

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1182nd MEETING SESSION (10th OF 2005)

+ + + + +

MONDAY

JUNE 13, 2005

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN	Chairperson
ANTHONY HOOD	Vice Chairperson
KEVIN HILDEBRAND	Commissioner
JOHN PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLLIN, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN, Office of Planning
ELLEN McCARTHY, Office of Planning

D. C. ATTORNEY GENERAL'S OFFICE:

ALAN BERGSTEIN, ESQ.
JACOB RITTING, ESQ.

This transcript constitutes the minutes from the meeting held on June 13, 2005.

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

2 6:52 p.m.

3 CHAIRPERSON MITTEN: Good evening ladies
4 and gentlemen. This is the June 13, 2005 Public
5 Meeting of the Zoning Commission of the District of
6 Columbia.

7 My name is Carol Mitten and joining me
8 this evening are Vice Chairman Anthony Hood, and
9 Commissioners Kevin Hildebrand and John Parsons.

10 Copies of today's agenda are available to
11 you and they are in the wall bin near the door. And
12 I would just like to remind folks that we don't take
13 any public testimony at our meetings unless someone is
14 specifically requested to come forward.

15 And I'd like to advise you that the
16 proceeding is being recorded by the court reporter,
17 but it also being webcast live. So we ask you to
18 refrain from making any disruptive noises in the
19 hearing room during our meeting. And we ask everyone
20 to turn off all beepers and cell phones at this time
21 as well.

22 Ms. Schellin, do we have any preliminary
23 matters?

24 MS. SMITH: No, Ma'am.

25 CHAIRPERSON MITTEN: All right. Just a

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1 little bit of housekeeping before we start. We have
2 two cases on for final action. Case Numbers -- well,
3 I guess it's the same case; 04-25, related to Catholic
4 University, the map amendment and further processing.
5 NCPC Review has not been completed so we're not ready
6 to go forward on final action of those. So they will
7 be moved to our next available public meeting.

8 And with that, we'll move to the Office of
9 Planning monthly report. And we don't have anyone
10 here from the Office of Planning.

11 MS. SCHELLIN: Actually, they are here.
12 Maybe they just don't know we've gotten started.

13 CHAIRPERSON MITTEN: Where are they?

14 MS. SMITH: They were in the office. Hold
15 on.

16 CHAIRPERSON MITTEN: Okay. Well, we'll
17 just go ahead and we'll pick them up on the back end.

18 So then, the first item under Consent
19 Calendar is Case No. 98-20A. And this is a request
20 for a minor modification to the Walter Washington
21 Estates. It relates to the community center and the
22 uses therein; a daycare center and the after school
23 care and the operation of those facilities, both in
24 terms of the capacity being requested and the ages of
25 the children to be served.

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1 And Ms. Schellin, did you have anything to
2 add. I just gave a little overview on the consent
3 calendar item?

4 MS. SCHELLIN: No, Ma'am. Just that we
5 prepared the memo recommending that you guys take
6 action as you please.

7 CHAIRPERSON MITTEN: Okay. Are there any
8 questions or concerns? Otherwise I would move that we
9 grant the request for minor modification in Case No.
10 98-20A.

11 VICE CHAIRPERSON HOOD: I'll second.

12 CHAIRPERSON MITTEN: Okay. That will go
13 to Mr. Hood.

14 COMMISSIONER HILDEBRAND: Madam Chair, I
15 did have one question. In the cover letter by Arnold
16 & Porter, there's a mention of before care as well as
17 after care. And I didn't see anything in the rest of
18 the documentation about what are the parameters of
19 before care.

20 CHAIRPERSON MITTEN: Would you just point
21 out specifically where it says that?

22 COMMISSIONER HILDEBRAND: It's on -- in
23 the June 21, 2005 letter, page 2, under Item No. 1,
24 Community Center.

25 CHAIRPERSON MITTEN: Do you mean June 1,

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1 2005?

2 COMMISSIONER HILDEBRAND: Yes. June 1st.
3 At the end of the second paragraph under Item No. 1.

4 CHAIRPERSON MITTEN: Okay. Very Good.

5 COMMISSIONER HILDEBRAND: And I didn't
6 know if that was just a mistake in the cover letter or
7 if there was something missing in their request for
8 amendment.

9 CHAIRPERSON MITTEN: Okay. Just bear with
10 me for a second.

11 MS. SCHELLIN: Excuse me. If I may, the
12 applicant's attorney has just advised that they took
13 out the before care request. It may have been a
14 mistake that it was still left in. But that request
15 was not part of what the end result is.

16 COMMISSIONER HILDEBRAND: Okay. Thank
17 you. That clarifies it for me.

18 CHAIRPERSON MITTEN: Okay. Thank you.
19 And just so that we're clear, the requests are very
20 specific. The request is to allow 59 children to be
21 served by the daycare center rather than 35; that the
22 ages for the daycare center be six weeks to five years
23 of age, rather than six months to five years of age;
24 that the after school care program be able to serve 33
25 children, rather than six children; and that the ages

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1 be four to 13 years of age, rather than six to 14
2 years of age.

3 So, aside from those very specific
4 modifications, anything else that's in there is sort
5 of extraneous.

6 COMMISSIONER HILDEBRAND: Okay.

7 CHAIRPERSON MITTEN: Okay. Any further
8 discussion or questions? All those in favor, please
9 say aye.

10 ALL: Aye.

11 CHAIRPERSON MITTEN: Ms. Schellin, it's
12 unanimous.

13 MS. SMITH: Yes. Staff will record the
14 vote four to zero to one to approve the Consent
15 Calendar Action in 98-20A; Commissioner Mitten moving,
16 Commissioner Hood seconding, Commissioners Hildebrand
17 and Parsons in favor; Commissioner Jeffries not
18 present, not voting.

19 CHAIRPERSON MITTEN: Thank you. Now we'll
20 move to the first case under Final Action which is
21 Case No. 05-13. Which is the Sua Sponte of the
22 JBG/Louisiana LLC case. Mr. Hildebrand?

23 COMMISSIONER HILDEBRAND: Madam Chair, I
24 have a preliminary matter for this case.

25 CHAIRPERSON MITTEN: Please.

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1 COMMISSIONER HILDEBRAND: As you know, I
2 sit on the Commission as a representative for the
3 Architect to the Capitol. And, as such, I feel that
4 I need to recuse myself from further participation in
5 this case, since my office has sent in a letter of
6 opposition to the original underlying case.

7 CHAIRPERSON MITTEN: Okay. Thank you.
8 Given the discussion that we had at our last month's
9 meeting and the fact that Commissioner Jeffries is not
10 in attendance and the fact that Commissioner
11 Hildebrand has just recused himself and that we will
12 need a vote of three in order to take some definitive
13 action on this case,

14 I'm going to ask for a date, Ms. Schellin,
15 that Commissioner Jeffries can join us. I don't know
16 what his schedule is like. But we can put this on for
17 a special public meeting, but I don't want to do it if
18 he's still going to be out of town.

19 MS. SCHELLIN: He's actually due back
20 after today.

21 CHAIRPERSON MITTEN: Okay. So we have two
22 hearings scheduled for Thursday, the 16th; the WMATA
23 case and the Pervious.

24 MS. SCHELLIN: Is that enough time to
25 advertise a special public hearing?

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1 CHAIRPERSON MITTEN: Actually, we need
2 five days. So I take that back. We could do it on
3 the 20th.

4 MS. SCHELLIN: Okay. What's that?

5 CHAIRPERSON MITTEN: Square 643.

6 MS. SCHELLIN: Okay. Let's set that.

7 CHAIRPERSON MITTEN: Okay. 6:00?

8 MS. SCHELLIN: 6:00 sounds good.

9 CHAIRPERSON MITTEN: Okay. Then the next
10 case under Final Action is Case No. 05-06, which is
11 the CyberKnife case, with Georgetown University.

12 VICE CHAIRPERSON HOOD: Madam Chair.

13 CHAIRPERSON MITTEN: Yes?

14 VICE CHAIRPERSON HOOD: I will not be
15 participating. I didn't participate in the hearings.
16 I guess I can still sit here, if that's okay.

17 CHAIRPERSON MITTEN: We would be most
18 pleased if you would stay with us. And, as to that
19 point, I believe Commissioner Jeffries did not
20 participate either. Is that correct?

21 MS. SCHELLIN: That is correct.

22 CHAIRPERSON MITTEN: Okay. So it's just
23 to the three of us, Mr. Parsons and Mr. Hildebrand.

24 COMMISSIONER HILDEBRAND: All right.

25 CHAIRPERSON MITTEN: We have a proposed

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1 summary order in that case. And, if you will recall,
2 there was no opposition to the further processing,
3 itself. So I would move that we approve Case No. 05-
4 06 and waive our rules which specifically would be
5 3028.8, and issue a summary order.

6 COMMISSIONER HILDEBRAND: I second that
7 and I agree that a summary order is appropriate in
8 this case.

9 CHAIRPERSON MITTEN: Thank you. Any
10 discussion? All those in favor, please say aye.

11 ALL: Aye.

12 CHAIRPERSON MITTEN: Ms. Schellin, there
13 are none opposed.

14 MS. SCHELLIN: Okay. Staff will record
15 the vote three to zero to two to approve Case No. 05-
16 06 for summary order; Commissioner Mitten moving;
17 Commissioner Parsons seconding; Commissioner
18 Hildebrand in agreeance and, let's see, Commissioner
19 Hood and Commissioner Jeffries -- well actually,
20 Commissioner Hood not voting, having not participated;
21 Commissioner Jeffries not present, not voting.

22 CHAIRPERSON MITTEN: Thank you. And now
23 I'll turn it over to Commissioner Hood for Case No.
24 04-28. This is a case that I didn't participate in,
25 which is the DMV text amendment.

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1 VICE CHAIRPERSON HOOD: Okay.
2 Commissioners we have in front of us Zoning Commission
3 Case No. 04-28. That's the DMV text amendment. Ms.
4 Schellin.

5 MS. SCHELLIN: Staff is provided the draft
6 order and asked that you take final action on this
7 case.

8 VICE CHAIRPERSON HOOD: Okay. Thank you,
9 Ms. Schellin. We also have a report from the NCPC
10 which advises that the proposal would not adversely
11 affect the identified federal interest, nor would it
12 be inconsistent with the comprehensive plan for the
13 National Capitol area.

14 And also, as the Chairperson stated
15 earlier, I don't think we had any opposition. We had
16 a lot of discussion. The text was advertised. And we
17 have the final text in front of us. If there are no
18 objections.

19 COMMISSIONER PARSONS: I move approval.

20 VICE CHAIRPERSON HOOD: It's been moved.
21 Can I get a second?

22 COMMISSIONER HILDEBRAND: Second.

23 VICE CHAIRPERSON HOOD: Moved and
24 seconded. All those in favor?

25 ALL: Aye.

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1 VICE CHAIRPERSON HOOD: Any opposition?

2 So ordered. Staff, would you record the vote?

3 MS. SCHELLIN: Yes. Staff would record
4 the vote three to zero to two to approve for final
5 action Case No. 04-28; Commissioner Parsons moving;
6 Commissioner Hildebrand seconding; Commissioner Hood
7 in favor; Commissioner Jeffries not present, not
8 voting; Commissioner Mitten not voting, having not
9 participated.

10 CHAIRPERSON MITTEN: Thank you. The last
11 item for us to take up this evening is a piece of
12 correspondence that has now grown to three pieces of
13 correspondence. In Case No. 01-28TE, which is the
14 time extension for 200 K Street Associates.

15 And, just to recount a few things that
16 have happened in this case, I think the original
17 request for a time extension was made in July of 2002.
18 We had scheduled a hearing. It had been postponed.
19 There was a lot of machinations going on.

20 And, if my recollection is correct, the
21 applicant had requested the postponement because they
22 were planning on making an alternative proposal to the
23 one for which the time extension had been requested.

24 That dragged on for a while. We finally
25 gave a drop dead date for submitting this amended

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1 application of January 2005. We received that new
2 proposal after giving that deadline. We set down that
3 proposal.

4 And now, here we are with a hearing date
5 finally scheduled seven months later. And the
6 applicant is requesting a further postponement of the
7 hearing. Which, frankly, is a little bit disconcerting
8 because of the nature of the request, which suggests
9 that the proffers that they made were not fully vetted
10 at the time that they made them. Which was integral
11 to our being willing to set down the case.

12 So, so far, what started out as a two-year
13 time extension has, by just lack of action, turned
14 into a three-year time extension. And I'm reluctant
15 to allow the postponement. And I would ask my
16 colleagues to join me on July 14th to hear this case.

17 VICE CHAIRPERSON HOOD: I would disagree
18 with you, Madam Chair. I think we -- I think some
19 things have changed. I think we have a letter from
20 the ANC, which is asking for some more time to deal
21 with some issues; affordable housing being one of
22 them.

23 And I think that, come they are here on
24 July 14th, not given the applicant the sufficient
25 amount of time will be a waste of time for all of us.

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1 I think we're not hurting anything. But they've asked
2 -- counsel has asked for October. And I'm in favor of
3 saying a full-fledged application in front of us in
4 October. And also of giving them a time to work with
5 the ANCs.

6 So I am in opposition of your comments.

7 CHAIRPERSON MITTEN: Anyone else?

8 COMMISSIONER PARSONS: I'm reading this
9 ANC letter. And apparently, there's a meeting to
10 occur on July 6th. And then on July 13th. And I
11 guess what they're saying is that's not enough time
12 for them to prepare for the following evening. Is
13 that what you understand, Mr. Hood?

14 VICE CHAIRPERSON HOOD: Well, I think
15 they're reconvening some negotiations. And what
16 they're working on, the way I read it, and
17 unfortunately we just got both of these as we came in
18 this evening.

19 COMMISSIONER PARSONS: Yes.

20 VICE CHAIRPERSON HOOD: But the way I read
21 it is that there's a spark interest and there's a new
22 adventure being taken. And I understand that we may
23 have delayed this from time to time again. But
24 sometimes these things take some time. Especially
25 dealing with the affordable housing issue.

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1 I'm just not ready to let go of this yet.
2 The applicant has assured us that in October, if we
3 come back, we will be, I think, it will be to our
4 advantage to wait until October. I'm willing to say
5 October is the drop dead date, especially considering
6 that some of the players have changed.

7 And I know that may not hold up in a court
8 of law because the players have changed. But I just
9 think that we have to be amenable. Especially when
10 we're dealing with affordable housing.

11 Sometimes it takes time to look at the
12 feasibility and how those things can actually
13 transpire and how it works.

14 So I'm in agreeance with what I see in
15 front of me and giving them some opportune time.

16 Now, after October, I may say something
17 totally different.

18 COMMISSIONER PARSONS: Well, I have to
19 read this. Again, I assure you that if this
20 postponement is granted, we will not come back to you
21 seeking another delay.

22 So that means, if it doesn't go forward in
23 October, we'll dismiss the case?

24 VICE CHAIRPERSON HOOD: I will have no
25 problems with that.

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1 COMMISSIONER PARSONS: Do you agree with
2 that?

3 VICE CHAIRPERSON HOOD: Yes, I've agreed
4 to that.

5 COMMISSIONER PARSONS: Because there's no
6 reason to continue after two and a half years.

7 CHAIRPERSON MITTEN: I definitely agree
8 with that. I guess it's just that this applicant;
9 we've had to push this applicant all the time.

10 COMMISSIONER PARSONS: Yes.

11 CHAIRPERSON MITTEN: And so it's always
12 that they play out the time limit as far as we will
13 let it go. And, you know, keep in mind that what got
14 them in the door was a time extension. The
15 application itself, based on what we set down, is
16 changed completely.

17 So this is really just a mechanism for
18 keeping them from making a new application. When, in
19 fact, that's mostly what it is. You know, the project
20 itself is almost entirely new.

21 VICE CHAIRPERSON HOOD: Well, Madam Chair,
22 I just see a waste of time for me to come -- and I
23 understand. I hear you. But I just think it's a
24 waste of time for us to strong arm and have the
25 applicant come down here on the 14th.

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1 And, as they stated in that letter, and I
2 will take it from the second paragraph, because it
3 will enable us to present a detailed plan for the
4 affordable housing component of the project.

5 Moreover, it will provide the opportunity
6 to gain the views of the Advisory Neighborhood
7 Commission 6C on the affordable housing component and
8 other aspects of the revised plans.

9 And I know none of us are here in
10 opposition of affordable housing. But I just think
11 that we need to play this out, let them go to October.
12 And then if they come back in October with another
13 extension, I will be the one to make the motion.

14 CHAIRPERSON MITTEN: Mr. Hildebrand?

15 COMMISSIONER HILDEBRAND: I think the
16 thing for me, not being here for the original case in
17 2002, I don't know that history so well. But I am a
18 little concerned that the applicant would bring the
19 case forward again, proffering something that they
20 weren't fully prepared to execute.

21 And I think that's the part I find
22 troubling. I just don't know what has happened since
23 March when they proffered the plan and now that
24 they're reconsidering it.

25 It is a little troubling that they didn't

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1 fully understand the economics of it before they
2 requested the first extension.

3 CHAIRPERSON MITTEN: Well, just to find
4 out where everyone is, I will move that we deny the
5 request for the postponement and go forward with the
6 hearing on the 14th.

7 COMMISSIONER HILDEBRAND: I would second
8 that motion.

9 CHAIRPERSON MITTEN: Okay. Is there any
10 further discussion? All those in favor, please say
11 aye.

12 RESPONSE: Aye. Aye.

13 CHAIRPERSON MITTEN: Those opposed, please
14 say no.

15 RESPONSE: No. No.

16 CHAIRPERSON MITTEN: Okay. Okay. Ms.
17 Schellin, let's just record that.

18 MS. SCHELLIN: Staff will record the vote
19 of denying postponing Case No. 01-28 as two to two to
20 one; Commissioner Mitten moving; Commissioner
21 Hildebrand seconding; and then against we would have
22 Commissioners Hood and Parsons; and Commissioner
23 Jeffries not present, not voting.

24 So the vote fails.

25 CHAIRPERSON MITTEN: Okay. Just to keep

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1 things moving, Mr. Hood, if you'll make a motion, I'll
2 make sure that we can go forward with something.

3 VICE CHAIRPERSON HOOD: I will move that
4 we grant the request for a postponement until -- do we
5 need to have a time certain?

6 CHAIRPERSON MITTEN: Yes.

7 VICE CHAIRPERSON HOOD: October 31, of
8 2000 --

9 CHAIRPERSON MITTEN: Five.

10 VICE CHAIRPERSON HOOD: 2005.

11 CHAIRPERSON MITTEN: Is that a hearing
12 night Ms. Schellin?

13 VICE CHAIRPERSON HOOD: I didn't say that
14 was the date.

15 COMMISSIONER HILDEBRAND: Halloween?

16 VICE CHAIRPERSON HOOD: I was giving them
17 until October 31.

18 COMMISSIONER PARSONS: That's not a good
19 start.

20 MS. SCHELLIN: Our first available date in
21 October would be the third.

22 CHAIRPERSON MITTEN: Mr. Hood is trying to
23 give them the latest possible date in October.

24 MS. SCHELLIN: Well, the 31st is the
25 latest.

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1 CHAIRPERSON MITTEN: And that's a hearing
2 night?

3 MS. SCHELLIN: That is a hearing night.

4 VICE CHAIRPERSON HOOD: And I guessed on
5 that. I was just saying that whatever date is
6 available, I was just giving them until the end of the
7 month.

8 CHAIRPERSON MITTEN: I want a specific
9 date; a hearing date.

10 VICE CHAIRPERSON HOOD: Well since I won,
11 you can have whatever date you want. What date do we
12 have?

13 CHAIRPERSON MITTEN: You haven't won yet.
14 So behave.

15 MS. SCHELLIN: We're getting nos on the
16 31st I think. Mr. Parson is saying no?

17 COMMISSIONER PARSONS: Okay. Yes. No
18 costumes here.

19 VICE CHAIRPERSON HOOD: October 3rd is the
20 first?

21 MS. SCHELLIN: It is the first. And then
22 we have the sixth available also.

23 VICE CHAIRPERSON HOOD: Okay. I will move
24 that we grant the postponement until October 3rd, the
25 first available date upon which the Commission will be

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1 able to have another hearing. And I so move.

2 COMMISSIONER PARSONS: Second.

3 CHAIRPERSON MITTEN: All right. I would
4 like to offer a friendly amendment that would be
5 consistent with your earlier statement; which would be
6 that I would be reluctantly in support of that request
7 if you would include that no further requests for
8 postponement would be granted.

9 VICE CHAIRPERSON HOOD: Did I say that?

10 COMMISSIONER PARSONS: Yes, you did.

11 VICE CHAIRPERSON HOOD: I said I would
12 make the motion if they -- okay, so --

13 COMMISSIONER PARSONS: Why not make it
14 now?

15 VICE CHAIRPERSON HOOD: Okay. I will
16 accept that.

17 CHAIRPERSON MITTEN: Okay.

18 VICE CHAIRPERSON HOOD: I hate to because
19 a lot of things -- well, okay.

20 COMMISSIONER PARSONS: The seconder will
21 accept that.

22 CHAIRPERSON MITTEN: Okay. So the motion
23 that has been made and seconded is to grant the
24 request for a postponement to a date certain, which
25 would be October 3, 2005, and that no further requests

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1 for postponement will be granted after that date.

2 Is there any further discussion? All of
3 those in favor, please say aye.

4 ALL: Aye.

5 CHAIRPERSON MITTEN: Ms. Schellin, it's
6 unanimous this time.

7 MS. SCHELLIN: Okay. Staff will record
8 the vote four to zero to one to grant postponement of
9 Case No. 04-28 from July 14th to a new hearing date of
10 6:30 p.m. on October 3, 2005, with no further requests
11 for postponement; Commissioner Hood moving;
12 Commissioner Parsons seconding; Commissioners
13 Hildebrand and Mitten in favor; Commissioner Jeffries
14 not present, not voting.

15 CHAIRPERSON MITTEN: Thank you. Anything
16 else, Ms. Schellin?

17 MS. SCHELLIN: No, Ma'am.

18 CHAIRPERSON MITTEN: Okay. Thank you.
19 We're adjourned.

20 (Whereupon, the hearing was concluded at
21 7:14 p.m.)

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