

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF:      :
                        :
American University,   : Case No.
2021 Campus Plan      : 20-31
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WEDNESDAY

APRIL 28, 2021

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The Public Hearing of Case No. 20-31 by the District of Columbia Zoning Commission convened via videoconference at 5:30 p.m. EDT, Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- ROBERT MILLER, Vice Chairperson
- PETER SHAPIRO, Commissioner
- PETER MAY, Commissioner
- MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- SHARON SCHELLIN, Secretary
- PAUL YOUNG, Zoning Data Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.

ALEXANDRA CAIN, ESQ.

The transcript constitutes the minutes from the Public Hearing held on April 28, 2021.

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(5:30 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. We are convening and broadcasting this public meeting by videoconferencing.

My name is Anthony Hood. Joining me are Vice Chair Miller, Commissioner Shapiro, Commissioner May, and Commissioner Turnbull. Also, from the Office of Zoning Staff, Ms. Sharon Schellin, and Mr. Paul Young who handles all of our virtual operations.

This is a continuation hearing of Zoning Commission Case 20-31, American University's Campus Plan. I would like to incorporate the opening statement of the other four or five cases or whatever the number is into this particular proceeding.

Again, if anyone has any issues or concerns or problems, please dial our OZ hotline number at 202-727-5471. Again, 202-727-5471.

Tonight -- and I'm going to ask Ms. Schellin also, to make sure I stay on track -- tonight, we are going to have rebuttal, cross on rebuttal, and the closing statement. I think that is our order of procedure tonight. I do know that we have a preliminary matter. I'll deal with that shortly. But before I do that, I want to thank Mr. Young, who I know has been working quite a bit today and he's going to continue. I want to thank him. I wanted to call him out. I do know that our Office of

1 Attorney General, Ms. Cain and others have been -- and I don't
2 want to give these names -- I am just going to say the whole
3 Office of the Attorney General. Mr. Tondro and others have been
4 providing us legal guidance all today, since I think about 9
5 o'clock this morning, so I want to -- hats off to them.

6 And then just hats off to everybody because this is not
7 an easy task when -- especially you start at 9 o'clock doing BZA
8 and then you show up doing the Zoning Commission. So I'm not
9 sure exactly again whose idea this was. Everybody seemed to
10 think it was mine, but again, we're here to do a service to the
11 city, so we're going to do our best and continue to do our best.

12 Ms. Schellin, do we have any preliminary matters?

13 MS. SCHELLIN: Yes, sir.

14 There was a motion filed by the Spring Valley Wesley
15 Heights party. They filed a motion to either strike or redact
16 Exhibit, I believe it's 78. If the Commission would take that
17 up as they please.

18 CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin.

19 I will be frankly honest, colleagues, I thought we had
20 dealt with that already. I understand the concern. But I would
21 ask that -- I would just like to say this that we acknowledge
22 the receipt of the Spring Valley Wesley Heights Citizen
23 Association's motion, which I think is at Exhibit 136, which
24 talks about Exhibit 78, which I have not looked back since the
25 first time we dealt with it. After that, as far as I'm concerned,

1 I have not opened it back up and I'm talking about Exhibit 78.

2 The Commission is reviewing it with its counsel, and
3 we will address the motion at the next -- hopefully, it's not at
4 the next hearing, but at the next decision meeting, but I think
5 we should be able to complete this hearing tonight. Again, we
6 acknowledge the receipt of the Spring Valley Wesley Heights
7 Citizen Association's motion in Exhibit 136. We are reviewing
8 it with our counsel and we'll address the motion at the next
9 decision meeting. Any objections? Any further comments?

10 (Negative head shake.)

11 CHAIRPERSON HOOD: Okay. Anything else, Ms. Schellin?

12 MS. SCHELLIN: Staff has nothing else.

13 CHAIRPERSON HOOD: Okay. Let's bring up counsel -- I'm
14 sorry, Mr. Tondro, counsel to this case and all those who will
15 be doing rebuttal. And then after they finish, we will bring up
16 -- after we ask them questions, we will bring up those parties
17 in that order.

18 Commissioner May, are you on? Yeah. He's on. Okay.
19 All right. Is everybody -- okay.

20 Mr. Tummonds, when you're ready, you may begin.

21 MR. TUMMONDS: Great. Thank you.

22 We are prepared to present our rebuttal testimony this
23 evening. We have two witnesses that will be presenting their
24 testimony. Ed Fisher on behalf of American University and Iain
25 Banks on behalf Nelson/Nygaard.

1 Mr. Young, could you pull up the PowerPoint
2 presentation.

3 MR. FISHER: Good evening, Commissioners.

4 It is again my pleasure being here today to present on
5 American University's 2021 Campus Plan. I would like to take
6 some time this evening to clarify a few issues, confirm ideas and
7 concepts previously presented, and respond to questions and
8 concerns raised at previous hearings.

9 I will start by saying that AU's consensus 2021 Campus
10 Plan as proposed is a result of more than two-and-a-half years
11 of collaborative work between the University, the AU Neighborhood
12 Partnership, the CLC, ANC 3B, ANC 3E -- thank you to Commissioners
13 Elkins and McHugh especially, and other members of both our
14 internal and external communities.

15 The AU Neighborhood Partnership has been and will
16 continue to be the vehicle that effectively allows for open
17 communication, collaboration and productive exchange between the
18 University, the broader community where we make decisions about
19 the creation and implementation of our campus plan. The
20 partnership is a collective of residents and AU leadership that
21 has proven through this campus plan process that because of
22 consistent and transparent communication, we can work through and
23 resolve our issues via consensus by being solution oriented.

24 AU remains committed to the Community Liaison
25 Committee, commonly referred to as the CLC, and making sure that

1 | it fulfills its purpose, which as described in this foundational
2 | operating document, is to serve as a forum for the exchange of
3 | information about university activities that may affect the
4 | community surrounding the university.

5 | AU will continue to report to the CLC on all relevant
6 | issues relating to the university and our compliance with the
7 | accompanying zoning order. As outlined in Condition No. 4, AU
8 | will maintain the CLC and it will continue to be chaired by a
9 | member of the President's Cabinet, Seth Grossman, Chief of Staff
10 | and Vice President of People and External Affairs, who currently
11 | chairs CLC meetings, and he will continue to do so in the future.

12 | AU believes that maintaining this current structure of
13 | having the AU Neighborhood Partnership and the CLC, which serves
14 | separate functions has been effective during the planning of the
15 | 2021 Campus Plan and will continue to be effective moving forward
16 | as our plan is implemented. We, therefore, urge the Zoning
17 | Commission to allow AU to continue to pursue both processes
18 | consistent with our proposed Conditions No. 3 and No. 4.

19 | AU strives to ensure that the campus plan will -- that
20 | the campus will adapt to and meet the changing needs of AU
21 | students, faculty and staff while, at the same time, respecting
22 | and enhancing the quality of life of those who live within the
23 | neighborhoods surrounding campus.

24 | Next slide please. As detailed in Section 5, our
25 | proposed campus plan does in fact comply with the applicable

1 zoning regulations including Subtitle X, Section 101.2, which
2 states that the uses shall be located so that they are not likely
3 to become objectionable to neighboring property because of noise,
4 traffic, parking, number of students, or other objectionable
5 conditions. Careful consideration of the size, mass, height,
6 location, and uses of proposed building was given during the
7 planning process as not to create objectionable conditions. We
8 firmly believe that our plan includes the level of detail required
9 by the zoning regulations.

10 Next slide. Consistent with the zoning regulation
11 requirements, the proposed building uses, and locations do not
12 present objectionable impacts. Our December 14th, 2020
13 submission details this in Exhibit K, which is also Exhibit 3C
14 of the record in this case. As noted in our testimony, proposed
15 setbacks for sites located in the vicinity of residential
16 properties have been thoughtfully considered based on feedback
17 from members of the community and the surrounding context of each
18 development site. More information can be found on pages 37
19 through 40 of our plan.

20 Next slide. And the next slide. At the first hearing,
21 Commissioner Miller asked that we provide building heights in
22 feet in addition to stories. We have updated Exhibit L to reflect
23 this request, which can be seen on the screen right now.

24 Next slide. We've also provided an updated color-coded
25 graphic that shows all proposed buildings in relation to existing

1 campus facilities. In response to a request for clarification,
2 the building heights provided for development sites 3 and 4 are
3 proposed to be measured from the adjacent finished grade that is
4 closest to University Avenue. As noted in the plan, we believe
5 that our development proposals effectively address AU space needs
6 in a manner that reinforces the unique campus scale of AU with
7 heights and densities that correspond to the surrounding built
8 environment and setbacks, buffers and design considerations that
9 effectively mitigate potential adverse impacts and respect
10 neighboring residential properties. That can also be found on
11 page 37 of our plan.

12 Next slide. In response to questions raised by
13 Commissioner Miller, at this time, we know that we will not
14 relocate the tennis courts on the roof of the center for athletic
15 performance. We can also confirm that the proposed buildings
16 will not have habitable penthouses. And you can see here on the
17 slide where you can find more information within our campus plan.

18 Next slide. So the next six slides or so, our response
19 to concerns about our landscape and buffers. So the university
20 continues to monitor, maintain, and refill the campus buffer
21 zones when needed. As recently as the fall of 2020, we planted
22 new trees and shrubs along the buffer near the Westover Community.
23 I, personally, signed an agreement with the Westover Place
24 Homeowners Association highlighting our commitment to maintain
25 the buffer on October 29, 2020. We are proud of our campus's

1 designation as an arboretum and we'll continue to maintain our
2 tree canopies and other plant life within and along the edges of
3 campus.

4 If you go to the -- next slide, please. You can also
5 see existing conditions of University Avenue and Westover buffers
6 on the next slides. These pictures were taken within the last
7 week or so. More landscape buffer information is detailed on
8 pages 41 and 42 and Exhibit P of the campus plan. That's also
9 Exhibit 3 and Exhibit 3D of the record in this case. So if you
10 go to the next couple of slides, you will see University Avenue
11 buffers as well as the Westover Place buffer.

12 So next few slides. When you get to slide 15 is when
13 I can start off with -- you can take a moment to look at the
14 buffers along those places on campus.

15 I will now address Jacobs Field. At the request of Dr.
16 Herzstein and Mr. Gerson, AU has agreed to build a sound barrier
17 wall along the existing fence line of the field and their home.
18 In a previous hearing, I may have misspoken to reference to
19 property line. Again, we will build this in the location that
20 is most suitable to mitigate the objectionable sound. We will
21 expedite the request of Dr. Herzstein and Mr. Gerson by making
22 the sound barrier wall the first project that we move forward
23 with at a further processing within 12 months of the order of
24 approval of our plan.

25 AU is fully committed to working with Dr. Herzstein and

1 Mr. Gerson on appropriate conditions to allow for the use of the
2 field without undue disturbance. During cross-examination, Ms.
3 Horvitz asked about the location of the sound barrier wall. As
4 part of our original December 14th, 2020 submission, the general
5 location of the wall can be found in Exhibit W. The specifics
6 such as the color, material, and other things will be detailed
7 at further processing after consultation with Dr. Herzstein and
8 Mr. Gerson, sound engineers, the partnership, the ANC and the
9 community. I can say at this time, we do expect the wall will
10 be approximately 360-feet long and 15-feet high. The filming
11 tower will also be 15-feet tall as also detailed an Exhibit W.

12 Next slide. Currently, there are two speakers that are
13 situated at the midfield marker on the side furthest away from
14 the Herzstein residence. These speakers are primarily used for
15 official NCAA games and are only in use on game days. There is
16 a horn and shot clock that is located on the scoreboard that is
17 intermittently used when the action on the field calls for it.

18 Next slide. Under times of normal campus operations
19 i.e., when we're not subject to COVID restrictions, Jacobs Field
20 is used for Varsity women's lacrosse and field hockey practice
21 in competition, club and intramural events, and summer camps and
22 clinics and special events such as the Juvenile Diabetes Research
23 Foundation Real Estate Games. The field is used from dawn until
24 dusk except for Sundays when use of the field is not permitted
25 until noon. As previously mentioned, AU has agreed to include

1 all 2011 Campus Plan conditions moving forward. You can see
2 proposed Condition No. 14 in our plan.

3 Next slide. In response to a question regarding the
4 orientation of the proposed scoreboard at Reeves Field, the new
5 scoreboard will remain in the same location as the existing
6 scoreboard and will include a no sound video component. The only
7 sound that will be generated by the proposed scoreboard will be
8 for clock starts and stops, substitutions, and end of half, sounds
9 that are required by the competition of the NCAA. The scoreboard
10 location does not face the neighborhood as pictured here on the
11 screen.

12 At this time, I will ask Iain Banks from Nelson/Nygaard
13 to provide additional comments on transportation and parking
14 related issues.

15 MR. BANKS: Thanks, Ed.

16 And if we just go to the next slide. I just want to
17 take a couple of minutes to address a question that was raised
18 for clarification by Commissioner Hood. But it was a question
19 raised by the Spring Valley Wesley Heights Citizens Association
20 where they suggested in 2011, a campus plan traffic study had
21 said that the vehicular traffic would decrease over the term of
22 the 2011 plan. But what we wanted to do is to be able to show
23 the actual CTR in 2011, was going to show, in fact, as part of
24 that approval and DDOT's report that the vehicular traffic was
25 actually projected to increase over the term of the 2011 plan.

1 And so, if you can just move to the next slide. The
2 numbers in Exhibit 10-A4 shown in that top graph there, show what
3 were the actual main campus trips of 2011. You can see there
4 that there was 463 in the a.m. period, and 865 in the p.m. period.
5 What the CTR in 2011 actually projected was that there was
6 actually going to be increased future vehicular trips based upon
7 growth in students, growth in faculty and staff, and populations
8 as well. And that lower graph or table there shows what those
9 projected trips were, so 522 in the a.m. period and 976 in the
10 p.m. period.

11 Moving on to the next slide. You can see from our
12 current work in the 2021 Campus Plan, which is Exhibit 18A, we
13 undertook vehicular trip counts of main campus in February 2020,
14 and they show in the a.m. 575 trips, in the p.m. 965. So compared
15 to what was projected back in 2011, those numbers are actually
16 very similar to each other which you can see in that bottom table
17 there. So slightly above in the a.m. peak period is what we saw
18 from the counts as over what was projected and actually very
19 slightly lower in the p.m. peak period, as opposed to what was
20 projected in 2011.

21 So onto the next slide. What we just really wanted to
22 highlight was that the 2011 CTR did in fact project that main
23 campus trips would increase over the term of that plan. And it's
24 been very much consistent with the CTR that we undertook in 2021
25 and the counts that we took in 2020 is obviously consistent with

1 DDOT's report and review of our study showing that's sort of a
2 projection of another hundred additional trips in the p.m. peak
3 hour would have very minimal vehicular impacts overall. So we
4 wanted to highlight, and that's all based upon our assessment as
5 well as DDOT's assessment. The Zoning Commission concluded back
6 in 2011 that the vehicular trips were not likely to create
7 objectionable conditions related to traffic. And that certainly
8 has been echoed on the current CTR, but it's been echoed within
9 DDOT's review of that CTR as well within their report of this
10 current campus plan.

11 And also, just really wanted to -- on the next slide,
12 one final question related to traffic and parking. There was a
13 question that was raised by the neighbors for the Livable
14 Community in regards to the easement rights to the use of 236
15 spaces at the 48th Street address. There you can see, pursuant
16 to the PUD for that site approved by the Zoning Commission in
17 late 2019, AU still continues to have the right of use of
18 approximately 56 spaces there. And the reason those spaces were
19 not included in the campus plan parking inventory is because the
20 site isn't actually one of the campus plan properties, which you
21 can see listed there and obviously, isn't within the campus plan
22 boundary. And obviously, all of the additional parking and
23 loading facilities are detailed within Exhibit Z of the campus
24 plan and Exhibit 3 and 3F of the record in this case.

25 With that I'll pass it back over to Ed.

1 MR. FISHER: Thank you, Iain.

2 So next slide, please. So previously, there were
3 questions raised about discrepancies in our enrollment figures
4 based on what was reported on our website and what we included
5 in our testimony. As per the zoning regulations and for campus
6 plan requirements, our fall 2020 full-time undergraduate
7 enrollment is 6,933 students. The number reflected on one of our
8 many web pages and then other places states a figure of 7,475
9 undergraduate students. Let me explain why two different numbers
10 have been presented.

11 AU releases what is called an Academic Resource book.
12 This resource book does not reflect the same methodology for
13 counting students that set forth in the 2011 Campus Plan Zoning
14 Order. For example, it includes study abroad students, part-
15 time students, online only students and depending on when the
16 count was certified, students who may have subsequently withdrawn
17 from the university. I will quickly do the math for you.

18 Next slide. Included in the fall 2020 numbers reported
19 in the Academic Resource book, there were 377 part-time
20 undergraduate students. There were 111 study abroad students.
21 There were 54 students who were enrolled when that census was
22 taken in October of 2020, who subsequently withdrew from their
23 university when a campus plan census was taken in November of
24 2020. So if you add 377, 111 and 54, you get 542 students. The
25 difference between 7,475 and 6,933 is, you guessed it, 542

1 students. This is consistent with the full-time undergraduate
2 student numbers that we report to the CLC every December to
3 demonstrate compliance with the student housing requirement.

4 Next slide. In response to clarification regarding the
5 9.73 percent growth rate for full-time undergraduate enrollment
6 noted in our testimony, this percentage represents the difference
7 between the fall 2010 full-time undergraduate enrollment reported
8 in the 2011 campus plan, 6,318 students, and in fall 2020 full-
9 time undergraduate enrollment reported to the CLC in December of
10 2020, 6,933 students, an increase of 615 students or 9.73 percent
11 between the fall of 2010 and the fall of 2020.

12 Next slide. I would also like to take a moment to
13 clarify the existing student housing requirement, which AU has
14 proposed to maintain the 2021 Campus Plan. For the 2011 Campus
15 Plan, AU is required to maintain a supply of housing sufficient
16 to make housing available for 100 percent of its full-time
17 freshmen and sophomore students and for 67 percent of all full-
18 time undergraduates. Since 2020 is an anomaly due to COVID, I
19 will use 2019 as an example. In 2019, we had 4,692 University
20 provided beds available. We had 6,907 full-time undergraduate
21 students; therefore, we had the capacity to provide beds for 68
22 percent of our full-time undergraduate student population. Even
23 if you take our fall 2020 full-time enrollment number of 6,933
24 students, we still meet the 67 percent requirement. Also, in a
25 response to a question raised by Commissioner Miller,

1 approximately 30 to 35 percent of our sophomore students reside
2 off campus.

3 Next slide. At our first hearing, I mentioned our new
4 online training orientation program for students that live off
5 campus. Chairman Hood requested screenshots of the program,
6 which can be seen here on this slide.

7 Next slide. In response to a question regarding AU's
8 plans for satellite campus development, the university has no
9 current plans to pursue campus locations in Maryland or Virginia.
10 AU is one of many critical entities that contributes to the
11 overall vitality of this great city. On pages 56 and 57 of our
12 campus plan submission, which is also Exhibit 3, of the record
13 in this case, you can see how our plan is compliant with the
14 District's comprehensive plan.

15 Next slide. As noted in the campus plan and our direct
16 testimony, since the inception of the AU Neighborhood
17 Partnership, representatives of the university including myself
18 and leaders of the steering committee have conducted direct
19 outreach to actively recruit community members to participate in
20 the inclusive partnership at CLC meetings, ANC meetings, Planning
21 101 Sessions and the AU Neighborhood Partnership open house.
22 During the last hearing, Mr. Kravitz described the level of
23 community participation in his testimony regarding the number of
24 distinct partnership meetings and participants. I want to thank
25 all of you who participated in these mini meetings for

1 volunteering your time, talents, insight and spending evenings
2 away from your families.

3 Community involvement and engagement has been the
4 cornerstone of this process and the partnership. In a process
5 that includes such a wide array of people who have different
6 interests, it is difficult for everyone to get everything that
7 they want; however, all voices were heard, and all concerns were
8 taken seriously. If any residents sincerely wanted to
9 participate in the partnership or to provide input on our campus
10 plan, they had an opportunity to do so. This was not a secret
11 society or private undertaking. This process was inclusive of
12 anyone that wanted to be included.

13 There were times when members of the partnership were
14 asked to keep certain information confidential to allow for
15 deliberation and development of the plan as part of our ground
16 rules, but ultimately, the plan was fully disclosed to the public
17 and to the CLC. As we seek to implement the campus plan, we
18 encourage the CLC and other neighbors, no matter how they
19 currently feel about the proposed plan, to be engaged and to
20 participate in the partnership and further process.

21 Next slide. In response to recommendations in the OP
22 and DDOT reports and requests made during the campus plan
23 hearings, AU has agreed to additional conditions of approval as
24 detailed in our April 19th, 2021 submission including undertaking
25 actions in support of the preservation of historic campus

1 resources. We will not seek to include additional master lease
2 beds to count towards the student housing requirement beyond the
3 existing 200 beds at the frequency. We will find a new 19 Capital
4 Bikeshare Station and expand the two existing Bikeshare stations
5 near campus. We will also limit student housing inventory to 500
6 additional beds or 700 additional beds if master lease beds are
7 no longer counted towards the student housing requirement

8 In conclusion, the campus plan does not end once the
9 Zoning Commission order is rendered. AU must continue to work
10 with the community as we implement the plan and is fully committed
11 to doing so. That is where the real work begins. That is when
12 we will hammer out the details of proposed buildings and the
13 sound barrier wall; that is when we will show how effective the
14 partnership is; that's when we will show how the community
15 engagement is effective; that's when we will show how strong this
16 community can be when we are all focused on outcomes and
17 solutions. I again, thank you for your time.

18 MR. TUMMONDS: Thank you, Mr. Fisher. We're now
19 available to answer any questions.

20 CHAIRPERSON HOOD: I want to thank Mr. Fisher and your
21 team for the closing. I really appreciate your last remarks
22 because it doesn't end when the Zoning Commission -- after the
23 Zoning Commission issues an order. I really appreciate the
24 continued collaboration. And I'm sure that those who -- those
25 parties and all dependent upon how this goes or what goes on will

1 continue to have that collaboration, so we're looking forward to
2 that. I appreciate that.

3 Let's see if we have any questions from the
4 Commissioners first on the rebuttal presentation to us tonight.

5 Commissioner May.

6 COMMISSIONER MAY: Yeah. A couple questions.

7 So the first one is, I think a relatively simple
8 question related to the traffic and parking, which is the
9 reference to the actual counts from 2020. And I don't know --
10 the last time we talked about traffic was so long ago, I don't
11 remember what we discussed before. Your statements about the
12 projections being more or less consistent is based on actual
13 counts from 2020. Yeah, 2020 was an exceptional year, traffic
14 wise, so I'm wondering how that relates and whether there was
15 actually data from 2019 or something like that that it was also
16 consistent with those numbers.

17 MR. BANKS: Yeah. Good question.

18 And I think this came up within our original testimony.
19 So we were in hindsight fortunate that we actually undertook the
20 traffic counts in February of 2020. So we actually did those
21 counts within the study area prior to the pandemic, which were
22 typical weekday days. And so good question and luckily, it gets
23 deemed as a normal year, so yeah.

24 COMMISSIONER MAY: All right. That's helpful to
25 understand.

1 And then, you know, the other thing that still is a
2 sticking point for me is the sound barrier and the approach to
3 addressing the concerns of Dr. Herzstein and Mr. Gerson. So I
4 was hoping to see something a little bit more robust about the
5 path going forward or about further discussions that may have
6 occurred between our last hearing and today. And so that's my
7 first question is, I mean have you had further discussions since
8 we had the last hearing?

9 MR. FISHER: Yes, Commissioner May.

10 Our counsel met last week to discuss the conditions
11 that were proposed by Ms. Horvitz and her clients. We have agreed
12 to some of them and others, we think are best suited to be
13 addressed at the further process. But we certainly, after hearing
14 from this Commission, made sure that we reached out so that we
15 could continue communications. And again, they presented about
16 15 conditions and probably close to half of them we were
17 comfortable with, and the others, we think we would have to
18 address at a further processing or after further communications
19 and further conversations.

20 COMMISSIONER MAY: Okay. Well, it's encouraging that
21 there was conversation. It's discouraging that we're not privy
22 to what was agreed to or what was not. Do you want to share
23 anything more about that?

24 MR. FISHER: I can tell you about a few of them that
25 we were certainly comfortable with. And if you just give me one

1 second here, I'm just pulling up my document. So AU was
2 comfortable with, obviously, making sure that is the first, for
3 the processing that we have, underneath this plan, we would apply
4 for a building permit within six months after the approval by the
5 Zoning Commission. We agreed to that.

6 COMMISSIONER MAY: Sorry. Six months of approval of
7 this plan or of the further processing?

8 MR. FISHER: Yes. Of the further processing, my
9 apologies. The further processing, my apologies further
10 processing.

11 COMMISSIONER MAY: Okay. Nothing about when you will
12 actually file for the further processing?

13 MR. FISHER: No. The further processing would be within
14 12 months of --

15 COMMISSIONER MAY: Twelve months of --

16 MR. FISHER: Yeah.

17 COMMISSIONER MAY: Yeah. Okay.

18 MR. FISHER: -- the approval of this order.

19 COMMISSIONER MAY: Got it.

20 MR. FISHER: Let me see if I can find some other ones
21 here. I'm sorry.

22 CHAIRPERSON HOOD: So let me just interrupt. We're
23 getting an echo and I know previously others were having some
24 problems hearing, so we don't want to run into that problem. So
25 let's see if we can maybe turn something down or mute something

1 | or whatever we need to do. Let's see if we can get rid of the
2 | echo.

3 | MR. FISHER: Yeah. So we've also agreed that we could
4 | minimize use of shot clocks during practices and scrimmages,
5 | which is something that was proposed. And that we -- those are
6 | some that I can repeat off the top of my head.

7 | CHAIRPERSON HOOD: Yeah. Mr. Tummonds, you're on mute.

8 | MR. TUMMONDS: We'd be willing to submit in the post
9 | hearing submission, you know, our proposed revisions to the 15
10 | conditions that were included in the Herzstein, Gerson's
11 | statement, and we can absolutely submit that for the record.

12 | COMMISSIONER MAY: Okay. Is AU, at this point, still
13 | -- well, sorry, I'm not even sure what your position is. But
14 | what is your position about the existing conditions that will
15 | remain in effect until the further processing is done and the
16 | wall is built. I mean what happens with those conditions, once
17 | the wall is built, in your mind.

18 | MR. FISHER: So we have agreed to keep the existing
19 | conditions in place, and we will enforce them. And as we are
20 | going through the further processing, we will work with Dr.
21 | Herzstein and Mr. Gerson on the conditions that would change post
22 | construction of the walls. A lot of that would be determined by
23 | the effectiveness of the wall once it's designed and built. But
24 | we would keep the existing conditions in place until then.

25 | COMMISSIONER MAY: Until it's built, but we won't know

1 | about the effect of the wall fully until after it is built and
2 | has been used for some period, right? So what happens in that
3 | period?

4 | MR. FISHER: So we believe that once this designed and
5 | the proper studies have been done, we would then be in a better
6 | position to negotiate the post construction conditions. And
7 | again, that's something that we will continue to do as we will
8 | work with Dr. Herzstein and Mr. Gerson. We will bring in our
9 | athletics department, our sound engineers and everyone to hammer
10 | out those details at that time.

11 | COMMISSIONER MAY: And you're still kind of not really
12 | -- I'm not -- maybe I'm not asking my question well. There, you
13 | know, you're going to figure out the best you possibly can and
14 | get it built the best you possibly can and so it's going to do
15 | the best possible job; however, that's just, you know, based on
16 | design, it's not based on actual performance. So it'll get built
17 | and you're hoping to have negotiated all of the future conditions
18 | by the time we approve the further processing? Because it seems
19 | to me that one of the things that you ought to be doing is keeping
20 | conditions in place until we know for a fact that the measures
21 | that you have taken are truly effective.

22 | MR. TUMMONDS: I think we understand what you're
23 | saying, Commissioner May. And, you know, this is somewhat of an
24 | interesting process and that we would have, we'd have a look back
25 | almost. You know what I'm saying? I think it's interesting,

1 | like okay, we go, we build, we go through the further processing,
2 | we've done the science, for lack of a better term, to address
3 | what we believe the impacts will be. And then it's almost as if
4 | we want to say let's have operations for some period and then
5 | look back to -- come back to the Zoning Commission to see effect
6 | then we could do conditions, modify those conditions.

7 | COMMISSIONER MAY: Yeah. It seems to me that that's -
8 | - it would be more sensible to be modifying conditions on the
9 | operations after we know more about performance. Otherwise,
10 | we're going to wind up with a further processing case where, you
11 | know, you've negotiated things to the best of your ability, but
12 | we're still going to have Dr. Herzstein and Mr. Gerson, you know,
13 | laying it out for us to, you know, insert ourselves into that
14 | decision-making at that moment. And, you know, I mean I don't
15 | want to have another hearing where we're going through that
16 | testimony. We've already had it, I've had it twice, you know,
17 | once with this plan, once with the last one. The Chairman has
18 | had it three times, you know. We want it to be resolved, I think
19 | by the time we get to a further processing hearing that this is
20 | the strategy going forward and Dr. Herzstein and Mr. Gerson agree
21 | about the path forward, I mean that's what I really think. And
22 | personally, I think that means, you know, accepting the fact that
23 | not all the conditions can be lifted once the wall is built, but
24 | that you would have to come back later and request a modification
25 | of those conditions based on the actual performance of the wall

1 and an acceptance by Dr. Herzstein and Mr. Gerson.

2 MR. FISHER: Commissioner May, I think that he
3 certainly agrees that we weren't expecting that all these
4 conditions would automatically go away once we were to construct
5 the wall. We know that some would be in place, there are some
6 that we would like to look at and maybe make some changes to,
7 but I think what you presented makes a lot of sense and I think
8 we're very much open to the path that you have laid out for us.

9 COMMISSIONER MAY: Okay. So if that is indeed the
10 case, then I think that should be memorialized in some way and
11 in a draft of the conditions, which I expect is not in anything
12 that's been proposed quite yet.

13 MR. TUMMONDS: That's correct. We will draft
14 accordingly.

15 COMMISSIONER MAY: Okay. All right. That's it for my
16 questions.

17 CHAIRPERSON HOOD: Okay. Thank you.

18 Commissioner Shapiro.

19 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

20 Yeah. The only thing I would add is along the same
21 lines that Commissioner May was discussing. So the neighbors
22 were clear in repeating that a number of the conditions that were
23 agreed upon previously that the university has not been adhering
24 to. So it's not clear to me how you're responding to that or do
25 you just flat out disagree with that?

1 MR. FISHER: I would say that in general, we disagree
2 with some of the assertions made by Dr. Herzstein and Mr. Gerson.

3 COMMISSIONER SHAPIRO: But I'm not hearing that in
4 rebuttal. So I'm trying to sort of get -- wrap my head around
5 or, you know, why there -- is it a communication issue or is
6 there -- yeah, I'm not quite sure what to do with it. So a little
7 point by point -- and again, building up like Commissioner May
8 said, a little point by point would be helpful from you all about,
9 you know, flat out which ones you disagree with. There were a
10 couple examples in your rebuttal. For example, the direction of
11 the new scoreboard, the frequency of the use of the horn. It
12 felt like it captured a few of them, but by no means all of them
13 that we heard in testimony.

14 MR. FISHER: So I think it's probably most suitable
15 that we would submit -- if you want to point by point based upon
16 their testimony, we can go point by point. We would have to
17 submit that in a post hearing submission.

18 COMMISSIONER SHAPIRO: And that's fine. And I think -
19 - I mean in part, it's because it builds on again, what
20 Commissioner May was saying, which is I don't -- and I completely
21 agree with him. I can't imagine why any of these conditions
22 would be lifted until once the wall is in place and then we have
23 a sense of what the impact is. And then you come back to us,
24 you know. Again, I just agree with Commissioner May -- then you
25 come back to us if we want to make some changes. That makes all

1 | the sense in the world. That's the only issues that I have.

2 | I appreciated the clarity of the rebuttal addressing
3 | point by point many of the other issues that were brought before
4 | us, so thank you for that.

5 | And Mr. Chair, that's all I have.

6 | CHAIRPERSON HOOD: Thank you.

7 | Commissioner Turnbull.

8 | COMMISSIONER TURNBULL: Thank you, Mr. Chair.

9 | I was hoping that the hearing on the campus plan --
10 | this AU campus plan would have gone -- I had visions of this
11 | going a lot smoother because of the neighborhood, part of the
12 | parties being together. But as we can see from the hearing, this
13 | has gone on -- well, I think this is our fifth night, fourth
14 | night. And although we have consensus or agreement with the ANCs
15 | for the university, we still have a lot of neighbors from
16 | previously who are opposed to a lot of different things who are
17 | really worried and concerned about it.

18 | My concern is the standpoint of process. We're working
19 | to try to make AU succeed, make it a better place to live, but
20 | also live equitably with its neighbors and what I'm concerned
21 | about is process. And that to go to further processing, should
22 | the Zoning Commission be looking to have thresholds to address
23 | issues that are outstanding before we go further at each
24 | processing? In other words, for Jacobs Field, are you -- should
25 | we -- before we even start, should you have some checklist as to

1 | how well the university is doing at that point in time as to all
2 | the conditions that currently exist?

3 | I know you said that you're meeting them, but we heard
4 | from Dr. Herzstein that there are things that don't happen, that
5 | the noise is still there, and it goes on. I'm trying to set up
6 | a process where we can go equitably into each further processing
7 | and say, yes, the university is ready to go ahead and meet this
8 | particular program, this project, and here's what we've done,
9 | here's where we are today and we think we can do better.

10 | So I'm just wondering should the Zoning Commission be
11 | asking the university to present to it at the time of further
12 | processing. We are coming for further processing because we have
13 | -- we are here. We think we've met the thresholds of what we're
14 | supposed to be doing and we'd like to go further. I'm just
15 | throwing that out. I'm just concerned that we're not doing --
16 | the same thing on Westover Place. You've shown pictures of
17 | landscaping and it look -- the owners over there submitted
18 | landscaping with a lot of dead trees or bushes and shrubs. So
19 | I'm wondering, before we get there, should there be something
20 | that when you say, "Yes, we've done this to the property, the
21 | next-door neighbors. We feel we're addressing this. We're
22 | protecting them. We're insulating them. We're trying to go
23 | beyond where we are." So I'm looking at like a threshold that
24 | before you do the further processing, you have to be at a certain
25 | point and that the Zoning Commission can say, "Okay. Yes. We

1 think that you've done that, you're in compliance and we think
2 we'll hear the case."

3 As Commissioner May and Commissioner Shapiro we're
4 talking about on Jacobs Field, one of the things that's often
5 done in building projects, and maybe you've done them yourself,
6 is a post occupancy evaluation. Where you actually go back and
7 see -- does the building meet the program that it was supposed
8 to do, and you check it off and you go through it.

9 For Jacobs Field, maybe there's like what might be
10 called a post construction evaluation, where you actually go
11 through and check off, and see what it is and analyze it. But I
12 think the post occupancy evaluation might be good over at Westover
13 Place where you've got neighbors that are concerned about
14 lighting and the size. I'm just throwing that out because I'm
15 worried about the -- ask the Zoning Commission going further and
16 further processing and are you ready for this particular project
17 to be able to do it? Have you met the conditions that the
18 neighborhoods are expecting that you've agreed to in the past?
19 I'm throwing that out there.

20 MR. TUMMONDS: Sure. So Commissioner Turnbull, I might
21 add -- I might address that. So our proposed Condition No. 10
22 is consistent with the Condition No. 12 we had in the 2011 Campus
23 Plan Order. And it says that no special exception application
24 filed by the university for further processing under this campus
25 plan may be granted unless the university proves that it has

1 consistently remained in substantial compliance with the
2 conditions set forth in this order.

3 COMMISSIONER TURNBULL: Okay.

4 MR. TUMMONDS: So we had that last time, and you may
5 remember in the Hall of Science.

6 COMMISSIONER TURNBULL: Right.

7 MR. TUMMONDS: And this -- we spent more -- probably a
8 lot more time talking about satisfaction of the conditions than
9 we did about the Hall of Science.

10 COMMISSIONER TURNBULL: Okay.

11 MR. TUMMONDS: So we've carried that over into this
12 campus plan as well.

13 COMMISSIONER TURNBULL: All right. I just wanted to
14 bring it up. I guess I'm a little bit -- the AU campus plan this
15 time maybe went a little better in some aspects, but we still
16 had a lot of neighbors that were opposed, so I'm just throwing
17 that out there. Thank you.

18 CHAIRPERSON HOOD: Okay. Thank you, Commissioner
19 Turnbull.

20 Vice Chair Miller.

21 VICE CHAIR MILLER: Thank you, Mr. Chairman and thank
22 you to you, Ed Fisher, and to Paul Tummonds from American
23 University for your rebuttal testimony this evening, which
24 addressed many of the key issues that had been raised by the
25 Office of Planning, me and my fellow Commissioners, so I very

1 much appreciate it.

2 I appreciate the height delineation of the proposed
3 buildings in relation to existing buildings that you've provided
4 both in the chart form and in a graphic. And I appreciate that
5 you stated clearly that you are willing to work -- to include in
6 this Order, let alone, in addition, in the further processing
7 order, conditions to deal with the -- that are appropriate to
8 deal with the existing set of noise objections related to the
9 athletic fields.

10 I wanted to thank -- take this opportunity to thank the
11 university for taking the Commission up on our encouragement to
12 engage in a partnership with -- mediated by Don Edwards or
13 something similar when you charged Don Edwards, and reaching all
14 of the consensus and collaboration that you did this time around
15 ahead of the hearing versus the last time. And I think that
16 there's credit to be provided here at least for me for that
17 effort. And getting the support of -- with conditions and
18 concerns that have been addressed by -- about by the university
19 to concerns of ANC, the support of ANC 3D, ANC 3E, The
20 Neighborhood Partnership. Can't remember the name of the other
21 neighborhood association that's a party in support, I think it's
22 Spring Valley Neighborhood Association.

23 Obviously, there's the parties to -- the two parties
24 in opposition. Spring Valley Wesley Heights Citizens Association
25 and Neighbors for a Livable Community. I may have bungled both

1 names. I apologize. But there's been a lot of effort in
2 collaboration this time around and we appreciate that. I think
3 it's important to -- well, maybe we'll get to this tonight. I
4 forget where we are in terms of who we hear from tonight. But I
5 just wanted to emphasize something that the ANC 3D, Commissioner
6 Chuck Elkins emphasized and asked us to emphasize in his Exhibit
7 No. 135 in this case. Just a recent -- I believe it's a recent
8 exhibit. He asked -- he reiterated a number of points that the
9 ANC had previously made in their testimony and in dialogue.

10 But I think two of the points near the end of his --
11 on page of this Exhibit 135 says, "Most of the opposing parties
12 in this case are raising further processing issues most likely
13 out of fear that if they do not raise them now, they will be
14 foreclosed from raising them later." And the second point, I'm
15 quoting, "The Zoning Commission can help greatly by reassuring
16 these parties," he's referring to the opposing parties, "That
17 they will not be foreclosed these issues that they're raising -
18 - will not be foreclosed in the future further processing
19 proceedings."

20 So I don't know where my colleagues are, but on behalf
21 of myself, I would say that, yes. Please be reassured, Mr. Smith,
22 Dr. Kraskin, Ms. Gates, others who are opposed that the issues
23 you've raised and the Gerson's, of course, but we do have
24 testimony tonight, rebuttal testimony that appropriate conditions
25 will be included -- continue to be included in this Order and

1 after we see how the sound will work.

2 But please be reassured that you will not -- that the
3 issues that you've raised in this proceeding other than, you
4 know, this building being built at all or -- but with the general
5 massing and height. But the issues that you've raised, which are
6 issues of concern, are not foreclosed from bringing up and for
7 addressing when we get to further processing of individual basis
8 going forward, so I just wanted to give that personal reassurance
9 and hope -- I think my colleagues probably would agree that they
10 will hear whatever testimony that citizens and neighbors provide
11 in further processing proceedings and we'll address them as
12 appropriate as we go forward.

13 Thank you, Mr. Chairman.

14 CHAIRPERSON HOOD: Okay. Thank you. Mr. Fisher, Mr.
15 Tummonds, I just have a few very quick questions. I heard a lot
16 about CLC, The Neighborhood Partnership and I know that the
17 Commission has a lot to do with the CLC. And I know that Vice
18 Chair Miller and I had this conversation before, but I think Mr.
19 Grossman is the head of the CLC. Why is it not a community? I'm
20 just curious. And I don't want to really rehash all that, but
21 I'm just trying to -- help me figure out -- help me understand
22 why we got -- how we got to -- or has it always been that way.

23 MR. FISHER: Chairman Hood, the CLC has usually been
24 shared by a member of the President's Cabinet, the meeting itself,
25 as far as calling, you know, bringing the meeting to order. We

1 have Mr. Edwards from JSA, but the meeting has generally been
2 chaired by a member of the President's Cabinet and Mr. Grossman
3 is a member of the President's Cabinet.

4 CHAIRPERSON HOOD: Okay. Because I know one time, I
5 know particularly myself, I mentioned about co-chairs kind of
6 give some equal equilibrium there. But, you know, be as it may.
7 And then I noticed that a lot of the opposition feels like the
8 CLC should have been or which actually came out of this Commission
9 for the most part. And I'm not trying to take anything from The
10 Neighborhood Partnership because as the Vice Chair and I already
11 -- I don't want to have that discussion we had some years ago.
12 As long as it's working, let's let it work. But I'm just trying
13 to figure out what I've heard and trying to make some rationale
14 about why the CLC -- they feel like the CLC is taking a lesser
15 role. That's the one I'm hearing. And that actually, I think
16 birthed out of this Commission. Do you have any response to
17 that?

18 MR. FISHER: Sure. Chairman Hood, so the partnership
19 is again, has been the vehicle for collaboration and like rolling
20 your sleeves up and getting the work done. Actually, if you
21 check out our CLC website, the purpose of the CLC was to provide
22 a forum for exchange of information about university activities
23 and to report out on the university's compliance. And so that's
24 what we have continued to use the CLC for, as a reporting
25 mechanism, and a way of getting information out to the community.

1 We've used the partnership as a vehicle for getting the work
2 done.

3 CHAIRPERSON HOOD: Okay. Let's talk about the shot
4 clock, and I go back to -- I kind of agree with Commissioner May,
5 but I know things take time. He's right. I've heard Mr. Gerson
6 and Dr. Herzstein's for years even her dad, her late dad. I'm
7 hoping that those discussions were some give and take because -
8 - I'm going to go back to what I said at the last hearing. If a
9 shot clock goes off, I need to know when it will stop too. So
10 there needs to be some balance and I'm hoping those discussions
11 balance. But the picture you showed me of the shot clock, I
12 could barely see -- unless, you know, a picture is a thousand
13 words -- it looked like it was behind a tree somewhere. Maybe
14 that was the angle intended so to give me that perception, but
15 it looks like it's off behind a tree. It looks like you can't
16 even hardly see it, even if I'm a player, so I don't know what -
17 - was it the angle or what was it?

18 MR. FISHER: So Commissioner Hood, that's actually the
19 scoreboard for the Reeves Field and not for Jacobs Field. Those
20 fields are next to each other. But there was a question at the
21 last hearing about the orientation of the new Reeves Field
22 scoreboard, so that's the picture you're seeing there. And it
23 is situated amongst some tree life, plant life and shrubbery, but
24 that is not the Jacobs Field scoreboard or shot clock.

25 CHAIRPERSON HOOD: Okay. So even that --

1 MR. FISHER: So I will say --

2 CHAIRPERSON HOOD: -- it's behind a tree, so, you know
3 --

4 MR. FISHER: That's correct.

5 CHAIRPERSON HOOD: -- it's very well hidden. I guess
6 that was my point. Wherever the field was, it's hidden. You
7 got to do a lot -- at least the view that we were given --
8 whatever field it was, you got to do a lot to see it and that's
9 my point. My point whether it be that field or Jacobs Field is
10 that there's got to be some give and take. Athletes need to be
11 able to see fields. We also need to be considerate of the
12 neighbors. So I'm hoping -- and I agree with Commissioner May,
13 I was looking for some a little more robust, a little more what
14 was agreed to, what we didn't agree to, and I know that some of
15 that's going to be provided. But again, I want to say this. I
16 know there's got to be some give and take. I also know that the
17 university is going to have to give some and also Dr. Herzstein
18 and Mr. Gerson also will have to understand. This is sports and
19 that happens, so I'm hoping that whatever you come back with,
20 there's trust.

21 But let me say this to you, Mr. Fisher and I know you've
22 been there, I guess about a year?

23 MR. FISHER: About two-and-a-half years now, a little
24 over two years.

25 CHAIRPERSON HOOD: Two and half -- okay. Okay. Okay.

1 I'm bad on time. But anyway, regardless, the issue is -- from
2 what I'm hearing from the community, some not all, but some, over
3 the years, it's always been a trust issue. And once you start
4 off not trusting, and this goes back to 2001 when we first took
5 over -- once you start off with that trust, that trust is going
6 to continue. But I will tell you this from 2001 to now, the
7 opposition, the way I see it, has lessened. It's not as much as
8 it has been. I think Mr. Turnbull alluded to it and I agree with
9 him, so let's continue to make sure that first of all, they trust
10 us.

11 As the Vice Chair mentioned and others, you know, a lot
12 of people are skeptical. They want to bring it up now as far as
13 the further processing. I know there's some things that are in
14 place where we cannot do further processing. I think we still
15 had that in our regulations. We made so many changes, I have to
16 try to remember to keep up with them. We cannot hear further
17 process unless you're in compliance. So Mr. Fisher, I'm hoping
18 that you and the university stay in compliance and let's rebuild
19 that trust. Because a lot of these angst and concerns, which
20 are legitimate, because the community, for the most part, felt
21 like the ball has just been dropped after you -- that's why I'm
22 glad about your closing remarks, of your rebuttal.

23 After the Zoning Commission hearings -- after the
24 Zoning Commission's Order, then you don't hear anything for a
25 while, you know, what was said doesn't materialize. So I'm hoping

1 that we can also, through all of this, build up that trust and
2 then we can even have the opposition even less.

3 I do appreciate slide 19. That was a question that I
4 piggyback on from Tom Smith. I'm hoping -- hopefully he saw it
5 as well and I'm interested in hearing his comments.

6 I appreciate you all also providing the website of the
7 course for the students. I just wanted to see how that looked
8 and, you know, I know you mentioned at the hearing how it works.

9 The other thing -- let me go back to the buffer. What
10 I do not want to see, and I'm saying this to both parties, the
11 AU and Dr. Herzstein and Mr. Gerson. What I'm saying is, we
12 build this wall, and we're still not happy. So again, I said at
13 the last -- we need to figure out a way, more robust. And I
14 can't think of a better word than what Commissioner May said, of
15 a more robust way of trying to resolve some of this. And again,
16 I'm not putting this all on the university, so I'm hoping Dr.
17 Herzstein, and Mr. Gerson hear what I'm saying. I'm not putting
18 all this on the university.

19 All right. I think that's all of my notes. I do
20 appreciate the rebuttal and the format that was presented. But
21 at the end of all of the cross on rebuttal, I do have in
22 collaboration with the Commission, and we have some things that
23 we can kind of narrow things down. And we're going to ask for a
24 little homework from all the parties and the applicant to make
25 things easier, so we make sure we capture everything as we get

1 ready to do our deliberations. Let me see if there's a second
2 round, Commissioner May, Commissioner Shapiro, Commissioner
3 Turnbull and Vice Chair Miller.

4 Okay. Now, let's go to -- and I'm sure Mr. Tondro or
5 Ms. Cain will let me know if I'm incorrect, but cross is on
6 rebuttal only, not bringing in part of the hearing. It needs to
7 be pertained to what we heard tonight on rebuttal, so we're going
8 to do cross on rebuttal. And I understand Mr. Tessler was going
9 to be speaking for neighbors -- no, I'm sorry. He's going to be
10 speaking for Westover Place in place of Mr. Kirkpatrick, who is
11 unavailable this evening. So let me start first cross on rebuttal
12 from the party in support, AU Neighborhood Partnership. And if
13 we could start bringing everybody up, Mr. Young, I would
14 appreciate it.

15 MR. KRAVITZ: Yes. We have two questions on the
16 rebuttal.

17 First, the partnership also has struggled with the
18 great disparity between the buffer photos that AU provided versus
19 the ones that Westover provided. And I know we would find it
20 helpful to see which better reflect reality. So if the Commission
21 asks you to do so, could you provide photos that are taken from
22 the same location and angle as the photos that were submitted by
23 Westover and enter them into the record?

24 MR. FISHER: Yes, Dr. Kravitz, we could certainly do
25 that.

1 MR. KRAVITZ: I think that'd be helpful. The second
2 question, this is the final one really, is about the conditions
3 for Jacobs Field. Are you -- is the applicant willing to seek
4 agreement on conditions that are tied to performance but already
5 now, so that, say condition X is relaxed if performance measure
6 Y is achieved? I think I'm frozen -- and so on. It seems to
7 the partnership that you should be able to agree to a complete
8 set of contingent new conditions before the wall is already
9 constructed. So AU certainty of what it looks like post wall
10 upon satisfaction of those conditions.

11 MR. TUMMONDS: Mr. Kravitz, yeah. I think that is a
12 good way for us to start kind of getting our arms around how we
13 do this, and I think -- I appreciate that. And I think that
14 would be a good way that we will formulate our post hearing
15 submission on this.

16 MR. KRAVITZ. Okay.

17 CHAIRPERSON HOOD: Go ahead. You can go ahead. Go
18 ahead, Mr. Kravitz. I'm sorry.

19 MR. KRAVITZ: Great. I believe the first question
20 about the Westover buffer photos made it through. My final
21 question is about whether or not the applicant is willing to seek
22 agreement on conditions for Jacobs Field that are tied to
23 performance. And you can do that already now so that you know
24 say condition X is relaxed if performance measure Y is achieved
25 and so on. It seems the buffer for this.

1 COMMISSIONER MAY: We did hear this.

2 MR. KRAVITZ: Well, at least I didn't. Do you have
3 one?

4 COMMISSIONER SHAPIRO: Yeah. No, I heard it too.
5 You're good.

6 MR. KRAVITZ: Yeah. Okay. Great. Yeah. Then I won't
7 repeat myself any further.

8 COMMISSIONER MAY: Thanks. I would just note that if
9 you're going to talk about conditional -- I'm sorry, contingent
10 conditions as you described them. There are still has to be a
11 decision that's made that those contingent -- or those conditions
12 have been met, so it's great to flesh it all out in advance. But
13 it would still require an action, I think by the Commission after
14 the further processing to lift any conditions, at least that's
15 my view.

16 CHAIRPERSON HOOD: Okay. Mr. Kravitz, have you -- did
17 you finish asking all your questions?

18 MR. KRAVITZ: It's just those two questions. Thank
19 you.

20 CHAIRPERSON HOOD: Okay. And yes, now, I understand
21 what was going on. We did hear the first one, so I know there
22 were some technical things going on there, so we did hear the
23 first one. Okay. Let's go to ANC. Probably should have the
24 ANCs first, I'm sorry.

25 ANC 3D, Commissioner Elkins.

1 COMMISSIONER ELKINS: We have no cross.

2 CHAIRPERSON HOOD: Thank you.

3 COMMISSIONER ELKINS: Are you able to hear me?

4 CHAIRPERSON HOOD: Yes, I am. I definitely heard it
5 clearly.

6 COMMISSIONER ELKINS: Good. Thank you.

7 CHAIRPERSON HOOD: Okay. Thank you.

8 Commissioner McHugh, any cross on rebuttal?

9 COMMISSIONER MCHUGH: Just one question for Iain Bank
10 for the transportation zone. Is Iain on, I expect?

11 MR. BANKS: Yep, I am.

12 COMMISSIONER MCHUGH: Okay. So I just -- and this
13 might be just a request, but the average volumes on Nebraska and
14 Mass. Do you have a number that kind of represents your
15 percentage, AU's percentage of the volume that's on Nebraska and
16 Mass?

17 MR. BANKS: I don't. We haven't checked that out
18 specifically, but we can certainly provide that. I mean we would
19 essentially take what we have from the main campus trips that we
20 took and subtract that from the vehicles going along.

21 COMMISSIONER MCHUGH: Okay. Yeah. Just as the
22 percentage. And then I'm curious in the increase over the 2011
23 to 2021 and how that affects the overall life, and that's the
24 only question I had.

25 Thank you, Mr. Chair.

1 CHAIRPERSON HOOD: Okay. Thank you.

2 Let's go to Spring Valley Wesley Heights. Tom Smith.

3 MR. SMITH: Mr. Chairman, can we -- could you be --
4 would you be willing to indulge us that we could go last?

5 CHAIRPERSON HOOD: I sure will. I started. Just go
6 ahead and do it but I'm glad you asked me. All right.

7 So let's go with Neighbors for a Livable Community.

8 MS. GATES: Thank you, Mr. Chairman.

9 I have a few questions before I get into my actual list
10 of concerns and this is for Mr. Fisher. Isn't it true that the
11 decisions have been made when matters are presented to the CLC,
12 so the decisions have been made? You're just informing the CLC
13 of what the decisions were; is that correct?

14 MR. FISHER: We generally report out to the CLC on
15 standard topics such as our off-campus incident reports, our
16 traffic reports, and our enrollment reports. Then we open up the
17 floor for conversations about other issues that are outstanding.
18 So we generally report out to the CLC regarding university
19 matters. This has been the first time that the CLC has been in
20 the position that it's in since we've contemplated or drafted and
21 created this last campus plan. And so we again, have used the
22 partnership as the vehicle for making decisions about the campus
23 plan.

24 MS. GATES: Thank you. And can you say that the most
25 impacted residents have been contacted and when I say

1 "contacted", I mean contacted by the partnership.

2 MR. FISHER: So we have a variety of methods in which
3 we use to contact our neighbors. We have a CLC Listserv, we have
4 AU part -- no, I'm sorry, it's not a partnership. We have AU
5 Neighborhood Listserv that has at least 7 to 800 members, so that
6 is one vehicle that we use. We also send out a postcard every
7 year so that neighbors know how to reach the university and those
8 are the general methods that we use for communicating with our
9 neighbors. We also report out at the ANC 3D and 3E meetings and
10 in addition to that, myself or Maria Barry, who's our Director
11 of Community Affairs, attends various civic associations or makes
12 visits to many of the high-rise buildings so that people know how
13 to get in contact with us. So I would say that we have done a
14 very good job of contacting all of our residents who live in and
15 around the community regarding the campus plan.

16 MS. GATE: Mr. Fisher, I believe the statement that was
17 made was that the partnership had been in contact. I don't
18 consider getting a postcard in the mail being in contact with.
19 What the university has managed to do, or the partnership has
20 managed to do, it appears, is put the burden on the resident to
21 contact the university; isn't that correct?

22 MR. FISHER: I would respectfully disagree with that,
23 Ms. Gates. We again, at all public meetings, community meetings,
24 we have invited anyone in attendance to participate in the
25 partnership. Again, we've attended countless meetings over the

1 last two-and-a-half, three years or so. And we even had a
2 partnership open house in 2018 where we invited neighbors and
3 residents to become members. Also, everything has been posted
4 on our AU Community Relations website. We have a CLC website,
5 the Community Relations website and the AU Neighborhood
6 Partnership website. So the information is there, and people
7 have been invited at every opportunity.

8 MS. GATES: But then isn't that an assumption that all
9 the neighbors belong to your Listserv, et cetera?

10 COMMISSIONER SHAPIRO: Mr. Chair.

11 MS. GATES: I really am very serious about this question
12 because all the neighbors have not been contacted. I got a phone
13 call last week from a neighbor wanting to know what was going
14 on.

15 COMMISSIONER SHAPIRO: Mr. Chair, respectfully. This
16 is repetitive. I think Ms. Gates has asked her questions and
17 Mr. Fisher has answered the questions.

18 MS. GATES: Thank you. Do study abroad students spend
19 any time on the AU campus?

20 MR. FISHER: No, ma'am. Throughout the semester study
21 abroad students are not on campus for classes.

22 MS. GATES: That semester, but during the whole year,
23 they never come to the campus. They never take any classes.

24 MR. FISHER: It's usually a semester --

25 MS. GATES: -- during a school year, an academic year.

1 MR. FISHER: They may. They may be in study abroad for
2 a semester and then they may in a different semester be on campus.
3 We count the students according to where they are or where they're
4 taking their courses for that semester when we take our count.

5 MS. GATES: Well, how does that affect the numbers that
6 you gave us earlier?

7 MR. FISHER: It does not affect the numbers that were
8 presented earlier.

9 MS. GATES: Thank you. Mr. Banks, (audio interference)
10 the university now under an agreement has the use of 56 parking
11 spaces in the Valor parking lot, correct?

12 MR. BANKS: That's correct, yes.

13 MS. GATES: Isn't it true that when the Valor case went
14 to the Zoning Commission, there were to be 236 spaces for American
15 University under this easement agreement? When did this change
16 occur?

17 MR. BANKS: I would pass over to Mr. Tummonds or Mr.
18 Fisher to respond to that.

19 MR. TUMMONDS: I agree. This is Paul Tummonds, I'm
20 sorry. We've said the number of spaces that are available to AU
21 after the Valor project is built, I'm not sure that it's relevant.
22 The PUD case. that is not part of this campus plan, and I guess
23 I question the relevancy of that question to us moving forward.

24 CHAIRPERSON HOOD: Ms. Gates, can you establish the
25 relevancy of (audio interference) --

1 MS. GATES: Is not the matter of --

2 CHAIRPERSON HOOD: -- unless you --

3 MS. GATES: The relevance. It's the fact that there
4 are 236 parking places.

5 CHAIRPERSON HOOD: Ms. Gates, I would ask if you can
6 get the right (audio interference).

7 MS. GATES: The 236 parking lots.

8 CHAIRPERSON HOOD: Ms. Gates. Ms. Gates. I would ask
9 that you give the rationale of the question. I'm asking you
10 because you have a delay, so I'm asking you to give a rationale.

11 MS. GATES: I'm happy --

12 CHAIRPERSON HOOD: If not. Let me just finish. If
13 not, if you could go to your next question.

14 MS. GATES: Is it relevant that there are 236 parking
15 places that are not counted in the parking inventory?

16 MR. TUMMONDS: Ms. Gates, moving forward, once the
17 Valor project is constructed there are --

18 MS. GATES: So I have four.

19 MR. TUMMONDS: Okay (audio interference).

20 CHAIRPERSON HOOD: So we only then -- Ms. Gates has a
21 delay --

22 MS. GATES: I'm sorry.

23 CHAIRPERSON HOOD: She has a delay. So if you notice,
24 when we ask a question, it takes a minute because she has a delay,
25 so let's be patient.

1 COMMISSIONER SHAPIRO: Mr. Chair, in this case, I think
2 when she's not using her video, I think we hear her better.

3 CHAIRPERSON HOOD: Okay.

4 Ms. Gates, could you turn your video off?

5 COMMISSIONER SHAPIRO: Maybe that'll work. I can't
6 guarantee it but --

7 CHAIRPERSON HOOD: Okay. Then that might help with
8 your delay.

9 MS. GATES: Thank you.

10 CHAIRPERSON HOOD: Here we go. Okay.

11 Mr. Tummonds, could you respond to her question? And
12 Ms. Gates, you can ask your next question.

13 MR. TUMMONDS: Sure. I think -- our answer is when the
14 Valor project is built and constructed, AU will have the ability
15 to use 56 parking spaces in that project. Those 56 parking spaces
16 are not counted in the inventory of the AU campus plan on account
17 of they are not within the campus plan boundaries.

18 MS. GATES: Are there -- other than the two properties
19 that are listed as not being counted, are there any others that
20 the university owns where they have parking that isn't included
21 in the inventory?

22 MR. TUMMONDS: Okay. So on all five properties that
23 are the subject of this campus plan, including the -- we'll call
24 the commercial properties, 4200 Wisconsin, 3201 New Mexico Avenue
25 and 4801 Mass Ave, we have included in our parking counts, all

1 of those spaces. We've also noted those spaces which are used
2 for AU purposes and say at 4200 Wisconsin, which also has
3 commercial tenants in that commercially zoned building, we've
4 noted those spaces in the building that are not used by AU but
5 are used by the commercial tenants, say in 4200 Wisconsin.

6 MS. GATES: Mr. Tummonds, did you say there are five
7 properties.

8 MR. TUMMONDS: Two campuses. I mean (audio
9 interference). Main campus (audio interference) campus.

10 MS. GATES: Oh. Thank you. Thank you. All right. I
11 got it.

12 The slide 4, fourth bullet and I'm using the outline
13 that we received today of the applicant's rebuttal. The slide
14 4, the fourth bullet say, "In response to a request for
15 clarification, building heights provided for development sites
16 three and four are proposed to be measured from the adjacent
17 finished grade that is closest to University Avenue"?

18 MR. TUMMONDS: Yes, that's correct.

19 MS. GATES: Okay. And so then if you go to slide 5
20 and you look at note three, which I'm sorry, I can barely see.
21 But it talks about topography and how that may affect the finished
22 grade. So are these two statements in conflict with each other?

23 MR. TUMMONDS: No. Ms. Gates, we wanted to be
24 completely clear because I noted in your testimony, you -- there
25 are -- say in your written submission, there was a discussion

1 | like we don't really know how tall these buildings will be; will
2 | the building height be measured from the campus road; will it be
3 | measured from the back closest to AU? I'm sorry, University
4 | Drive. We wanted to be clear and unequivocal. Just as we did
5 | in the Hall of Science building, when we said the measured
6 | building height is 54-feet 6-inches, and the height from
7 | basically, the back of the building closest to University Avenue
8 | is 70-feet approximately, we wanted to be clear in this case.
9 | The tallest point of this building facing University Avenue will
10 | be 60-feet tall. That's it.

11 | MS. GATES: Okay. Thank you. So looking at the diagram
12 | on page 37 of the Campus Plan, can you point to the finished
13 | grade you reference?

14 | CHAIRPERSON HOOD: What page is that in the rebuttal?

15 | MR. TUMMONDS: It's not in the rebuttal.

16 | CHAIRPERSON HOOD: It's not in the rebuttal.

17 | MR. TUMMONDS: Correct?

18 | MS. GATES: It's slide 6. Slide 6.

19 | COMMISSIONER MAY: Slide 6.

20 | CHAIRPERSON HOOD: So did you -- did somebody testify
21 | to that in rebuttal? Maybe I need to understand the nexus, the
22 | connection, because if it was not a rebuttal we need to (audio
23 | interference).

24 | COMMISSIONER MAY: Mr. Chairman.

25 | MS. GATES: It is in the rebuttal.

1 COMMISSIONER MAY: Yeah. She's saying --

2 MR. TUMMONDS: I can answer the question.

3 CHAIRPERSON HOOD: (Audio interference) of the --

4 COMMISSIONER MAY: Slide 6.

5 CHAIRPERSON HOOD: Slide 6. Okay. Now, that (audio
6 interference) slide. Thank you.

7 MR. TUMMONDS: So slide 6. But then Ms. Gates, if I
8 look at page 37 of the campus plan, which is the page which shows
9 the proposed sites on the quote/unquote "West Campus" and this
10 has site three, which is the Center for (audio interference),
11 it's that site where it says at its closest point, it would be
12 closest point to University Avenue, it would be approximately
13 110-feet. So we are saying that building will be no taller than
14 60-feet tall when you stand on the ground 110-feet away from the
15 property line adjacent to University Avenue.

16 MS. GATES: Okay. Thank you.

17 Is there a lighting plan for the 2021 Campus Plan?

18 MR. TUMMONDS: So I think that's -- you raised an
19 interesting point and I think what we wanted to discuss, and I
20 was going to address this in my closing is that Subtitle Z,
21 Section 302.10 includes a -- the requirements for filing and it's
22 grouped together both the campus plan and the further processing
23 applications. And it lists information that would be relevant
24 to determine whether what are the impacts of the campus plan or
25 a further processing application in the community. We believe

1 that's the information that we've provided in the campus plan in
2 the statements is, it is especially noted on pages 38 and 40 of
3 the campus plan, say that when we do further processing for site
4 15 on the East Campus, we will absolutely do a lighting plan.

5 When we present further processing applications for any
6 of the development sites on the West Campus, sites one through
7 six, we would provide a lighting plan. Truthfully, we think that
8 the -- this idea of -- there is no requirement to have a lighting
9 plan, there is a requirement to provide relevant information
10 regarding lighting. And we think that we -- through the further
11 processing applications, we will certainly have lighting plans
12 that address any potentially adverse impacts that light from a
13 further processing building like site 3, like site 15 would have
14 on adjacent property owners.

15 MS. GATES: So once the buildings, the campus plan has
16 been approved and then we have to wait for further processing,
17 how did the residents know what light bleed from the proposed
18 dormitories will be? I mean a building 60-feet high just across
19 the street might really have an objectionable condition.

20 COMMISSIONER MAY: Mr. Chairman, there was no testimony
21 in rebuttal about lighting, so I don't know that this is
22 necessarily on point.

23 CHAIRPERSON HOOD: Okay. I will rule that out of order
24 and ask Ms. Gates about your next question, but I will state that
25 Mr. Tummonds volunteered to answer the question when she first

1 asked.

2 MR. TUMMONDS: I know. I know.

3 CHAIRPERSON HOOD: Yeah. So here's where I am. Let
4 me just say -- that's why I asked the question earlier. To help
5 the Commission and to help me, I think the applicant has done a
6 fabulous job with rebuttal and PowerPoint. So a lot of your
7 questions that you're focusing to, could you tell us -- at least
8 help me see what page you're on so I can follow it in the rebuttal.
9 And that way, the questions that we're going to be asking will
10 be coming from the rebuttal and which by law, that's what we're
11 supposed to be doing. Okay. So you can continue, Ms. Gates.

12 MS. GATES: Okay. Let's go to slide 7. Is it correct
13 that new tennis courts will only be placed on the ground during
14 the period of the 2021 Campus Plan?

15 MR. FISHER: Yes, Ms. Gates. We do not intend to build
16 any tennis courts from the roofs of any buildings. Any new tennis
17 courts will be on the surface of the campus, ground surface.

18 MS. GATES: Thank you. What about basketball courts?

19 MR. FISHER: Any new basketball courts will be
20 constructed on the ground surface.

21 MS. GATES: So you're saying that only mechanical
22 penthouses will be installed on new building development and
23 there won't be a change of penthouse use during further processing
24 or throughout the 2021 Campus Plan?

25 MR. FISHER: That is correct.

1 MS. GATES: Thank you. I think also on slide 7, are
2 you aware that Exhibit No. 47 of Case 1107-G contains a University
3 Avenue landscape buffer enhancement plan?

4 COMMISSIONER SHAPIRO: Mr. Chair, I think by
5 definition, that's not cross on rebuttal.

6 CHAIRPERSON HOOD: I'm going to -- I would agree, but
7 I want to allow it because I think she (audio interference) it.
8 I see the nexus. So if you could just answer that, Mr. Tummonds,
9 but I would ask again that we keep our questions to rebuttal.

10 MR. TUMMONDS: I could take -- and maybe I'll just try
11 and cut to the chase. We believe the landscape buffer that exists
12 along University Avenue is sufficient. It is consistent with the
13 university's commitments to providing a thoroughly landscape
14 buffer along University Avenue.

15 MS. GATES: But that same thoroughly landscape buffer
16 which promised in this other case, so let's move on. And you
17 pointed in -- again, I'm still on slide 7, Mr. Hood. You pointed
18 to the exhibit where the campus -- where the landscaped plan
19 shows, but is there any place that a detailed list of trees,
20 shrubs or plantings exists? Because what's presented appears to
21 be a series of landscape rooms separated by green dots on the
22 page.

23 MR. TUMMONDS: I think we did -- we addressed that
24 question a couple ways. One, we submitted the pictures in the
25 rebuttal testimony that truly convey what we think the appearance

1 of the landscape buffer is. We think that in consultation with
2 Exhibit P, which is the little green circles that you noted. I
3 would also highlight Exhibit F, which is the exhibit where we
4 noted the campus special in Heritage -- I think the special in
5 Heritage trees which exists on the campus. So ultimately, Ms.
6 Gates, I think you're saying that you don't believe that the
7 landscape buffer along University Avenue is sufficient. We
8 respectfully disagree. We believe that we have provided
9 information into the record showing the sufficiency of the
10 landscape buffer along University Avenue.

11 MS. GATES: Thank you. So when were the photos shown
12 in slides 8 through 14 taken?

13 MR. FISHER: Those photos were taken probably two days
14 after the last hearing, Ms. Gates. So our last hearing, I believe
15 was on the 20th, so I believe they were taken on April the 23rd.

16 MS. GATES: Well, how would the same depictions look
17 if they had been taken in early March? Would there be gaps
18 showing at that point in the buffer?

19 MR. FISHER: Well, trees generally blossom and bloom
20 around this time of the year, so I'm assuming that they would
21 look -- they wouldn't be as full. But in April and in May, is
22 when -- generally, when trees and flowers bloom, so they would
23 look slightly different, I'm sure.

24 MS. GATES: And is that something that you want to
25 improve since I've heard that you feel this is adequate, there

1 are gaps that are not taken up by the trees, the leaves on the
2 trees.

3 COMMISSIONER SHAPIRO: Mr. Chair, I think the question
4 has been asked and answered?

5 MS. GATES: It has not.

6 CHAIRPERSON HOOD: I think it would be a simple yes or
7 no, Mr. Tummonds, what Mrs. Gates asked. And I would agree with
8 Mr. Shapiro as actually, I think I've asked him a few times,
9 actually, but yeah. Mr. --

10 MR. TUMMONDS: We believe --

11 CHAIRPERSON HOOD: Mr. Tummonds, could you just say yes
12 or no whether you want to improve it? I think it's a quick
13 answer.

14 MR. TUMMONDS: We believe the landscape buffer is
15 sufficient and we obviously, it is a living growing thing. And
16 so we are continually enhancing it or monitoring it to make sure
17 that it does do what it's supposed to do, which is buffer the
18 visual impacts of institutional buildings truthfully that are
19 pretty far removed from University Avenue.

20 MS. GATES: Mr. Chair.

21 CHAIRPERSON HOOD: Yes.

22 MS. GATES: I really think it's (audio interference)
23 that there wasn't early case which (audio interference).

24 CHAIRPERSON HOOD: Ms. Gates, could you do me a favor?
25 Could you turn your -- I really love looking at you, but your

1 sound is not coming over, so I'm really getting it that well.

2 MS. GATES: Thank you.

3 CHAIRPERSON HOOD: Okay. Now, if you can ask your
4 question.

5 MS. GATES: Is that better?

6 CHAIRPERSON HOOD: Yes, that's better. Thank you.

7 MS. GATES: Okay. I really think this needs attention
8 from the Zoning Commission given that an earlier case provided
9 the same photographs and nothing has changed. Some Casey Trees
10 were put in, but they were not put in all along and many of those
11 did not survive, so this is not adequate, and I'll leave it at
12 that. I have --

13 CHAIRPERSON HOOD: Are you finished, Ms. Gates?

14 MS. GATES: No.

15 CHAIRPERSON HOOD: I thought you were finished. I will
16 say this though. Let me just warn you that if this goes to court,
17 they will probably say whoever ran that hearing allowed so much
18 testimony during rebuttal. So I would ask you all to work with
19 me so we can make sure we have a clean record because what you
20 just told us was all testimony and we got it through your cross-
21 examination.

22 MS. GATES: Okay. I really thought I was going to be
23 cross-examining Mr. Tummonds. So this question really is for
24 him, but I will skip it because it has to do with the use of
25 Jacobs Field. I've done that. Okay. I also wanted to ask was

1 everyone -- and I guess this is for Mr. Fisher -- was everyone
2 who expressed interest in joining the partnership invited to join
3 (audio interference)?

4 MR. FISHER: So Ms. Gates, as I stated previously,
5 anyone who wanted to participate in a partnership or was extended
6 an invitation was welcome to join, to my knowledge, at least.
7 Since I've been here, no one was turned away from participating
8 if they were willing to adhere to the guidelines that have been
9 set.

10 MS. GATES: Well, I did express interest in joining and
11 never heard back, so I just want to go on the record as saying
12 that is not a true statement. Thank you. I'm through.

13 CHAIRPERSON HOOD: One thing I do know Ms. Gates, work
14 ain't crowded, and I'm sure that they will probably find a way
15 for you to be able to participate, so I'll leave it at that. So
16 thank you, Ms. Gates.

17 Let's go to the next, Mr. Tessler. Mr. Tessler is
18 filling in tonight. Ben Tessler. Do you have any cross on
19 rebuttal?

20 MR. TESSLER: I do. Thank you so much.

21 I'm asking questions for Board members and at least six
22 residents closest to the site No. 15, who are concerned about
23 this plan, and I'm hoping that I don't go out of line and I do
24 this properly.

25 Are you aware that our main concerns for Westover Place

1 are the height, size of the building at site 15, wanting a much
2 smaller building, no underground parking garage that we have
3 concerns about the issues and uses of the building, not wanting
4 a theater auditorium, food venues and the like to create vehicular
5 and pedestrian traffic, having an acceptable buffer (audio
6 interference).

7 COMMISSIONER SHAPIRO: Mr. Chair. Mr. Tessler, can I
8 interrupt? Mr. Chair?

9 CHAIRPERSON HOOD: Yes.

10 COMMISSIONER SHAPIRO: This is not cross on rebuttal.

11 COMMISSIONER MAY: Yeah. The only thing that was
12 mentioned was the buffer.

13 CHAIRPERSON HOOD: So --

14 MR. TESSLER: Well, isn't this about location, height,
15 density, and use of buildings?

16 CHAIRPERSON HOOD: That is on page 6 in rebuttal. Let
17 me let him finish the question.

18 Restate your question, Mr. Tessler.

19 MR. TESSLER: Well, I asked if you are aware of all the
20 things that I've said already, a much larger setback and concern
21 for damage to our homes. Now, I'm going under the assumption on
22 page 3 printed on the rebuttal that says it's about location,
23 height, density, and use of buildings and that's what that's all
24 about.

25 MR. FISHER: So Mr. Tessler to answer your question.

1 Yes, we are aware of the concerns of the Westover Place residents.

2 MR. TESSLER: Okay. Is it not correct that many of the
3 setbacks are 220-feet, 140-feet and 400-feet?

4 COMMISSIONER MAY: Mr. Chairman, this was not in the
5 rebuttal. There are only general references to setbacks and
6 there's a description of the buffer.

7 MR. TESSLER: Okay. I could --

8 CHAIRPERSON HOOD: Okay. Again, I think Mr. Tessler
9 you mentioned your take -- you're extrapolating from page 3?

10 MR. TESSLER: Yes.

11 CHAIRPERSON HOOD: Unless my counsel or somebody -- I
12 don't want to -- since he's referring to page 3, I'm talking to
13 my colleagues now, I think this is in order.

14 COMMISSIONER MAY: Sure.

15 CHAIRPERSON HOOD: But let's see how far out he goes.
16 I don't think it has always exactly say it, but he's -- the
17 reference is there on page 3.

18 COMMISSIONER MAY: Sure.

19 CHAIRPERSON HOOD: I'm trying to balance this whole
20 issue because I can tell you if it's -- if we don't do this right
21 (audio interference).

22 MR. TESSLER: Well, the question is that we believe we
23 understand, if we are correct, that there are many setbacks of
24 220 feet, 140 feet and 400 feet. Westover setback is 65 feet.
25 Is that not the smallest setback of all the buildings?

1 CHAIRPERSON: Okay. I'm going to (audio interference)
2 the question in order. Mr. Tummonds or somebody can answer that
3 please.

4 MR. TUMMONDS: Yes.

5 CHAIRPERSON HOOD: The answer is yes. Okay.

6 MR. TESSLER: Isn't it true that the only supposed
7 compromise with Westover in the entire plan was to have the height
8 of the building on the Westover side be only two stories high.

9 MR. TUMMONDS: This is where I would object Anthony
10 Hood, Commissioner Hood, I should say. There's no discussion
11 about this even if we extrapolate slide 3 and slide 6, again,
12 and maybe I would say 2. This is completely repetitive with the
13 cross-examination that Mr. Kirkpatrick gave on behalf of Westover
14 during our presentation in chief.

15 MR. TESSLER: Okay. Well, I'm just going from the many
16 questions that people that are closest to this site 15, so I'm
17 hoping for a little lenience with that. But essentially, you
18 know what our concerns are?

19 COMMISSIONER SHAPIRO: Mr. Tessler, if I may. I think
20 the issue is not the legitimacy of the concerns, because we hear
21 you loud and clear. It's more about the process that we're in
22 the midst of right now. So there was --

23 CHAIRPERSON HOOD: I'm going to need -- let me
24 interrupt. I'm going to need to take a 10-minute break.

25 Vice Chair, if you could take over.

1 VICE CHAIR MILLER: What are you asking me to do, Mr.
2 Chairman? But I'm (audio interference) but --

3 COMMISSIONER SHAPIRO: He needs to take a 10-minute
4 break, Vice Chair Miller.

5 VICE CHAIR MILLER: Well, why don't we all take a 10-
6 minute break is what I would suggest.

7 COMMISSIONER SHAPIRO: Okay.

8 VICE CHAIR MILLER: Okay.

9 Bye-bye. We'll be back.

10 COMMISSIONER SHAPIRO: Back at 7:20.

11 VICE CHAIR MILLER: Thank you for that clarification,
12 Mr. Shapiro.

13 (Whereupon, the above-entitled matter went off the
14 record and then resumed.)

15 CHAIRPERSON HOOD: All right. When everybody is back,
16 let's give them a few moments. I had an -- you know, living in
17 the city, I had an emergency in my neighborhood. The police are
18 out there now. So anyway, let's go ahead and we can everybody
19 back up. I'm not sure where you left off, Vice Chair or how much
20 time you told me, you know, (audio interference).

21 VICE CHAIR MILLER: I was about to resume, and you came
22 back just in the nick of time and saved me from the bell.

23 CHAIRPERSON HOOD: All right. Well, let's go ahead and
24 bring everybody back up. And I'm not sure where we left off.
25 The excitement kind of got me going but we will continue.

1 COMMISSIONER SHAPIRO: Mr. Tessler was on cross on
2 rebuttal.

3 CHAIRPERSON HOOD: Okay.

4 Mr. Tessler, you can -- everybody get set.

5 Mr. Tessler, you can begin again. I'm sorry for the
6 interruption. Thank you for everybody's indulgence.

7 MR. TESSLER: I'm hoping that my questions are going
8 to be okay. In the diagrams, you show heights of proposed
9 construction and discuss sizes of buildings. The rebuttal has a
10 graph on page 5 with building heights. It doesn't provide heights
11 for two and three-story portions of the buildings, just the
12 maximum. Our questions or questions posed to me by people that
13 live near this site is the construction next to Westover is to
14 be the same height as the Myers building, which is a two-story
15 building next to our border. Isn't it true that the Myers
16 building is actually taller than a Westover townhome?

17 MR. FISHER: Mr. Tessler, I'm not exactly sure how tall
18 the townhomes are, but we can assess that and we can go outside
19 and take a look, but I don't know exactly how tall the Westover
20 townhomes are.

21 MR. TESSLER: Okay. You described a two-story building
22 is actually taller not shorter than the third story of Westover
23 townhome because your buildings have higher ceilings. Doesn't
24 that mean that if you -- from the third level of Westover
25 townhome, would be directly into the second story of the proposed

1 AU building especially because the AU building would be built on
2 a slope rising up from Westover?

3 MR. FISHER: Mr. Tessler, without being inside of a
4 Westover townhome, I cannot tell you what the view would be at
5 this time until we get a better idea of the design of the building
6 proposed for (audio interference).

7 MR. TESSLER: So wouldn't it be misleading for the
8 Commission to think that the height of proposed building would
9 actually be shorter than a Westover townhome? I'm happy for you
10 to come just see a townhome here.

11 COMMISSIONER SHAPIRO: Mr. Chair, respectfully, I think
12 the question is asked and answered.

13 MR. TESSLER: Okay.

14 COMMISSIONER MAY: I would also say we heard testimony
15 to this effect from the Westover Place party. So we're well
16 aware that these buildings could be taller than the Westover
17 Place townhomes.

18 MR. TESSLER: Okay.

19 VICE CHAIR MILLER: And we're aware of the topography.

20 MR. TESSLER: Okay. From page 19 to 24, you're talking
21 about traffic. Some of the stuff we're seeing, I think for the
22 first time and we don't know how the numbers were composed, but
23 I do not believe that a 400-car garage on the site next to us
24 will likely increase traffic at Ward Circle and promote more
25 congestion in our area given those spaces will be used many times

1 every day?

2 MR. TUMMONDS: I would object to that question. The
3 information that was provided on traffic was specific to a
4 question that was raised by Commissioner Hood in the last hearing
5 regarding what is the 2011 CTR what it said and what are you
6 saying, we did not testify any testimony in chief this evening
7 about traffic impacts, parking impact with a 400-space garage on
8 site 15.

9 CHAIRPERSON HOOD: So what I'm going to ask Mr. Tessler
10 is that you have to go on mute when Mr. Tummonds is talking. And
11 I'm getting a lot of feedback from somewhere. Everybody (audio
12 interference) on mute. And that question actually originated
13 from the party in opposition, Tom Smith, and I just followed up
14 on it, so I want to make sure the record is clear on that. But
15 I will tell you that if everybody mutes when the other person is
16 talking, we won't have a whole lot of feedback, so thank you.

17 MR. TESSLER: Okay. So we're just concerned about, and
18 as I said, as I look at these papers here, we're talking about
19 and Subtitle 10, Section 101.2; location, height, density, use
20 of buildings; there's many pages on traffic and our concern is
21 traffic. Our concern is the garage next to us. This is our last
22 shot at trying to address those things that are issues for us
23 and that's merely what we're trying to do.

24 COMMISSIONER MAY: This is your last chance to ask
25 questions of the applicant on the testimony and rebuttal. You

1 had your opportunity to make your point during your testimony.

2 MR. TESSLER: Okay. Regarding the buffer. You have
3 photos there, does the buffer on the East Campus look like your
4 photos all year long?

5 MR. FISHER: That would be determined by the season
6 that we're in, Mr. Tessler. Again, we took these photos -- again,
7 I believe it was the 21st or 22nd of this month. As you can
8 imagine, when its fall, leaves fall off of the trees and the
9 buffer looks different. As you're aware, we recently planted new
10 trees and shrubs in October 2020. You and I both signed an
11 agreement expressing AU's commitment to maintaining the buffer
12 moving forward, so hopefully that answers your question.

13 MR. TESSLER: Do you know how long the dead trees,
14 stumps, rocks, boulders were there before we walk into that buffer
15 and identified what needed to be taken out?

16 MR. FISHER: No. I don't know how long they were there,
17 sir.

18 MR. TESSLER: Okay. Because it seemed abandoned and
19 neglected for years and I'm thinking about that.

20 CHAIRPERSON HOOD: Mr. Tessler. Mr. Tessler.

21 MR. TESSLER: Yep.

22 CHAIRPERSON HOOD: It's unfortunate that Mr.
23 Kirkpatrick did not inform you on some of the proceedings earlier
24 or I'm not sure if you even on. You may have or may not have.
25 But again, like I asked everyone, if you could let us know what

1 page of the rebuttal. They did a good job putting the rebuttal
2 in a PowerPoint, of what you're asking, because I don't think
3 that was part of what was said. If you can make a nexus or a
4 connection to it, I will allow it, but right now, I think you
5 need to move to the next question unless you can get a connection.

6 MR. TESSLER: Yes. Because they have photos of all
7 these great trees, but it all depends on the angle that you're
8 looking at. You're not looking at the rocks and things that are
9 there, you're not looking at a lot of the big open areas. And
10 just as these photos were taken a little while ago, some of the
11 photos that I've provided were taken maybe 10 days ago.

12 CHAIRPERSON HOOD: (Audio interference) all led into a
13 question on rebuttal.

14 MR. TESSLER: I guess my question is if you had taken
15 your photos at different angles, if you had -- somebody said they
16 wanted to look at and take photos from this side of our community,
17 I'm happy to show you, happy to bring you around, and would your
18 photos look different if you had taken them from our side?

19 MR. FISHER: Mr. Tessler, we believe that the photos
20 that have been included accurately represent the buffer as it
21 exists today, and, you know, hopefully that answers your
22 question.

23 MR. TESSLER: So I'm going to ask a question. Can we
24 talk about the uses of the building, or no? Meaning the things
25 that we don't want -- we're not expecting to have that we don't

1 know what's going to be there. We don't know the uses of the
2 building; is that possible?

3 CHAIRPERSON HOOD: So I think Mr. Tessler that is not
4 in the rebuttal. I think there'll be other avenues like further
5 processing, which I know, in this particular case, nobody wants
6 to hear. There will be ample time to deal with some of that at
7 that point as the Vice Chair and others have said. But again,
8 if you point to me where it is in the rebuttal, they made it very
9 easy for me tonight. If you point to me where it is in the
10 rebuttal, I will allow it. If it's not there, then we're going
11 to chime in, me and my colleagues.

12 MR. TESSLER: Okay. I guess that I don't have much
13 more to say then. But let me ask a question, one last question.
14 Are these things not supposed to be -- so this is their rebuttal,
15 but we never have heard what they're going to do in that building.
16 We don't know what the uses are going to be. Okay. Isn't that
17 supposed to have happened by now? Isn't that what's required?

18 CHAIRPERSON HOOD: There is a -- I forget what the
19 statute is. I think it's 101.8 and I may be getting all this
20 mixed up, but I believe it's -- hopefully, I'm not citing the
21 wrong statute and I'm sure if I am, that counsel let me know.
22 But even at that, it is further processing, but I know that that
23 was (audio interference) previously, but the person who presented
24 and I can't remember the opposition who presented previously
25 stopped because I forgot exactly how it reads, but I will find

1 | it shortly. You'll probably getting -- you know, (audio
2 | interference) with somebody else. But I will read it again for
3 | your (audio interference) to help you. But I will tell you that
4 | this further processing and doing further processing is what
5 | (audio interference) will come up. You'll know what size, what
6 | (audio interference) of use, what the use is, there are a lot of
7 | issues that are coming. This is just a (audio interference) plan
8 | here and I'm not sure how much you follow during our whole campus
9 | plan, but this is where we are. So I'm going to ask you again,
10 | if you have questions, just keep it to rebuttal. And that's not
11 | (audio interference) reports.

12 | MR. TESSLER: I think that I don't have any further
13 | questions.

14 | CHAIRPERSON HOOD: Okay. So I don't want you, Mr.
15 | Tessler to be discouraged in this process, but the process is the
16 | process and there will be another bite, I believe, of the apple
17 | (audio interference), especially further processing, and I'll
18 | leave it at that. All right. Let me see here. Okay. Let me
19 | start with (audio interference).

20 | COMMISSIONER SHAPIRO: Mr. Tessler, can you just mute
21 | your microphone, please. Thank you.

22 | MR. TESSLER: Sorry.

23 | COMMISSIONER SHAPIRO: Thank you, sir.

24 | MS. HORVITZ: Mr. Hood, did you just say it was my
25 | turn?

1 CHAIRPERSON HOOD: Yes, it is, Ms. Horvitz. This is
2 your turn.

3 MS. HORVITZ: Thank you so much.

4 And I really appreciate the comments and questions of
5 the Commission of the applicant because this is likely the only
6 opportunity to cross on rebuttal. I do have some questions,
7 nonetheless. Most of them are going to be directed to Mr. Fisher.

8 Mr. Fisher, you testified and also the PowerPoint at
9 page 15 talked about several procedural concessions that the
10 university has made. And the first one was that the university
11 was agreeing to apply within 12 months for further processing of
12 the acoustics area, 12 months from what Mr. Fisher?

13 MR. FISHER: From the approval of this -- of the order
14 date from the Zoning Commission.

15 MS. HORVITZ: Thank you. And then I think you testified
16 on rebuttal that, in addition, the university was willing to
17 apply for a building permit at some point thereafter within a
18 particular time (audio interference); was that six months?

19 MR. TUMMONDS: You -- I'm sorry.

20 MR. FISHER: You want to answer?

21 MR. TUMMONDS: Sure. I think what Mr. Fisher said was
22 within six months, so they (audio interference) within 12 months
23 of this campus plan approval, AU will file the further processing
24 application for the wall. After we go through that further
25 processing application, within six months of that approval of the

1 further processing application for the wall, we will be filing a
2 building permit for the wall.

3 MS. HORVITZ: Thank you, Mr. Tummonds. So that's at
4 least a year-and-a-half away if everything happens tomorrow. And
5 then is the university committed to building the wall with any
6 particular time frame after the building permit is issued?

7 MR. FISHER: So we would attempt to build the wall as
8 quickly as possible, but also not to disrupt the schedules of our
9 athletic teams, especially for competitive games that are
10 sanctioned by the NCAA. But at this time, we don't have an exact
11 construction schedule, but again, we are committing to get it
12 built as quickly as possible.

13 MS. HORVITZ: And is the university prepared to put in,
14 as a condition, the agreement to apply for a building permit
15 within six months and to build as soon as possible?

16 MR. FISHER: Yes.

17 MS. HORVITZ: Now, in the rebuttal testimony, there was
18 also a reference to the height and length, or at least approximate
19 height and length of the acoustic barrier, and I believe you
20 testified, correct me if I'm wrong, that at the present time the
21 thinking is that the acoustic barrier will be approximately 15
22 feet high and 360 feet in length. Is that anywhere in the written
23 submissions of the university with respect to this campus plan?

24 MR. FISHER: The length of the field -- I'm sorry, the
25 field -- the length of the wall is included in one of our

1 exhibits, I believe it's Exhibit W. The height of the wall is
2 not laid out specifically in that exhibit based on previous
3 conversations --

4 MS. HORVITZ: But isn't that --

5 MR. FISHER: I'm sorry. I was just saying based on
6 previous conversations, we believe that to be the approximate
7 height, but it is in Exhibit W.

8 MS. HORVITZ: But is the university prepared to submit
9 a condition that states that the wall would be approximately 15
10 feet in height when it's submitted for further processing, or at
11 least 15 feet in height, something to that effect?

12 MR. FISHER: I think we're generally comfortable with
13 that, but I think we would also want to make sure that the wall
14 is the appropriate height and length to mitigate the noise.

15 MS. HORVITZ: Agreed. And with respect to the length,
16 is it your testimony that Exhibit W of the campus plan application
17 actually provides any indication in feet as to the anticipated
18 length of the acoustic barrier?

19 MR. FISHER: My apologies. Yes. It is in again,
20 Exhibit W. There is a graphic on the bottom left-hand corner of
21 the page, and it says specifically sound barrier wall is 360 feet
22 long.

23 MS. HORVITZ: Okay. That's in Exhibit W?

24 MR. FISHER: Yes, ma'am.

25 MS. HORVITZ: Okay. Thank you. So is the university

1 prepared to agree that the wall but that it's promising to apply
2 for further processing within 12 months will be approximately 360
3 feet in length as part of that commitment and the condition?

4 MR. FISHER: Yes. I believe we would be comfortable
5 with that.

6 MS. HORVITZ: Thank you. And similarly, you testified
7 on rebuttal that the wall will in fact be built at the fence line
8 rather than at the property boundary line. Is that a condition
9 that the university is willing to commit to in writing as part
10 of the proposed conditions from Zoning Commission?

11 MR. FISHER: Again, I believe we're comfortable with
12 that. As I also stated, it would be built in the location that
13 would be most effective to mitigate the sound, but we believe
14 that to be along the fence line.

15 MS. HORVITZ: Now, you testified, and the rebuttal
16 materials also make reference, specifically on page 16 that there
17 are currently, I believe you said two speakers, amplified noise
18 speakers, midfield location on the bleacher side. Was that your
19 testimony?

20 MR. FISHER: Yes. They are located on the field
21 opposite of the property line or opposite of your client's home.

22 MS. HORVITZ: And when was that, I mean as of what
23 date?

24 MR. FISHER: The speakers have been placed there during
25 the most recent athletic season due to COVID because we don't

1 have spectators. And we'd have to separate our student athletes
2 from either the referees or the people who work -- who are working
3 the event for the NCAA.

4 MS. HORVITZ: Well, are there occasions where more than
5 two speakers are used on Jacobs Field?

6 MR. FISHER: To my knowledge, no. I don't believe so.

7 MS. HORVITZ: Do you know which way the speakers face?
8 Do they face towards the bleachers or away from the bleachers?

9 MR. FISHER: Currently, they are facing your client's
10 home.

11 MS. HORVITZ: Okay. And are they portable or can they
12 be -- can I pick them up and change their position if I wanted
13 to?

14 MR. FISHER: They are portable. We do not keep them
15 on the field. We only have them on the field for game days.

16 MS. HORVITZ: Is the university willing to agree to a
17 condition at least until the wall is built and tested that
18 speakers will be face away from 4710 Woodway Lane rather than
19 facing it?

20 MR. FISHER: So we'd have to consult with our athletics
21 department to see what's -- how we could accommodate or change
22 the speaker setup right now. Again, because of NCAA rules, we
23 do have to have a sound system there but we will consult with
24 them to see if they can be changed. And again, this was only
25 because of our COVID season. So hopefully, this fall, we might

1 | be able to change the arrangement and we'll be able to have
2 | spectators and/or to change the situation of our student athletes
3 | when they are performing.

4 | COMMISSIONER MAY: Can I interrupt for a second?

5 | CHAIRPERSON HOOD: Let me just interrupt. Ms. Horvitz,
6 | and then I'll go to Commissioner May. I think that's one of those
7 | questions where, I believe that you all can work with, especially
8 | before further processing, and that goes to the give and take
9 | that we spoke about earlier. You know, I understand where you're
10 | trying to go, but I think that's -- and I think you're trying to
11 | get the best for your client, but I think that's one of those
12 | discussions that need to be had when you all are doing those
13 | negotiations.

14 | Commissioner May.

15 | COMMISSIONER MAY: Yeah. I just wanted to clarify. I
16 | mean I thought there already was a condition that the speakers
17 | were not to be pointed toward the Herzstein residence; is that
18 | not correct? I'm not asking you, Ms. Horvitz. I'm asking the
19 | university.

20 | MS. HORVITZ: Okay. Thank you.

21 | MR. TUMMONDS: Commissioner May, you're correct. And
22 | so due to COVID they had to move the speakers -- so they moved
23 | the speakers to the opposite side of the field, so further away
24 | from the Herzstein residence. But again, now it does face towards
25 | because of the COVID restrictions. I think as Mr. Fisher said,

1 | we will make sure that as we move forward in the fall season, we
2 | hope that COVID restrictions will not be there, but then we will
3 | also make sure that that is conveyed to the athletic department.
4 | They need to push hard back on the NCAA.

5 | COMMISSIONER MAY: So it seems to me that that means
6 | that you're violating the current conditions of the plan and
7 | maybe that fact got past me before. But it seems to me that if
8 | you want to change the condition that requires that they point
9 | away from the house, you have to come back to us to have that
10 | condition changed.

11 | MR. TUMMONDS: Agreed.

12 | COMMISSIONER MAY: You probably should have done that
13 | before or at least when this was happening because of COVID.

14 | MR. TUMMONDS: Understood.

15 | COMMISSIONER MAY: Okay. So --

16 | MR. FISHER: Commissioner --

17 | COMMISSIONER MAY: If this is a continuing condition,
18 | then I expect that that's what would happen, right?

19 | MR. FISHER: So Commissioner, if I can chime in for a
20 | moment; you are correct. I don't believe that we have any more
21 | NCAA games for the rest of this academic semester. There may be
22 | one more in the first week of May. Actually, this past weekend,
23 | we had a women's lacrosse game, and we did not have amplified
24 | noise there because we did realize that this speaker setup was
25 | not the way that it should be, so we removed them for that

1 particular event. Again, I believe there's one more for this -
2 - the rest of this academic calendar year and then there should
3 not be any use of it during the summer because there won't be
4 any NCAA games. So between now and then, we will continue to
5 work with Dr. Herzstein and Mr. Gerson before the next athletic
6 season starts, so that we can rectify that situation.

7 COMMISSIONER MAY: Okay. And so if there are -- I mean
8 I'm not worried about the game next week. I mean, I think the
9 Chairman said, there has to be a little give and take, and we
10 can be understanding of the COVID circumstance now that we're
11 largely past your athletic season. But if there's going to be a
12 condition -- a change to a condition due to whatever the playing
13 circumstance is in the fall, then I expect that the university
14 will come back to modify a condition and hopefully have the
15 Herzstein's in agreement with that proposed condition change.

16 MR. FISHER: We --

17 COMMISSIONER MAY: So (audio interference) everybody?

18 MR. FISHER: Yes. We can commit to doing that if we
19 need to make any changes. We'll make sure that we come back
20 before the Zoning Commission.

21 COMMISSIONER MAY: All right. Sorry to interrupt.

22 MS. HORVITZ: Thank you. I appreciate that. No, no,
23 no. I really appreciate it. And just as a follow -- a conclusion
24 to this point, Mr. Fisher. Are the current speakers elevated or
25 are they on the ground?

1 MR. FISHER: They are not elevated. They are on the
2 ground.

3 MS. HORVITZ: Okay. Now, you made reference both in
4 your PowerPoint and in your testimony on rebuttal to the air horn
5 and shot clock, and I refer you specifically to page 16. Was it
6 your testimony that the air horn and shot clock are both mounted
7 on this current scoreboard?

8 MR. FISHER: There is an air horn and shot clock mounted
9 on the board. And there is another air -- shot clock, I believe,
10 that is located on the ground level on the opposite end.

11 MS. HORVITZ: Okay. And so the air horn and the shot
12 clock that are on the scoreboard, are they elevated above ground
13 level?

14 MR. FISHER: Yes, they are.

15 MS. HORVITZ: Do you know how high they are?

16 MR. FISHER: They are located towards the bottom of the
17 scoreboard. I don't know exactly how high that is.

18 MS. HORVITZ: But wouldn't placing the air horn and the
19 shot clock at an elevated location make it more challenging to
20 mitigate noise with an acoustic barrier.

21 MR. FISHER: I think it's most appropriate for a sound
22 engineer to answer that question.

23 MS. HORVITZ: Okay. Now, in your testimony and at page
24 16, you made reference to -- actually, I'm not sure you testified
25 about it. But at page 16 you referred to the scoreboard horn

1 and said that it occurs at the end of each pass on lacrosse, two
2 times per game, and at the end of each period for field hockey,
3 three times per game. And then you also wrote in your submissions
4 at page 16 that the shot clock board is used for lacrosse games
5 only and sound infrequently, only when the clock runs to zero.
6 Do you recall that submission?

7 MR. FISHER: Yes. That's part of our PowerPoint
8 submission, yes.

9 MS. HORVITZ: Okay. So isn't it true that there are
10 other events that occur in a women's lacrosse game that require
11 the air horn to go off?

12 MR. FISHER: I believe what I presented in the
13 PowerPoint and in my testimony is accurate about the usage of
14 shot clocks and air horns during the game.

15 MS. HORVITZ: So do you -- are you unfamiliar with say
16 the NCAA requirements that the air horn go off during timeouts,
17 illegal substitutions or when the shot clock malfunctions, for
18 example?

19 MR. FISHER: I believe that what I presented is accurate
20 to the usage of the shot clocks and air horns during the game.
21 I am not intimately familiar with NCAA rules.

22 MS. HORVITZ: Well where did you get the information
23 for page 16 then?

24 MR. FISHER: This information was provided by our
25 athletics department.

1 MS. HORVITZ: Okay. And so -- and then with respect
2 to the shot clock and that it only goes off when it runs to zero,
3 is that just like once per half or once per quarter, or is there
4 a shot clock where like 90 seconds of possession, it'll go off
5 if you don't change possession. Do you understand my question?

6 MR. FISHER: I believe you're, again, asking me how
7 many times that the shot clock and air horn go off and it's
8 presented in the slide that you referenced.

9 MS. HORVITZ: Well, how often does the clock run to
10 zero?

11 MR. FISHER: Infrequently. It would differ, I'm
12 assuming, for each game.

13 MS. HORVITZ: And why would it differ?

14 COMMISSIONER SHAPIRO: Mr. Chair.

15 MS. HORVITZ: Okay.

16 CHAIRPERSON HOOD: Yes.

17 MS. HORVITZ: That was fun.

18 CHAIRPERSON HOOD: Commissioner Shapiro. Yeah, you
19 know.

20 COMMISSIONER SHAPIRO: Ms. Horvitz got the message
21 right.

22 CHAIRPERSON HOOD: Okay.

23 MS. HORVITZ: Okay. Now, in Zoning Commission -- strike
24 that. In your rebuttal testimony and your presentation, you
25 refer to the use of Jacobs Field from dawn to dusk except for

1 Sunday morning. Are you aware that the field is in fact sometimes
2 used on Sunday morning?

3 MR. FISHER: No, I'm not aware.

4 MS. HORVITZ: Would the university be willing to commit
5 to a condition of prohibit usage of the field on Sunday morning?

6 MR. FISHER: That's an existing condition which we've
7 already committed to moving forward in this campus plan.

8 MS. HORVITZ: And also in your rebuttal testimony, you
9 made reference to special events and then gave only one example,
10 which was the Juvenile Diabetes Research Foundation Real Estate
11 Games. Can you give me other examples of the types of special
12 events that are occurring on the field?

13 MR. FISHER: We could provide a list instead of -- in
14 subsequential filing.

15 MS. HORVITZ: They're not all charities, are they?

16 MR. FISHER: No.

17 MS. HORVITZ: Okay. And then you indicate on page 17
18 that public safety is alerted when the field rules are violated.
19 And AU will revoke access to the field if groups do not follow
20 the rules set forth in their rental contract. Do the rental
21 contracts expressly prohibit amplified noise?

22 MR. FISHER: Yes. The restrictions of the field is
23 expressly laid out in any previous or contracts with outside
24 organizations.

25 MS. HORVITZ: Do the rental contracts also expressly

1 prohibit usage after dark?

2 MR. FISHER: I don't know the answer to that
3 specifically, but we don't rent or have outside organizations use
4 the field outside of the allowed times.

5 MS. HORVITZ: Okay. Thank you. And then let's say in
6 the last five years, how many times has AU revoked access to
7 Jacobs Fields based on violations of a rental contract that are
8 unrelated to payments?

9 MR. FISHER: I don't know the number but that's
10 something that we can look into and follow-up on.

11 MS. HORVITZ: Well, how often does the university rent
12 out the field to non-university users?

13 CHAIRPERSON HOOD: Ms. Horvitz --

14 MR. FISHER: Again, that's a question I would have to
15 look up and follow-up on.

16 CHAIRPERSON HOOD: Hold on. Hold on. That question
17 was out of order -- that question and the previous question are
18 out of order. I'm trying to look on here and see where any of
19 that is and I don't see it. If you can direct me to it, I'll
20 rule it in order; if not, next question.

21 MS. HORVITZ: Thank you. I will move on. But just,
22 for the record, page 17 was referring to revocation of rental
23 contracts and I was trying to get a sense of how many rental
24 contracts there were and whether there had, in fact, been
25 revocations, but I'll move on.

1 Now, given my first series of questions, Mr. Fisher,
2 about how it's going to be a year, potentially before AU applies
3 for further processing and potentially another six months before
4 there's an application for building permit, and then whoever
5 knows how long after that for actual construction of the wall.
6 What conditions is the university proposing should be in place
7 during the next two or three years before the sound wall is built?

8 CHAIRPERSON HOOD: Commissioner Shapiro.

9 COMMISSIONER SHAPIRO: Mr. Chair. I'm actually -- I
10 mean I'm curious about that question what the answer might be,
11 but I don't see how that is cross on rebuttal.

12 MS. HORVITZ: Thank you. I mean he did testify that
13 they had agreed to all 2011 Campus Plan conditions during his
14 testimony, so I'm trying to explore that a little.

15 COMMISSIONER SHAPIRO: I mean if it's (audio
16 interference).

17 CHAIRPERSON HOOD: I'm going to allow it. I'm going
18 to allow that question, Ms. Horvitz, but make sure we don't go
19 too far off based on that.

20 MS. HORVITZ: Yes. Yes.

21 MR. FISHER: So Ms. Horvitz, as you just stated, we
22 have agreed to bring forward the 2011 Campus Plan conditions into
23 the 2021 Campus Plan as it pertains to Jacobs Field, conditions
24 17 through 25, I believe is what they are.

25 MS. HORVITZ: But at the present time, the university

1 is not proposing any additional conditions to address the
2 concerns that have been articulated in this case by Dr. Herzstein
3 and Mr. Gerson before the wall is built?

4 MR. FISHER: Again, we propose to move forward those
5 original conditions in addition to the condition stating that we
6 would move forward within 12 months of the Order with the further
7 processing.

8 MS. HORVITZ: You were asked a few questions about
9 whether there had been any overtures made to my clients in the
10 last week or so, and you couldn't remember exactly the substance
11 of all of those. But had my clients asked the university to
12 require testing of actual mitigating effects of the barrier and
13 the submission of those results to the Commission and the Woodway
14 owners before any Zoning Commission conditions on field usage and
15 noise are modified, was that one of the suggestions from my
16 clients?

17 MR. FISHER: I'm going to ask Mr. Tummonds to chime in
18 on that.

19 COMMISSIONER MAY: Ms. Horvitz.

20 MR. FISHER: You two had a conversation last week, so
21 I would --

22 COMMISSIONER MAY: Can I interrupt? Since I asked the
23 question. The university agreed to provide the list of the
24 conditions that were discussed and what they've agreed to what
25 they've not, so we will get to that when they get the submission

1 to us.

2 MS. HORVITZ: Okay. Thank you. All right. There was
3 a question directed to the University during its rebuttal cross
4 about whether performance measures would be a good way of defining
5 the success or failure of the wall. Is that something that the
6 university has articulated, what the performance measures would
7 be?

8 MR. FISHER: Not at this time, no. We have not done
9 that at this time.

10 MS. HORVITZ: Okay. Switching very briefly to Reeves
11 Field scoreboard. Has the university clarified in its rebuttal
12 that the Reeves Field scoreboard will also have a shot clock
13 and/or air horn?

14 MR. FISHER: The Reeves Field scoreboard will be a no
15 sound scoreboard. I can't state specifically whether that would
16 have an air horn or shot clock at this time, but I don't believe
17 that it is.

18 MS. HORVITZ: Let me direct you -- I'm not trying to
19 trick you or anything. Let me direct you to page 18 of your
20 PowerPoint on rebuttal. Specifically, it says the only sound
21 that would be generated by the proposed scoreboard would be for
22 clock starts and stops, substitutions, and end of half e.g., only
23 sounds that are required for competition by the NCAA. Do you
24 see that?

25 MR. FISHER: You're correct. That is accurate. When

1 I was speaking about no sound, that means there will be no sound
2 from the video component of the scoreboard. So what you see
3 there on that slide is correct regarding the shot clock and air
4 horn.

5 MS. HORVITZ: So which boards are occurring on these
6 fields that require a shot clock or air horn?

7 MR. FISHER: Reeves Field is used for soccer, I believe,
8 and track and field sports.

9 MS. HORVITZ: Does the NCAA requires a shot clock and
10 stop and air horns for soccer?

11 MR. FISHER: I'm not sure.

12 MS. HORVITZ: Is it the university's intention to
13 expand usage of Reeves Fields to additional sports that might
14 require these scoreboard features?

15 MR FISHER: I can't speak to that at this time.

16 MS. HORVITZ: If I might direct a question to Mr. Hood.
17 I understand that the university is going to be submitting some
18 post hearing submissions. Obviously, my client would like an
19 opportunity to address any of those post hearing submissions.
20 And I, unfortunately, would like to reserve the right to request
21 an opportunity to cross on any additional rebuttal depending on
22 what is presented.

23 CHAIRPERSON HOOD: Unfortunately, Ms. Horvitz the
24 applicant has the last -- and you already know this -- but I'm
25 going to say the applicant has the last say because the burden

1 of proof is on the applicant. This Commission will look at all
2 that. We don't usually go back and forth. This is what we're
3 doing now. We're doing cross on rebuttal. The applicant will
4 have some further filings, which I'm going to actually talk about
5 in a moment and then that's it. Because if that's the case, we
6 will be having -- this campus plan, we'll be going back and forth,
7 so that's -- hopefully, that answers your question.

8 MR. TUMMONDS: Chairman Hood, all of the parties in
9 opposition get the opportunity to respond in writing to the
10 applicant's post hearing submissions.

11 CHAIRPERSON HOOD: Okay. Yes. But she wants to -- I
12 think she says she wanted to cross.

13 MR. TUMMONDS: I know. I know. But I think -- I guess
14 what I'm trying to say is there is the opportunity for all of
15 the parties in opposition to respond to new information that is
16 presented to the Zoning Commission through the post hearing
17 submission process. That is no different than every contested
18 case that, in fact, goes before the Zoning Commission.

19 CHAIRPERSON HOOD: Okay. Yes. You are correct. Mr.
20 Tummonds is correct. The parties will have a chance to respond
21 in writing, Ms. Horvitz, but you were talking about cross-
22 examination and that's not going to be part of it.

23 MS. HORVITZ: And I understand what the Chair is saying.
24 I am concerned, however, that the university has a history of
25 submitting post hearing submissions with new factual information,

1 | which essentially undermines the ability of the parties in
2 | opposition to engage in a cross-examination of --

3 | COMMISSIONER SHAPIRO: Mr. Chair.

4 | MS. HORVITZ: -- what that (audio interference) says
5 | and I'm just making a record for it. I understand the (audio
6 | interference).

7 | CHAIRPERSON HOOD: So again, Ms. Horvitz, if that's
8 | what you believe that's been provided, once you respond, once the
9 | parties respond, there just won't be any cross-examination. So
10 | you'll be able to -- if that's what you believe that happens,
11 | put that in your response.

12 | MS. HORVITZ: Exactly. I just wanted to alert the
13 | Chair to my concern and I --

14 | CHIARPERSON HOOD: Okay.

15 | MS. HORVITZ: -- I have concluded my questions.

16 | CHAIRPERSON HOOD: Okay. So noted. I need to take a
17 | moment. I've been advised on something I said earlier and I need
18 | to correct it. I think Mr. Tessler -- Mr. Tessler, under Subtitle
19 | X, Section 101.16, it provides that a campus plan cannot include
20 | a further processing. And that's -- and I would encourage you
21 | to look at Subtitle X, Section 101.16. And also Subtitle Z,
22 | 302.10, requires that the applicant for a campus plan to provide
23 | a facility's plan showing -- I think this goes to the question
24 | that Mr. Tessler was asking about what uses and what was going
25 | to be used of the building.

1 But Subtitle Z, 302.10 requires the applicant for a
2 campus plan to provide a facility's plan showing the existing and
3 proposed building uses. Proposed uses is usually general
4 categories, i.e., academic student life, et cetera. One second.
5 AU did provide that as part of its application in chief and I
6 would ask that you go back and look at it, Mr. Tessler, you and
7 your organization. And they will have to call out the specific
8 exhibit in their post hearing filings and which Ms. Horvitz has
9 just mentioned. Any questions with that, you can follow-up with
10 staff, and I wanted to put that on the record for Mr. Tessler.
11 Okay. And Ms. Horvitz, you are complete, I believe.

12 Let's go to Ms. Ambrose.

13 MS. AMBROSE: Yes. Hello. Let me just say something
14 here, if you can bear with me for a second, Chairman Hood and
15 Commissioners and applicant.

16 This being my first participation in an AU Campus Plan
17 Zoning hearing and representing a party, at this session, I
18 inquired of some of the other parties here what to expect, you
19 know, what to expect of this phase, whether we could make closing
20 statements or whatever, and I was reminded and cautioned about
21 keeping it to just cross of the rebuttal. Some of my questions
22 that I was going to raise in my cross to do with say enrollment
23 numbers, it was raised and answered for by Ms. Gates; Mr. Banks,
24 Iain Banks, about the traffic count; and even Mr. Tummonds brought
25 up -- thank you -- the insight into lighting, which is a current

1 concern.

2 So frankly, I don't really have any more questions. I
3 would like to say something though since this is for the record.
4 And I so respect now, the importance in the distinction of cross
5 versus testimony and I'm not going to get into testimony tonight.
6 I could cite my concerns just as Westover did tonight, but I'm
7 not going to do that. I've already done that. And you've given
8 me the opportunity and I appreciate that. I do want to say for
9 the record, though, because Westover keeps saying that their
10 building 15 is going to be the closest to the neighboring
11 residential houses. Well, actually, that's not true. Building
12 11 on page 39 of the campus plan, it's 60-feet from the corner
13 of Nebraska and Rockwood Parkway.

14 COMMISSIONER SHAPIRO: Ms. Ambrose you were on a roll,
15 but then you stepped off your roll.

16 MS. AMBROSE: No, very well. I just -- well, because
17 I -- you know, I'm not --

18 COMMISSIONER MAY: You've made this point before too.

19 COMMISSIONER SHAPIRO: Yeah.

20 MS. AMBROSE: Thank you.

21 COMMISSIONER MAY: We remember it.

22 MS. AMBROSE: Okay. Thank you.

23 COMMISSIONER SHAPIRO: Yes, we remember.

24 MS. AMBROSE: I appreciate it. I also wanted to say
25 for Chairman Miller and May, and also Chuck Elkins for bringing

1 up this fact that hopefully, you know, a lot of these specifics,
2 a lot of this need for reassurance and clarification will happen
3 in further processing, so I appreciate. That's all I want to
4 say. My questions were responded to earlier about the rebuttal.
5 Thank you.

6 CHAIRPERSON HOOD: Okay. Thank you, Ms. Ambrose. And
7 Ms. Ambrose, and I'm going to say this for the record, I allowed
8 that, but actually, that was totally out of order, but I allowed
9 that because you said this was your first time. We have to learn
10 as well. I would tell you that, and I'm going to digress for a
11 moment.

12 One night in the hearing we had former Chief Judge
13 Rufus King in the hearing. And I knew that he was going to watch
14 the way I handled cross-examination. And the public couldn't see
15 it, and even my colleagues, but I was just as nervous as I could
16 be because I couldn't handle that. Now, if he had saw these
17 examples, at least the first couple of nights, he'll probably
18 would have come up and said something else to me, but that
19 particular night he came up and said, you run a good hearing,
20 and that meant a lot.

21 Now, I know people don't like the way cross-examination
22 goes, believe me, I hear things too. But at the end of the day,
23 we have to have a complete record. (Audio interference) is right
24 just in case anybody has any challenges, because at the end of
25 the day, the judge is going to say what kind of format did they

1 do, that has nothing to do with anything. It's not going to be
2 like we are and allow things. They're going to just cut it off,
3 cut through the weeds and get to the case in chief of the case.
4 They'll get to the main points. And that's what we try to do
5 here with cross-examination. So I appreciate this being your
6 first time, don't let it be your last time. And one thing I will
7 say, due to this process, don't let nobody else discourage you,
8 stay involved, and I appreciate that, so stay involved. Okay.
9 All right.

10 I think last but never least, let's go to Spring Valley
11 Wesley Heights.

12 Mr. Smith.

13 MR. SMITH: Thank you, Chairman Hood. I appreciate you
14 letting me go last.

15 If I can just do one question out of order here from
16 what I was going to do while it's still fresh. The Reeves Field
17 issue of noise from page 18 of the presentation.

18 Mr. Fisher, you all never testified during your
19 testimony, did you -- about the noise coming from these -- I
20 don't want to say from the scoreboard because you say it's not
21 from the scoreboard, but the noise associated with the new digital
22 scoreboard. Did you or did I miss that?

23 MR. FISHER: I don't believe we did. I believe there
24 was a follow-up question by one of the Commissioners about the
25 placement of the scoreboard and so we answered it here in rebuttal

1 tonight.

2 MR. SMITH: Thank you. And thank you for sharing that
3 information. So given what we just heard in the exchange between
4 you and Ms. Horvitz. What are you planning to do to mitigate
5 that sound of the shot clocks and the air horns at Reeves Field?
6 We've heard a lot about Jacobs Field, but now, what about Reeves
7 Field?

8 MR. FISHER: Well, Reeves Field already has -- as you
9 can see a scoreboard there with a shot clock in air horn, and so
10 this is just a replacement of that scoreboard. It's pretty
11 outdated and we're adding the video component. So to date, we
12 don't get any complaints about the noise coming from Reeves Field.

13 MR. SMITH: So you're not anticipating any change in
14 the current conditions; is that correct?

15 MR. FISHER: That is correct. Again, this is just a
16 newer model of the scoreboard that we're installing.

17 MR. SMITH: Thank you very much. That's very helpful.
18 If I go back to my set questions. Beginning with page 5 and I
19 just want to be -- Mr. Tummonds said he wanted to be very, very
20 clear and I appreciate this. This has to do with the sites for
21 the Center for Athletic Performance and the dorm, the adjacent
22 dorms, so there will be 3 and 4, sites 3 and 4. And this has to
23 do with also the language that you put in here, it says "The
24 exact building heights and the building height measuring point
25 for each of the proposed buildings will be finalized during the

1 further processing review for the project." So I guess I'm
2 wondering, how reliable are these height numbers that you've
3 given us for the building, that's part A of my question. Part B
4 of the question is, can we lock in your comments about the
5 measuring point for buildings three and four. Based on what you
6 provided us, is that something that we can lock in? So a two-
7 part question.

8 MR. TUMMONDS: I'll start with -- thank you. I'll
9 start with the second. Yes, lock it in. With regards to -- first
10 of all, the actual building and measurement, that's why we put
11 in slide 5, the building heights in both stories and height, it
12 said up to 70-feet. So that, you know, again, as we go through
13 further processing, we are providing the Zoning Commission, the
14 community with a sense of how tall those buildings will be. And
15 then when we go for further processing, we will say, as we noted
16 for building three, three-stories up to 60 feet. It is now, here
17 is the measuring point, this is what it's going to be.

18 MR. SMITH: And Paul by -- I'm sorry Mr. Tummonds --
19 by --

20 MR. TUMMONDS: That's all right.

21 MR. SMITH: -- I feel like I've known you so long.
22 It's hard to refer you as Mr. Tummonds. But Paul is it -- are
23 you saying then that these building heights will not exceed what
24 you put into Exhibit L?

25 MR. TUMMONDS: That's correct.

1 MR. SMITH: Thank you. That makes things much clearer.
2 On page 6 of your presentation, the graphic that you show, does
3 that graphic show the building heights in relation to the heights
4 of the adjacent homes? It doesn't show that; am I correct?

5 MR. TUMMONDS: No. That's correct.

6 MR. SMITH: Okay. And is that something that you're
7 planning to provide?

8 MR. TUMMONDS: No, we're not.

9 MR. SMITH: So this graphic doesn't give us a sense of
10 the impact of those heights on the surrounding neighborhood, but
11 just shows us what it looks like on the campus within the campus;
12 is that correct? Would that be fair?

13 MR. TUMMONDS: That's correct.

14 MR. SMITH: Okay. And then on page 7 with the
15 landscaping. Have you all decided where the tennis courts are
16 going to be relocated?

17 MR. FISHER: No, we haven't decided at this time.

18 MR. SMITH: Thank you. And I want to -- if you go to
19 slide 9 of your presentation. I don't know if you want to bring
20 that up or how you want to do that, but if you go to slide 9 and
21 you look at pictures E, G, H and I. Is there something wrong
22 with picture F? There's no picture F. Just curious because,
23 you know, are we missing something?

24 MR. FISHER: I'm sorry. It looks like there are two
25 Es, one of those -- the second one should be an F. That's a

1 typo.

2 MR. SMITH: Okay. Thank you. And there isn't any --
3 in picture H -- well, let me ask you this before I go there. Is
4 there a reason why you didn't include pictures in your original
5 application or as part of your testimony?

6 MR. FISHER: We submitted these pictures as a result
7 of questions that were asked at the last hearing about our buffer.

8 MR. SMITH: Okay. I'm not going to go into some of
9 the other things that were, you know, like classes, I mean about
10 April and May. We know when bushes, flower and when they're
11 stronger and the like, but we look at H, there's no ground cover
12 there, correct, in picture H?

13 MR. FISHER: I believe that to be correct, yes.

14 MR. SMITH: And on pictures E, G -- I'm sorry, that
15 would be F, I'm sorry, F, G, H and I, that black wall there,
16 that's your fence; isn't that correct?

17 MR. FISHER: That's correct.

18 MR. SMITH: So if I can see the fence at this point in
19 time of the year when the foliage is at its peak, isn't it safe
20 to conclude that if you took these pictures at night during other
21 times of the year, there would be a lot of light coming from the
22 campus to the neighborhood; isn't that a fair assessment?

23 COMMISSIONER SHAPIRO: Mr. Chair, if I may. The point
24 -- I hear Mr. Smith, loud and clear. This point has been made
25 so many times. It's unduly repetitive.

1 CHAIRPERSON HOOD: Okay. Mr. Smith, next question,
2 please.

3 MR. SMITH: Okay. Well, will there be a condition in
4 the campus plan -- okay. Let me back up. Landscaping is not
5 something that is just done once and then it's over, right? It
6 requires to be maintained. It that safe to say?

7 MR. FISHER: That's accurate.

8 MR. SMITH: So will there be a condition in this campus
9 plan, as there has been in the last two campus plans, about
10 maintaining and enhancing the landscape barrier along University
11 Avenue

12 MR. FISHER: Right now, there isn't a condition that
13 specifies that but again, we have once again committed to
14 maintaining all of our buffers. We have a maintenance team that
15 comes out there regularly to enhance and work on those buffers,
16 but I don't think that that's something that we would object to.

17 MR. SMITH: Okay. So you would be fine with continuing
18 what is Condition No. 20 basically in the current campus plan;
19 is that correct?

20 MR. FISHER: Are you referring to the 2011 Campus Plan
21 condition?

22 MR. SMITH: Yeah. I think it's Condition No. 20 in
23 that campus, I mean it may be my condition number, but you're
24 willing to include a condition in this plan similar to what you've
25 had in previous plans; am I understanding correctly?

1 MR. FISHER: Yes.

2 MR. SMITH: Thank you. I want to skip over parking,
3 if I might, for the time being and come back to it. I know,
4 Chairman Hood, you're eager, but I still need to think how I'm
5 going to be able to ask the questions to get my point across.

6 On page 6 -- no, it's not 16 anymore. Hold on. It's
7 -- on page 23, starting on page 23, you talk about the parking
8 inventory. I want to make sure I have this correct; you talk
9 about the parking inventory. Do you have access right now to
10 the 3,000 parking spaces that you are saying that you would
11 provide at a maximum?

12 MR. FISHER: Is that a question directed to me or Mr.
13 Banks?

14 MR. SMITH: Well, I was directing it to you, Mr. Fisher,
15 but whoever has the answer.

16 MR. FISHER: So right now, we have access to 2,701
17 spaces but we have a total of 3,045.

18 MR. SMITH: Okay. So you have access to roughly 2,700
19 spaces. How are you going to get -- what is your plan for getting
20 to 3,000 or since it's only -- since what you're proposing is
21 only a maximum of 3,000, is that just kind of a number that is
22 going to float out there that you never have to reach?

23 MR. FISHER: We are proposing a maximum of 3,000 spaces.
24 I'm not sure if I understood the question other than --

25 COMMISSIONER MAY: Mr. Smith, can you tell me where

1 this is in the rebuttal?

2 MR. SMITH: Well, he talks -- he raised the questions
3 about parking inventory on page 23. He mentions proposed parking
4 and loading facilities are detailed at pages 47 through 49 as
5 well as Exhibit Z of the campus plan. So I'm just really asking
6 questions about parking inventory since he made reference to
7 them.

8 COMMISSIONER MAY: Well, the fact that it was
9 referenced, I'm not sure that that really opens up the entire
10 inventory for discussion. I mean we've had these discussions
11 before. Can you sort of get to the point or, you know --

12 MR. SMITH: Yes, sure.

13 COMMISSIONER MAY: -- that's (audio interference) in
14 rebuttal.

15 MR. SMITH: I mean I was --

16 COMMISSIONER MAY: Because it's not clear to me.

17 MR. SMITH: I thought I was getting the point, I
18 apologize. I'm just trying to find out where these extra spaces
19 are coming from. He doesn't have the 200 -- he mentions about
20 having only 50 spaces at this other property and that was private
21 (audio interference).

22 COMMISSIONER MAY: Okay. So back to the applicant,
23 where are the extra spaces coming from?

24 MR. FISHER: Potential underground parking that we have
25 proposed. But this is all laid out in great detail in Table 3-

1 4 of our CTR per site throughout the entire campus and exactly
2 how many spaces that we have in each one of those.

3 COMMISSIONER MAY: Okay. So I think that question has
4 been answered.

5 MR. SMITH: I agree. Thank you very much, Commissioner
6 May. And I'm trying to go through this really quickly because
7 I'm as eager to see the President speak as anybody.

8 Student population numbers, 20 -- page 24 and 25. I
9 want to clarify about the study abroad, and we're talking about
10 111. You mentioned 111 study abroad students. Is that number
11 constant each semester? Is that something that you -- do you
12 all limit your program to that number or does it change?

13 MR. FISHER: So that number is usually much higher but
14 that is a 2020 number, so due to COVID, it's a lower figure.

15 MR. SMITH: So with the fall 2020 numbers, were you
16 still -- you weren't doing a study abroad in fall of 2020; isn't
17 that correct?

18 MR. FISHER: There were some students who were studying
19 abroad. That's reflected in that 111 number.

20 MR. SMITH: Okay. And were they studying abroad in a
21 virtual -- was it virtual study abroad or was it actually people
22 --

23 COMMISSIONER MAY: How is that relevant to our
24 questions here?

25 MR. SMITH: The relevance has to do with the fact that

1 | where the university is within 55 students of exceeding their
2 | housing capacity on the campus. And if there are -- if they're
3 | counting 111 students to study abroad and there may be some issues
4 | as to whether that number is actually accurate, then the
5 | university would not be in compliance with the current housing
6 | mandate. I'm happy to move on.

7 | COMMISSIONER MAY: The question is how do they intend
8 | to meet it given the fluctuations in study abroad, right?

9 | MR. SMITH: I'm happy to move on. And ask just one
10 | other question about the study abroad program. Are you planning
11 | on doing virtual study abroad in the future?

12 | MR. FISHER: We don't know. I don't know. Excuse me.

13 | MR. SMITH: And actually, I should rephrase that. Once
14 | COVID is finished, I mean there was something that came out today
15 | that said that you'll be doing a combination of study abroad --
16 | this is from (audio interference). And my question for this is
17 | how does that impact how you figure -- how you count students
18 | for purposes of the cap? You're not counting them now for study
19 | abroad. If they are doing virtual study abroad but living on
20 | campus, will they be counted? Do you need to go back and look
21 | at the methodology that you use for counting students in a post-
22 | COVID world?

23 | MR. FISHER: Students who are living on campus aren't
24 | in study abroad number. They're not counting -- if they're living
25 | on campus, they're not included in our study abroad number.

1 MR. SMITH: The question, Mr. Fisher -- my question is
2 in a post-COVID world where you're counting students only if
3 they've taken -- they take a physical class at the campus, and
4 given that you're looking now to do study abroad virtually, do
5 you need to reexamine how you count students? That's my only
6 question. Is that something --

7 COMMISSIONER MAY: Didn't he just answer that? He said
8 that if they're living on campus, they'll be counted. Isn't that
9 the answer? Regardless of where they're studying, where they're
10 virtually studying. I don't understand what your question is.

11 MR. SMITH: Actually, that's not what I heard,
12 Commissioner May. But if that's the answer, I'm very happy to
13 hear it.

14 COMMISSIONER MAY: It was that -- did I correctly
15 portray your answer, Mr. Fisher?

16 MR. FISHER: Yes. If the student is living on campus,
17 they are not counted as a study abroad student. They are counted
18 in our general roaming cap number, or whether we count based upon
19 the methodology.

20 MR. SMITH: Right.

21 MR. FISHER: If they live on campus, they're counted
22 under our cap.

23 COMMISSIONER MAY: Okay. Thank you.

24 Mr. Smith, do you have more questions?

25 MR. SMITH: I do -- I just -- I'm trying to make sure

1 I don't repeat questions that have been already been asked,
2 Commissioner.

3 COMMISSIONER MAY: All right. I'm sorry.

4 MR. SMITH: The information provided tonight showed the
5 student count numbers from 2020 -- I'm sorry, from 2010 to 2020.
6 And the campus plan was approved in 2012. I just had -- is there
7 a reason why, in all of your subsequent plans to this Commission
8 you've always started with the year 2011, since that would have
9 been the start, is there a reason why tonight with these figures,
10 you're going back to 2010 instead of 2011? I'm sorry.

11 MR. FISHER: The figure that we reported in the 2011
12 campus plan was based on fall 2010 numbers. So over the last
13 decade, that shows you what the growth has been.

14 MR. SMITH: Thank you. You also mentioned a condition
15 that you're willing to go --

16 COMMISSIONER SHAPIRO: Hold on a minute, Mr. Smith.
17 Somebody needs to mute. Somebody's hitting a keyboard button or
18 something.

19 MR. SMITH: Is it okay to go ahead now?

20 CHAIRPERSON HOOD: Sure. You can go.

21 MR. SMITH: You noted in your -- on page -- now, I lost
22 my pages here. Page -- it's towards the very end and I'm sorry,
23 but I was -- my pages have gotten a little confused here. You
24 mentioned that you've agreed to a condition to allow only -- to
25 use only 500 new beds on campus, 700 if you don't get permission

1 to count the master leases. So just for purposes of my question,
2 I'm just going to assume that the Commission is going to give
3 you permission to use the 200 master bed leases. But since you're
4 proposing, you know, 1030, you're only planning on using 500, are
5 you prepared to take off any of your project sites off the table?

6 MR. FISHER: No. We don't intend to take any of the
7 project sites off the table.

8 MR. SMITH: And why not, if you are proposing 1030 but
9 only going to do 500?

10 MR. FISHER: As we stated from the outset, we only
11 propose to build 500 new beds on campus. What we have laid out
12 is the sites or the places where we have opportunities to build
13 those beds across the campus.

14 MR. SMITH: So some of us who are in opposition may be
15 fighting projects that you all have no intention of building; is
16 that correct?

17 MR. FISHER: I'm sorry. Could you repeat that? I
18 couldn't hear the beginning.

19 MR. SMITH: My question was basically, you know, some
20 of us here who are in opposition, and I noticed I got at least a
21 laugh from Commissioner Shapiro. I appreciate that. That some
22 of the buildings you're proposing, you actually have no -- some
23 of the buildings that we're fighting, collectively, the
24 opposition, you absolutely no intention of building whatsoever.
25 And you can't put our minds at rest, I guess, or at least some

1 of our minds.

2 MR. FISHER: Again, this is a campus plan, we hope to
3 build those 500 beds, again, at sites 2 and sites 4. We've
4 included other housing sites in this plan that we would use in
5 the event that we can't get 500 beds at those sites.

6 MR. SMITH: Let me go to (audio interference) page 19.
7 And I'll be directing these questions to Mr. Banks.

8 MR. TUMMONDS: Sure. Let's start with that.

9 MR. SMITH: Mr. Banks, are you familiar at all with -
10 - you have made reference in here to the 2011 traffic study that
11 was done by -- well, it doesn't matter who it was done by. But
12 you all didn't do it, Nelson/Nygaard didn't do it. How familiar
13 are you with the discussions that surrounded that study when it
14 was offered?

15 MR. BANKS: I am not familiar with those discussions.
16 That was ten years ago prior to my work with the university.

17 MR. SMITH: Would you be surprised to hear -- well, I'd
18 just like to read this to you and if you could just react to
19 this. If it holds true --

20 CHAIRPERSON HOOD: Mr. Tummonds.

21 MR. TUMMONDS: Yeah. I'm already going to object
22 because there is no way that reading a quote would have anything
23 to do with what Mr. Banks testified to.

24 CHAIRPERSON HOOD: If the quote is in your rebuttal
25 PowerPoint, then I'm going to rule that in order. If it's not

1 | in your rebuttal PowerPoint, I'm going to rule that out of order.
2 | So I need to hear it, so I know whether it is in order or out
3 | order.

4 | MR. SMITH: I would --

5 | CHAIRPERSON HOOD. So if Mr. Smith is out of order --
6 | if it's not in there, it's out of order so you can save all of
7 | us some time.

8 | MR. SMITH: I will withdraw it. I will withdraw the
9 | question. I will withdraw the question.

10 | Mr. Banks, were you aware of the fact that the
11 | university had argued that its TDM measures that it put in place
12 | in 2011 would actually continue a pattern of reducing traffic
13 | during the last ten years of the campus plan?

14 | MR. BANKS: I'm certainly not aware of those
15 | discussions because I wasn't there. But certainly, the CTR and
16 | the response from DDOT of their review of the CTR back in 2011
17 | suggests otherwise, that there would be an increase in traffic,
18 | hence, the projections that we showed on slide 20.

19 | MR. SMITH: Isn't the issue that I raised, the question
20 | I raised about the TDM measures that are in place in this -- that
21 | are being proposed in this campus plan, wasn't the question about
22 | the adequacy of those TDM measures?

23 | MR. BANKS: Were you asking the question about the
24 | adequacy of the TDM as it relates to the 2011 Campus Plan or
25 | current campus plan?

1 MR. SMITH: This has to do with the current campus
2 plan. The question -- you mentioned that your presentation was
3 prompted by comments from Chairman Hood and Chairman Hood has
4 generously, I think generously, attributed that to me, and that
5 is true, I did raise the question, citing the numbers from your
6 current study as well as the numbers from the previous study.
7 But the question was about whether based on the increase in the
8 amount of traffic over the last 10 years, are your TDM measures
9 adequate? That was the question, wasn't it? Wasn't that the
10 issue that was raised? It's not whether your --

11 MR. TUMMONDS: Right. Mr. Banks, I think that's a yes
12 or no question.

13 MR. BANKS: (Audio interference) part of the question.

14 CHAIRPERSON HOOD: I am going to ask Mr. Banks to repeat
15 that, as at least for me, it paused a minute.

16 MR. BANKS: I believe that was probably (audio
17 interference) responded to that as in our testimony.

18 MR. SMITH: Okay. But you know, as Mr. Tummonds says,
19 is it a yes or no, I guess?

20 MR. TUMMONDS: Yeah. I think Iain, I think what Mr.
21 Smith is asking, do we believe that our TDM (audio interference)
22 will be successful?

23 MR. BANKS: My mistake. I thought you were asking me
24 whether or not that was the question you'd actually asked already
25 and (audio interference) perspective, I mean --

1 COMMISSIONER SHAPIRO: Mr. Banks, Mr. Banks. Just say
2 yes or no.

3 COMMISSIONER MAY: Yeah. And you're going in and out
4 too.

5 CHAIRPERSON HOOD: And let me just say this to my
6 colleagues (audio interference). So I want you all to know, I
7 want him to answer. I'm not satisfied with it.

8 COMMISSIONER MAY: No. I think the biggest problem
9 right now is that Mr. Banks is floating in and out. So he's got
10 it -- I think you should turn off your camera, so maybe we can
11 hear you better.

12 MR. BANKS: (Audio interference). Okay. Yes, it is
13 off. So the -- I believe the answer is yes. The university has
14 a robust TDM program that they continue to refine year on year
15 to keep up with best practices, and in accordance with review
16 from DDOT, they certainly anticipate that that continues and will
17 continue to liaise with DDOT to ensure that the TDM program that
18 they deliver, which is probably the most robust within the city
19 is adequate and keeps vehicle trips to the campus to a minimum.

20 CHAIRPERSON HOOD: Mr. Smith, let me just interrupt.
21 Let me ask you to rephrase -- I'm looking for my notes. Let me
22 ask you to rephrase that question that you asked because we do
23 have a response, even though it credits me, you're right (audio
24 interference). Let me ask you rephrase that question how you
25 phrased it the first time, if you don't mind?

1 MR. SMITH: Are you referencing my last question that
2 I asked, or the question I asked way back then?

3 CHAIRPERSON HOOD: The question about the TDM measures.
4 And you saw -- I think it was -- let me paraphrase. You saw how
5 it's increasing and I think you asked why didn't we change -- I
6 forgot how -- but I think it was so fitting, but I just cannot
7 find it. If you don't remember, I have it written down somewhere.
8 I really want Mr. Banks to go a little more than yes or no, even
9 if they do it in their response. So if you can remember -- I
10 would like for you phrase it just how you phrased it a while back
11 because he called -- they (audio interference) themselves
12 responding to that here, but I'm actually not satisfied with that
13 either, while I accept it for now. But I want you to ask it how
14 you asked it; if not, I will find it in my notes. But you may
15 go ahead and proceed.

16 MR. SMITH: If I might come back to it. Maybe I will
17 get a brainstorm in the next few minutes. For purposes of time,
18 let me just continue down this road of questions and I'll come
19 back to that. I meant to go and actually look at the transcript
20 and see for myself how I asked it originally, but I didn't do
21 that (audio interference) time today.

22 So Mr. Banks, even based on the numbers that you provide
23 in your rebuttal of the current numbers versus the projections,
24 those current numbers still represent a 10 percent increase over
25 the projections for the a.m. peak hours; isn't that correct?

1 MR. BANKS: Yes. That is correct.

2 MR. SMITH: At what percentage level -- and I'm just
3 using the idea of percentage as a way to communicate, meaning to
4 lay folks, like myself -- at what percentage level does the
5 increase become significant in the view of the university?

6 COMMISSIONER SHAPIRO: Mr. Chair, I'm struggling to
7 figure how this hypothetical connects to what's actually before
8 us.

9 MR. SMITH: Oh. It's not a hypothetical, Commissioner
10 Shapiro, and if you notice on the (audio interference) --

11 COMMISSIONER HOOD: Mr. Chairman.

12 MR. SMITH: -- they have provided pages -- I will direct
13 this to the Chair.

14 Mr. Chairman, it's not hypothetical. It's 20 -- pages
15 20 and 21 are the charts that AU has included in their rebuttal.
16 I'm asking a specific question about the numbers on those charts,
17 and asking at what point in time does that increase, which they
18 acknowledge now is a 10 percent increase, where does it become
19 significant on the scale that it becomes something to be concerned
20 about?

21 CHAIRPERSON HOOD: I'm going to allow that question.
22 But also let me add, Mr. Smith, your question centered around the
23 TDM measures with -- it looks like it was failing or whatever
24 the case was, it was not meeting up to optimal. You asked why
25 not more -- why we're not more aggressive. I think that was the

1 question that you asked. So if we can put all that in that
2 question, I'm going to allow that because I'm trying to get some
3 answers myself, so if somebody can answer that, Mr. Banks.

4 MR. BANKS: Yeah. So we'll address the question (audio
5 interference) the growth of traffic and when does that become a
6 significant impact to the university. I mean obviously, the
7 university is a community member. It needs to have people coming
8 via all modes of transportation (audio interference) faculty
9 (audio interference). They are of a level of service standard
10 that the city abides by. (Audio interference) so something in
11 the university and obviously, the community will (audio
12 interference) issue and to the details of what these conditions
13 are (audio interference).

14 MR. TUMMONDS: Mr. Chairman. Mr. Banks is fading in
15 and out. I can't understand --

16 CHAIRPERSON HOOD: Okay. Let me do this and say Mr.
17 Tummonds.

18 Mr. Banks, could you call in because you're -- actually
19 you've been talking now for about two minutes and nobody really
20 understood a word you said, I know I didn't.

21 MR. SMITH: Mr. Chairman, if it's helpful to speed this
22 along, the question I just asked and then the follow-up question,
23 which is the one that you've reminded me of, is why not more
24 aggressive measures of TDM -- I'm very happy if they would just
25 provide the answers in writing in a filing because that's really

1 -- those are the last questions I have.

2 CHAIRPERSON HOOD: Okay.

3 MR. TUMMONDS: We'll take that. We will take that.

4 CHAIRPERSON HOOD: You ain't lying. So, obviously, we
5 want to all go ahead with the (audio interference). And Mr.
6 Smith said it, not me but okay, so (audio interference).

7 MR. SMITH: Do I get a point, Chairman Hood, for that?

8 CHAIRPERSON HOOD: You get -- actually, you get ten
9 points for that because I thought it was going to be another half
10 an hour. All right. So we have completed cross on rebuttal. So
11 let me -- unless my colleagues have any closing comments, so to
12 help us to -- let me -- and I remembered, I can't believe it. To
13 help us, and I'm asking the applicant and all of the parties and
14 hopefully everyone is still here, in consultation with our
15 counsel, this is what we're asking for. There's a lot of moving
16 parts here. So from the applicant, we're asking for submission,
17 which provides -- hold on. Yeah.

18 We're asking from the applicant, Mr. Tummonds, a
19 submission which provides a citation to each specific exhibit in
20 the record/hearing testimony which: A) satisfies the applicant
21 requirements of X 101.8 and Z 302.10 and provides -- okay. I
22 got that -- and provides justification for the campus plan
23 requirements of Subtitle X 101.1 and 101.16. And if you need to
24 follow-up with any of that, please follow-up with Ms. Schellin.

25 Next, from the parties in support. We need a final

1 consolidated submission, which outlines why the party believes
2 the applicant has satisfied the campus plan requirements of
3 Subtitle X 101.1 through 101.16, with references to the exhibits
4 and hearing dates at which evidence/testimony was filed or
5 presented, and that's for the parties in support.

6 Now, for the parties in opposition -- and this is going
7 to help us in our deliberations, so we won't miss any points.
8 For the parties in opposition, a final consolidated submission,
9 which outlines why the party believes the applicant has not
10 satisfied the campus plan requirements of Subtitle X 101 -- 1-
11 101.16. Oh, no. I'm sorry, 1-101 and then 6 through 16, with
12 references to the exhibits and hearing dates, in which evidence
13 and testimony has filed -- was filed and presented.

14 Now, again, if you don't understand what I'm saying.
15 I know, I'm just -- you can always call Ms. Schellin and she will
16 give you further clarification and this is going to help us in
17 our deliberations.

18 So the submissions should not include arguments, new
19 evidence, but should effectively serve as a table of contents,
20 list of reasons why applications did or did not meet the
21 requirements for the requested campus plan approval based on the
22 existing case record.

23 As such, all the requested submissions should be due -
24 - should be due some time, two weeks or so. As the filings will
25 be summaries of the record and will not include arguments, there

1 will not be a need for responses. So if you have any questions,
2 you can ask Ms. Schellin or you can ask for that -- and that's
3 in collaboration with our counsel. They are helping us to prepare
4 for our deliberations, so we won't be kind of all over the place.
5 We need to kind of pull everything in so we can deliberate and
6 make sure we get everybody's point, pro or con. Okay? So again,
7 if you didn't get it tonight, you can call Ms. Schellin.

8 Mr. Smith, I saw your hand go up.

9 MR. SMITH: Chairman Hood. Might we ask if Ms. Schellin
10 could send this out to us by email so that we don't have to all
11 bother her (audio interference).

12 CHAIRPERSON HOOD: Okay. Yeah. That may be -- good
13 suggestion. You have another point. So I think that's -- that
14 will be good. Ms. Schellin, if you could send that out, actually
15 to everyone of what was asked of them. I think that's -- I
16 believe that's okay. And I'm sure if it wasn't, Mr. Tondro or
17 Ms. Cain would have shown up. Okay. Mr. -- Commissioner Shapiro.

18 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

19 I just want to clarify for my own sake. There were
20 certain things that we asked for from the applicant and I'm trying
21 to figure out how that match -- how that connects with the
22 instructions for everybody, and maybe we could get some help from
23 OAG or Ms. Schellin on this.

24 CHAIRPERSON HOOD: I believe, Ms. Schellin, I think I
25 know either the applicant has probably kept a list of things that

1 | were asked for, I don't know if you kept it as well, Ms. Schellin,
2 | but I think typically you rely -- or we rely on the applicant.
3 | If not, in our transcript and we know what we asked for and if
4 | we don't see it, Commissioner Shapiro, then we will continue to
5 | ask for it. We don't move as far, so --

6 | COMMISSIONER SHAPIRO: I was just thinking of Ms.
7 | Horvitz's requests and that conversation and the back and forth
8 | with Commissioner May around that they'll have an opportunity to
9 | respond in writing to what the applicant submits.

10 | CHAIRPERSON HOOD: Yeah. And everybody has the
11 | opportunity to respond in writing, that's what I mentioned
12 | earlier on the recommendation of counsel. And Mr. Tummonds
13 | mentioned it earlier, there will be some filings, everybody has
14 | a chance to respond. Ms. Horvitz's issue, the way I heard it,
15 | and I may have missed some of it, but she wanted to cross-examine
16 | that, and I was letting her know that was not on (audio
17 | interference).

18 | COMMISSIONER SHAPIRO: That's another question. I'm
19 | totally with you on that, Mr. Chair. It's more that if the
20 | applicant is submitting something and then the parties in
21 | opposition have a chance to comment on that, to respond in writing
22 | to that, I'm just thinking of the timing of that in relation to
23 | the timing of the instructions to the different parties.

24 | CHAIRPERSON HOOD: So we're going to leave that up to
25 | Ms. Schellin to work out a schedule. And I agree there's going

1 to be a response, there's going to be some schedule. But even
2 before we go that far, I need to allow Mr. Tummonds a closing,
3 so Mr. Tummonds, your closing.

4 COMMISSIONER TURNBULL: Mr. Chair, I just wanted to
5 clarify one thing. What you have said about the submissions
6 being due by the parties, the applicant, those are the ones that
7 do not get a response.

8 CHAIRPERSON HOOD: The submission --

9 COMMISSIONER TURNBULL: That you just asked for now.

10 MR. TUMMONDS: Maybe we can say --

11 CHAIRPERSON HOOD: Oh, yeah. No, no, no. That's some
12 totally different. That's totally different.

13 COMMISSIONER TURNBULL: Our responses to those, those
14 are coming in and that's totally it.

15 CHAIRPERSON HOOD: Those were captured in collaboration
16 with counsel to help us in our deliberation, so we won't miss
17 anything. That would -- yeah. No. Yeah.

18 MR. TUMMONDS: Yeah

19 COMMISSIONER TURNBULL: I just wanted to clarify --

20 MR. TUMMONDS: (Audio interference.)

21 CHAIRPERSON HOOD: Okay.

22 MR. TUMMONDS: It sounds like yeah -- right. This is
23 Paul Tummonds. There are two buckets. Bucket number one is the
24 information that (audio interference) that all parties are
25 required to provide, that we will get the specific details from

1 Ms. Schellin. Bucket number two is the information that the
2 applicant has been requested to provide. I think we can also
3 provide that within two weeks. Parties have a week after that
4 to respond, as is our kind of typical process on post hearing
5 submissions. So it's two buckets.

6 CHAIRPERSON HOOD: Okay. Well, as long as we get the
7 buckets right. Buckets, canisters, whatever it is, let's just
8 make sure we get it, but I really want Ms. Schellin to give us
9 the schedule. But before we do that, Mr. Tummonds, can you give
10 us your bucket of closing, please.

11 MR. TUMMONDS: Absolutely, thank you very much.

12 First, I want to thank the Zoning Commission, the
13 Office of Zoning, OAG staff, OP, and DDOT representatives that
14 have participated in this lengthy public hearing process. I also
15 want to thank all the parties and persons both in support and
16 opposition that have participated in the two-and-a-half-year
17 process that created the 2021 American University Campus Plan.

18 The information that has been submitted in the record
19 of this case by the applicant, by the Office of Planning, by the
20 Department of Transportation, by ANCs 3D and 3E, and by the AU
21 Neighborhood Partnership create a clear and convincing case that
22 American University's 2021 Campus Plan should be approved. The
23 materials submitted by the applicant meet the requirements
24 enumerated in the Zoning regulations for review and approval of
25 a campus plan application. In these materials, we have also

1 | noted that the further processing applications for specific
2 | buildings will include more detailed information that will be
3 | relevant to the Zoning Commission's determination of the impacts
4 | of those buildings on neighboring properties.

5 | The 2021 Campus Plan proposes a measured and thoughtful
6 | approach to managing AU's growth and development over the next
7 | 10 years that will not create objectionable impacts to the noise,
8 | traffic, parking, number of students or other objectionable
9 | conditions.

10 | First, the locations, heights, and densities of the
11 | proposed building sites as well as student conduct policies will
12 | effectively mitigate any potential adverse noise-related impacts
13 | on neighboring properties.

14 | In addition, we have agreed to file a further
15 | processing application for the construction of an acoustical
16 | barrier sound wall adjacent to Jacobs Field within one year of
17 | the approval of 2021 Campus Plan. As we will detail in our post
18 | hearing submission, we will propose conditions during the quote/
19 | unquote "pre-wall period" and we will continue to abide by those
20 | conditions as we note.

21 | Second, the university continues to minimize any
22 | traffic and parking impacts through its emphasis on multimodal
23 | transportation, robust TDM and performance monitoring plans, off-
24 | campus parking enforcement and a cap on the total number of
25 | parking spaces that will be provided in the campus plan

1 properties.

2 Third, the university is proposing an enrollment cap
3 of 14,380 students and has agreed to maintain a supply of housing
4 sufficient to make housing available for 67 percent of the full-
5 time undergraduate student population that was consistent with
6 the 2011 Campus Plan.

7 And finally, the university has proposed a series of
8 conditions consistent with past campus plan approvals that will
9 further mitigate any potential objectionable impacts on
10 neighboring properties. This concludes our presentation in this
11 case, and we thank you again.

12 CHAIRPERSON HOOD: Okay. Thank you. And thank you,
13 Mr. Turnbull for those responses that I mentioned, you're right
14 -- no responses from that, so thank you.

15 Commissioner Shapiro, maybe your question will get
16 answered as soon as Ms. Schellin does the scheduling.

17 Ms. Schellin, could you (audio interference) --

18 COMMISSIONER SHAPIRO: And Ms. Cain is (audio
19 interference).

20 CHAIRPERSON HOOD: Okay. Ms. Cain.

21 MS. CAIN: Yes.

22 Commissioner Hood, I just want to sort of clarify the
23 schedule based on these sort of two buckets of conditions, or
24 submissions, as you call them. So what we recommend is that the
25 first round should be the applicant's submissions responding to

1 the issues that were raised by the various parties in opposition,
2 questions from the Commission, and that would come in first.
3 After that, all the parties would have an opportunity to respond
4 in writing to those submissions. After that round of responses,
5 that's when we would recommend that what the Commission laid out,
6 this sort of table of contents, summary submissions, should not
7 provide any additional information, they just sort of summarize
8 and consolidate what's already in the record that those come in
9 and there would not be any response to those submissions because
10 they would not include any new information. They would simply
11 be, you know, like I said, table of contents. So we can work
12 with the Office of Zoning to put together a timeline and, you
13 know, potentially like a procedural memo that would go on record
14 outlining all of that, but that would be the procedure that we
15 would recommend.

16 MS. SCHELLIN: Yeah. I already have the dates ready
17 and I was going along that same line. I'm good with that. So I
18 was going to ask the applicant if they -- if two weeks is going
19 to be enough time for them to provide the additional documents
20 that the Commission has requested?

21 MR. TUMMONDS: Yes, we can do that in two weeks.

22 MS. SCHELLIN: Okay. So those additional requests, and
23 I believe you guys only asked the applicant for additional
24 documents; is that correct? None of the other parties were asked
25 for anything. So those documents would be due by 3 o'clock p.m.

1 on May 12th. And then responses, if the parties choose to make
2 them, would be due by 3:00 p.m. on the 19th of May, again, by
3 3:00 p.m. on May 19th. And then also, the "homework" as Chairman
4 Hood put it, would be due by May 19th at 3:00 p.m. And any draft
5 findings, facts, conclusions of law, if the parties from the
6 applicant and if the parties want to provide a draft, they would
7 also submit that to the record and send me in Word version of
8 the draft order.

9 MR. TUMMONDS: Ms. Schellin, the draft order also due
10 on May 19th.

11 MS. SCHELLIN: Yes, 3 o'clock p.m. And, of course, you
12 must serve all other parties; serving by email works.

13 CHAIRPERSON HOOD: Okay. I think between Ms. Cain and
14 Ms. Schellin, we have gotten some organization to the
15 instructions. I think we're good to go. And after that, I don't
16 think we have any other questions.

17 MS. SCHELLIN: Yes. One question. I'm sorry, one
18 other date, we can put this on for May 27th for decision at 4
19 o'clock p.m.

20 CHAIRPERSON HOOD: Vice Chair Miller, you have a
21 question?

22 VICE CHAIR MILLER: Yes, Mr. Chairman.

23 I didn't want to (audio interference) this, but since
24 there are now the two buckets which I appreciate all the
25 clarification, the two buckets of submissions that we're talking

1 | about here, so the first one were the applicant is responding to
2 | questions that the Commission (audio interference), which Ms.
3 | Schellin can go over with the applicant, which I think mostly
4 | relates to the conditions related to the sound wall or the noise
5 | related to the fields that may include other things. But one
6 | thing that I wanted to have included in that, since we're going
7 | to now have the opportunity for response before we get to the
8 | final table of contents type submissions, is the issue that and
9 | I think Mr. Smith raised in his cross-examination, that the height
10 | graphics and height information that were provided mostly in
11 | supplemental response to my question tonight, which I appreciate,
12 | did not include, as Mr. Fisher said, in response to Mr. Smith's
13 | question, heights in relation to the heights of adjacent
14 | neighborhood houses. So I think I would like to have, if the
15 | Commission is okay, in that first bucket of submission a
16 | supplemental to what they provided tonight, which was helpful,
17 | but also showing the heights of adjacent buildings whether they
18 | are at Westover Place, whether they're at University Avenue,
19 | Nebraska or Rockwood, wherever. I think I know what they are.
20 | I'm very familiar with the neighborhood. But I just think for
21 | the record, since we now have the relationship of heights between
22 | what's proposed and existing on the campus, I think I originally
23 | did ask for, also in relation to what's adjacent across the
24 | street, or abutting that that's not part of the campus. So if
25 | that could be part of it, I would -- that first bucket, I would

1 appreciate it.

2 CHAIRPERSON HOOD: Okay. Anything else? All right.
3 So with that, I'm going to close the hearing with the exception
4 of everything that we've asked for in our process, which has
5 already been outlined and I don't need to add anything else to
6 that.

7 The Zoning Commission will meet again tomorrow night.
8 This is our regular monthly meeting. So we will be back on these
9 same platforms, but for the AU hearing tonight, I want to thank
10 everyone for their participation. And if I don't hear anything
11 else, this hearing is adjourned, and all you all have a nice
12 evening. See you then.

13 MS. SCHELLIN: Thank you.

14 (Whereupon, the above-entitled matter went off the
15 record at 9:10 p.m.)

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C E R T I F I C A T E

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This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCZC

Date: 04-28-21

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
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