

BEFORE THE DISTRICT OF COLUMBIA ZONING COMMISSION

THE GEORGE WASHINGTON UNIVERSITY)
FOGGY BOTTOM CAMPUS PLAN: 2006-2025 AND)
FIRST-STAGE PLANNED UNIT DEVELOPMENT)
AND ZONING MAP AMENDMENT)

Z.C. Nos. 06-11 &
06-12

**OPPOSITION OF THE GEORGE WASHINGTON UNIVERSITY TO MOTION OF FOGGY
BOTTOM ASSOCIATION AND ADVISORY NEIGHBORHOOD COMMISSION 2A TO
STRIKE DISTRICT DEPARTMENT OF TRANSPORTATION REPORT**

The George Washington University (“University”), through its counsel, opposes the request of the Foggy Bottom Association (“FBA”) and Advisory Neighborhood Commission 2A (“ANC”) that this Commission strike the memorandum dated January 4, 2007 filed by the District Department of Transportation (“DDOT”) in response to supplemental cross examination questions submitted by FBA/ANC. None of the grounds cited by the FBA/ANC provide any basis for removing the DDOT response from the record. Specifically, the University submits that:

- On January 12, 2007, DDOT filed a supplemental response which addressed all outstanding questions that were not included in DDOT’s initial January 4, 2007 response to FBA/ANC’s cross examination questions and thus the record is complete.
- The parties were not prejudiced by the late filing of the DDOT responses to the supplemental cross examination questions. All parties had ample opportunity to consider the written and oral testimony presented by DDOT and conduct cross-examination of that testimony during the course of the hearings; the responses provided by DDOT on January 4 and January 12, 2007 are in fact consistent with and reflect information already in the record; and DDOT was directed to file the supplemental responses for the record for the Commission’s consideration in its decision and not for further consideration by the parties.
- The record in this case contains substantial evidence to support the Commission’s approval of the *Foggy Bottom Campus Plan: 2006 – 2025* and related first stage PUD and Zoning Map Amendment.

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Accordingly, we request that this Commission proceed with its consideration of the above-captioned applications without delay at its scheduled decision meeting on January 17, 2007.

ARGUMENT

1. DDOT Has Submitted Its Complete Response to the Supplemental Cross-Examination Questions Submitted by the FBA/ANC.

On January 4, 2007, DDOT responded to 11 of the 15 supplemental cross-examination questions submitted by the FBA/ANC and, on January 12, 2007, DDOT responded to questions numbered 12 through 15 which concluded its responses to all of the questions. Thus, the record is now complete. Further, DDOT's responses make clear that it provided answers based on its own independent internal review and without guidance from the Applicant. Thus, the arguments by the FBA/ANC that DDOT's responses were incomplete or that DDOT might seek input from the University's traffic expert in responding to the questions are now moot.

2. No Party Was Prejudiced by the Late Filing of the DDOT Response.

The DDOT filing was not a report; rather, it was composed of responses by DDOT to cross-examination questions posed by the FBA/ANC which the Commission specifically asked DDOT to respond to in writing. The Commission specifically offered counsel for the FBA/ANC the opportunity to submit written questions to DDOT in lieu of continued cross-examination, so that the answers could be further informed by experts within DDOT, including those who were not in attendance at the hearing. Tr. Nov. 30, 2006 at 79. At that time, counsel for the FBA/ANC agreed to submit the questions in writing and also agreed with the Commission that if the responses were not complete, it would be up to the Commission to request additional information from DDOT. Id. at 79 – 81.

Counsel for the FBA/ANC did not request the opportunity to respond to the supplemental answers by DDOT, nor is such an opportunity required on either a practical or a procedural basis. During the course of the six public hearings on the applications, all parties had ample opportunity to cross-examine DDOT on the traffic and transportation issues, to meet with DDOT along with their experts to present their views,¹ and to provide for the record their responses to DDOT's findings. The hearing process, along with the additional opportunity provided to the FBA/ANC to submit supplemental written cross-examination questions to DDOT, provided more than adequate opportunity for cross-examination and the development of a complete record.

As the D.C. Court of Appeals has recognized and as the Zoning Regulations make clear, the Zoning Commission has the authority to place reasonable restrictions on cross-examination and at some point in time, cross-examination concludes and the case is ready for decision by the Commission. 11 DCMR § 3020.2; see Glenbrook Road Ass'n v. D.C. Bd. of Zoning Adjustment, 605 A.2d 22, 39 ("The Board undoubtedly has broad discretion with respect to the nature, scope and duration of cross-examination.") The University submits that the responses by DDOT are complete and in fact are consistent with and reflect information already in the record. To the extent that the Commission determines that any portion of DDOT's responses are incomplete or nonresponsive, the Commission can make that determination as it so indicated at the November 30, 2006 public hearing.

Finally, the suggestion by the FBA/ANC that the timing of the filing of the DDOT responses was to allow the parties the opportunity to take DDOT's responses into consideration in their proposed findings of fact and conclusions of law is not supported by the record. As the

¹ Indeed, the FBA/ANC did meet with DDOT along with their traffic expert, Mr. Mehra.

hearing transcript makes clear, initially both the DDOT responses and the draft orders were to be filed on the same date: December 21, 2006. Tr. Nov. 30, 2006 at 112 – 13. Parties were given an additional week to submit the draft orders at the request of WECA, so that the full transcripts would be available to the parties. No party requested the additional time in order to be able to respond to or consider DDOT’s responses. Id.

3. The Substantial Evidence of Record Supports a Finding of No Objectionable Traffic or Transportation Impacts.

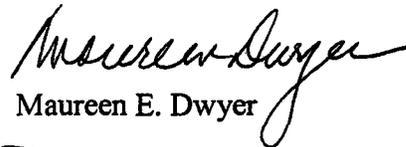
The DDOT responses supplement a record that is replete with evidence submitted by the Applicant, opposing parties and DDOT. DDOT’s findings consistently support the Applicant’s position that there are no objectionable traffic impacts generated by the proposed *Foggy Bottom Campus Plan: 2006 – 2025*. DDOT submitted two written reports, dated September 14, 2006 and November 27, 2006, and representatives of the agency provided testimony and responded to questions from the parties at the September 21, 2006, October 11, 2006, and November 30, 2006 public hearings, which included extensive cross-examination from the parties. DDOT also filed its responses to the supplemental cross-examination questions on January 4 and 12, 2007.

Further, the Campus Plan and the first-stage PUD are overall “concept” plan approvals and do not independently authorize any specific development projects without further review and approval. Specifically, the parties, DDOT, and the Commission will all have the opportunity to evaluate the traffic impacts associated with the implementation of the Campus Plan and first-stage PUD as individual projects are submitted for second-stage review and approval over the twenty-year term of the Campus Plan and PUD.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the FBA's motion be denied and that the Zoning Commission continue with its decision on the *Foggy Bottom Campus Plan: 2006 – 2025* and First Stage Planned Unit Development and Zoning Map Amendment without delay at the scheduled special public meeting. We look forward to the Commission's decision.

Respectfully submitted,


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January 17, 2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this motion was delivered by hand and electronic delivery on January 17, 2007.

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