

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:           |
                             |
APPLICATION BY GEORGE WASHINGTON |
UNIVERSITY FOR A MODIFICATION OF | Case No.
THE PLANNED UNIT DEVELOPMENT AND | 01-17M
AND A ZONING MAP AMENDMENT UNDER |
CHAPTER 24 OF THE D.C. ZONING    |
REGULATIONS FOR THE PROPERTY     |
LOCATEDE AT 1957 E STREET, N.W.  |
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Thursday  
Janaury 17, 2002

Hearing Room 220 South  
441 4th Street, N.W.  
Washington, D.C.

The Public Hearing of Case No. 01-17M by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
PETER G. MAY	Commissioner

COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, ZC  
Sharon Sanchez, Office of Zoning

OTHER AGENCY STAFF PRESENT:

John Fondersmith, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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P-R-O-C-E-E-D-I-N-G-S

(6:40 p.m.)

CHAIRPERSON MITTEN: This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, February 17, 2002.

My name is Carol Mitten, and joining me this evening are Vice Chairperson Anthony Hood, and Commissioner Peter May. We may be joined later by Commissioner Hannaham. Commissioner Parsons will not be joining us this evening.

At its special public meeting of August 21, 2001 the Commission decided to consider the proposed request as a modification to the PUD for 1957 E Street, and not as a minor modification. Accordingly a hearing was set for November 15, 2001. This evening's hearing is a continuation of that hearing.

This hearing will be conducted in accordance with the provisions of 11 DCMR, section 3022, and processed as a second stage PUD application.

The subject of the evening's hearing is Zoning Commission Case Number 01-17M. This application is the request by the George Washington University for a modification of the planned unit development and the zoning map amendment under chapter 24 of the District of Columbia Zoning Regulations for the property located, again at 1957 E Street Northwest.

Copies of today's hearing announcement are available to you and are located on the table near the door.

1           The order of procedure this evening will be as  
2 follows; preliminary matters, and then we'll have the Applicant  
3 first present the additional information that they did not  
4 present at the initial session of the hearing, followed by the  
5 report of the Office of Planning, reports of other government  
6 agencies, report of Advisory Neighborhood Commission 2A, parties  
7 and persons in support, parties and persons in opposition, and  
8 finally rebuttal by the Applicant.

9           The following time constraints will be maintained  
10 in this hearing. I think the Applicant will be given about 15  
11 minutes for that additional presentation. Parties will have 15  
12 minutes, organizations, 5 minutes, individuals, 3 minutes. The  
13 Commission intends to adhere to these time limits as strictly as  
14 possible in order to conclude this hearing in a reasonable  
15 period of time. The Commission reserves the right to change the  
16 time limits for presentations if necessary, and notes that no  
17 time shall be ceded.

18           All persons appearing before the Commission are  
19 to fill out to witness cards. These cards are located, again,  
20 on the table near the entrance door. Upon coming forward to  
21 speak to the Commission, please give both cards to the reporter  
22 who is sitting to my right. All individual's or organizations  
23 who would like to testify, please sign the witness list located  
24 at the table at the entrance door.

25           The decision by the Commission in this case must

1 be based exclusively on the public record. To avoid any  
2 appearance to the contrary the Commission requests that persons  
3 present not engage the members of the Commission in conversation  
4 during a recess or at any other time.

5 The staff will be available throughout the  
6 hearing to discuss procedural questions, and please direct any  
7 questions that you may have to Mr. Bastida, who is sitting to my  
8 right.

9 Please turn off all beepers and cell phones at  
10 this time so as not to disrupt these proceedings. At this time  
11 the Commission will consider any preliminary matters. Mr.  
12 Bastida, do we have any preliminary matters?

13 SECRETARY BASTIDA: Yes. We have two preliminary  
14 matters, Madam Chairman. One is the qualification of Dr. Shalit  
15 as a expert witness.

16 The other is that the ANC is requesting to  
17 provide the remainder of their testimony in writing and that you  
18 leave the record open for ten days in order for them to do so,  
19 if you were to complete the hearing tonight.

20 And then, the Applicant would request, probably -  
21 - I talked to the Applicant, and he is requesting, I believe, a  
22 week to be able to provide rebuttal to whatever would be  
23 submitted in writing.

24 I have not been able to contact the West End  
25 Citizens Association and I don't know their position on that.

1 CHAIRPERSON MITTEN: Well, let's deal with the  
2 first issue, and I think, just for clarification, I believe that  
3 Dr. Shalit is being offered as an expert by the ANC.

4 SECRETARY BASTIDA: By the ANC. Right.

5 CHAIRPERSON MITTEN: Okay. And what subject is  
6 he being offered in?

7 SECRETARY BASTIDA: Dr. Shalit, could you come  
8 forward and explain your expert -- I mean, explain what  
9 expertise you're being proffered for?

10 CHAIRPERSON MITTEN: You need to turn on the  
11 microphone, Dr. Shalit.

12 DR. SHALIT: I'll be offering expert testimony in  
13 economics by looking at the PUD.

14 CHAIRPERSON MITTEN: Economics.

15 DR. SHALIT: Yes.

16 CHAIRPERSON MITTEN: Okay. Thank you. Mr. May,  
17 did you get a copy of Dr. Shalit's written?

18 COMMISSIONER MAY: Yes I did.

19 CHAIRPERSON MITTEN: All right. Is there any  
20 objection from the Applicant to Dr. Shalit?

21 (No response)

22 CHAIRPERSON MITTEN: All right. Any objection to  
23 Dr. Shalit from the organizer?

24 (No response)

25 CHAIRPERSON MITTEN: So without objection, Dr.

1 Shalit will be recognized as an expert in economics. Then the  
2 second issue is the schedule for the ANC to submit the bulk of  
3 its testimony in writing.

4 SECRETARY BASTIDA: The ANC has proffered that  
5 Dr. Shalit constitutes 50 percent of the testimony, and that the  
6 rest, that would be provided within ten days, and will  
7 constitute the other 50 percent.

8 CHAIRPERSON MITTEN: All right. So then the  
9 question following that is, is seven days an adequate amount of  
10 time for the Applicant and parties to respond?

11 SECRETARY BASTIDA: The Applicant has stated to  
12 me that, yes, for him, it is sufficient time to do so. Mrs.  
13 Kahlow, I have not been able to contact her. Accordingly, I  
14 don't know the position that she would take on that matter.

15 CHAIRPERSON MITTEN: Please come forward, Mrs.  
16 Kahlow.

17 MS. KAHLOW: I have voice mail both at home and  
18 the office and I have not received a voice mail, but if I had I  
19 would have responded and asked a question, since I'm very much  
20 an expert in questions. Exactly how does it work in terms of  
21 cross examination, and would this be precedent-setting for other  
22 parties, that they could do something about cross? Could you  
23 explain the process to me?

24 CHAIRPERSON MITTEN: I'm going to ask Mr. Sansone  
25 to address that question.

1 MS. SANSONE: Madam Chair, I think it would be  
2 somewhat difficult, but not impossible to have to handle items  
3 that would be brought up in the cross examination in the written  
4 response. It obviously wouldn't be the same as the opportunity  
5 for an in-person opportunity to ask oral questions. But I  
6 believe the Applicant can address any issues they wish to  
7 address.

8 CHAIRPERSON MITTEN: If you have anything to add  
9 on the subject, feel free.

10 MR. FEOLA: Thank you, Madam Chair. Phil Feola,  
11 from Shaw Pittman, for the Applicant.

12 I don't think we can substitute cross  
13 examination, and I think we, as parties, would have to waive our  
14 right to cross examine any witnesses. And I think, on behalf of  
15 the University, we would be willing to waive that right in this  
16 case, avoiding any precedent setting.

17 And I guess I would like, and something Mr.  
18 Bastida and I did not talk about earlier today on the phone, is  
19 that I think we can respond in seven days to a reasonable amount  
20 of material that comes in. I mean the party, the ANC, would  
21 have had 15 minutes to present a case. I guess if we receive  
22 ten days from today a type of Encyclopedia Britannica of  
23 evidence, then it would be very difficult.

24 So maybe the Commission, I don't know how you  
25 would do this, could put some limits on how much material, 20

1 pages, 25 pages, something you could read in 15 minutes.  
2 Somehow try to get some handle on something, so we don't find  
3 ourselves writing -- coming to you and saying, we really  
4 couldn't respond in seven days.

5 CHAIRPERSON MITTEN: I understand what you're  
6 saying. Okay.

7 MS. KAHLOW: I have one other thought. Since we  
8 all came prepared with written testimony as the BZA requests,  
9 and we have 15 copies, can't they just submit the testimony  
10 today? I know I could then read it, so I could see if I need to  
11 reflect on any of it right now. Instead of giving them  
12 additional time. And in that additional time would there be  
13 additional ANC meetings. I mean, because then everything  
14 changes, I know testimony changes. All of this seems extremely  
15 unfair to me.

16 CHAIRPERSON MITTEN: Well, a couple things.  
17 First is that the request that we got in writing from Mr.  
18 Drought, that came in today -- the reason that they're not  
19 prepared to go forward is that he hasn't had time to prepare the  
20 presentation. So it's not available -- I mean my understanding,  
21 and somebody can correct me if I'm wrong, is that it's not  
22 available tonight.

23 Then, I think Mr. Feola's point is a good one,  
24 which is, you're not required to waive your right to cross  
25 examine. In this case the University is willing to do that

1 under the circumstances, and so as a party you'd be asked to  
2 make the same waiver.

3 MS. KAHLOW: Well, then the second half of my  
4 question was should there be any new ANC meeting and  
5 resolutions? If there are not, and this is just on the same  
6 amount of stuff, then we would be willing to waive it, but if  
7 there is -- I noticed that the ANC agenda for next week has that  
8 as an agenda item again. So are we in a continuous process  
9 here, or are we just based on the old stuff that's all ready up?

10 CHAIRPERSON MITTEN: Okay, let's get a  
11 representative from the ANC up here and sort this out.

12 MS. ELLIOTT: Good evening, Commissioner Mitten.

13 CHAIRPERSON MITTEN: Please, for the reporter,  
14 state your name for the record.

15 MS. ELLIOTT: Sorry, Elizabeth Elliott, ANC  
16 Chair. We have no -- Ms. Kahlow apparently didn't understand  
17 the written notice from the ANC. All we are going to be doing  
18 is giving an update about what was going on with the project.  
19 We have no resolutions. We've done our resolutions on this  
20 project.

21 CHAIRPERSON MITTEN: Okay. So there's nothing --

22 MS. ELLIOTT: And we had no idea that this was  
23 going to come up. We weren't sure whether Mr. Drought was ill.  
24 We hadn't heard from him until today, and we got the same  
25 notice that you got, so --

1 CHAIRPERSON MITTEN: Okay. Do you have any sense  
2 of the volume of the material?

3 MS. ELLIOTT: Other than responding to the  
4 Applicant's new material that came in for this hearing, which  
5 you haven't got our response to that, so that will be included,  
6 we've had a pretty voluminous, encompassing presentation which,  
7 I think, covers pretty much our aspects. I think the only thing  
8 we would be responding to additionally would be the new material  
9 from the University.

10 CHAIRPERSON MITTEN: Okay. So in terms of the  
11 bulk of it, that has already been submitted for the record.

12 MS. ELLIOTT: Yes.

13 CHAIRPERSON MITTEN: All right. So do you have a  
14 sense then?

15 MS. KAHLLOW: Is it possible we -- our party -- we  
16 didn't receive their response to the Applicant's additional  
17 information.

18 CHAIRPERSON MITTEN: That's what she said they  
19 haven't prepared yet.

20 MS. KAHLLOW: And we didn't receive a copy of  
21 Drought's letter from today. I'd like also a copy that. We  
22 just somehow didn't get copies of things.

23 MS. ELLIOTT: I don't have a copy of Drought's  
24 letter from today. It was sent --

25 CHAIRPERSON MITTEN: Mr. Bastida, why don't you

1 just do everybody a favor and make a bunch of copies of this.  
2 Can we do that?

3 SECRETARY BASTIDA: Yeah, I have copies of the  
4 letter here with me. The thing is the letter is not accurate.  
5 The letter was not resubmitted after Dr. Shalit was -- I was  
6 informed that Dr. Shalit would be here, and will provide  
7 testimony for the record for the ANC as an expert witness, and  
8 then the time frame will change to ten days. So, but I can  
9 provide this letter to anybody, and I have copies of the letter  
10 here.

11 CHAIRPERSON MITTEN: Great. So anybody who wants  
12 a copy, acknowledging that the timing that's represented in the  
13 letter -- and is incorrect, or has been changed, and that  
14 there's no reference to Dr. Shalit.

15 DR. SHALIT: I just want to provide a simple  
16 clarification about what has happened. I was prepared last time  
17 to give testimony, as I am prepared for today, and my schedule  
18 is completely booked, and I knew that if I'm not going to do it  
19 today, I'm not going to be here.

20 CHAIRPERSON MITTEN: I understand.

21 DR. SHALIT: That is the only reason --

22 CHAIRPERSON MITTEN: And I think that the parties  
23 actually welcome the opportunity to cross examine you in person.  
24 So I think it's going to work out fine.

25 DR. SHALIT: Okay.

1 CHAIRPERSON MITTEN: Thank you.

2 DR. SHALIT: I just need -- want to make sure  
3 that I'm going to be finished today.

4 CHAIRPERSON MITTEN: You will. I promise.

5 DR. SHALIT: Okay.

6 MR. FEOLA: Madam Chair, Phil Feola, again for  
7 the record, I guess I'm a little confused by what Ms. Elliott  
8 said. We submitted our submission that the Commission requested  
9 on December 14th. I believe the parties had an opportunity to  
10 respond to that by January 4th. So that should have already  
11 been in the record. I though we were just talking about, now  
12 the testimony that they would be delivering tonight, which can't  
13 be delivered, as Mr. Drought has been ill.

14 CHAIRPERSON MITTEN: I understand your point.  
15 Ms. Elliott, do you understand Mr. Feola's point?

16 MR. FEOLA: I just wanted to point out what we  
17 were expecting.

18 CHAIRPERSON MITTEN: Right. Mr. Feola's point is  
19 that there were responses due from the parties to the additional  
20 information that --

21 MS. ELLIOTT: So we're precluded from responding  
22 to that material at this point in our testimony?

23 CHAIRPERSON MITTEN: Well, unless you can make --  
24 unless you should put forward a reason why you should be given  
25 some additional opportunity. Do you have a reason?

1 MS. ELLIOTT: Just that, I was not clear on that,  
2 that we could not respond to any additional supplementary  
3 information in our testimony. We were going to be covering the  
4 whole -- we're not going to have a specific response to that  
5 material. We will give our testimony in rebuttal to the  
6 Applicant's case. Is that not part of the Applicant's case, the  
7 additional material?

8 CHAIRPERSON MITTEN: Okay. You're saying there  
9 is not going to be separate submission.

10 MS. ELLIOTT: No. It will be all part of our --  
11 it will be encompassed in our testimony in response to  
12 everything. I just am questioning whether we're precluded from  
13 responding because we didn't do something specific.

14 CHAIRPERSON MITTEN: No, I don't think so.

15 MS. ELLIOTT: Thank you.

16 CHAIRPERSON MITTEN: Mr. Feola's fine with the  
17 way you are going to proceed.

18 MS. ELLIOTT: Thank you.

19 CHAIRPERSON MITTEN: All right.

20 SECRETARY BASTIDA: Madam Chairman, the other  
21 announcement is, the list of witnesses, of people who want to  
22 testify is by the entrance door, and individuals that previously  
23 signed are included there, but if anybody else wants to testify,  
24 please sign that witness list. And I thank you.

25 CHAIRPERSON MITTEN: Does that do it for the

1 preliminary matters?

2 SECRETARY BASTIDA: Yes, Madam Chairman.

3 CHAIRPERSON MITTEN: Okay. Great. Now anyone  
4 who was not sworn at the prior session of the hearing, who would  
5 like to testify this evening, please rise to take the oath.

6 SECRETARY BASTIDA: Do you swear or affirm that  
7 what you are about to testify is the truth and nothing but the  
8 truth?

9 CHAIRPERSON MITTEN: Thank you. Now we ask the  
10 Applicant to come forward and present the additional information  
11 in whatever level of detail you would like.

12 MR. FEOLA: Thank you Madam Chair. For the  
13 record again, Phil Feola. Thank you for the 15 minutes we are  
14 going to have to explain this because we did submit a lot of  
15 things. I think the Commission asked for some things, and  
16 hopefully the written materials are self-explanatory, but we  
17 thought it might be prudent to take 10 or 12 minutes to explain  
18 it, which leaves Charles Barber, from the University, who will  
19 explain it. Thank you.

20 MR. BARBER: Good evening Madam Chair, members of  
21 the Commission. Could I borrow your microphone so I could point  
22 --

23 CHAIRPERSON MITTEN: Certainly.

24 MR. BARBER: Thank you. I think it would be  
25 helpful if we were to reorient ourselves as to the location of

1 the project. It's been a couple of months since we were here  
2 the last time. Thank you. And this map is in your Commission's  
3 Attachment J. The Elliot School project, 1957 E Street, is in  
4 red on Square 122. As indicated by the map, all the properties  
5 within that square are GW properties, with the exception of a  
6 commercial parking garage on the Northwest -- immediately on the  
7 Northwestern side of the project.

8 On the East is the General Services  
9 Administration building, to the South is an open plaza, opening  
10 out to federal buildings to the South, to the West is the Red  
11 Cross building, which has recently been topped out.

12 This square has not been used for residential  
13 uses with the exception, of course, for GW residential uses.  
14 You have two dormitories on this square, and you will see the  
15 campus plan boundary includes those dormitories. And those  
16 dormitories, Mitchell Hall and Thurston Hall, have been there on  
17 the campus plan for more than four years. The closest  
18 residential facility not owned and operated by the University is  
19 to the northwest at this location.

20 As I pointed out, again, the campus plan boundary  
21 runs -- it's immediately adjacent to the subject property,  
22 separating 1957 E Street from Mitchell Hall immediately to the  
23 north. I think that orients us.

24 In Attachment A to our submission, we tried to  
25 lay out the comparison of benefits from the use of this site by

1 George Washington University and the Association of General  
2 Contractors. I will not -- certainly, I will not read that, but  
3 I will highlight a couple of matters, a couple of issues from  
4 that.

5 The Association of General Contractors, a non-  
6 profit facility, was going to provide a mixed-use facility -- a  
7 non-profit organization providing a mixed-use facility. We, as  
8 in George Washington University, is a non-profit entity to  
9 provide a mixed-used facility and the same general mixture of  
10 uses. And there's a little basic difference in our view from  
11 the project with the exception that it was presumed that the  
12 residential portion by the Association of General Contractors  
13 would have generated greater tax revenue. That's not entirely  
14 proven for the reasons we've set forth, but they were operating  
15 on that assumption. We believe, though, the use by the  
16 University far outweighs whatever advantage the use by the  
17 Association of General Contractors. And let me enumerate that.

18 There are non-economic benefits. George  
19 Washington University, of course, is an educational institution.

20 And education itself is a societal benefit indeed reflected in  
21 the enabling statute of the Zoning Commission, D.C. Code 514.  
22 One of the purposes of the Commission is to promote the uses of  
23 land for a number of activities but including educational  
24 activities. So this is certainly an educational activity, both  
25 in classrooms, teachers, faculty offices, research, continuing

1 education, education in the broadest sense.

2 In addition, contributions to international  
3 relations. This is not just education generally but this is an  
4 Elliot School of International Affairs and particularly during  
5 the time in the foreseeable future, international relations.  
6 Research, education, improving international relations is  
7 clearly critical.

8 The residences, jokingly referred to as the West  
9 Wing, we house some 193 students, there are 193 beds in those  
10 apartments. Students' residences are an important part of this  
11 project, and they're important to this community, important to  
12 the neighborhood. We believe this is an appropriate location  
13 for student residences. If this Commission approves this  
14 project, it will become part of the campus plan, and so you will  
15 have increasing number of students' residences on the campus  
16 plan. And that's clearly a benefit, as came forward in the  
17 recent campus plan case.

18 Retail space, there will be retail space. The  
19 Association of General Contractors had no commitment and made no  
20 provisions for retail space; George Washington will -- 3,300  
21 square feet on-site as well as another 1,700 square feet that  
22 will be made available to the public next door to Mitchell Hall.

23 I know Mr. Hood is clearly interested in the  
24 First Source agreement and the LSDBs. We have included within  
25 our submission, I believe in Tab B, GW's progress on that. And

1 this is not like the situation where people promise; this  
2 performance. We have had a history here of performance on both  
3 First Source and the LSDB. On the First Source, some 28  
4 contractors and subcontractors have participated, including 16  
5 companies that have participated in excess of \$500,000, which  
6 include apprenticeship programs. On the LSDB program, GW  
7 contractors on the Elliot School alone have been utilized to the  
8 tune of \$1.4 million. Another \$2.8 million, double that, has  
9 been used for minority businesses that don't qualify for the  
10 LSDB program. And, of course, that's not counting the use that  
11 the University makes outside the Elliot School program with LSDB  
12 in the amount of \$56 million.

13 And the, finally, there are commitments, and I  
14 will get to the economic commitments to the West End Citizens  
15 Association agreement, but there are certainly non-economic  
16 benefits. The University agreed to restrict the timing of truck  
17 deliveries to the building to times other than rush hour, and  
18 this will have a positive impact on traffic flow in the area.  
19 And the very nature of the agreement requires a working together  
20 between the University and the community. There will be a body  
21 that will be required to administer the University's \$500,000  
22 contribution in which the University will have representation,  
23 and members of the community will have representation. So that  
24 evidence and our whole settlement process with the West End  
25 Citizens Association reflects the commitment by the University

1 to work with the community.

2 Let me now turn to, briefly, the economic  
3 benefits, which I've told those here. I think you can review  
4 them, including those that I think are real but not any more  
5 difficult to quantify on Page 5. I think I should say a note on  
6 the \$500,000 commitment to the Foundation to feed homeless and  
7 elderly. That commitment was phrased that we would make the  
8 commitment to the Foundation for that purpose and the site was  
9 supposed to be Scholl's Cafeteria. Scholl's Cafeteria is no  
10 longer in business.

11 I'm here to say categorically that the University  
12 is still committed to that \$500,000 contribution. We will still  
13 make it to the Foundation for the purpose of the feeding  
14 program. It will be up to the Foundation to decide exactly the  
15 locale of where that program is administered, but we will make  
16 that \$500,000 contribution. It's not dependent upon Scholl's  
17 being in operation.

18 Again, I think the economic benefits are real and  
19 they are here for your review.

20 Let me, in the minute that I have remaining,  
21 touch upon a couple of points with the status of the project.  
22 The project is topped out on both sides. We will now -- the  
23 crane is scheduled to be taken away within a matter of days.  
24 The construction will now turn largely internal to be built out  
25 internally, and we're on schedule to meet our construction

1 completion date of August of 2002. We have, during this  
2 process, attempted to be responsive to community concerns about  
3 the project. There has been some communication and concerns  
4 raises. We have, where appropriate, communicated that to the  
5 contractor. We believe as the construction moves indoors, that  
6 will lessen any impacts on construction on the surrounding  
7 community.

8 I will now stop and address any questions the  
9 Commission might have on the analysis of the benefits or any  
10 other submission that the University has. Thank you.

11 MR. FEOLA: Madam Chair, we also have the project  
12 architects and the traffic engineer available for questions,  
13 because some of the submission included their materials as well.

14 CHAIRPERSON MITTEN: Right. Thank you. Let me  
15 see if either Mr. Hood or Mr. May have any questions on the  
16 additional materials or on Mr. Barber's presentation?

17 MR. HOOD: Madam Chair, I just wanted to ask Mr.  
18 Barber quickly about his orientation, if you could go back to  
19 the board that you --

20 MR. BARBER: Yes.

21 MR. HOOD: -- were giving us our brief  
22 orientation. Could you explain to me where is the nearest  
23 residential either apartment or condominium located towards this  
24 existing site that --

25 MR. BARBER: Non-university residential.

1 MR. HOOD: Non-university right.

2 MR. BARBER: It's this location.

3 MR. HOOD: Which is right across the street -- or  
4 up the street.

5 MR. BARBER: York, right here.

6 MR. HOOD: Okay. And where is one to the East?  
7 Where is the nearest --

8 MR. BARBER: To the East?

9 MR. HOOD: Right.

10 MR. BARBER: You'd have to go on the -- it's the  
11 White House.

12 MR. HOOD: Oh.

13 MR. BARBER: Pretty much.

14 MR. HOOD: It's hard to believe I have an  
15 orientation merit badge. But, anyway, okay, what about South?

16 MR. BARBER: There's nothing. There's a plaza,  
17 the State Department but nothing, no residences, no.

18 MR. HOOD: Okay. And the one after that, the one  
19 that you showed me, to the West, up the street a little bit, I  
20 believe it was, that's where the closest one is.

21 MR. BARBER: Yes, it is.

22 MR. HOOD: Okay. And where is the park? There  
23 was a park or something that was mentioned.

24 MR. BARBER: There's a park plaza on the opposite  
25 side of E Street, south of E Street.

1 MR. HOOD: Okay. All right. Thank you. Also,  
2 Madam Chair, I just want to state that I was pleased to see the  
3 submission about the LSDBs and the DOES, and I just wanted to  
4 say that for the record. Thank you.

5 CHAIRPERSON MITTEN: Thank you. And just for  
6 clarification, my understanding is that the AGC PUD did not have  
7 any -- it did not have a First Source agreement or a memorandum  
8 of understanding for the LSDBs, is that right?

9 MR. BARBER: That is correct. It did not, and  
10 there was no requirement in the Zoning Commission order that it  
11 do so.

12 CHAIRPERSON MITTEN: Great. Thanks. Mr. May?

13 MR. MAY: I was following on the orientation  
14 question. I'm curious about this too. The building immediately  
15 to the west --

16 MR. BARBER: To the west.

17 MR. MAY: Yes.

18 MR. BARBER: That's the Red Cross building.

19 MR. MAY: Okay. And is that the existing  
20 configuration of that building?

21 MR. FEOLA: No. Mr. May, that's the old Red  
22 Cross building, it's in plan right now. The current building is  
23 about a half million square foot building that has just been  
24 topped out that takes pretty much the rest of that open space.

25 MR. MAY: Okay.

1 CHAIRPERSON MITTEN: Thank you. Ms. Elliott, did  
2 you have any questions for the ANC on the --

3 MR. BARBER: I'm sorry. Could I just make one  
4 more final comment?

5 CHAIRPERSON MITTEN: Sure.

6 MR. BARBER: I'm sorry. And then I open myself  
7 to cross examination. We think these benefits are real and  
8 tangible, and I think it's also important to bear in mind that  
9 whatever proposed benefits that the AGC has proposed in coming  
10 before the Zoning Commission were not able to be realized for  
11 whatever reason, large or economic, they could not make a go of  
12 it. And they tried. They got a couple of extensions and had, I  
13 understand, numerous discussions, but they couldn't -- those  
14 benefits, whatever they were, were not realized. These benefits  
15 that the University brings to the table are going to be  
16 realized, because the project is going forward, and they are  
17 real and they are tangible. That's all I have to say. Thank  
18 you.

19 CHAIRPERSON MITTEN: Thank you, Mr. Barber. Ms.  
20 Elliott, did you have any questions? Come on forward.

21 MS. ELLIOTT: I just have one question on the  
22 traffic report. We haven't received a DPW report.

23 CHAIRPERSON MITTEN: Neither have we.

24 MS. ELLIOTT: Oh. And I just was wondering if  
25 the impact of the new I think it's 400-car garage and the 1,900

1 plus employees that are going to be coming into the Red Cross  
2 site have been taken into consideration?

3 CHAIRPERSON MITTEN: By the Applicant --

4 MS. ELLIOTT: Yes.

5 CHAIRPERSON MITTEN: -- Applicant's traffic  
6 expert?

7 MS. ELLIOTT: Yes.

8 CHAIRPERSON MITTEN: Okay.

9 MS. WHITE: Hi. My name is Nicole White. I'm  
10 with Gorove Slade Associates. I have DPW reports. I could read  
11 it or I could give it to the Commission to make copies and  
12 distribute.

13 CHAIRPERSON MITTEN: I think we'd like to get  
14 copies.

15 MS. WHITE: Okay.

16 CHAIRPERSON MITTEN: What's the date on it?

17 MS. WHITE: November 16, 2001.

18 CHAIRPERSON MITTEN: Okay.

19 MS. WHITE: And it was to Andy Altman at OP.

20 CHAIRPERSON MITTEN: Okay. Could you answer the  
21 question that Ms. Elliott asked, which related --

22 MS. WHITE: I'm sorry, I didn't hear the  
23 question. I was --

24 CHAIRPERSON MITTEN: I'll tell you what it was.

25 MS. WHITE: Okay.

1 CHAIRPERSON MITTEN: Does your traffic study  
2 consider the impact of the 400-car parking garage and 1,900  
3 employees at the new and expanded Red Cross building?

4 MS. WHITE: Yes, it does.

5 CHAIRPERSON MITTEN: Okay.

6 MS. WHITE: Okay.

7 CHAIRPERSON MITTEN: Thank you. Any other  
8 questions, Ms. Elliott? Ms. Kahlow?

9 MS. KAHLOW: I only have one question, Mr.  
10 Barber. You were testifying about the relative retail in the  
11 AGC versus the GW. Isn't true that the Zoning Commission's  
12 order for the AGC authorized up to 500,000 square feet of  
13 retail?

14 MR. BARBER: My understanding is the AGC order  
15 authorized retail, and I'd have to confirm the amount, but it  
16 authorized retail. I don't know if AGC is going to do retail,  
17 but it authorized it.

18 MS. KAHLOW: Thank you.

19 CHAIRPERSON MITTEN: All right. If there are no  
20 further questions, then we'll move to the report by the Office  
21 of Planning.

22 MR. FONDERSMITH: Thank you very much, Madam  
23 Chair and members of the Commission. I'm John Fondersmith from  
24 the Office of Planning, and you have our report. I'm going to  
25 go through fairly fast and summarize, and of course we'd be glad

1 to answer questions.

2 In summary, the Office of Planning recommends  
3 that the Zoning Commission approve the requested PUD  
4 modifications. And of course in making this recommendation we  
5 do understand that the BZA, at the time we wrote it, was a  
6 proposed order and it's now final, that if the Zoning Commission  
7 approves this PUD, the PUD property will be included within the  
8 GW campus plan boundary with the certification -- we had said  
9 200 beds before but that's changed, as you know, in the BZA  
10 order to 193 beds. That reflects the change in the PUD due to  
11 building in the retail space on the ground floor.

12 We go through in the report background about the  
13 original PUD and the GW modifications of it, and unless there's  
14 specific questions, since that's all been testified to,  
15 essentially, I'm not sure it's useful to repeat that. I would  
16 just say that it's important to recognize that this is a change.

17 In some respects, it's close to the previous PUD, but there are  
18 differences. I mean that's why we are here. And it would have  
19 been nice, in some respects, at least from some aspects, if the  
20 original PUD had gone forward. We talked to them also, and they  
21 just weren't able to make that work. I think that might have  
22 been in part due to the economic times in the early and mid-  
23 '90s.

24 And we talked about in our report the issue of  
25 the new hearing, which of course has been resolved and the

1 status of construction, which Mr. Barber just mentioned, that  
2 it's topped out, and the relationship to the plan now that this  
3 would be included. We discussed the site which you've seen on  
4 the map, and we go into some detail.

5 I would like to stress the -- this is on Page 7  
6 -- the importance of this PUD in this setting. It's a somewhat  
7 monumental setting in an area that was once termed the Northwest  
8 Rectangle, and that is this grouping of plazas and the  
9 government buildings primarily that extend on down to the Mall.

10 And it's striking when you go out there now to see this new  
11 building -- and of course this would have been true with the  
12 Association of General Contractors' building also -- the forum  
13 there and the new Red Cross building, that these buildings will  
14 mean some change in the area in the way it's perceived and in  
15 activity. And that's kind of maybe separate from the PUD case  
16 itself, but it's important in the overall development of this  
17 area.

18 There are still questions outstanding and really  
19 don't have anything to do directly with this case, but what the  
20 Kennedy Center wants to do in bridging the freeway and going  
21 back into the City. So as some of the pieces of which this PUD  
22 building is a part are completed, we have the possibility of  
23 seeing some changes in this section of the City.

24 We talked about the change in residential use,  
25 and of course as the Association of General Contractors was an

1 apartment building with a range of uses and probably -- range of  
2 units, I'm sorry, would have had around 100 or so persons living  
3 there, assuming some apartments would just have one person, some  
4 with two and maybe some with more. The University, they have  
5 designed it as an apartment house. It's, in effect, of course  
6 being operated as a unit, as a dormitory, and you could get into  
7 questions about how that's defined, but it's a unit. There will  
8 be more students, 193, than would have been with the previous  
9 thing. We think that that's, in terms of the numbers, not  
10 necessarily a bad thing. It's certainly not going to create  
11 congestion in this part of the City.

12 It's important to note the University, in  
13 addition to getting the space, gets a new door, a new presence  
14 really, on this E Street Mall, and so that's obviously important  
15 for them.

16 In appearance, the overall bulk will be about --  
17 it's essentially the same as the approved PUD. There's the  
18 illumination of balconies and so on, so there's some changes in  
19 the design appearance and the materials on the facade but  
20 essentially the same physical perception. Of course, in terms  
21 of what's going on there, there is a difference of perception.  
22 It would have been perceived as an Association headquarters if  
23 the previous PUD had gone forward, although in fact it would  
24 have been commercial office space in there. Now it will be seen  
25 as part of the University and as the Elliot School, and I think

1 they're very interested in the relationship to the Department of  
2 State, which is nearby and of course the Federal Reserve has  
3 headquarters there and so on. That relationship is important to  
4 the University. So there's -- we tried to also to go through  
5 the various uses and amenities, and there's some tradeoffs, I  
6 would say, there.

7 And then we went to the comprehensive plan and  
8 especially the Ward 2 element. And of course there are a  
9 variety of elements in the comprehensive plan. There's great  
10 concern expressed there in various sections about the impacts of  
11 the University housing on Foggy Bottom. On the other hand,  
12 there's also a concern to have the University build housing and  
13 provide it, in which the BZA in its recent case has recognized.

14 There is a section in the Ward 2 plan for  
15 utilizing the potential of the District universities, especially  
16 in Ward 2 to create an expanded center of knowledge and learning  
17 in the center of Washington. And the expansion and improvement  
18 in the Elliot School furthers that objective.

19 So, again, in looking at the comprehensive plan,  
20 there's various sections that apply, and there's some that are  
21 at difference. We have concluded in looking overall at it that  
22 the approval of modified PUD is not inconsistent with the  
23 comprehensive plan. ANC can speak for themselves and that the  
24 DPW was submitting this report that you see. And I must say I  
25 just have realized that for some reason usually these things

1 come directly to you; in this case, it came to us and I think  
2 was submitted after -- I think we received it after our report  
3 and frankly did not realize that it had not gone --

4 CHAIRPERSON MITTEN: It doesn't really -- it's  
5 not very detailed, so we can absorb it quickly.

6 MR. FONDERSMITH: Yes. So, in summary, again we  
7 recommend that the Zoning Commission approve the requested PUD  
8 modifications, and of course we understand that that would mean  
9 that this become, if the Commission approves it, become part of  
10 the campus plan.

11 CHAIRPERSON MITTEN: Thank you, Mr. Fondersmith.  
12 Mr. Hood or Mr. May, any questions for Mr. Fondersmith?

13 MR. HOOD: Yes, madam Chair. Mr. Fondersmith, on  
14 the first page of your report, you're talking about if the  
15 Zoning Commission approves the requested PUD modifications, it  
16 will also have the effect of approving the PUD property within  
17 the expanded George Washington University campus boundary. I  
18 guess my question is, is that -- I'm not following that. So  
19 what you're saying if this PUD is approved, then it  
20 automatically becomes within the boundary?

21 MR. FONDERSMITH: That's right. That's the way  
22 the BZA wrote their order. And of course the whole -- not the  
23 whole -- but a large thrust of the discussions on the campus  
24 plan that have been going on is how to gain -- how to get -- how  
25 to have the University build more on-campus housing. And of

1 course this Commission just dealt with further processing of two  
2 new dormitories. But there are requirements in the campus plan  
3 for that, and in this case the BZA, my understanding from  
4 reading it and listening to some of those deliberations,  
5 recognize that the University was proposing in this PUD to build  
6 these additional units, which are adjacent to other -- to the  
7 two dormitories that were mentioned, and really are in the  
8 square that is all University property except for the commercial  
9 parking garage.

10 MR. HOOD: Thank you, Mr. Fondersmith. Madam  
11 Chair, not having been on too many campuses, I'm wondering is  
12 that the normal procedure? I just see a problem. I don't know,  
13 I don't want to go back and redo whatever the BZA has done, but  
14 to automatically say if we approve it, it automatically goes in  
15 the boundary area, I think the BZA has basically made the  
16 decision for us. I'm not sure. I would have to -- I don't know  
17 who I could direct that question to. Maybe someone who sat on  
18 that case may want to ask that and maybe have more insight on it  
19 than I do.

20 CHAIRPERSON MITTEN: Well, I think I can at least  
21 explain the thinking behind it, which is if the Zoning  
22 Commission approves the PUD modification that's been requested,  
23 then we're saying, "Okay, this is a University building, this is  
24 going to house University students and University school." So  
25 in that we're trying to facilitate what Mr. Fondersmith was

1 describing -- getting as many beds available on campus. If this  
2 was going to be a University dormitory immediately adjacent to  
3 the campus, then in the interest of facilitating the counting  
4 and getting a sufficient number of beds actually on campus  
5 that's why we said, "Well, if it's going to be that anyway, and  
6 it's immediately adjacent, let's count it." But in no way was  
7 the BZA trying to, what do I want to say, telegraph what they  
8 thought the Commission should do. It's really contingent on our  
9 decision.

10 MR. HOOD: Thank you, Madam Chair, for that  
11 clarification, because that takes me to my next question, Mr.  
12 Fondersmith. In your report, you raised a concern about the  
13 expansion into the community, and when I hear what I said to you  
14 previously, I see the expansion now, what precautionary measures  
15 is the Office of Planning working with to also make sure that  
16 the -- and I don't know if you can answer this question tonight;  
17 maybe you have to take it back to others, but to the best of  
18 your ability, what, to the best of your ability, if you could  
19 answer it for me, what precautionary measures is the Office of  
20 Planning making, because obviously there are some issues.

21 George Washington University, I guess, growth --  
22 like I said the other night, other universities are expanding.  
23 George Washington University I guess has to expand. But also  
24 you have a community down there. So in your report here, you  
25 raised a concern, but my concern is, is the Office of Planning

1 planning on working those issues out?

2 MR. FONDERSMITH: Well, we were, of course, in  
3 the campus plan process, very concerned about getting a formula  
4 or an approach that would get more housing on campus. I mean  
5 that really was the central issue or thrust in the campus plan.

6 And the resolution or I should say the decision that the BZA  
7 came up with as a result of that and of course as a result of  
8 the community is an effort to require housing to go on campus.  
9 I'm not sure that that's the last thing. I think there will  
10 have to be continuing efforts, but that's the -- you know,  
11 that's the main focus of the campus plan.

12 MR. HOOD: I understand that, and like I said, I  
13 don't want to open up the campus plan again, but it appears to  
14 me that we're trying to accommodate something. It's like we're  
15 hustling backwards. We're trying to accommodate more things for  
16 the GW campus, but also we're expanding the campus, so I just  
17 don't see where the planning is taking effect or where the  
18 negotiation or the working through it all is in effect.

19 And I'm not necessarily pointing any fingers at  
20 anyone in any particular direction, I'm just trying to  
21 understand at some point in time we may need to look at some  
22 other avenues, because that issue, I understand, has been going  
23 on for a long time, and it looks like the campus is expanding, I  
24 mean, like all other universities in this country, actually. On  
25 the other hand, we're saying we're trying to accomplish

1 something, but we're also expanding the campus. So it just  
2 seems or appears to me that we're hustling backwards. And that  
3 statement was made on someone who hasn't really been following  
4 that whole episode.

5 CHAIRPERSON MITTEN: If I --

6 MR. BARBER: Madam Chairman?

7 CHAIRPERSON MITTEN: Oh, certainly.

8 MR. BARBER: I'd like to say something, but I can  
9 go after you.

10 CHAIRPERSON MITTEN: Well, I think at this point  
11 we're just doing a -- we're having our cross examination of Mr.  
12 Fondersmith. So you'll get your turn later.

13 I just want to pick up on what Mr. Hood -- what  
14 his concern is and maybe put it a little bit more bluntly. And  
15 this is one of the concerns of the ANC, which is the Office of  
16 Planning, in weighing in on the campus plan, was very concerned  
17 about just what Mr. Hood was describing, which was the expansion  
18 of the University, particularly related to housing. And the  
19 Office of Planning's position was that that outward expansion  
20 needed to stop in Foggy Bottom/West End. Now, the Office of  
21 Planning is endorsing exactly that, an expansion of University  
22 housing outside the existing campus boundary, and that needs to  
23 be reconciled by the Office of Planning. So how do you  
24 reconcile that shift in position?

25 MR. FONDERSMITH: I think we reconciled it in

1 terms of where this was. And as I said at the beginning, this  
2 is a revised PUD, and there are pluses and minuses in it. It  
3 does provide for some additional student housing here, which, as  
4 you said, is at a point that is right adjacent to the campus  
5 boundary as now defined and in a square that is essentially a  
6 University square. It certainly would have been nice to have an  
7 all-residential -- not an all-residential, just part PUD.

8 CHAIRPERSON MITTEN: But it's actually bigger  
9 than, "Would have been nice." That was a policy position that  
10 the Office of Planning took. And when the stakes were big, it  
11 was the campus plan you were talking about, and that was a large  
12 part of the discussion. And the Office of Planning took a very  
13 strong position that the community, the neighborhood, needed to  
14 be protected. And while this is adjacent to the campus  
15 boundary, it's also adjacent to the residential neighborhood.

16 So I don't know how the others feel, but I think  
17 I'm not getting satisfaction from your responses, and I think  
18 what I'd like is maybe for the Office of Planning to give some  
19 more thought to how you reconciled your position on this PUD  
20 with your position on the campus plan and maybe make an  
21 additional submission to us.

22 MR. FONDERSMITH: We'll do that.

23 CHAIRPERSON MITTEN: Thank you. Mr. May, did you  
24 have any questions? Okay. Mr. Feola, any questions for Mr.  
25 Fondersmith?

1 MR. FEOLA: Mr. Fondersmith, was there anything  
2 in the AGC PUD, to your knowledge, that would have prohibited  
3 the AGC, had it built this apartment building, from renting to  
4 GW students?

5 MR. FONDERSMITH: No, there's not that I know of.  
6 And in our report, let me see if I can find it, we indicated  
7 that whatever number of units it came out -- and let's say it  
8 was 55 or 56, in that range -- we indicated that chances are  
9 some of those would have been rented to University students.

10 MR. FEOLA: Given the proximity of the  
11 University.

12 MR. FONDERSMITH: Yes, that it's right next door.  
13 Let me see where -- I'll find that in a minute. But we made  
14 that point. But the -- say, out of 55 -- well, you don't know,  
15 that's a market kind of thing. But we thought about this. It's  
16 probable that out of -- if it had been built and if it had 50  
17 units or so, then maybe ten or 15 of those or maybe less would  
18 have been rented to University students. So there would have  
19 been some students there, almost certainly. But there also  
20 would have been a regular apartment house.

21 MR. FEOLA: No guarantee, though, would there?  
22 There was no requirement that AGC not rent the entire block of  
23 building to GW students.

24 MR. FONDERSMITH: Not that I know of.

25 MR. FEOLA: So we're just speculating on how many

1 GW students.

2 MR. FONDERSMITH: But the community, remember --  
3 and there's been several discussions on the record of the  
4 advantages of that PUD, that those apartments would be --

5 MR. FEOLA: But there was nothing in the AGC PUD  
6 that would have restricted it, is there?

7 MR. FONDERSMITH: I don't believe there is, not  
8 that I know of.

9 MR. FEOLA: Thank you. Those are all my  
10 questions.

11 MR. BARBER: Madam Chair, could I have a minute?

12 CHAIRPERSON MITTEN: Sure.

13 (Pause.)

14 MR. FEOLA: That's all, Madam Chair.

15 CHAIRPERSON MITTEN: Thank you, Mr. Feola. Ms.  
16 Elliott, any questions?

17 MS. ELLIOTT: Under the AGC PUD, that building  
18 was not a rental building, correct? It was a condominium  
19 building? It was going to be condominium units for purchase by  
20 all residents? Yes. And also the -- did you notice the  
21 intensity of uses in the commercial part of the building that  
22 are about three times more intense as what the AGC was planning  
23 in the property?

24 CHAIRPERSON MITTEN: When you say "commercial,"  
25 what do you mean specifically?

1 MS. ELLIOTT: The office space uses, the AGC  
2 uses, their two-thirds portion of the building.

3 CHAIRPERSON MITTEN: Okay.

4 MR. FONDERSMITH: Let's see, they had -- let's  
5 see, according to my numbers here, they had about 175,000 square  
6 feet of commercial use. That included their offices and space  
7 that would have been rented as commercial office space.

8 MS. ELLIOTT: Right. I'm talking about  
9 occupancy, approximately. It says about 364 -- around 360 plus  
10 employees contrasted with 1,300 students in the building, plus  
11 three floors of office space and executive education center.

12 MR. FONDERSMITH: The square footage is less in  
13 the GW PUD.

14 MS. ELLIOTT: Yes, I understand that.

15 MR. FONDERSMITH: In terms of people coming in  
16 and out, it's certainly -- at least at certain times of the day,  
17 it's probably going to be higher than would have been with the  
18 previous PUD.

19 MS. ELLIOTT: Thank you.

20 MR. FEOLA: Madam Chair, I have a follow-up  
21 question for Mr. Fondersmith based on what he just testified to.

22 CHAIRPERSON MITTEN: Okay.

23 MR. FEOLA: You just said that, I believe in  
24 response to Ms. Elliott's question, that the AGC was to be a  
25 condominium building. Would you point out in the AGC PUD what

1 or where that is a requirement?

2 CHAIRPERSON MITTEN: You need to turn your mike  
3 on, Mr. Fondersmith.

4 MR. FEOLA: Well, as opposed to playing games, we  
5 will submit the AGC PUD for the record. There is nothing in the  
6 conditions that require it to be anything but a residential  
7 building. It doesn't say condominium anywhere --

8 CHAIRPERSON MITTEN: Well, we're going to save  
9 your rebuttal for the end.

10 MR. FEOLA: Well, okay.

11 CHAIRPERSON MITTEN: Ms. Kahlow.

12 MS. KAHLLOW: Mr. Fondersmith, I want you to refer  
13 to both your August 20 and November 9 report, and I wonder why  
14 you did not mention the WECA/GW agreement restricting student  
15 parking? You mention various amenities that were agreed to but  
16 only certain selected provisions in the agreement. And since  
17 that was very important, why did you not mention it? Pages 1  
18 through 2 on August 20, and Page 4 on November 9.

19 CHAIRPERSON MITTEN: You need to turn your mike  
20 on again, I'm sorry.

21 MR. FONDERSMITH: I'm sorry. I'm not sure  
22 offhand. I remember that we went through the agreement between  
23 the University and the West End and listed those. If you're  
24 saying that there's something left out, we'll have to go back  
25 and --

1 MS. KAHLOW: Well, I can suggest that when you do  
2 your additional submission for Ms. Mitten, you might want to  
3 elaborate on this area that's missing. There was a letter  
4 attached to the GW/WECA agreement that was part of the  
5 agreement, and for some reason you overlooked that letter.

6 CHAIRPERSON MITTEN: Mr. Fondersmith, if you  
7 wanted to include any comments on that in your additional  
8 submission, we'd welcome that.

9 MR. FONDERSMITH: We'll do that.

10 CHAIRPERSON MITTEN: Thank you. Any other -- no,  
11 I guess not. All right. Is there anyone here from DPW? I  
12 don't see anyone that I recognize. So we'll just acknowledge  
13 that we have the -- we now have in the record the November 16,  
14 2001 report from the Department of Transportation. Any other  
15 government agencies represented here tonight? All right.

16 Then we'll go to the report by ANC-2A and just to  
17 make sure that I understand how we're going to proceed, we're  
18 just going to hear Dr. Shalit testify, and then the rest will be  
19 submitted in writing. And, Dr. Shalit, we're going to put you  
20 on the clock for 15 minutes. And, Dr. Shalit, I'm going to give  
21 you a two-minute warning and a one-minute warning, because the  
22 wires get loose, and you won't be able to tell probably. I'm  
23 not going to try not to move the wires. You need to give those  
24 to the staff and she'll pass them out.

25 MR. SHALIT: For the record, my name is Sol

1 Shalit, and I am an economist. I live at 2500 Virginia Avenue,  
2 Northwest, Washington, D.C. 20037, and I'm testifying today as a  
3 pro bono expert witness for the ANC-2A and in opposition to the  
4 application of George Washington University.

5 My task this evening is to try to assist you in  
6 comparing the original PUD with the Applicant's PUD. My  
7 approach was to look at the public benefits and amenities of the  
8 original AGC PUD, compare them with those of the proposed new GW  
9 PUD, spell out the differences, and calculate a present value  
10 dollar figure for the change, with a positive or negative  
11 whenever feasible.

12 I should mention that present value calculations  
13 are routinely used to deal with varying future dollar streams.  
14 They vary in their time period by bringing them into a common  
15 denominator and enabling their aggregation and comparison on a  
16 consistent basis. So all the numbers that are in front of you  
17 are all comparable. They are all apples. You can add them,  
18 subtract them and so on. My assumptions, the sources and basis  
19 for calculations you can find in the notes on Page 6.

20 In general, I would say, that whenever I face an  
21 ambiguity because of insufficient information, I have resolved  
22 it conservatively; that is, in the Applicant's favor. For  
23 example, since I did not have detailed breakdown of the original  
24 PUD, I assumed that Item H and I, for example, were already  
25 included in Item J in the table that you have in order to assure

1 against double counting. Likewise, although I had serious  
2 reservations about the Applicant's valuations, in terms of  
3 dollar figures, of their retail space and low-cost meals, these  
4 are Item K and L, I nevertheless accepted their numbers and gave  
5 them full credit.

6 In the matrix below that looks more daunting than  
7 it really is because it just really tries to list every item  
8 that the University has claimed as a benefit or amenity or a  
9 plus, I tried to be as comprehensive and detailed as I could so  
10 that I can make as full a comparison as I could.

11 I have tabulated in the matrix that you see,  
12 starting on Page 4, side by side, the two PUDs, and I analyzed  
13 the impact of the change on the public amenities and benefits.  
14 I shall not take your time in going over the entire matrix, and  
15 I think it's self-explanatory, and the calculations are really  
16 straightforward. I'll just confine my remarks to a few  
17 observations, and then I'll stop for any questions you have.

18 It is enough to look at the matrix, first to  
19 Items A and B, to realize that we are not having a minor change  
20 but an entirely new different PUD, different in both use and  
21 amenities. And what I'm trying to determine -- help you  
22 determine is whether the proposed PUD offers today at total  
23 value of public amenities and benefits that is at least equal to  
24 the one the Zoning Commission arrived at in 1993 when it granted  
25 AGC a zoning change that clearly has considerable market value.

1 Let me briefly go over a number of items in the matrix. Most  
2 of them I think are self-explanatory.

3 I think the most significant items are A and B,  
4 although there's no quantification in terms of dollars on that.

5 It relates to change in use. These can be quantified but not  
6 without further study. The fact that they are not quantified  
7 here with a dollar figure does not imply that they're either  
8 amorphous or unimportant; quite to the contrary. For now, they  
9 would need to be evaluated qualitatively.

10 Let me move to Item M, First Source employment  
11 opportunity, small business, et cetera, which was again  
12 discussed today and before, and the University makes it an  
13 important amenity or benefit. I think in that context it's  
14 important to understand the role that D.C. industrial revenue  
15 bonds play in this PUD. The \$380 million of D.C. tax-exempt  
16 industrial revenue bonds that the District gave GW is a long-  
17 term financing vehicle, and it grants GW a considerable subsidy  
18 and interest cost for many years to come. The savings to GW in  
19 borrowing costs on the entire bond issue would be at least \$7.6  
20 million per year. You can see the calculations in the notes,  
21 and I won't go into it to elaborate; that's straightforward.

22 Now, of that \$380 million subsidized loan, about  
23 \$71 million are earmarked to finance the presently proposed PUD.

24 The District's financing subsidy to the Applicant for this PUD  
25 alone has a capitalized present value of \$25 million, a little

1 over \$25 million. I did not debit them for these \$25 million.  
2 I mean you wouldn't see it on the last column as a minus.

3 I'm providing this figure only to emphasize that  
4 GW has agreed to some requirement and assumes some employment  
5 obligations when it accepted this \$25 million gift from the  
6 District. These past requirements were incurred to partially  
7 compensate the District in consideration for its rather generous  
8 subsidy. These requirements cannot, in my opinion, be somehow  
9 transfigured and be passed off to this Commission now as, quote,  
10 "benefits and amenities" for this PUD. It's like selling the  
11 same rug twice to two different buyers.

12 We can go item by item. I'm sure that you  
13 probably would like to do that during the cross examination, and  
14 I'll just conclude by saying that my conclusion, as you can see  
15 at the bottom of the matrix, is that at a very conservative  
16 estimate this PUD falls short by nearly \$57 million when  
17 compared to the PUD which this body has approved nine years ago.

18 And this grossly underestimates the loss of public amenities  
19 and benefits in approving the Applicant's PUD, because the \$57  
20 million shortfall includes only quantifiable estimated items.  
21 The real loss is far greater since many PUD elements were not  
22 estimated. Almost all are serious and quite negative.

23 In closing, the PUD zoning change is a valuable  
24 and scarce public resource, just like granting pollution rights  
25 for segments of the broadcasting sector. And this body, this

1 Commission, has the public trust of allocating these public  
2 resources. That's what PUD is all about. It is a well-  
3 established public policy that the allocation of public  
4 resources not be misallocated or squandered. Accordingly, and  
5 to that end, the District has established procedures and  
6 substantial grounds for awarding PUDs. When it granted the  
7 original AGC PUD, this Commission, in effect, set a price tag  
8 for this public resource. This price tag constitutes a minimum  
9 threshold which the Applicant's proposed PUD must meet. It does  
10 not.

11 I hope my testimony is helpful in your  
12 deliberations. I've submitted to you a matrix, detailed notes,  
13 and I will now stop, I hope ahead of my time, for any questions  
14 that you might have.

15 CHAIRPERSON MITTEN: Thank you, Dr. Shalit. This  
16 is a very interesting analysis that you've done. I wish I had  
17 had it a little bit sooner so I could have absorbed it more.  
18 Let me see if Commissioner Hood or Commissioner May have any  
19 questions.

20 MR. MAY: I really only had a couple of questions  
21 about the matrix, actually. If I understand your full testimony  
22 correctly, it kind of boils down to the bare minimum of the  
23 conservative -- your conservative assessment of the impact of  
24 this change. I think I note in here -- let's see, you've  
25 actually calculated, Item J, the loss and tax revenue at \$56

1 million -- \$56.11 million. And can you tell me a little bit how  
2 that was calculated, to start with?

3 MR. SHALIT: Yes.

4 MR. MAY: I mean it's \$2.54 million annually in  
5 tax revenue and present value, which is not a concept that I  
6 carry with me.

7 MR. SHALIT: Okay. The increase of \$2.54 million  
8 annually in the D.C. tax revenue, that is taken just from the  
9 November, I believe, 1993 Zoning Commission final order. That  
10 number, 2.54, was taken from there --

11 MR. MAY: Okay.

12 MR. SHALIT: -- as the annual increase in the  
13 D.C. tax revenue. Then --

14 MR. MAY: How did -- okay.

15 MR. SHALIT: -- what I did, as you can see in  
16 Note 1 below, the 1993 -- if you look at Page 6 -- at Page 7,  
17 sorry, the 1993 figure of \$2.5 million in annual D.C. tax  
18 revenue, adjusted for the cost of living -- since we're talking  
19 about 1993 dollar, we had to bring it to -- amounts \$3.12  
20 million in 2001 over a 30-year term, and that's what the figure  
21 is about, about a 30-year duration. Over a 30-year term, it  
22 amounts to \$93.6 million with a capitalized present value of,  
23 over this 30 years, taking them over 30 years, not just taking  
24 the final amount, that would be \$56.11 million.

25 MR. MAY: So in other words, if I had \$56 million

1 today, I'd have \$93 million in 30 years.

2 MR. SHALIT: If you just multiply it out, it  
3 would be \$93 million, but if you allow for the spacing over 30  
4 years, it would be \$56 million.

5 MR. MAY: Okay. And your total bottom line is  
6 just about \$56 million.

7 MR. SHALIT: Yes.

8 MR. MAY: And so without that particular element,  
9 it's virtually awash within a half million dollars, by your  
10 calculations.

11 MR. SHALIT: My total is minus \$56 million.

12 MR. MAY: Right. And this is a minus \$56  
13 million.

14 MR. SHALIT: That's correct.

15 MR. MAY: So without that in there, it's a  
16 difference of about a half million dollars. In other words, if  
17 you took the tax revenue element out of your calculations.

18 MR. SHALIT: This is the main --

19 MR. MAY: It's the main cost.

20 MR. SHALIT: This is the main item. I'd like to  
21 hear the grounds for why it would be inappropriate for me to  
22 consider that as a price tag. The tax revenue is a very  
23 important thing. Of course, if you take it out, then --

24 MR. MAY: I'm not suggesting that I have that  
25 authority to say that it's --

1 MR. SHALIT: No, no, no.

2 MR. MAY: But there has been other --

3 MR. SHALIT: I agree with the arithmetic, what  
4 you're saying, I agree with the arithmetic.

5 MR. MAY: Right.

6 MR. SHALIT: Yes.

7 MR. MAY: It was just a math question.

8 MR. SHALIT: Okay.

9 MR. MAY: Thanks.

10 CHAIRPERSON MITTEN: Mr. Hood, any questions?

11 MR. HOOD: I do have a question, and I'm trying  
12 to look at this. A lot of work went into this. This looks like  
13 a good job.

14 MR. SHALIT: Thank you.

15 MR. HOOD: My question is, could you expound a  
16 little bit for me on the \$500,000 amount? Just kind of explain  
17 it to me, what you were saying --

18 MR. SHALIT: Excuse me, Vice Chairman. Which  
19 item are you talking about?

20 MR. HOOD: As soon as I find it, I'll let you  
21 know. Just give me one second.

22 MR. SHALIT: Oh, oh, okay. Okay. I'm sorry.

23 MR. HOOD: Okay. I know I was just looking at it  
24 -- K. I've been trying to look at all this right quick. It's K  
25 on Page 5. Can you just run through that? Because you heard

1 the dollar amount was \$500,000. You heard Mr. Barber testify  
2 that even though the place, restaurant was -- the Cafeteria is  
3 now closed and whatever else, they're going to proffer, I guess,  
4 to do that somewhere else. I don't want to speak for him, but I  
5 believe that's what he said. But explain to me what you mean --  
6 what you're saying about the \$500,000? What are you saying  
7 about that amount of money?

8 MR. SHALIT: This will be Item K.

9 MR. HOOD: K, right.

10 MR. SHALIT: Okay. All I said is going from the  
11 first column, the AGC-approved PUD has none, there was nothing  
12 there. There was no benefit of \$500,000. That's why the first  
13 item says none. I'm moving from left to right. Okay? Then I'm  
14 listing the GW-proposed PUD which has \$100,000 per year for five  
15 years, which is the \$500,000, free meals, reduced cost meals and  
16 so on and so on, and through a foundation whose board is not  
17 independent of GW. I listed this. It's not a complete  
18 donation; there is some control there. That is not for me to  
19 evaluate. I'm just listing it for sake of completeness, that's  
20 all.

21 Now, in the third column, I state the effect of  
22 the change. I listed here some reservations I have about how  
23 much of a community benefit it is really. It's a non-  
24 guaranteed, restricted by certain terms, and so on.  
25 Nevertheless, as I said in my opening remarks, I gave them full

1 credit for the entire \$500,000, and you can see that in Note 3  
2 on Page 7.

3 Note 3 at Page 7 says the capitalized value. If  
4 you take a present value calculation and you take \$100,000 per  
5 year for five years at four percent, the present value of this  
6 is \$460,000. Now, if you want to do apples with apples, we give  
7 them the full credit for the \$500,000 despite the reservations,  
8 and the present value of that is \$463,000. And that is why you  
9 see here 0.463, because the whole number in here are in  
10 millions. That's why it's 0.463. Despite the reservations, it  
11 gives them, conservatively, the full credit for the \$500,000 no  
12 matter if some people have questions, and I'm sure the ANC and  
13 some others may have questions. But I have credited them for  
14 that amount fully. What I did I brought it to present value  
15 like I did all the others.

16 MR. HOOD: Okay. And I'm going to ask you to do  
17 the same exact explanation -- and I'm understanding it better  
18 with your explanation, as opposed to reading it -- same one for  
19 M for me.

20 MR. SHALIT: M, okay. M is what I tried to  
21 address in my opening remarks about the First Source employment.

22 Of course, as it was pointed out earlier, the first column,  
23 AGC-approved PUD, did not have that. That's why I wrote "not  
24 applicable." They didn't have it. GW says that they have a  
25 benefit, and that benefit is the First Source employment

1 opportunities and local, small and this is a benefit that they  
2 are offering for this PUD.

3           And what I am saying in the assessment for change  
4 I'm analyzing that. I am saying that this is not an amenity.  
5 An amenity is something that you give. This is a requirement  
6 that they have to do no matter what, because they got a big gift  
7 of \$25 million. And they undertook -- you see, the District  
8 doesn't give out something just for nothing. Sometimes it does,  
9 I guess, but in this case there's a procedure and that's a  
10 revenue bond. They say, "Okay, you want to do that, you have to  
11 increase some employment opportunities for minorities. And this  
12 is a benefit, but you have to do that. Why? Because you got a  
13 \$25 million subsidy here for that project." And that's why they  
14 say, "Okay, we'll take the subsidy, and we undertake to do this.

15           This is an agreement, a requirement. We are required by the  
16 terms of the industrial revenue bond to do these programs.  
17 These programs cannot be sold again to us here in this  
18 Commission as a benefit. This is a requirement."

19           If you have a requirement to obey the law or that  
20 you have entered into an agreement, you cannot sell it twice.  
21 This is not a benefit for this -- it's completely irrelevant for  
22 this project. That's why I put a zero there. I put a zero  
23 there, because all the calculations there and so on, they have  
24 to do that. They got already the benefit, they got their  
25 subsidy, and that's why it's double counting.

1 MR. HOOD: You know, I would agree with you about  
2 putting a zero there but for other reasons.

3 MR. SHALIT: Oh, you want me to elaborate?

4 MR. HOOD: No, no. I don't want you to  
5 elaborate. That was your analysis.

6 MR. SHALIT: Oh.

7 MR. HOOD: But I have an analysis too. By no  
8 fault of GW, you or anyone else, but we need to improve that  
9 whole piece, and I would agree with you with the zero, but I  
10 just have other reasons.

11 MR. SHALIT: I have also other reasons that I  
12 myself have written about -- we read in the newspaper about the  
13 problems that GW was having in complying with this problem, and  
14 I wrote -- there was some hearings held about it, and I wrote  
15 several things about it. These were my words, what is it,  
16 Schwartz and Katanya, I don't know what's the title of these  
17 people, I'm sorry, they're not commissioners, what are they?

18 MR. HOOD: Council members.

19 MR. SHALIT: Council members. I wrote to them --  
20 and I didn't bring it with me, but I will mail it to you if this  
21 appropriate -- my concerns that the fact that they're not  
22 complying with it is very serious, because it's not out of the  
23 goodness of their hearts that they had to comply with it. They  
24 got money for it, and the had to comply, and I asked them to  
25 hold GW's feet to the fire on that. And I think I got very

1 positive responses by email from several --

2 MR. HOOD: Let me just ask you a question: Would  
3 you say that the City has a DOES project -- I mean a plan in  
4 place, a local disadvantaged business? Would you say that they  
5 actually have a good process in place?

6 MR. SHALIT: No, I would not say that. If they  
7 had a good process, you wouldn't have had these problems.  
8 Apparently something is lacking. I don't have the details of  
9 exactly what is lacking there; I haven't made a study of it.  
10 All I know is that a contractor, from what I read in the paper,  
11 a contractor took the bid and he was the lowest bidder, and he  
12 was making it quite clear that he was not going to comply with  
13 it. And the University said, "Well, we have to comply with  
14 that." But he said, "Don't worry, I'll take care of it."

15 And so the University felt that they were just  
16 making a good effort to comply, but they don't have to comply.  
17 And I say that this is not good. They have to comply, because  
18 these are the terms of the industrial revenue bond. This is the  
19 context -- a larger context, and I am very sensitive and the  
20 community is very sensitive to that.

21 MR. HOOD: Thank you, Madam Chair. I won't hold  
22 up -- I could go back and forth all day and we could discuss it.  
23 I'm getting a lot of good information that I could use  
24 elsewhere, but I want to stay with this case. Thank you, Madam  
25 Chair.

1 CHAIRPERSON MITTEN: Thank you, Mr. Hood. Mr.  
2 Feola, any questions for Dr. Shalit?

3 MR. FEOLA: Just a couple, Madam Chair. Thank  
4 you. Dr. Shalit, you, as Commissioner May pointed out, the vast  
5 majority of the economic detriment of this project is fixed to  
6 the Order 746, which identifies a revenue stream from the AGC  
7 PUD at \$2.54 million; is that correct?

8 [No response.]

9 MR. FEOLA: And your analysis discounts that  
10 there will be zero revenue stream, tax revenue stream from the  
11 University project; is that correct.

12 MR. SHALIT: That is not correct.

13 MR. FEOLA: How much revenue -- tax revenue do  
14 you project from the University's project, as proposed here  
15 before the Commission? Because I don't see it in your matrix of  
16 discounting at \$2.54 million by some amount, 0.1, 0.2, one  
17 million.

18 MR. SHALIT: Could you then restate your  
19 question. I think you had some questions and some statements,  
20 so let me get the question first.

21 MR. FEOLA: The question is how much tax revenue,  
22 present day value, did you accord the University's project?

23 MR. SHALIT: I have accorded everything that the  
24 University has claimed.

25 MR. FEOLA: No. I asked you how much tax

1 revenue? The University hasn't claimed any tax revenue. Have  
2 much tax revenue have you put in your analysis --

3 MR. SHALIT: Whatever the University has claimed  
4 I put. If you look at Item L, there is a plus there; Item K,  
5 there is a plus there. If the University -- it is up to the  
6 University to make its case. We are not making your case. The  
7 Commission is not making your case. You have the obligation and  
8 the burden to make your case. If you had put a number and I did  
9 not include it, then I could see that.

10 CHAIRPERSON MITTEN: Dr. Shalit? Dr. Shalit?  
11 It's really not about -- it's about answering the questions.

12 MR. SHALIT: But my question is --

13 CHAIRPERSON MITTEN: No, you don't have the  
14 question, you have the answer.

15 MR. SHALIT: Oh.

16 CHAIRPERSON MITTEN: But it's not about sort of  
17 then adding on and telling --

18 MR. SHALIT: Okay. All right. I stand  
19 corrected.

20 CHAIRPERSON MITTEN: It's easy to slip into.

21 MR. FEOLA: The simple answer is you didn't --  
22 whether the University provided it or not, you didn't assign a  
23 tax revenue from the University's project in your analysis.

24 MR. SHALIT: Well, for two reasons. I did not  
25 for two reasons. One --

1 MR. FEOLA: I'm just asking whether you did or  
2 not.

3 MR. SHALIT: There was none.

4 MR. FEOLA: Okay. Did you see the University's  
5 pre-hearing submission, which was delivered to the ANC, dated  
6 December 14?

7 MR. SHALIT: I saw all the documents. I'm not so  
8 sure if I had the whole thing, but I'm sure that I -- are you  
9 referring to a specific figure that was not included?

10 MR. FEOLA: Well, yes. There is information in  
11 this submission --

12 MR. SHALIT: Could you point out that  
13 information?

14 MR. FEOLA: Well, I don't need you to do it now;  
15 you can do it later.

16 MR. SHALIT: Oh, okay. But I have the thing  
17 here. I can --

18 MR. FEOLA: But you didn't count it in; that's my  
19 point, apparently not.

20 MR. SHALIT: I'll have to ask you just to clarify  
21 because I have no opportunity later on to say it. What is the  
22 number and where is it that I did not include in here?

23 MR. FEOLA: It's in the December 14 filing we  
24 made with the Zoning Commission, which the ANC got a copy of.

25 MR. SHALIT: Which page? Would you kindly --

1 MR. FEOLA: Page 4, behind Tab A -- or you don't  
2 have the tabs. It's the first section, "Comparison of  
3 Benefits."

4 MR. SHALIT: If I have overlooked something, I  
5 certainly would be happy to amend it. No, no. Okay. I did  
6 include it. I'm very glad that you opened it for me. I almost  
7 was ready to give up.

8 MR. FEOLA: Well, how much then did you give to  
9 the University?

10 MR. SHALIT: I'm going to tell you exactly.

11 MR. FEOLA: Okay. Well, that's what I asked five  
12 minutes ago.

13 MR. SHALIT: Give me a little time. I didn't  
14 look at these figures since November -- since October, but I'll  
15 -- everything is reproducible here. You'll forgive me for just  
16 one second while I look at my notes.

17 CHAIRPERSON MITTEN: Certainly.

18 MR. SHALIT: I really want to fully respond.

19 (Pause.)

20 MR. SHALIT: Okay. Page 4. Okay. Page 4  
21 contains several things. Should I wait for anyone to look at  
22 Page 4. Is everyone on the same page?

23 CHAIRPERSON MITTEN: We're ready for you.

24 MR. SHALIT: Oh, oh. Okay. Okay. Thank you.  
25 There are several items here. District Bond Program

1 reallocation, this counts for nothing. This is all part of --  
2 this item was excluded deliberately on the same grounds that I  
3 have explained before.

4 MR. FEOLA: So you did not include that in --

5 CHAIRPERSON MITTEN: Mr. Feola, could you turn on  
6 your microphone, please?

7 MR. FEOLA: You did not include that in your  
8 numbers?

9 MR. SHALIT: Did not, and I don't think it should  
10 be included for the reasons --

11 MR. FEOLA: That's fine. I'm just asking whether  
12 you did or not.

13 MR. SHALIT: No, did not include it, and it  
14 shouldn't be included, in my opinion. It's double counting.

15 CHAIRPERSON MITTEN: Okay. Next.

16 MR. SHALIT: Second item, donations, 500, that  
17 was included. Tax revenue from operation of retail, although  
18 the numbers don't compute here, I included the face value of  
19 every little thing here -- the 93,440, the 13,390. So they were  
20 included. If you look at the notes on Page 7, they were  
21 included, the retail, and they are included in the column --

22 MR. FEOLA: I'm sorry, on Page 7.

23 CHAIRPERSON MITTEN: Note Number 4.

24 MR. SHALIT: Note Number 4, okay? The 93 is  
25 there; the 13 is there. I had questions --

1 MR. FEOLA: I'm sorry, I'm sorry.

2 MR. SHALIT: Page 7, Note -- you have a detailed  
3 calculation of that -- 93,440 and 13,390.

4 MR. FEOLA: Tell me again. Now I'm on the right  
5 page; I was on the wrong page.

6 MR. SHALIT: That's your page --

7 MR. FEOLA: Your page, your Page 7.

8 MR. SHALIT: My Page 7, Item 4, capitalized value  
9 of 93,440 per year for ten years. Why ten years? Because ten  
10 years is the amount, the length of time that you are obligated  
11 to keep the retail.

12 MR. FEOLA: But you capitalized the \$2.5 million  
13 at 30 years, so the retail's going to go away at year ten? I  
14 don't understand why you --

15 MR. SHALIT: The obligation expires after ten  
16 years.

17 MR. FEOLA: What expires after ten years?

18 MR. SHALIT: The obligation to -- you have got --  
19 GW --

20 MR. FEOLA: The BZA order runs forever.

21 MR. SHALIT: GW said that we will keep those  
22 things for ten years minimum, and this is what I capitalized it  
23 for, for ten years, the retail space.

24 MR. FEOLA: Well --

25 MR. SHALIT: Yes. That's what --

1 MR. FEOLA: -- that's what you capitalized, but  
2 that's not what the Zoning Commission's PUD order runs. It runs  
3 for the length of the project.

4 MR. SHALIT: But it has to be relevant.

5 CHAIRPERSON MITTEN: But, Mr. Feola, is the  
6 commitment -- does the commitment that the University made --

7 MR. SHALIT: But you're claiming a benefit, sir,  
8 here.

9 CHAIRPERSON MITTEN: Dr. Shalit, let me just --

10 MR. SHALIT: Oh, I'm sorry.

11 CHAIRPERSON MITTEN: -- raise the question. Does  
12 the commitment that the University made to maintain this minimum  
13 amount of retail in the PUD project and in the adjacent  
14 property, does that have a time limit on it?

15 MR. FEOLA: It has a time limit with regard to  
16 the deal with the West End Citizens Association. It doesn't  
17 have a time limit with the zoning application.

18 CHAIRPERSON MITTEN: Okay. And what's the time  
19 limit?

20 MR. FEOLA: With the West End Citizens  
21 Association?

22 CHAIRPERSON MITTEN: Yes.

23 MR. FEOLA: Yes, I'm sorry, I stand corrected.  
24 Mr. Barber reminds me that it's ten years on the 1,700 square  
25 feet in Mitchell Hall.

1 CHAIRPERSON MITTEN: Okay.

2 MR. FEOLA: The 3,300 feet in the 1957 E Street  
3 project will run the length of the PUD unless we come back and  
4 ask for a modification.

5 CHAIRPERSON MITTEN: All right. So that would be  
6 a minor change with this new information.

7 MR. SHALIT: My response is all the numbers that  
8 the University has claimed they were all computed.

9 CHAIRPERSON MITTEN: Okay. Anything else, Mr.  
10 Feola?

11 MR. FEOLA: Dr. Shalit, you indicated -- you kept  
12 on using the word, "subsidy," with regard to the industrial  
13 revenue bond financing. Is that, in your mind, a subsidy from  
14 the District of Columbia Government?

15 MR. SHALIT: It is a subsidy --

16 MR. FEOLA: Let me ask it another way. Does the  
17 money come out of the District of Columbia Government Treasury?

18 MR. SHALIT: It is a little --

19 MR. FEOLA: In your opinion.

20 MR. SHALIT: Well, the answer to your question,  
21 did it come from the pocket, the answer is no and yes, and  
22 that's why I have to elaborate if I am allowed to.

23 MR. FEOLA: Sure.

24 MR. SHALIT: A subsidy is, for the recipient,  
25 lowering the cost of borrowing by a certain amount. Now, I

1 don't want to start a big lecture here about what it costs the  
2 District to have an industrial revenue bond from a finance point  
3 of view. It is a limitless capacity, and it imposes a cost on  
4 the District, although not out-of-pocket cost. And everyone  
5 knows, perhaps unless one wants to be strictly a bean counter  
6 accountant, that real costs do not have to be out-of-pocket  
7 costs.

8           There are many real opportunity economic costs,  
9 and this is one of them. So much so that there was a time in  
10 which the municipality has overdone that kind of industrial  
11 revenue bond for all kinds of reasons -- and I'm not suggesting  
12 that this is one of them -- that Congress wanted to take away or  
13 modify these things. What I'm saying is it imposes real costs  
14 on D.C. The one obvious way to see that is the ranking of the  
15 bond of D.C., the creditworthiness. Look at Orange County and  
16 so on. So, it's not a limitless --

17           MR. FEOLA: Wait, wait, back up a second. Are  
18 you suggesting that the Industrial Revenue Bond program affects  
19 the District of Columbia bond rating? Is that your testimony?

20           MR. SHALIT: No, I'm not saying that. I'm saying  
21 that ability of the District of Columbia to issue industrial  
22 revenue bonds is, in the long run, has some costs, not out-of-  
23 pocket costs, on the District of Columbia.

24           MR. FEOLA: Because the money doesn't come from  
25 the District of Columbia, does it?

1 MR. SHALIT: The money does not come --

2 MR. FEOLA: And the subsidy comes from the  
3 Internal Revenue Service, does it not?

4 MR. SHALIT: That's true.

5 MR. FEOLA: So there is no out-of-pockets costs  
6 for running that program, is there?

7 MR. SHALIT: There's no out-of-pocket costs, but  
8 there are costs.

9 CHAIRPERSON MITTEN: Okay. I think we got that  
10 point. I think that's been driven home. Okay.

11 MR. FEOLA: I think I have one final question.  
12 And you suggest that the value of the First Source agreement and  
13 the Local Disadvantaged Business agreement, for the purposes of  
14 the PUD, should be zero, because the University is obligated to  
15 do that under another program. Is that your testimony? Is that  
16 correct?

17 MR. SHALIT: That is correct. The University --  
18 this is not a benefit. This is a requirement.

19 MR. FEOLA: I understand. But if the University  
20 didn't buy this property, would the AGC have that benefit on the  
21 table? We're comparing AGC now to GW.

22 MR. SHALIT: That's an improper comparison.

23 MR. FEOLA: Oh, okay. So --

24 MR. SHALIT: The proper comparison is you have a  
25 resource -- you see, when you buy the building, you don't buy --

1 you buy the PUD that was originally there that I thought there  
2 is a price tag on it. This building is a resource, it has  
3 opportunity costs. If the University sells that building and  
4 say if this PUD is not approved, this building is a resource.  
5 And the PUD has a value, and there is a price tag. And we can  
6 add up all those things, and if the University gives a total sum  
7 of benefits that is like the original PUD or comes close, that  
8 is one element. But if it does not, it cannot count as benefit  
9 things that are not a benefit, that are requirements of the law  
10 or requirements of previous obligations.

11 And it is important for this Commission to know  
12 that they cannot count that, because should this Commission  
13 decide that there are some other alternative uses for this  
14 building, perhaps with a PUD or without a PUD, by an occupant  
15 other than the University, the University can always sell the  
16 building if it isn't approved, there are many, many  
17 opportunities. It's a resource. It has a market value, the PUD  
18 has a market value. It doesn't have to be granted unless there  
19 are compelling, sensible obvious reasons. That's what the whole  
20 procedure is about.

21 MR. FEOLA: But it has a market value with the  
22 NBOC or the LDSBE agreement and the First Source agreement, and  
23 it has a market value without, right?

24 MR. SHALIT: I don't understand the question.

25 MR. FEOLA: I'll withdraw the question. I have

1 no further questions.

2 CHAIRPERSON MITTEN: Thank you. Mrs. Kahlow, any  
3 questions? Okay. Thank you, Dr. Shalit.

4 MR. SHALIT: Thank you. Thank you for  
5 accommodating me.

6 CHAIRPERSON MITTEN: Now we'll move to the party  
7 in support, West End Citizens Association.

8 MS. KAHLLOW: I'm Barbara Kahlow, representing the  
9 West End Citizens Association today. Accompanying me is WECA  
10 Board Member Sarah Maddox, who was Chairman of ANC-2A during the  
11 original 1991 through '93 PUD period. WECA founded in 1910 and  
12 one of the oldest citizen associations in D.C. is the principal  
13 community organization in the GW neighborhood. It is primarily  
14 interested in maintaining a residential neighborhood in Foggy  
15 Bottom/West End and in keeping GW, especially its institutional  
16 uses, within its campus plan boundaries.

17 Ms. Maddox will provide an historical perspective  
18 for the 1991 through '93 period. As ANC-2A Chair, she served as  
19 the community's lead negotiator with the former site owner, the  
20 Association of General Contractors, AGC. Her successfully led  
21 negotiations resulted in the community support for the AGC PUD.

22 I will testify about the September 2000 to  
23 January 2002 time period, including the WECA's contention that  
24 GW needed to file a PUD modification request since its plans and  
25 amenities differed from those of the AGC. The West End sought

1 to obtain both on-site and off-site amenities and other  
2 protections for the immediately impacted community to replace  
3 those eliminated after GW's purchase. Now, let me go to that  
4 period, starting since December 2000 up to today.

5 On September 25, 2000, after change both in  
6 ownership from the AGC to GW and in the plans for the building  
7 and the associated amenities, but before any on-site  
8 construction, the WECA initiated the Foggy Bottom/West End  
9 community's objection to GW's plans for 1957 E Street by filing  
10 two motions with the Office of Zoning. On April 10, the BZA  
11 granted Intervenor status to the WECA and appealed the Zoning  
12 Administrator's administrative decision, including an improperly  
13 issued building permit. Let me just say that the various  
14 motions that we filed in September of 2000 were all -- the  
15 Zoning Commission sent them all to the Zoning Administrator, so  
16 it was the Zoning Administrator who acted, and that's why we  
17 appealed his action.

18 The WECA successfully proved that GW's plans  
19 differed from the approved PUD. For example, removal of  
20 balconies for condominium apartment living, removal of a  
21 separate garage for condominium residence security and removal  
22 of retail uses for the condominium living. The WECA contended  
23 that GW needed to file a request for review by the Zoning  
24 Commission of its modifications, including mitigation to replace  
25 amenities eliminated after it purchased the property from the

1 AGC.

2 The BZA's August 7 order stated, quote, "The  
3 parties are strongly encouraged to pursue settlement of this PUD  
4 dispute," unquote. On August 17, after participation in BZA-  
5 directed settlement discussions, including representatives of  
6 the D.C.'s Office of Corporation Counsel in all of the meetings,  
7 the WECA executed an agreement with GW which provides both on-  
8 site and off-site amenities and other protections for the  
9 immediately impacted community. Consistent with the overall  
10 intent of the Commission's PUD regulations, the settlement  
11 agreement benefits not only the immediately impacted community  
12 east of Washington Circle, but also other elderly and poor  
13 residents of the District of Columbia.

14 The settlement agreement provides 5,000 square  
15 feet of new retail space, which is the exact amount in the AGC  
16 PUD application -- as you recall, I asked GW that question --  
17 i.e. it is the exact amount the community had expected from its  
18 agreement with AGC. It is true that the AGC PUD did not have it  
19 as a requirement, but it was clear from their filing and from  
20 all the discussions that that expectation we thought was going  
21 to be realized.

22 In addition, the agreement provides a \$500,000  
23 subsidy for the public benefit of the operation of a program  
24 originally conceptualized to be at Scholl's Cafeteria but will  
25 be relocated, GW testified today, to provide meals for no charge

1 or at reduced rates to elderly and poor residents of the  
2 District of Columbia.

3 Examples of other provisions include GW's  
4 agreement to, a, comply with the D.C. Environmental Policy Act  
5 for all future campus construction projects; b, restrict  
6 deliveries to its loading dock on 19th Street, which is heavily  
7 used by commuters, to non-morning and non-evening rush hours.  
8 As this Commission knows, we are very interested in that exact  
9 same restriction in our IMF PUD discussion. C, house on-site  
10 only juniors, seniors, graduate students and students enrolled  
11 in an Honors Program; and, d, restrict, i.e. not discourage, the  
12 word is "restrict," GW student parking by GW freshmen and  
13 sophomores living in the Foggy Bottom/West End area. And Ms.  
14 Mitten is aware that that's a broader area, the definition that  
15 goes up to M Street. So it's the whole campus plan plus area up  
16 to M Street that they would not be able to park.

17 And the provision is extensive, and that's why I  
18 asked for the Office of Planning to add that to its report. It  
19 says that the University commits to proffer to BZA a condition  
20 restricting freshmen and sophomores living in Foggy Bottom/West  
21 End area from bringing cars to school or parking in the Foggy  
22 Bottom/West End area. In essence, this condition would provide  
23 that GW publish in University documents, for example, its  
24 catalogs and Internet communications, including its web site,  
25 this policy. Contrary to testimony on November 15 by the

1 University, this restriction on student parking applies campus-  
2 wide, not just for this GW site. It applies to all freshmen and  
3 sophomores campus-wide.

4 This amenity package is justified because GW's  
5 plans for institutional and dormitories would negatively affect  
6 WECA members with a variety of environmental, economic and  
7 social impacts. For example, there would be reduced on-street  
8 parking, increased traffic, negatively affected property values  
9 and substantial rent increases. Because of such impacts, 1957 E  
10 Street was specifically excluded by the D.C. City Council from  
11 the Central Employment Area, the CEA and is subject to the D.C.  
12 Environmental Policy Act. Unfortunately, DCRA erroneously  
13 informed GW that the site was in the CEA. As a consequence, GW  
14 did not prepare all the environmental documents which would have  
15 identified the full range of adverse environmental effects on  
16 WECA members. The bottom line is the various adverse effects  
17 justify the mitigation in the settlement agreement.

18 Unfortunately, ANC-2A chose not to participate --  
19 MS. ELLIOTT: Madam Chair, I object to the  
20 characterizations.

21 CHAIRPERSON MITTEN: Well, you can -- when you  
22 make your case, you can make those assertions, but as is typical  
23 when people disagree, they don't agree with each other's  
24 characterizations. So please proceed, Mrs. Kahlow.

25 MS. KAHLOW: Unfortunately, ANC chose not to

1 participate in the BZA-directed discussions that WECA  
2 participated in in mid-August. On November 5, ANC-2A passed a  
3 resolution merely objecting to GW's modification request, i.e.  
4 it did not identify any possible mitigation measures.

5 In sum, the WECA supports GW's PUD modification  
6 request on the condition that the Zoning Commission include in  
7 its order all substantive provisions in the WECA/GW agreement.  
8 WECA's principal objective has been realized. GW filed a PUD  
9 modification request and the settlement agreement provides  
10 amenities which replace those eliminated. Now, Ms. Maddox will  
11 go back in history. Thank you.

12 CHAIRPERSON MITTEN: Thank you.

13 MS. MADDOX: Well, first of all, I'm very sorry  
14 Mr. Parsons isn't here so we could compare gray hair, since we  
15 both started out with this and Mr. Feola as well. So that's how  
16 long I've been involved with this. I'm Sara Maddox, a resident  
17 of Monroe House Condominium at 522 21st Street, Northwest since  
18 February 1970. I appear before you as a member of the Board of  
19 Directors for the West End Citizens Association and a long-term,  
20 since 1990, participant in this case.

21 During the initial phases, I was the ANC  
22 Commissioner for this area and served as Chair of the Foggy  
23 Bottom/West End Advisory Neighborhood Commission, ANC-2A. I  
24 believe the materials in the record sufficiently document my  
25 extensive experience on this issue.

1                   When the Associated General Contractors, a non-  
2 profit organization and the original owners, decided to  
3 redevelop the property, a working group was formed to achieve  
4 the best possible results under the zoning regulations of the  
5 District of Columbia. The citizens wanted a residential  
6 presence, a compatible office building and ground floor retail  
7 functions to service the neighborhood. After a strenuous  
8 process, including the 1992 objection and the subsequent 1993  
9 support, ANC-2A came to an agreement on the amenities package,  
10 which did include retail, with the AGC and then ultimately  
11 supported the PUD project before this body.

12                   And I must say, he shall be nameless, but the  
13 architect almost drove me to the end of my mind as we fought  
14 over every little piece of construction material and the  
15 balconies and trying to make sure people wouldn't hang laundry  
16 on there. I mean the neighborhood took this building genuinely  
17 to heart for every little piece.

18                   As time went by and the economy of the District  
19 did not support the window of opportunity for the AGC to go  
20 forward with this project, the AGC gained extensions on the time  
21 frame of the PUD. In time, for their own reasons, and sadly for  
22 the neighborhood, the AGC decided to leave the District of  
23 Columbia and consequently put the property up for sale. When  
24 the Treasurer of the AGC called me to tell me they were selling  
25 it, it was with great sorrow that their Board had come to that

1 decision. We had worked long and hard to keep them in the  
2 District.

3 The purchaser of the property, the George  
4 Washington University, thus gained the advantages of the  
5 approved PUD. To the extent provided by the DCMR regulations,  
6 the residents of the neighborhood wanted the elements of the  
7 ANC-2A-supported PUD preserved and implemented, including the  
8 amenities. As I stated almost a decade ago, and it's still  
9 true, we need retail services in our neighborhood. The small  
10 businesses have continued to be wiped out by other development  
11 projects.

12 And an example, for instance, is the matter-of-  
13 right building such as the one at the northeast corner of 21st  
14 and I Streets. We lost a neighborhood drug store that made real  
15 milkshakes, we lost a dress shop where they could do  
16 alterations, and even, unfortunately, a fast food place. That's  
17 even missed. So we've lost more and more retail, and this is a  
18 real strong effort to get some retail back to bring citizens  
19 what they need to live there.

20 GW has now committed to provide the retail  
21 opportunities, and not without a lot of agony, and to charge  
22 rents accordingly, which reflects their lower property costs  
23 with a tax-exempt institution.

24 Additionally, to ameliorate the impact of GW's  
25 assumption of the PUD, there are provisions regarding the

1 traffic flow patterns and a GW commitment to a published and  
2 publicly stated policy of freshmen and sophomores not bringing  
3 personal vehicles to the Foggy Bottom/West End campus, which is  
4 like that of other higher educational institutions sited in  
5 urban areas. Thank God for Peterson's Guide to Collect, I got  
6 to read about 400 colleges and their policies.

7 Again, this has not been easy nor perfect. It  
8 seems that zoning-like democracy requires constant vigilance.  
9 Thank you very much.

10 CHAIRPERSON MITTEN: Thank you. Any questions,  
11 Mr. Hood, Mr. May? Okay. I just have one question about the  
12 amenity, the \$500,000 amenity. Given the focus of your  
13 organization on your neighborhood, why do you have sort of --  
14 why did you accept a more-ended amenity that would provide  
15 support for the poor and the elderly anywhere in the District of  
16 Columbia as opposed to targeting it to the neighborhood?

17 MS. KAHLOW: In the beginning of time, before you  
18 were on the Zoning Commission, and I testified on PUDs so I have  
19 extensive testimony on how we, at least my personal philosophy,  
20 not necessarily the organization's, that PUDs should benefit the  
21 immediately impacted community, the developers should get some  
22 benefits and so should the City at large, and every PUD in which  
23 we've been associated, I've been associated, sometimes with  
24 WECA, sometimes with the Foggy Bottom Association, has benefits  
25 to the entire community at large. The IMF PUD 1 had \$462,000

1 for a homeless feeding program located out of Foggy Bottom to  
2 benefit the City at large. The Millennium Square 51 project had  
3 \$100,000 for the D.C. Central Kitchen. The IMF-2 has \$100,000  
4 for the D.C. Central Kitchen. There are things that would  
5 benefit -- it's our community's obligation to be part of the  
6 greater City.

7 Now, since Scholl's has moved, we are hopeful  
8 that this new location will be within the Foggy Bottom/West End  
9 boundaries. Scholl's happened to be right across the way. And  
10 then it would benefit our residents as well as anyone else who  
11 would be coming into this facility. And we think that's our  
12 social obligation.

13 CHAIRPERSON MITTEN: Okay.

14 MS. MADDOX: May I add just a bit to that? There  
15 are many elderly people in our neighborhood that because of  
16 declining eye sight, lack of tactile ability, they don't cook  
17 for themselves and really do eat out or take out food back home,  
18 because they really can't cook for themselves. And what we'll  
19 be looking for too is an entity or an institution someplace  
20 where they can easily go to continue to do that.

21 A lot of them were doing that in Scholl's, and  
22 that's why Scholl's came to mind. And then formerly the Soho  
23 Market, which was at the corner at 20th and Penn, they would eat  
24 there for lunch and then they would take food home in a plastic  
25 box for dinner, because they had a buffet kind of choice. So

1 we're looking for that sort of thing to accommodate those in our  
2 neighborhood who are not adept at cooking for themselves  
3 anymore.

4 CHAIRPERSON MITTEN: Thank you. Mr. Hood?

5 MR. HOOD: Madam Chair, I just have a quick  
6 question, I guess, for Ms. Kahlow. The majority of your West  
7 End Citizens Association, do they intertwine or intermingle with  
8 the ANC? Is it the same neighborhood?

9 MS. KAHLLOW: The boundaries of the ANC, the Foggy  
10 Bottom Association and the West End Citizens are close but not  
11 identical. The West End goes a little further east, including  
12 up to 15th Street. But the WECA members, the presidents there,  
13 and I go to every ANC meeting, as many as we can possibly  
14 attend.

15 MR. HOOD: Does it overlap? So it doesn't  
16 overlap.

17 MS. KAHLLOW: The boundaries, as I say, do  
18 overlap, though the West End is larger. The West End has more  
19 area.

20 MR. HOOD: So you have members of the West End  
21 Citizens Association who are also members of ANC-2A also.

22 MS. KAHLLOW: Yes. Well, let me just say that the  
23 Foggy Bottom Association is focused out of the Foggy Bottom  
24 Historic District. The West End Citizens Association is focused  
25 in the GW area, though they have members in both areas. And the

1 ANC covers both the Foggy Bottom Historic District area as well  
2 as the GW campus area. So we all are very close and talk to  
3 each other. We just have different points of view sometimes.

4 MR. HOOD: Which association is most affected,  
5 West End Citizens?

6 MS. KAHLOW: Speaking from -- I believe so, but  
7 -- I don't know if that's universally agreed to, but I think so  
8 in --

9 MS. MADDOX: Mr. Hood, if I may add also, because  
10 the West End has meetings during daylight hours, a lot of the  
11 elderly in our neighborhood don't come out at night for the ANC,  
12 but they do come out during the daylight hours for the meetings  
13 for the West End. So it's another challenge of our  
14 communications. And also we have an informal meeting time  
15 afterwards so we can hear people out and talk to them. We have  
16 speakers from the City who come and crave more information. So  
17 it's a more informal opportunity to get more information out and  
18 about and also to get feedback.

19 MR. HOOD: Okay. Thank you.

20 MS. KAHLOW: I wanted to also say because the  
21 boundaries are larger in the West End, there are people that are  
22 across the City. Ms. Mitten often comes, people like Jim  
23 McGrath, Terry Lynch. A number of people that don't go to our  
24 ANC meetings and don't go to Foggy Bottom do come to the West  
25 End, so it's a larger organization in terms of boundaries.

1 MR. HOOD: Okay. Thank you.

2 CHAIRPERSON MITTEN: Mr. Feola, any questions?

3 MR. FEOLA: No, ma'am.

4 CHAIRPERSON MITTEN: Ms. Elliott, any questions?

5 MS. ELLIOTT: Yes. Ms. Kahlow, you said that  
6 West End was Intervenor in this BZA appeal and was the ANC also  
7 not in that appeal?

8 MS. KAHLOW: Yes.

9 MS. ELLIOTT: Okay. And West End appealed the  
10 balconies, the garage entrances and the garage spaces and the  
11 retail. And the ANC approached it from the complete change in  
12 the use from the original PUD, is that not correct?

13 MS. KAHLOW: I'm not sure. I thought we all had  
14 the same stuff, which was the change in the use as well as the  
15 change in the specifics. I thought we both did the same. I  
16 don't remember that difference.

17 MS. ELLIOTT: Okay. Thank you. In the original  
18 PUD, wasn't the -- from my recollection, in the reading of it,  
19 the retail space was attached to the commercial portion of the  
20 building. It was to be something like a bookstore attached to  
21 AGC. It was not going to be -- there was nothing specific other  
22 than that, but it was going to be related to the AGC in that  
23 portion of the building, not in the residential portion of the  
24 building.

25 MS. KAHLOW: The commercial in the AGC PUD, and

1 Ms. Maddox can correct me, I think I've got it right, didn't  
2 have specifications. The AGC would not be running it; it would  
3 be renting the space to a private retail tenant.

4 MS. ELLIOTT: That's your recollection of it.

5 MS. KAHLOW: That is correct.

6 MS. ELLIOTT: All right.

7 MS. KAHLOW: I've read the order.

8 MS. ELLIOTT: Well, so did I. In your agreement,  
9 you talk about housing on this site juniors, seniors, graduate  
10 students and students enrolled in an Honors Program. And under  
11 the BZA order, GW is contending that it needs to house  
12 undergraduate students, so I'm a little confused about this. So  
13 are we going to put grad students in here as well as  
14 undergraduate students?

15 MS. KAHLOW: As you know, these were on parallel  
16 tracks, these two cases. And the West End thought that they  
17 wanted students with maturity. Juniors, seniors, graduate  
18 students and students enrolled in the Honors Programs is what's  
19 --

20 MS. ELLIOTT: No, I'm just asking if you're --

21 MS. KAHLOW: -- directed, and that's what the  
22 agreement was.

23 MS. ELLIOTT: -- I'm just asking --

24 CHAIRPERSON MITTEN: Ladies, ladies, ladies.

25 MS. ELLIOTT: I'm just asking if you're going to

1 include graduate students in this -- if you're planning to  
2 include graduate students. I don't want an exposition on the  
3 reasons for it. I'm just asking what the difference is.

4 MS. KAHLOW: The agreement includes graduate  
5 students. It was signed before the campus plan was finished.

6 MS. ELLIOTT: All right. And in fact ANC  
7 commissioners -- there are no ANC commissioners that sit on your  
8 West End Citizens Association Board or are members of the West  
9 End Citizens Association.

10 CHAIRPERSON MITTEN: Are you asking her a  
11 question?

12 MS. ELLIOTT: Yes, I'm asking you that.

13 MS. KAHLOW: There have been. I don't know if  
14 there is or isn't now.

15 MS. ELLIOTT: Okay. And one last question: How  
16 often are your West End Citizens Association meetings?

17 MS. KAHLOW: Quarterly.

18 MS. ELLIOTT: Thank you.

19 CHAIRPERSON MITTEN: Thank you both for coming  
20 down tonight. Now, on my list of witnesses, I don't see any  
21 individuals that have signed up to testify in support. Is there  
22 anyone who'd like to testify in support? All right. Then we'll  
23 move to persons in opposition, and I have Mrs. Miller, Lactitia  
24 Combrinck, please come forward. And I'm just going to go with  
25 the first name here, Charlene. You don't want to testify?

1 Okay. Is there any other individuals who would like to testify  
2 in opposition? We'll put you forward now.

3 And, Mrs. Miller, I know that you had asked staff  
4 about having five minutes to testify, but you're here to testify  
5 as an individual, so you'll be allowed three minutes. You need  
6 to turn on your microphone if you're going to talk to us.

7 MS. MILLER: My name is Dorothy Miller, and the  
8 ANC gave authority to all of the commissioners to testify on  
9 behalf of ANC. That was the reason I was requesting the five  
10 minutes and the fact that I have trouble seeing right now.

11 CHAIRPERSON MITTEN: Well, the agreement about  
12 the way that the ANC's case was going to proceed was that Dr.  
13 Shalit would testify, and the rest of the ANC's case would be  
14 provided in writing. It wasn't the agreement that the  
15 individual ANC commissioners were going to be given the  
16 opportunity to piggyback on that. But let me ask Mr. Feola, in  
17 deference to the fact that Mrs. Miller had an eye operation  
18 recently, would you have any objection to five minutes?

19 MR. FEOLA: No objection.

20 CHAIRPERSON MITTEN: Okay.

21 MS. MILLER: Thank you.

22 CHAIRPERSON MITTEN: Mr. Bastida, we're going to  
23 -- or Ms. Sanchez, we're going to give five minutes to Mrs.  
24 Miller then.

25 MS. MILLER: My name is Dorothy Miller, and I

1 represent ANC-2A-05, and with the redistricting, this 122 now is  
2 in my single number district when they rearranged the ANCs. I  
3 would like to read what they said in the approval of the BZA.  
4 The Board of Zoning Adjustment actions are, to say the least,  
5 they've been unusual.

6 The ANC-2A appealed the Zoning Administrator's  
7 decision regarding this planned unit development. The first  
8 order, 16701, on ANC-2A's appeal, granted in part the Zoning  
9 Administrator's lack of authority to approve the elimination of  
10 the garage entrance, the elimination of the balconies, the  
11 change in the exterior materials and the change in the use of  
12 the part, as to the requirements for prior ANC notification of  
13 the building permit application and construction start and  
14 compliance with the Environmental Policy Act. Now, that was  
15 because they ruled it outside of the Central Employment Area --  
16 I mean inside when it was outside, so they should have done one.

17 And I would like to say, in answer to the other  
18 thing, is that as to negotiation on this property, I would like  
19 to call the Commission's attention to the fact that the West End  
20 Citizens Association is not the largest association in Foggy  
21 Bottom/West End area, it's the Foggy Bottom Association.  
22 Nevertheless, only ANC has the legal authority to represent the  
23 community before the District and government agencies. The  
24 citizens elected these members for this purpose, and attached is  
25 a copy of an article covering the community's reaction to the

1 West End Citizens Association's negotiations and what has  
2 happened since, and they are attached to my statement.

3 And the main point I want to make is that also  
4 attached to my statement is what the Part 122 looked like when  
5 they said the streets were unstable and what it looks like now.

6 I also attached my letter to Mr. Tagilini, the Director of  
7 Transportation, to -- wait a minute. GW asked to -- they asked  
8 for a stay the motion, and the reason they asked for stay the  
9 motion was that they wanted the contractor to stabilize the  
10 streets. The BZA accepted this statement without verifying that  
11 the person who made it had the credentials to support such a  
12 statement.

13 I asked the Director of the Department of Public  
14 Works to verify the conditions of the streets and if he found  
15 them unstable to close them and to put a stop work order on the  
16 project. Attached is a copy of my letter to the Director of  
17 Transportation and his reply.

18 I've also got the pictures showing what it looked  
19 like when they said the streets were unstable and what it looks  
20 like now. They have built two almost complete buildings, and  
21 that's without any approval from the Zoning Commission, which I  
22 really take offense that, because I think you're supposed to  
23 have approval before you start building.

24 Then they come in and say, well, if they  
25 destroyed them, they would be so financially hurt. If they

1 would, that was the choice they made to take. And the Office of  
2 Planning stated in there that the Foggy Bottom Association had  
3 not taken a position on this matter. The Foggy Bottom  
4 Association did not ask for party status but did concur with  
5 ANC-2A's resolution over on 11-A. A copy of the Foggy Bottom's  
6 letter was distributed to you all tonight, because for some  
7 funny reason, when they faxed it, it slipped between things,  
8 half went in and half didn't. So we got copies sent to you all,  
9 and Mr. Alberto Bastida said he was going to get them to you  
10 tonight.

11 CHAIRPERSON MITTEN: And he has.

12 MS. MILLER: Yes. Okay. Now, I really would  
13 like to call your attention to the --

14 CHAIRPERSON MITTEN: You have a minute left now.

15 MS. MILLER: Okay. Oh, the BZA required them to  
16 submit a written status report to the Zoning Commission on the  
17 effects of the planned construction on the campus parking, and  
18 I've given -- Mr. Bastida didn't have a copy of that, and I  
19 brought him a copy tonight, and they don't say which case it  
20 applies to, but the first thing on it says this Elliot School,  
21 which is within the campus now, which is against the regulations  
22 to be moved from within the campus to outside of the campus.

23 And the other thing is on the construction they  
24 list two or three places that do not -- in other words, they  
25 have never approved that they could use as a parking space the

1 Kennedy Center. And with the Kennedy Center now redoing  
2 everything, I don't see how they possibly could, and I think  
3 that subject came up. And the Zoning Commission has not  
4 approved and they have not built the 200 spaces the put in there  
5 for the Elliot School. And --

6 CHAIRPERSON MITTEN: Mrs. Miller, it's time to  
7 wrap it up.

8 MS. MILLER: Okay. You can see from my  
9 statement, and I've given you quite a few attachments that will  
10 explain to the people who did not hear this on the campus plan  
11 exactly what is going on at 16701. There were four orders -- or  
12 three orders made on that.

13 CHAIRPERSON MITTEN: Thank you.

14 MS. MILLER: And I've tried to cover them.

15 CHAIRPERSON MITTEN: Thank you. Ms. Combrinck.

16 MS. COMBRINCK: Good evening, Ms. Mitten and  
17 commissioners. My name is Lactitia. This is my code, and my  
18 home address is 532 20th Street, Northwest. I am a member of  
19 the Foggy Bottom community, President of the York Apartments  
20 Tenants Association and a member of both the West End Citizens  
21 Association and Foggy Bottom Association.

22 The York Apartments are in the block facing the  
23 GW building project in Square 122; that is to the west.  
24 Therefore, we are keenly aware of the impact of the outer  
25 surface and use of this building under construction, and we feel

1 that the elimination of the main community amenities package  
2 provided for the original PUD, namely about 50 residential  
3 units, is a loss to our neighborhood.

4 This was brought about when GW University assumed  
5 ownership of the site. The prospect of additional housing units  
6 for the community and substantial anticipated tax revenue  
7 generated from them and the business use of the building that  
8 the original owner was going to develop was certainly a bright  
9 and positive one for our community where residential housing  
10 stock has been reduced steadily.

11 Ever widening business and public needs have been  
12 the driving force that brought bulldozers to clear lots and in  
13 some cases whole blocks to make space, especially since the  
14 1950s, for the new homes of, amongst others, the World Bank, the  
15 IMF and the George Washington University. Preservation of  
16 residential space is a vital component of Foggy Bottom and for  
17 the City.

18 Not beneficial to this ideal was the new  
19 community's package proposed in an agreement reached August 17,  
20 2001 between the West End Citizens Association and the George  
21 Washington University. The main components being 3,300 square  
22 feet of street-level, quote, "community-oriented retail space,"  
23 close quote, in the Elliott School building.

24 CHAIRPERSON MITTEN: You have about a minute  
25 left, just so you have a sense of that. We'll read you written

1 testimony, so just hit the highlights for us.

2 MS. COMBRINCK: Well, we just do not feel that  
3 these benefits, as agreed in the so-called settlement, do not  
4 translate and the same benefits for the immediate neighborhood  
5 in the way that it would have reaped from primarily more housing  
6 opportunities provided by the original PUD and the potential tax  
7 income generated for the City.

8 Furthermore, the three negotiators who  
9 represented the WECA acted without the authorization of a  
10 resolution passed by the West End Citizens Association Board  
11 regarding an appropriate amenities package for the community.  
12 There was no evidence of a duly convened meeting of the Board,  
13 nor did the WECA President make any effort to notify the  
14 membership of the actions taken by him and two prominent and  
15 active members.

16 CHAIRPERSON MITTEN: You need to summarize now.

17 MS. COMBRINCK: In closing, Ms. Mitten, as  
18 evidence of the neighborhood's strong objection to both the  
19 above agreements and actions of the three WECA representatives,  
20 I would like to submit a petition signed by members of the Foggy  
21 Bottom community. And with them, I want to urge the Commission  
22 to withhold approval of GW's application for a modification of  
23 this PUD. Thank you for the opportunity to testify.

24 CHAIRPERSON MITTEN: Thank you. Did you have  
25 something that you were going to give us?

1 MS. COMBRINCK: Yes. I have copies of the  
2 petition signed by the community. I have 72 signatures.

3 CHAIRPERSON MITTEN: What is the nature of the  
4 petition? What's --

5 MS. COMBRINCK: To withhold approval of the  
6 modification -- the application of the modification of the PUD.

7 CHAIRPERSON MITTEN: Okay.

8 MS. COMBRINCK: Because we just do not feel that  
9 what is being suggested by the agreement reached between WECA  
10 and GW is in any way comparable to what the original PUD  
11 specified. In fact, we feel that WECA represented the whole  
12 community, and that was certainly not democratic. GW went ahead  
13 and negotiated only with one entity of the community, and that  
14 wasn't fair.

15 CHAIRPERSON MITTEN: Okay. Thank you. Any  
16 questions for either of these ladies? No? Mr. Hood?

17 MR. HOOD: Yes. I just want to follow-up on Ms.  
18 Cambrinck?

19 MS. COMBRINCK: Combrinck.

20 MR. HOOD: Combrinck. Some of the people who  
21 signed the petition, and I haven't had a chance to see it yet,  
22 but --

23 MS. COMBRINCK: I have it here.

24 MR. HOOD: We'll get it from you, but some of the  
25 people who signed it, are they also members of WECA? When you

1 say that you feel like they didn't represent the whole  
2 community, how was that representation done?

3 MS. COMBRINCK: I did not make a breakdown of the  
4 membership.

5 MR. HOOD: Okay.

6 MS. COMBRINCK: It was to represent the  
7 community, but some of them are members of both associations.  
8 The majority would have been from the Foggy Bottom Association,  
9 but they're all community --

10 MR. HOOD: One day somebody's going to have to  
11 explain all that to me, because I'm going to tell you, I'm  
12 thoroughly confused about that whole process over there. I have  
13 enough problems, I guess, in my own neighborhood.

14 Ms. Miller, let me ask you a question. Now, you  
15 stated that you're going to be the Commissioner for that single-  
16 member district, but that doesn't take effect until when?

17 CHAIRPERSON MITTEN: Turn on your microphone, Ms.  
18 Miller.

19 MS. MILLER: I understand they're going to be  
20 doing that when elections come up in the fall.

21 MR. HOOD: Next time, right. So right now you're  
22 not the Commissioner.

23 MS. MILLER: But it has been awarded to my ANC,  
24 so it's included as soon as the official records. And the  
25 reason is the Board of Elections and Ethics hasn't been able to

1 rearrange the roles yet.

2 MR. HOOD: But you will be the SMD Commissioner.

3 MS. MILLER: Yes, if I'm elected again.

4 MS. COMBRINCK: Ms. Elliott is now the  
5 representative for that area.

6 MR. HOOD: Ms. who?

7 MS. COMBRINCK: Ms. Elliott, Elizabeth Elliott.

8 MR. HOOD: Oh, okay. I probably asked you that  
9 last time, forgive me. Let me ask -- well, maybe I should ask  
10 her. Let me just ask you, Ms. Miller: Was there an SMD meeting  
11 held, single-member district meeting?

12 MS. MILLER: No, sir. The ANC meets, and most of  
13 the people that are in my district that come, come to the ANC  
14 meeting.

15 MR. HOOD: As a whole.

16 MS. MILLER: As a whole, because that's where we  
17 do most of the business. And our next meeting is on the 23rd.

18 MR. HOOD: Okay. Okay. Thank you, Madam Chair.  
19 Thank you.

20 MS. MILLER: And may I tell you that attached to  
21 my record also is the community's reaction to what Ms. Combrinck  
22 just told you.

23 CHAIRPERSON MITTEN: Thank you. Mr. Feola, any  
24 questions?

25 MR. FEOLA: No, ma'am.

1 CHAIRPERSON MITTEN: Mrs. Kahlow, any questions?  
2 Ms. Elliott, any questions? Thank you both.

3 MS. MILLER: Thank you.

4 CHAIRPERSON MITTEN: Now we'll have rebuttal by  
5 the Applicant. Give those to staff and I'll pass them down.  
6 Give him everything, and he'll make sure we get it.

7 MR. FEOLA: Thank you, Madam Chair. I think we  
8 only have a few minutes of rebuttal. I'd like to cover a couple  
9 of points that have been made tonight, and I'll let Mr. Barber  
10 start.

11 MR. BARBER: Thank you. My rebuttal will address  
12 two main issues, Dr. Shalit's presentation, and the discussion  
13 that was taking place with the Office of Planning on placing  
14 this within the context of the campus plan.

15 Dr. Shalit's presentation did reflect a lot of  
16 work. I wish we had received it sooner. Clearly it was a  
17 response to the University's December submission, and it sounds  
18 like he's had it for a little while. Dr. Shalit's a very nice  
19 gentleman, but the bottom line is we should have received Dr.  
20 Shalit's submission on January 4th since it was in direct  
21 response to what we had submitted.

22 If we had the response when it was due, we could  
23 have spent some time with it and we could have prepared a cross  
24 examination. We have waived our right to cross examine other  
25 aspects of the ANC's presentation. We can't afford to waive

1 cross examination of Dr. Shalit.

2           Having said that, there are a couple of points I  
3 want to bring up. I think Dr. Shalit incorrectly assesses the  
4 bond financial program as a subsidy given by the District of  
5 Columbia. The bond financing program, without getting too  
6 technical, is a creature of Federal law. It authorizes tax  
7 exemptions for worthy causes, and it authorizes, Federal law  
8 authorizes local governments to determine which projects are  
9 worthy.

10           The fact that this project has been so  
11 designated, I think point number one is that in itself it is a  
12 worthy project. It is a project with a lot of benefits in the  
13 minds of the District of Columbia, because it has been awarded  
14 tax exempt bond financing. Not all projects qualify for tax  
15 exemption. A lot of commercial projects would not qualify.  
16 That this project did, I think that speaks well of the project.

17 I think it speaks to the public benefits.

18           Secondly, we've made no attempt to deny the fact  
19 that we were required under that bond financing -- this is  
20 really a contract, no money comes to us. The bonds that mature  
21 only by the revenue of the George Washington University. So  
22 there's no money coming to us. On the contrary, we make a  
23 difference. That's what the program is all about. The money is  
24 going the other way. I think that what should have been a  
25 benefit is money from the bond financial program.

1                   On the First Source analysis, the analysis of the  
2                   employment program, the question is, what are the public  
3                   benefits? Now, looking at why GW is involved in that program is  
4                   not the issue. Our motives are not the issue. What we are  
5                   comparing, what I thought you were comparing, are the public  
6                   benefits that flow to the District from GW as opposed to the  
7                   presumed benefits that were going to flow from the AGC project.  
8                   That's the question.

9                   The question of -- Dr. Shalit highly discounts  
10                  our bond program because we were required to do it. That's  
11                  irrelevant. Why we are doing it is not the point. The point is  
12                  to look at the public. How are they going to benefit? There  
13                  are clear benefits to the District of Columbia from various  
14                  aspects of the tax free bond financing, irrespective of why the  
15                  University is doing it.

16                  With that perspective, all of our negotiated  
17                  benefits from the bond program are legitimate public benefits.  
18                  The District thinks so. That's why they imposed those  
19                  requirements on us. So they are clearly public benefits.

20                  On the First Source Employment program, we could  
21                  be here all night if we get into a discussion of the nature of  
22                  this. We are actually engaged in a discussion on how you  
23                  improve the program. I think the bottom line is, on this, is  
24                  that GW has participated in this program. The District thinks  
25                  this is a public benefit. The people who have been trained

1 think it's a benefit.

2 Again, I'm not going to get into the whole  
3 picture of that particular contract, but the bottom line is, at  
4 the end of the day they are all signed. They have completely  
5 gone beyond this project about the best way to run an efficient  
6 program, and that's beyond the scope of this hearing. But they  
7 had training on site. People were trained on site. They work a  
8 lot of the time with subcontractors on site.

9 The distribution of the local minority companies  
10 for the University has been maintained on the Elliot School  
11 site. I think they believe it's a benefit of that program. So  
12 clearly there were benefits.

13 And finally on Dr. Shalit's analysis, I think the  
14 bottom line is, that the main benefit of Dr. Shalit's analysis  
15 had going for the AGC was the money that they were presumed to  
16 grow on an tax revenue basis. I entirely respect what the  
17 neighborhood is worried about. They were actually going to  
18 occupy the entire space. They were going to support entirely  
19 LSDBs, which is a tax exempt organization, which were intended  
20 to occupy the entire section.

21 I urge you not to follow that analysis. It is  
22 following the trail that LSDBs are different issues.

23 Finally, on the ANC analysis, in here it is  
24 talking about the lack of benefits. I am disappointed that  
25 they, for their own reasons, chose not to participate in

1 negotiations. They could have put some benefits on this. The  
2 West End Citizens Association came. Other people could have  
3 come. We didn't deny anyone. Corporation counsel was  
4 represented. It was discussed in open hearings. We were urged  
5 to negotiate and the ANC decided not to. For them to come here  
6 tonight and say, well, GW just doesn't have sufficient public  
7 benefits, is surprising given their lack of participation in the  
8 settlement discussions.

9 Let me now turn to the context of this project  
10 within the campus plan, and the dialogue you engaged in with Mr.  
11 Fondersmith. I think it's fair to say that the central issue --  
12 Mr. Hood, your question really is a campus plan issue, that is,  
13 the question of university expansion in the larger context of  
14 Foggy Bottom.

15 I think the central issue in the campus plan, and  
16 certainly Ms. Mitten can correct me if I'm wrong, was how to  
17 balance the reasonable expectations of protection of the Foggy  
18 Bottom community. About that, I guess, also reasonable  
19 expectations of the University, in terms of reasonable growth  
20 and the need for space to provide housing. We wrestled with  
21 that. The University had a view about how that balance should  
22 be struck, the Office of Planning had a view, citizens had a  
23 view, but we all wrestled with that.

24 But, I think it's important to remember it wasn't  
25 one side. It's not just one group of needs here, protecting

1 Foggy Bottom community. There were the reasonable needs that  
2 need to be accommodated for George Washington University, and  
3 that was what was the subject of several months of protracted  
4 discussion with the Board of Zoning Adjustment. Ultimately the  
5 BZA struck a balance. Not the balance I would have struck, but  
6 they struck a balance, and they imposed some serious conditions  
7 on the University on housing its undergraduates, time frames,  
8 where they're supposed to be housed, first time frame kicking in  
9 in August 2002, certain percentage housed on our campus, or  
10 outside the Foggy Bottom, West End area, and then that  
11 percentage having to be housed by 2006 entirely on our campus.  
12 They are very stringent requirements.

13 In that same deliberation the BZA also took note  
14 of the Elliot School. They noticed the situation I pointed out,  
15 the context. They noted this is not a situation of the  
16 University coming in and displacing any current residents.  
17 There were no current residents there.

18 And so, even within the context of striking that  
19 tough balance, and imposing those tough conditions, the BZA  
20 supported by the Office of Planning said, the Elliot School is a  
21 different situation. Without prejudging the case that's before  
22 you, in terms of benefits and appropriateness of awarding a  
23 modification to the PUD, if you all decide that's appropriate,  
24 then we feel, the BZA feels, the Office of Planning feels it  
25 should come within the campus plan. Why? Because it's

1 appropriate to do so.

2 There is nothing about this University property  
3 on that square. There's University housing directly next door.

4 It's been there forever. The fact that you have another  
5 facility doesn't impose any more adverse impacts on that  
6 community. Not that that's a standard here in this case, but  
7 the BZA evaluated that within the whole context of the campus  
8 plan.

9 And, I know you weren't there, and I'm not going  
10 to go all the way through it, but I would submit that your  
11 concerns were addressed in the campus plan process, and even in  
12 addressing those concerns, both the Board of Zoning Adjustment  
13 and the Office of Planning concluded that with respect to this  
14 site, if the Zoning Commission approves, it should be included  
15 within the campus plan.

16 I think that's consistent. I'm not going to speak  
17 for the Office of Planning. I think that's consistent with the  
18 approach the Office of Planning took, because they were also  
19 trying to balance competing needs, and they recognized that the  
20 University needs space to provide the beds that everyone's  
21 urging us to provide. And they want us to do it on campus.  
22 They said if it's approved, this will become on campus.

23 MR. BARBER: I think my only closing is that this  
24 case -- those issues were addressed in the campus plan. It's a  
25 separate case, and that balance was struck that even the parties

1 there that I've named recognize that there's certain fairness to  
2 George Washington that this project be included in the campus  
3 plan, if the Zoning Commission decides to approve the amended  
4 application of the -- the amended PUD. Thank you.

5 CHAIRPERSON MITTEN: Thank you. Any questions on  
6 the rebuttal? Mr. Hood?

7 MR. HOOD: Madam Chair, thank you. I just wanted  
8 to piggyback on what I said previously. I think, Mr. Barber, my  
9 issue was not to reopen the George Washington campus plan,  
10 because I know it's very limited. But I will tell you that my  
11 concern to Office of Planning was through all of that what kind  
12 of planning mechanism do we have in place for the neighborhood  
13 action, all this high-tech stuff we have going on now in the  
14 City and everybody's at the table?

15 If this were to be approved, and I'm not saying  
16 that the University should stop expanding or stop growing.  
17 Maybe you might want to sometime look outside that envelope and  
18 come over to another ward or something. I'm just throwing that  
19 out there. But what I'm saying is what type of planning  
20 measures -- and that was directed to the Office of Planning, not  
21 necessarily to GW or to the community. It isn't in the report.

22 They said that they had a concern about the expansion in the  
23 community. So if you have that concern, I want to know what  
24 plans are being in process to mitigate the next building, and  
25 then we're down here doing another PUD and we're going to expand

1 it this or that way.

2 And I'm not condemning expansion. What I'm  
3 saying is the plan should be in place. And I understand, I know  
4 it's a lot of balance that took place, and, again, I'm new to  
5 this, I'm new to this trying to balance thing. I just want to  
6 know what was in place from the Office of Planning, not from GW,  
7 not from the community or not from the Commission. I'm looking  
8 to the planners.

9 MR. BARBER: I understand that you're interested  
10 in the Office of Planning, but I again submit that the campus  
11 plan order is the plan. We're not allowed to challenge housing  
12 in Foggy Bottom. The residences, the facilities that we own  
13 are outside the campus plan. That was one of the aspects of the  
14 order. It certainly put certain limitations on the University,  
15 and without again going into the campus plan, the campus plan  
16 order was designed to address that issue. I'm not here to  
17 defend that campus plan order; I think it speaks for itself.

18 But, again, the Office of Planning can speak for  
19 itself and it's going to do that reconciliation, I believe. But  
20 I have found their position to be consistent. They had these  
21 concerns, but they were able to see Elliot School in a different  
22 context, and they weren't waiving their position on other  
23 aspects. But, again, I'll leave that to the Office of Planning.

24 Your question's addressed to the Office of Planning, and I'll  
25 let them answer it.

1 MR. HOOD: Yes. I think they're going to answer  
2 it at a later time. I also have a note here to myself, how to  
3 improve the program.

4 MR. BARBER: DOES.

5 MR. HOOD: Oh, yes, that was it. You will  
6 obviously have some information -- you've already had  
7 discussions with Council Member Katanya, who I've already spoken  
8 to myself.

9 MR. BARBER: Yes.

10 MR. HOOD: Do you have it written? And, Madam  
11 Chair, this is going --

12 CHAIRPERSON MITTEN: No, we want to know as much  
13 as we can.

14 MR. HOOD: We have some things that are coming  
15 up, and that may be able to help us when we go to the table.

16 MR. BARBER: Let me -- I can get you some  
17 information on that that we have participated in. What we --  
18 let me try to summarize it in a nutshell. Our experience with  
19 Miller and Long revealed a lot of things to us. I personally  
20 participated in lengthy negotiations with the Department of  
21 Employment Services and Miller and Long in trying to bring those  
22 parties together. And Miller and Long felt they had a better  
23 way to train people that didn't fit within the confines of the  
24 DOES regulations. They felt and long believed that they U.S.  
25 regulations were outdated -- they're 30-, 40-year regulations --

1 and there are better ways to train people in the construction  
2 industry.

3 In some sense, GW's caught between a rock and a  
4 hard place, because we don't train construction workers, but we  
5 hired Miller and Long, and we wanted them to the table, and  
6 ultimately they came to the table. Ultimately, they signed, and  
7 ultimately they did train. But they -- Miller and Long believe  
8 that those regulations that DOES operates and therefore  
9 certifying apprenticeship programs needs to be broadened to take  
10 into account -- and quite frankly, they believe that the rules  
11 favor union shops at the expense of non-union shops. And they  
12 believe they need to be made fair and broader.

13 We are participating in those discussions, and I  
14 think there are some recommendations that are in draft that I  
15 can get you. I think they're closer to being finalized. They  
16 will be submitted to Katanya about how to improve that program  
17 and how to broaden with it, with the goal that I think everyone  
18 shares which is to improve the training mechanisms, training  
19 programs in the District of Columbia.

20 MR. HOOD: Okay. Madam Chair, if that's an  
21 order, if they could give that to staff. I don't know if that's  
22 an order for this case or not, but --

23 CHAIRPERSON MITTEN: It doesn't have to be  
24 submitted for the record of this case, but we have an ongoing --  
25 we're in an ongoing effort to try and make the First Source

1 agreement and the memoranda of understanding really result in --  
2 achieve the expectations, and we've discovered, and as you  
3 discovered, that the expectations are not being achieved. And  
4 we want, if they're going to be offered as amenities to PUDs --

5 MR. BARBER: We want them to be real.

6 CHAIRPERSON MITTEN: -- we want them to be real.

7 MR. BARBER: I understand. I'd be happy to  
8 submit the recommendations that GW's been associated with.

9 CHAIRPERSON MITTEN: Thanks.

10 MR. HOOD: Thank you.

11 CHAIRPERSON MITTEN: Ms. Elliott, any questions?

12 MS. ELLIOTT: I just have one question. You  
13 talked about the campus plan. I was wondering if you have made  
14 a decision to proceed in the federal case against the City and  
15 the BZA in the campus plan case?

16 MR. BARBER: Yes, we have. We've elected to  
17 proceed with that case. GW's view is that the balance struck in  
18 that case was not the correct balance, and we are acting to  
19 pursue it.

20 CHAIRPERSON MITTEN: Mrs. Kahlow, any questions.

21 MS. KAHLOW: No.

22 CHAIRPERSON MITTEN: Okay. Did you want to make  
23 a closing statement?

24 MR. FEOLA: May I?

25 CHAIRPERSON MITTEN: Sure.

1 MR. FEOLA: Thank you, Madam Chair, members of  
2 the Commission. Appreciate your indulgence on a pretty  
3 controversial and complicated case. I don't think anyone in  
4 this room, including the opponents, would deny that there's an  
5 existing PUD order that would enable the University, as the  
6 owner, to build this building, subject to the design changes we  
7 talked about in November. And in fact the design changes have  
8 seemed to faded out of the radar screen. No one has complained  
9 that the balconies are being enclosed or that we're eliminating  
10 a not-so-attractive parking garage entrance or a loading dock,  
11 et cetera.

12 So what we're talking about is really not how big  
13 the -- untypical for a Zoning Commission PUD -- we're not  
14 talking about how big the building should be or the color of the  
15 windows or the shadows it casts or any of the traffic that's  
16 generated. We're talking about who is the ultimate user of this  
17 building, because I think we all -- assuming that you would  
18 approve those minor design changes, which I just mentioned, the  
19 University could put in a commercial office use. They could  
20 rent these apartments to me and you and everyone else. Or they  
21 could sell it to Charles E. Smith or Car America and they could  
22 do it. So we're not talking about traditional land use things  
23 that come before the Commission.

24 What we're really talking about is, is it  
25 appropriate to let the University use this previously approved

1 PUD, subject to those design changes? Is it appropriate for the  
2 University, as owner of that apartment to allow only student to  
3 live in it, notwithstanding that the AGC could have done the  
4 same thing. The AGC could have built this apartment building  
5 like the Statesman, which is owned by Charles E. Smith, which is  
6 right around the corner, and virtually all the apartment units  
7 are rented to GW students. So we're not talking about really  
8 what the change of use is in the residential; in fact, I think  
9 the BZA recognized that by not overturning the Zoning  
10 Administrator with regard to the residential.

11 So we're now talking about the academic side of  
12 this project. As you heard testimony before last time by the  
13 architects, 82 percent of the commercial side of this PUD is  
14 still going to be used for offices. They're going to be used  
15 for GW offices, no doubt. It's going to be used by faculty and  
16 staff, et cetera, et cetera. Again, AGC built this building.  
17 They could have rented 82 percent of this building to GW or  
18 Catholic or Harvard as university use. We wouldn't be here  
19 before with a PUD modification.

20 So now we're down to talking really about 18  
21 percent of the commercial building, which is going to be used  
22 for classrooms. This is really the only different use that this  
23 application asks this Commission to look at, academic  
24 classrooms. We would submit that the benefits that go beyond  
25 the cost/benefit analysis that we heard and debated to have the

1 University use are important. And it goes directly, I think, to  
2 the heart of Mr. Hood's comment about the campus plan.

3 The University, we know, has to expand. All good  
4 institutions have to grow. The Elliot School, which is growing  
5 in reputation, needs a new facility. This opportunity, which  
6 doesn't displace any persons, takes a piece of property, which  
7 for those of you who don't remember, was two-thirds surface  
8 parking lot. That red strip along E Street was primarily a  
9 surface parking lot, and on the eastern third of the building,  
10 there was a four-story 1950s office building that was about  
11 35,000 square feet. So the University took this opportunity to  
12 place the Elliot School there. Believe me, that took away the  
13 pressure, if you will, to buy more property at Foggy Bottom to  
14 put the Elliot School someplace else. It seems like a -- as  
15 Commissioner May said last time, it was an opportunity, it was  
16 an opportunity. No one's displaced. We're taking a  
17 commercially zoned property and reusing it. Yes, it is outside  
18 the campus plan but barely and now we're asking you to put it  
19 in. I don't think the BZA or the Office of Planning ever said  
20 that the campus plan boundary can never expand. I don't think  
21 that's the case. If the GSA came for sale, maybe we would be  
22 before you talking about expanding the campus plan boundary to  
23 include the GSA building.

24 So I think, on balance, when you look at this  
25 from a land use perspective and try to put aside the emotions,

1 the land use difference between this and the AGC is only 18  
2 percent of the commercial side being used as academic space. We  
3 think that the benefits that this brings, and, again, it's an 18  
4 percent difference of a speculative office building that was  
5 never built, never been financed, never went forward, outweigh  
6 all the potential negatives of taking this property off the tax  
7 roll, which it was off the tax roll, by the way, when AGC owned  
8 it. We were hoping, as counsel to the AGC -- as Ms. Maddox  
9 said, that we could build something here for the AGC which would  
10 add to the tax benefits, but they could never do it, and believe  
11 me they tried.

12 So just in summation, I would like to say that  
13 nothing -- in your deliberations on this case, there's nothing  
14 in here that really changes the underlying concept of the  
15 approval this Commission gave the AGC in 1993. It will still  
16 result, as your order says, 746 said, the development of a well-  
17 planned residential/commercial mixed use development, attractive  
18 and efficient in overall planning and design, and it will not  
19 change the impact on the surrounding community from that land  
20 use and traffic and noise impact that you understood in 1993.  
21 And, as we pointed out in our December 14 filing, that still, as  
22 the Office of Planning terms, it's consistent with over 40  
23 different provisions of the comprehensive plan.

24 So we urge you to take a look at this project.  
25 The project is being built, and we think occupants by the

1 University is a benefit to this community and this City as  
2 opposed to trying to rent it in the public market. So thank you  
3 for your time and for your patience.

4 CHAIRPERSON MITTEN: Thank you, Mr. Feola. Now,  
5 let's talk about the schedule and a few people have mentioned we  
6 are expecting an additional submission from the Office of  
7 Planning and the rest of the ANC.

8 SECRETARY BASTIDA: We'll have two submissions  
9 from the Office of Planning, I believe. One is the Office of  
10 Planning to address the policy differential between expansion --  
11 previously denying the expansion of the University and now  
12 endorsing it.

13 CHAIRPERSON MITTEN: Yes, that's right.

14 SECRETARY BASTIDA: And the other was OP is to  
15 address the George Washington issues.

16 CHAIRPERSON MITTEN: The issue that was raised by  
17 Mr. Kahlow.

18 SECRETARY BASTIDA: Right.

19 CHAIRPERSON MITTEN: Right.

20 SECRETARY BASTIDA: Okay. We are -- the ANC  
21 proposed a ten-day time window to submit the remainder of his  
22 testimony, and that would be due at noon on Monday, January the  
23 28th. The ANC would serve all the parties regarding that  
24 submission. The parties have until Tuesday, February the 5th to  
25 respond it. The Office of Planning's submission should be done

1 by -- we can either set it for Monday, January 28 or February 5.

2 I would rather have it on Monday, January 28. That way we'll  
3 have enough time to provide it to the commissioners.

4 CHAIRPERSON MITTEN: Well, what opportunity is  
5 there for the parties to respond to whatever --

6 SECRETARY BASTIDA: Okay, right. The Office of  
7 Planning is to make a submission for Monday, January 28, and  
8 then the parties have till Tuesday, February 5 to answer to it.

9 And then findings of fact and conclusions of law has to be  
10 provided also by Tuesday, February the 5th, at the latest. It  
11 can be provided earlier. In that way, the subject could  
12 probably be on the February Commission agenda.

13 MR. FEOLA: What day is that?

14 SECRETARY BASTIDA: February 11.

15 CHAIRPERSON MITTEN: I'm going to be absent at  
16 our February 11 meeting, so we may decide to hold off. I don't  
17 think it's going to change your plans any, is it?

18 MR. BARBER: Change of plans, no. The cloud over  
19 the property just will remain a little longer. We're, of  
20 course, anxious to dispel the cloud, but whenever you can  
21 properly address this, then certainly we would appreciate you  
22 being there.

23 CHAIRPERSON MITTEN: Thank you.

24 MR. BARBER: What date are we looking at?

25 CHAIRPERSON MITTEN: Do you know what the date of

1 the March meeting is?

2 SECRETARY BASTIDA: Yes. It's March 11 also.  
3 It's -- February has 28 days.

4 CHAIRPERSON MITTEN: Okay. And I mean not to --  
5 that probably would be the earliest opportunity. But if we were  
6 to have a special public meeting for some purpose, it's possible  
7 we could make a decision at a special public meeting. But it's  
8 unlikely that we would have one during the month of February.

9 MR. HOOD: And, also, Madam Chair, Mr. Parsons is  
10 not participating. And if you weren't here in February, that  
11 leaves us with three, and I think it's better for the City to  
12 make sure we have as many participate as possible.

13 CHAIRPERSON MITTEN: I agree.

14 SECRETARY BASTIDA: Well, Mr. Hannaham  
15 participated on the initial hearing. I will provide him with  
16 the remainder of the record, and if he decides -- chooses to  
17 read it, then he can participate.

18 MR. FEOLA: Given the March date then --

19 SECRETARY BASTIDA: March 11.

20 MR. FEOLA: -- might it not be possible to loosen  
21 some of the time frames to --

22 CHAIRPERSON MITTEN: You'll have to talk to Mr.  
23 Bastida about that. He likes to run a tight ship.

24 SECRETARY BASTIDA: If March 11 is the date, I'm  
25 sure the ANC will be delighted. So I can give you more time.

1 MR. FEOLA: Well, I was thinking more of the  
2 findings of fact. Everything's due -- I mean the responses are  
3 all due at the same time, and everybody's got a lot of things to  
4 do. So I was thinking if we could keep the submissions and  
5 responses to the tight time frame and give everybody two more  
6 weeks to do the findings of fact.

7 MR. BARBER: With all due respect, my outside  
8 counsel has to respond February 5 to both the Office of Planning  
9 and to the ANC. And then to have the findings of fact due the  
10 same day is a bit much. So could we push the findings of fact  
11 back a little bit?

12 SECRETARY BASTIDA: I would like to then ask the  
13 ANC what their time frame is in order to be fair to everybody  
14 and also to the West End Citizens Association.

15 MS. KAHLLOW: I think that January 28 is more than  
16 fair for the ANC. They should have submitted testimony today.  
17 And February 5 is okay for responding to the OP and ANC, but I  
18 do think the findings of fact another week would be good. Just  
19 one extra week would be helpful. So instead of February 5, how  
20 about February 12, just give us an extra week.

21 SECRETARY BASTIDA: Thank you. Ms. Elliott?

22 MS. ELLIOTT: Thank you. I concur with that.

23 SECRETARY BASTIDA: Great. Then finding of facts  
24 should be provided to this office on Tuesday, February 12, by 12  
25 noon. Thank you.

1 MR. BARBER: Thank you.

2 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.  
3 It's so nice to see you sitting at the table without being  
4 together.

5 MR. SHALIT: It only happened because he was  
6 sitting right here.

7 (Laughter.)

8 CHAIRPERSON MITTEN: Ladies and gentlemen, I'd  
9 like to thank you for your patience and your participation in  
10 this hearing. The record in this case is closed, except for the  
11 information or reports that we specifically requested and must  
12 be filed as indicated by the schedule that Mr. Bastida just  
13 articulated. Please note that all filings are to be made no  
14 later than noon of the date specified.

15 The Commission will make a decision on this case  
16 at one of its regular monthly meetings following the closing of  
17 the record, and we're shooting for March. These meetings are  
18 held at 1:30 p.m. on the second Monday of each month with some  
19 exceptions, and February is one of those, and are open to the  
20 public. If any individual is interested in following this case  
21 further, please contact staff to determine whether this case is  
22 on the agenda of a particular meeting. I now declare this  
23 public hearing closed.

24 (Whereupon, at 9:35 p.m., the Zoning Commission  
25 meeting was concluded.)

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