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Testimony of Christopher H. Collins, Counsel
District of Columbia Building Industry Association
on "Changes to the Height Act: Shaping Washington, DC for the Future"
Thursday, July 19, 2012 1:30 p.m.
Before the Committee on Oversight and Government Reform, Subcommittee on
Health Care, District of Columbia, Census and the National Archives
Congressman Trey Gowdy, Chairman
2154 Rayburn House Office Building

Good afternoon Chairman Gowdy and members of the Committee. I am Christopher Collins and I am testifying today as Counsel to the District of Columbia Building Industry Association.

About DCBIA

The District of Columbia Building Industry Association (DCBIA) is the professional association representing both the commercial and residential real estate industries in the District of Columbia. Our membership of nearly 500 companies and organizations comprises several thousand real estate professionals. Association members are engaged in all aspects of real estate development and include developers, general contractors, architects and engineers, lenders, attorneys, brokers, title companies, utility companies, community development organizations and other industry members.

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As an advocacy organization, DCBIA represents the interests and views of its members before the District of Columbia and the federal governments, community organizations and other business associations. DCBIA is an advocate for a vigorous, responsible real estate industry. We interpret that advocacy role broadly - to not only give voice to the specific concerns of our members, but also to speak out in support of public policies that promote the economic growth and vitality of the nation's capital.

Our members serve frequently on commissions, task forces and study groups to address crucial economic development and municipal governance issues. Our members work closely with agencies of the DC government to advise and assist in the efficient administration of city programs - most recently in areas related to land use, building regulation, comprehensive planning, tax issues and affordable housing and community development. We also work in collaboration with other business groups and community organizations to attract and retain business investment and to facilitate the revitalization of distressed areas in the City. For more information, see our website at www.dcbia.org.

Background of the 1910 Height Act

The Act to Regulate the Height of Buildings (Act of June 1, 1910, 36 Stat. 452) is commonly referred to as the 1910 Height Act. The specific requirements of the 1910 Height Act for discussion today are found in Section 5, which is attached hereto. That section provides that buildings on "business streets" (those sides and portions of streets located in Special Purpose, Waterfront, Mixed Use, Commercial, or Industrial zoning districts) may be erected to a height equal to the width of the adjacent street plus 20 feet, with an overall maximum height of 130 feet, except for the north side of Pennsylvania Avenue between

First and 15th Streets NW, where a height of 160 feet is permitted. On residence streets, the maximum height is 90 feet, but is further limited by the width of the adjacent street, minus 10 feet. The point of measurement is required to be taken from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof or parapet, provided that if the building has more than one front, the height shall be measured from the elevation of the sidewalk that permits the greater height.

Above the maximum height of a building itself, Section 5 of the 1910 Height Act allows for two types of structures:

- architectural elements such as "spires, towers, domes, minarets and pinnacles", which has now evolved into what generally are known as "architectural embellishments"; and
- utilitarian elements such as penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks and fire sprinkler tanks. With the advent of central heating, ventilation, and air conditioning in multi story buildings, this equipment is now placed on the roof as the modern version of ventilation shafts, chimneys and smokestacks.

Congress set no limitation on the height of the permitted architectural elements, and they can be located anywhere above the roof of a building. Likewise, Congress set no limit on the height of the utilitarian roof structure elements, except that they are required to be constructed with a setback from the exterior walls of the building equal to their height above the roof, and they are prohibited from being used for "human occupancy."

Building heights in the District of Columbia are also governed by the DC Zoning Regulations, which in many instances permit maximum heights that are less than those permitted by the 1910 Height Act, and which also provide a height limit for roof structures of 18 feet, six inches above the height of the roof.

Proposed Modifications to the 1910 Height Act

DCBIA believes that the horizontal nature of our city skyline is an important component of the city's beauty and special character. We also understand that there are a wide variety of views on the wisdom and importance of the 1910 Height Act, and whether the established height limits should be retained or modified. DCBIA has examined this issue, and we believe that there is a practical approach for a minor change in the 1910 Height Act that would have absolutely no impact upon the skyline of the city as currently permitted by the 1910 Height Act. Simply stated, that is to remove the restriction on "human occupancy" above the top story of a building. Allowing habitable space in a roof structure in addition to the normal roof top machinery, while retaining the current roof structure setback requirement, would allow a wide variety of uses, such restaurants and lounges, health clubs, community rooms, and enclosed swimming pools as well as other residential and non-residential uses. Allowing such use of roof structure space would also likely promote a greater use of rooftops outside of these roof structures for active and passive outdoor recreation, and rooftop landscaping. We believe that this proposal will have a positive benefit on the quality of life of those using those facilities, and will also help to enhance the beauty of the skyline of our "horizontal city". The attached article provides more detail on this proposal.

On behalf of DBIA, I thank you for the opportunity to appear today. I would be pleased to answer your questions.

Proviso.
Treaty rights not affected.

and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act.

Approved, May 30, 1910.

May 30, 1910.
[H. R. 9304.]
[Public, No. 195.]

CHAP. 261.—An Act Granting certain lands in the Coconino National Forest, in Arizona; for observatory purposes.

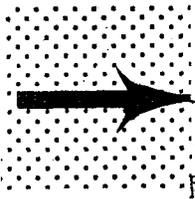
Lowell Observatory, Ariz.
Lands in Coconino National Forest granted for.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to Percival Lowell, his heirs and assigns, section numbered seventeen, in township numbered twenty-one north of range seven east of the Gila and Salt River base and meridian, the said tract of land being within the Coconino National Forest, in the Territory of Arizona, for observatory purposes in connection with the Lowell Observatory: *Provided*, That in the event of the removal or abandonment of the said observatory or the use of said land by the grantee for other than observatory purposes the said land shall revert to the United States: *Provided further*, That the title to the merchantable timber thereon and the right to cut and remove the same in such manner as to preserve the herbage and undergrowth in their natural condition shall remain in the United States.

Proviso.
Reversion for non-user.

Timber rights excluded.

Approved, May 30, 1910.



June 1, 1910.
[H. R. 19070.]
[Public, No. 198.]

CHAP. 263.—An Act To regulate the height of buildings in the District of Columbia.

District of Columbia.
Height of nonfireproof dwellings, etc., limited.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the date of the approval of this Act no combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied as a dwelling, flat, apartment house, tenement, lodging or boarding house, hospital, dormitory, or for any similar purpose shall be erected, altered, or raised to a height of more than four stories, or more than fifty feet in height above the sidewalk, and no combustible or nonfireproof building shall be converted to any of the uses aforesaid if it exceeds either of said limits of height.

Business buildings.

SEC. 2. That from and after the date of the approval of this Act no combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied for business purposes only shall be erected, altered, or raised to a height of more than sixty feet above the sidewalk, and no combustible or nonfireproof building shall be converted to such use if it exceeds said height.

Fireproof materials required for buildings exceeding 60 feet.
Churches excepted.

SEC. 3. That all buildings in the District of Columbia, including buildings of every kind, class, and description whatsoever, excepting churches only, hereafter erected, altered, or raised in any manner as to exceed sixty feet in height shall be fireproof or noncombustible and of such fire-resisting materials, from the foundation up, as are now or at the time of the erecting, altering, or raising may be required by the building regulations of the District of Columbia.

Hotels, etc.

Hotels, apartment houses, and tenement houses hereafter erected, altered, or raised in any manner so as to be three stories in height or over and buildings hereafter converted to such uses shall be of fireproof construction up to and including the main floor, and there shall be no space on any floor of such structure of an area greater than two thousand five hundred square feet that is not completely inclosed by

fireproof walls, and all doors through such walls shall be of noncombustible materials.

Every building hereafter erected with a hall or altered so as to have a hall with a seating capacity of more than three hundred persons when computed, as provided by the building regulations, and every church hereafter erected or building hereafter converted for use as a church, with such seating capacity, shall be of fireproof construction up to and including the floor of such hall or the auditorium of such church as the case may be.

SEC. 4. That additions to existing combustible or nonfireproof structures hereafter erected, altered, or raised to exceed the height limited by this Act for such structures shall be of fireproof construction from the foundation up, and no part of any combustible or nonfireproof building shall be raised above such limit or height unless that part be fireproof from the foundations up.

Towers, spires, or domes, hereafter constructed more than sixty feet above the sidewalk, must be of fireproof material from the foundation up, and must be separated from the roof space, choir loft, or balcony by brick walls without openings, unless such openings are protected by fireproof or metal-covered doors on each face of the wall. That full power and authority is hereby granted to and conferred upon every person, whose application was filed in the office of the Commissioners of the District of Columbia prior to the adoption of the present building regulations of said District, to construct a steel fireproof dome on any buildings owned by such person, in square three hundred and forty-five of said District, as set forth in the plans and specifications annexed to or forming a part of such applications so filed, any other provision in this Act contained to the contrary notwithstanding. And the inspector of buildings of said District shall make no changes in said plans and specifications unless for the structural safety of the building it is necessary to do so.

Every theater hereafter erected and every building hereafter converted to use as a theater, and any building or the part or parts thereof under or over the theater so erected or the buildings so converted, shall be of fireproof construction from the foundation up and have fireproof walls between it and other buildings connected therewith, and any theater damaged to one-half its value shall not be rebuilt except with fireproof materials throughout and otherwise in accordance with the building regulations of the District of Columbia.

SEC. 5. That no building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by twenty feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of two or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway. Where a building is to be erected or removed from all points within the boundary lines of its own lots, as recorded, by a distance at least equal to its proposed height above grade the limits of height for fireproof or noncombustible buildings in residence sections shall control, the measurements to be taken from the natural grades at the buildings as determined by the commissioners.

No building shall be erected, altered, or raised in any manner as to exceed the height of one hundred and thirty feet on a business street or avenue as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania avenue between First and Fifteenth streets, northwest, where an extreme height of one hundred and sixty feet will be permitted.

Halls.

Churches.

Additions.

Towers, spires, and domes.

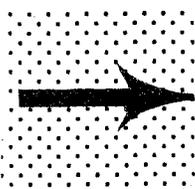
Dome in square 345.

Plans.

Theaters.

Width of street to govern height.

Business streets.



Residence streets.	On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over eighty feet in height to the top of the highest ceiling joists or over eighty-five feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by ten feet, except on a street, avenue, or highway sixty to sixty-five feet wide, where a height of sixty feet may be allowed; and on a street, avenue, or highway sixty feet wide or less, where a height equal to the width of the street may be allowed.
Foot, p. 891. Corner lots.	The height of a building on a corner lot will be determined by the width of the wider street.
Streets less than 90 feet wide.	On streets less than ninety feet wide where building lines have been established and recorded in the office of the surveyor of the district, and so as to prevent the lawful erection of a building in advance of said line, the width of the street, in so far as it controls the height of buildings under this law, shall be held to be the distance between said building lines.
Adjoining public buildings.	On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Commissioners of the District of Columbia.
Abutting Union Station plaza. Vol. 32, p. 913.	Buildings hereafter erected to front or abut on the plaza in front of the new Union Station provided for by Act of Congress approved February twenty-eighth, nineteen hundred and three, shall be fireproof and shall not be of a greater height than eighty feet.
Towers, chimneys, sprinkler tanks, etc.	Spire, towers, domes, minarets, pinnacles, pent houses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this Act when and as the same may be approved by the Commissioners of the District of Columbia: <i>Provided, however,</i> That such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed: <i>And provided,</i> That pent houses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof.
Provisions. Fireproof requirements.	SEC. 6. That no wooden or frame building hereafter erected, altered, or converted for use as a human habitation shall exceed three stories or exceed forty feet in height to the roof.
Distance from exterior walls.	SEC. 7. That for the purposes of this Act the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height.
Limit for frame dwellings.	SEC. 8. That buildings erected, altered, or raised or converted in violation of any of the provisions of this Act are hereby declared to be common nuisances; and the owner or the person in charge of or maintaining any such buildings, upon conviction on information filed in the police court of the District of Columbia by the corporation counsel or any of his assistants in the name of said District, and which said court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars per day for each and every day such nuisance shall be permitted to continue, and shall be required by said court to abate such nuisance. The corporation counsel of the District of
Basis of measurement.	
Violations declared nuisances.	
Penalty.	
Injunction proceedings.	

Columbia may maintain an action in the supreme court of the District of Columbia, in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceeding shall be punished as for contempt by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the United States jail for not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

Punishment for violating injunction.

SEC. 9. That Congress reserves the right to alter, amend, or repeal this Act. All laws in conflict herewith are hereby repealed.

Repeal, etc.
Vol. 30, p. 922.

Approved, June 1, 1910.

From the Washington Business Journal
: <http://www.bizjournals.com/washington/stories/2010/02/22/tidbits9.html>

OnSite

Guest comment: We can relax D.C.'s height limits

Keep city's character by using roof structures for human occupancy

Premium content from Washington Business Journal by Wayne S. Quin

Date: Monday, February 22, 2010, 12:00am EST

Related:

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Acrophobia is normally thought of as a fear of heights from the person's perspective looking down. But it's also a good way to describe the fear of seeing and permitting higher buildings in D.C.

Scores of articles have been written and many symposia have been held debating and commenting about the limitation on building heights. Local and federal agencies frequently reference the height of buildings as being one of the most sensitive parts of the city's planning and built environment. The core of this focus always seems to be the congressionally enacted 1910 height act. Most everyone takes pride in the horizontality of our capital city, arguing the city would not have that character without the act.

Unfortunately, myths, misunderstandings and strained interpretations sometimes cause public officials and preservationists to fear that real estate developers, architects and their attorneys want to breach the limitations and destroy that character with major vertical increases having an adverse impact on our skyline.

No doubt, there are those who would like to do away with the 1910 height act and, at the other extreme, there are those who would like to apply interpretations that restrict heights far below what was intended by the act.

Both are wrong. There is a middle ground — all completely within the framework of the overall heights of buildings as consistently permitted and built over the last 100 years.

The 1910 height act was initiated by the District of Columbia Board of Commissioners — not Congress — because, after the permitting of the Cairo Hotel at 1615 Q St. NW, our

city fathers felt that there should be appropriate height limits. The essential requirements of the act, as now in effect, are that buildings on business streets may be erected to a height of the width of the street plus 20 feet, with an overall maximum height of 130 feet, except for the north side of Pennsylvania Avenue between First and 15th streets NW, where "an extreme height" of 160 feet is permitted. On a residence street, the maximum height is 90 feet, but further limited by the width of the street diminished by 10 feet. The point of measurement is required to be taken from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof or parapet, provided that if the building has more than one front, the height shall be measured from the elevation of the sidewalk that permits the greater height.

Above the maximum height of a building itself, the law also provided for essentially two types of structures, namely architectural elements such as spires, towers, domes, minarets which has evolved into what generally has become known as "architectural embellishments"; and utilitarian elements such as penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks and fire sprinkler tanks. Congress set no limit for these roof structure elements but required them to be constructed with a setback from public street frontages on a 1:1 basis and prohibited them from being used for "human occupancy."

Since the inception of zoning in D.C., the Zoning Commission has established height limits by zoning districts. While there have been several limits regarding size of roof structures, no limit on the height of roof structures existed until December 1976, when the Zoning Commission adopted a general limit of 18 feet, 6 inches, with the right of the Board of Zoning Adjustment to approve higher structures.

So the result today is that a 90-foot building with an 18-foot, 6-inch roof structure would have a silhouette of 108.5 feet with setbacks above the height act restriction and a 130-foot building would have a silhouette rising to 148.5 feet with certain setbacks above the restrictions. Aside from setbacks imposed by zoning, the only setback required by the height act is from public streets. These heights have been deemed appropriate to preserve our horizontal city.

Within the overall height limitations, it is clear that Congress intended broad flexibility under the height act enabling the city to be competitive as evidenced by the fact that the act left to D.C. agencies the question of what constitutes a building, left to the city the enforcement of the act through the Office of Corporation Counsel (now the Office of the Attorney General), gave the city the right to adopt a schedule of heights for buildings adjacent to federal buildings and allowed the city to determine how high and how large roof structures should be. Originally, the primary purpose of the height limits was fire safety. That rationale has completely faded, and the sole arguments are now aesthetic and historic aimed at protecting the horizontality vision. Today, the city is at a distinct disadvantage in not being able to be more competitive with our surrounding jurisdictions in terms of design and availability of residential and commercial space.

So, within the existing framework, what additional height can be permitted without doing damage to the essential constraints of the 1910 act? Architects and engineers indicate that the ability to provide one or two more floors of first-class residential and commercial

space in new buildings could be provided with 10 to 20 feet more of height. We need to find a way to allow this without damaging the wonderful perspectives of our city. One solution would be to allow human occupancy within the established total framework of our buildings. This includes the space within buildings as now limited by the act and the space that is already permitted for roof structures with the additional 18 feet, 6 inches. Recently the Office of Planning has suggested that a roof structure height of 20 feet would make more sense.

The aesthetic and historic nature of the height act's application would then be respected and the horizontal nature of our city would not be impaired. While presenting technical and architectural issues on how to provide mechanical and safety measures within the same space above the basic height limits, in many cases additional residential units or commercial space could be provided. Two legislative actions would be required:

1. Congress would have to amend the 1910 height act to allow human occupancy in the space previously allowed for the architectural and utilitarian roof structures. Congress could limit how high human occupancy could go, for example, 20 feet, with the previously required public street 1:1 setback.
2. The Zoning Commission would have to amend the zoning regulations to follow such congressionally approved limitations and would need to determine what size and setback would be required and then provide for limited flexibility through the Board of Zoning Adjustment.

In this manner, the increase of height would be within the overall building heights now permitted and the competitive position of the District of Columbia could be enhanced without disturbing the long and widely respected structural height limitations.

Whayne S. Quin is a partner and land-use practice leader for the mid-Atlantic region at Holland & Knight LLP.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – “Truth in Testimony”
Required by House Rule XI, Clause 2(g)(5)

Name: Christopher H. Collins

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2009. Include the source and amount of each grant or contract.

None

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

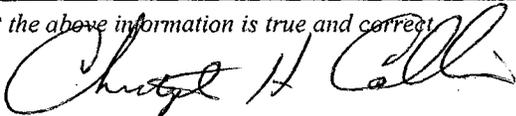
Testifying on behalf of the District of Columbia Building Industry Association where I serve as Counsel.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2009, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

I certify that the above information is true and correct.

Signature:



Date:

7/13/12



Christopher H. "Chris" Collins

Partner

Washington, D.C.

t: 202-457-7841

e: chris.collins@hklaw.com

Practices

Real Estate
Land Use
Mid-Atlantic Land Use
D.C. Practice

Education

Catholic University of America,
Columbus School of Law, J.D.

Boston College, A.B., *magna cum laude*, Political Science

Bar Admissions

District of Columbia
Maryland

Christopher H. Collins focuses on zoning and land use law, historic preservation, municipal law, building code and foreign mission and international organization matters. He has considerable experience representing a broad range of local, national and international clients, including residential, commercial, retail and industrial developers, financial institutions, asset managers, hotels and hospitality providers, schools and universities, foreign governments, nonprofit organizations, religious institutions, and property owners and commercial tenants in all areas of land use law and real estate development. He represents clients before all of the federal and local land use regulatory agencies in District of Columbia.

Mr. Collins has lectured both locally and nationally on historic preservation, land use and foreign missions issues. He is also the author of numerous articles on issues involving building codes, zoning regulations, foreign missions and recent developments in land use law and related matters. As an accredited LEED AP Professional, he also counsels clients regarding green building and sustainability issues. Mr. Collins is Counsel to the D.C. Building Industry Association.

Mr. Collins has represented more than 50 foreign governments and international organizations in real estate matters, primarily relating to the acquisition, location, replacement and expansion of their embassy and other facilities in Washington. He is a Counselor to the Meridian International Center.

Professional Honors & Awards

- *The Best Lawyers in America* guide, Land Use & Zoning Law; Real Estate Law, 2008-2012
- Corporate Counsel Edition, *Super Lawyers* magazine, 2009-2010
- Washington, D.C. *Super Lawyers* magazine, 2009
- Top Washington Lawyer Finalist, *Washington Business Journal*, 2007 and 2008
- The Legal 500, 2007 and 2008
- Lawdragon 500, 2006
- U.S. Green Building Council, LEED Accredited Professional (LEED®AP)

Holland & Knight

Memberships

- District of Columbia Building Industry Association, Counsel
- DCBIA Political Action Committee, Treasurer
- DCBIA Community Services Corporation, Counsel
- Meridian International Center, Counselor and former Trustee
- Cultural Tourism DC, Board member
- Lambda Alpha International Honorary Land Economics Society
- Urban Land Institute – Full Member

Court Admissions

- U.S. Supreme Court
- U.S. District Court for the District of Columbia
- U.S. Court of Appeals, D.C. Circuit
- All Courts in District of Columbia
- All State Courts in Maryland

Speaking Engagements

- "Sustainability Initiatives in the District: What You Need to Know," Holland & Knight Seminar, April 24, 2012
- "Real Estate & Construction Considerations for Associations and Nonprofits," CBHAnnual Nonprofit Seminar, November 4, 2010

Published Articles & Books

- "Summary of D.C. Green Building Act Requirements," *District of Columbia Building Industry Association Pipeline*, April 2010
- "New Residence Building in Washington, D.C. for Chinese Embassy's Education Office," *China*, Newsletter – June 2008