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December 21, 2006

By Hand Delivery

Carol J. Mitten, Chairperson
District of Columbia Zoning Commission
Office of Zoning
441 4th Street, NW, Suite 210
Washington, DC 20001

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 2006 DEC 21 PM 12:53

**Re: Zoning Commission Case Nos. 06-11 and 06-12
 The George Washington University Foggy Bottom Campus Plan: 2006–2025
 and related First-Stage PUD and Map Amendment**

Dear Chairperson Mitten and Members of the Commission:

This letter is filed in response to the Commission’s request that The George Washington University (“University” or “GW”) respond to an inquiry posed by the West End Citizens’ Association (“WECA”) at the November 30, 2006 Zoning Commission hearing associated with the above-referenced cases.

Background

In its November 15, 2006 supplemental filing, the University submitted an additional provision to its previously proposed Condition 11 regarding the Foggy Bottom staff and faculty population cap. This additional provision would require that, as part of the report required in connection with each second stage Planned Unit Development application associated with the Campus Plan, GW would provide a list of any “outsourcing activities” that occurred since the filing of the last report. “Outsourcing activities” is defined in the Condition to include the termination within any thirty-day period of 50 or more Foggy Bottom faculty or staff who are assigned to a specific University department or unit and are permanently replaced with contractors or other persons not employed by the University to perform on the Foggy Bottom campus the services of the terminated faculty or staff.

At the November 30, 2006 hearing, GW representatives explained that the University already had in place a mechanism to track such personnel actions, since the definition proposed is consistent with the threshold which has been established under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. Section 2101

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("WARN"). Essentially the WARN Act triggers a requirement by private employers such as GW to provide certain advance notice to employees and local government entities of a "plant closing" or "mass layoff."

During cross examination, Barbara Kahlow, on behalf of the West End Citizens' Association, questioned why the University did not use the standard of "ten employees" as the reporting threshold consistent with OMB Circular A-76 (the "OMB Circular"). The Commission directed WECA to submit a copy of the OMB Circular and directed the University to provide a response to Ms. Kahlow's inquiry. On December 7, 2006, WECA provided a citation to the OMB Circular.

University Response

The OMB Circular referenced by WECA has no relevance to this proceeding. The purpose of the OMB Circular is to provide guidance to federal agencies concerning when, and under what circumstances, agencies might use the private sector to perform "commercial activities" of the government. Previously, the OMB Circular, under the "direct conversion" provision, permitted agencies to directly convert work to or from the private sector, without cost comparisons, where an activity is or will be performed by an aggregate of 10 or fewer full time equivalent employees ("FTEs"). Office of Management and Budget, Circular No. A-76 Rev. Supp. Handbook, Pt. I, Ch. 1 (1999) (as cited by WECA).¹

The 2003 revision to the OMB Circular, however, eliminated direct conversions and the 10 person threshold. Instead, the revised OMB Circular substituted a new standard which requires a streamlined competition process for employment activities involving 65 or fewer full time employees and standard competition for more than 65 FTEs. Office of Management and Budget, Circular No. A-76(Rev.), Attachment B (2003).² **Thus, under the current OMB Circular, the triggering number for federal agencies is 65 rather than 10.**

Regardless of the trigger established in the OMB Circular, the purpose of the University's addition to Condition 11 is to provide a reasonable mechanism for reporting outsourcing activities, but to do so in a manner that is consistent with existing University business practices so as to ensure compliance with the Campus Plan conditions and not create an undue administrative burden on the University. The advantage of tying the reporting requirement to the WARN definition of a "significant employment action" is that this federal law *already generally applies to private employers*. Under WARN, the University is currently required to track employment terminations involving at least 50

¹ The document is available at <http://www.dla.mil/j-3/a-76/A-76SupplementaryHandbookPart%20I.html>.

² The 2003 revision is available at http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.html#b

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employees within a 30 day period, and thus reporting this already-tracked data in connection with a second-stage PUD application would provide a reasonable reference point and an appropriate mechanism for facilitating compliance with Condition 11. The OMB Circular cited by WECA, on the other hand, has no application to private employers and is intended to guide federal agencies on what level of competition should be utilized for the government's own outsourcing activities. Thus, the OMB Circular does not provide a standard which would have any relationship to existing GW operations and should be disregarded in fashioning an appropriate threshold for reporting University outsourcing activities.

With this filing, the University has addressed all of the issues raised by the Commission and looks forward to the public meeting on January 17, 2006.

Very truly yours,



Maureen Dwyer



David Avitabile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this letter and enclosures were delivered by hand delivery and electronic mail on December 21, 2006.

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