July 5, 2022

Mr. Anthony J. Hood, Chairman
D.C. Zoning Commission
One Judiciary Square
441 4th Street NW, 2nd Floor
Washington, D.C. 20001

RE: Zoning Commission Case No. 22-13 – Application of the Wesley Theological Seminary for Approval for a Campus Plan: Neighbors for a Livable Community (NLC) – Spring Valley-Wesley Heights Citizens Association (SVWHCA) Reply To June 28 Office of Planning (OP) Filing On Tax Consequences Of Proposed Landmark-Wesley Commercial Deal

Dear Chairman Hood and Members of the Commission:

At the conclusion of its June 13, 2022 hearing in the above referenced case, the Zoning Commission instructed the D.C. Office of Planning (OP) to examine the tax revenue consequences of Wesley Theological Seminary's proposal to house approximately 600 American University (AU) students on its campus in a building owned and operated by Landmark Properties, a private commercial developer of student housing, as part of a 99-year ground lease contract. The new student apartment building would comprise approximately 73 percent of the Seminary's total build-out on its property; so, it is the central element and driving force of Wesley's 2022 Campus Plan.

Tax consequences of this deal were raised at the June 13 hearing by Commissioner Robert Miller. Commissioner Miller even suggested that OP might want to contact the Office of the Chief Financial Officer (CFO). OP's one-day late June 28 response to the Commission's request reflects an embarrassing lack of due diligence by the agency. In its June 28 filing, OP relies solely on the applicant's

unsubstantiated and unsourced opinion about tax issues related to the Wesley property contained in its June 27 post-hearing filing.

Ironically, in doing so, OP affirms, if the applicant's tax-related opinion is correct, that the proposed project is a commercial "activity," consistent with all the definitions of commercial activity, including those outlined in 18 U.S. Code, Section 31 (a)(10), and, therefore, is subject to the limits imposed in the Campus Plan Zoning Regulations outlined in *Subtitle X, Section 101.4.*

We acknowledge the legitimate interest in knowing more about the tax consequences of this deal. After all, we, too, raised the issue multiple times in the community meetings with Wesley only now to learn that we were stonewalled. Wesley did not raise the issue as part of its application before the Zoning Commission. And after it was raised by Commissioner Miller, Wesley did not choose to offer any rebuttal testimony to address the issue. Instead, it included a short unsubstantiated and unsourced opinion in its submitted-written Closing Argument that the deal would result in some additional tax revenue for the city – apparently believing this might satisfy Commissioner Miller's concerns.

If the Commission believes the tax issue is consequential in the outcome of this proceeding, then we encourage the Commission to request a more thorough and independent response from OP or from an expert source, such as the office of the Chief Financial Officer (CFO), that also includes an analysis of tax advantages/benefits that Landmark and Wesley may achieve as a consequence of the terms of the proposed commercial deal. Or alternatively, the Commission could open the issue up for additional hearing and cross examination, especially since it appears likely that Wesley and Landmark Properties would not have moved forward with the deal without a thorough analysis of the tax consequences that, if provided to the Commission, might be responsive to the Commission's request for information.

If OP had done any due diligence, it might have reported to the Commission that the tax-related issues presented in this case may go beyond whether the DC government will or will not earn additional tax revenue from this ground lease arrangement. If OP had done any due diligence, OP could have informed the Commission that the DC Office of Tax and Revenue records indicates Wesley's tax exempt status is designated as a religious organization, not an educational institution.

If OP had done any due diligence, OP might have informed the Commission that the DC Office of Tax and Revenue records also indicate that Lot 819, where the proposed new commercial student apartment building will be located, is the only lot on the Wesley property designated for tax purposes as "Tax Class: 1-Residential." All other Wesley lots in Square 1600 (Lots, 7, 8, 9, and 818) are designated as "Tax Class: 2 - Commercial." And, OP might also have informed the Commission that, unlike the other properties on the Wesley campus, the tax records do not account for the value of the current dormitories located on Lot 819 that will be demolished to make way for the new massive 659-bed facility, which may have an impact on the assessed value and any potential tax liabilities associated with this commercial deal.

Such unique tax issues are important because they also raise questions about what type of zoning relief may be appropriate for Wesley to seek. Should Wesley be seeking a special exception under the Campus Plan rules or a variance? And what standards are to be applied by the Zoning Commission when reviewing this case?

Wesley should have addressed all of these issues as part of its application. It did not. Only when Wesley learned that one Commissioner might be concerned about tax consequences of the deal, the Seminary sought to sneak in a short, but glaringly incomplete, unsubstantiated and unsourced opinion in its submitted

written Closing Statement ***(Exhibit No. 42)*** that the deal would result in additional tax revenue for the District. And then, although it was specifically not requested to address the tax issue in its post-hearing filings, the Seminary again inserted a similar unsubstantiated and unsourced opinion in that filing.

In filing its comments one day late, OP quoted the Wesley opinion to inform the Commission that the agency had no need to follow up on the Commission's request for more information because the applicant already expressed its opinion in its post-hearing filing. So much for an independent or comprehensive review!

The most deplorable aspect of the OP filing is that – by relying solely on the June 27 Wesley post-hearing filing – the agency utterly failed to (a) identify the specific taxes (not tax amounts) that are at issue with this project; (b) assess how the deal might offer more favorable tax advantages to Landmark than if the company sought to build a commercial student apartment building for AU students independent of Wesley Seminary; (c) outline both the tax liabilities and tax advantages for Landmark and Wesley stemming from this commercial deal; and (d) given that Wesley is not planning to use a significant portion of its tax exempt land (73 percent of its total build-out) to advance its educational mission, examine what tax revenue is lost by the District as a consequence of this land not being available for commercial, including residential, development consistent with existing zoning and the Future Land Use Map (FLUM).

Even a perfunctory analysis would have addressed these issues and better informed the Commission about the tax consequences of the proposed deal between Landmark and Wesley. But, OP did not see fit to do even the most perfunctory of analysis.

Representatives of NLC and SVWHCA raised the issue of tax consequences of this deal as part of the community engagement process with Wesley. We were

advised by Wesley on multiple occasions that there were no tax consequences and that tax-related questions would not be an issue in this case. Neighbors were even advised by Wesley's legal team that the Seminary would not be subject to Unrelated Business Income Tax (UBIT) because of the ground lease.

We did not raise the issue of the tax consequences of this deal as part of our presentation before the Commission primarily because, based on Wesley's assertions in the community meetings and its Campus Plan application, we focused instead on the commercial issues raised by ***Subtitle X, Section 101.4.*** In the unambiguous language of ***Subtitle X, Section 101.4***, that issue is this: **Are "commercial activities or developments" permitted on a college campus if they are "unrelated to the educational mission of the applicant?"** As we have said previously, housing 600 American University students on the Wesley campus – in a building comprising 73 percent of the total campus build-out – does not pass the threshold outlined in ***Subtitle X, Section 101.4***.

Undoubtedly Wesley and its partner, Landmark, know far more about the tax consequences of this deal than have been shared in the record for this case; it is unlikely that a deal would have progressed so far without Landmark and/or Wesley assessing the tax consequences of the deal. We do not doubt these tax issues are complex or that Wesley's assertions to date reflect the full scope of the tax issues or how Landmark and Wesley are likely to benefit financially.

OP's June 28 response to the Zoning Commission falls embarrassingly short of the Commission's request. Moreover, the response is stunning in simply accepting on face value the unsubstantiated and unsourced opinion from the applicant on the tax consequences of the project. OP's reliance on Wesley's June 27 filing is even more problematic because the applicant's opinion, which

represents new evidence in the case, was filed by the applicant in the record initially as part of its submitted-written Closing Statement.

Although the Seminary had an opportunity to offer this opinion or substantiate the opinion with an expert source as part of rebuttal and subject to cross examination by all parties in this case, Wesley's legal team chose a more evasive course.

Rather than challenge the propriety and fairness of introducing new evidence in the case as part of Wesley's written Closing Argument, Neighbors for a Livable Community (NLC) and Spring Valley-Wesley Heights Citizens Association (SVWHCA) deferred filing such a challenge pending OP's post-hearing filing. We believed – apparently incorrectly and naively – that OP would address the issue substantively, as requested by the Commission.

OP's abysmal response reflects a pattern in this case of the agency sidestepping critical issues, including whether the project complies with the on-campus commercial limits outlined in ***Subtitle X, Sections 101.3 and 101.4***, raised in this case.

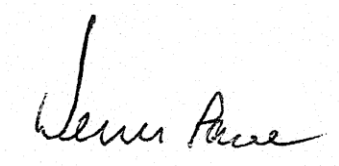
In responding to Commissioners' questions at the June 13 hearing, OP even went so far as to justify the agency's unwillingness to conduct any independent assessment of compliance with the commercial provisions of the Campus Plan regulations by stating that it defers to Zoning Administrator Matt LeGrant. Yet, Mr. LeGrant's only role in this case, based on the record, was to send email correspondence saying that the proposed project matched the definition of a "dormitory" – a matter that has never been at issue in this case.

In conclusion, OP sadly did not do **any** due diligence to investigate the tax question raised by the Zoning Commission. OP simply accepted as fact an unsubstantiated and unsourced opinion from the applicant found in both its

submitted-written Closing Statement (which was new evidence not previously presented in the case) and in the applicant's June 27 post-hearing filing.

Thank you for the opportunity to submit these comments.

Sincerely,



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Certificate Of Service

We hereby certify that on July 5, 2022, this was delivered via electronic mail to the following:

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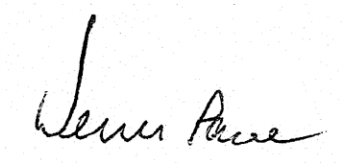

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