

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

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IN THE MATTER OF:	:
	:
AMERICAN UNIVERSITY	: Case No.
CAMPUS PLAN AND FURTHER	: 11-07
PROCESSING	:
-----	:

Monday,
November 7, 2011

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

The Public Hearing of Case No. 11-07 by the District of Columbia Zoning Commission convened at 06:30 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
MICHAEL G. TURNBULL, FAIA, Commissioner
(OAC)
PETER MAY, Commissioner (NPS)

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation
JOEL LAWSON

The transcript constitutes the
minutes from the Public Hearing held on
November 7, 2011.

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

2 6:32 p.m.

3 CHAIRMAN HOOD: Good evening,
4 ladies and gentlemen. This is a public
5 hearing of the Zoning Commission of the
6 District of Columbia, Monday, November 7th,
7 2011.

8 My name is Anthony Hood.

9 Joining me are Commissioners May
10 and Turnbull. Office of Zoning Staff Ms.
11 Sharon Schellin. Office of Planning Ms.
12 Steingasser and Mr. Lawson.

13 Again, we are reconvening Zoning
14 Commission Case Number 11-07.

15 Notice of today's hearing was
16 published in the D.C. Register on April 1st,
17 2011.

18 The hearing will be conducted in
19 accordance with provisions of 11 DCMR 3117 as
20 follows: Preliminary matters, cross
21 examination of Applicant's rebuttal and
22 Applicant's closing.

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1 Only parties and the Applicant's
2 witnesses should fill out two witness cards
3 prior to the cross examination of the
4 Applicant. These cards are located to my left
5 on the table hear the door.

6 Would all of the Applicant's
7 rebuttal witnesses please rise to take the
8 oath?

9 Ms. Schellin, would you please
10 administer the oath?

11 MS. SCHELLIN: Please raise your
12 right hand. Do you solemnly swear or affirm
13 the testimony you'll give this evening will be
14 the truth, the whole truth and nothing but the
15 truth?

16 Thank you.

17 CHAIRMAN HOOD: Okay. Again, we
18 know that the subject of this evening's
19 hearing is Zoning Commission Case Number 11-07
20 as I already stated. This is a request by
21 American University for special exception
22 relief pursuant to 210 and 3104.1 of the

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1 Zoning Regulations.

2 I think that we have met enough
3 times that I don't have to read that whole
4 opening statement and I will just incorporate
5 the record to follow the other transcripts
6 that precede this one.

7 Okay. Ms. Schellin, do we have
8 any preliminary matters?

9 MS. SCHELLIN: No, sir.

10 CHAIRMAN HOOD: Okay. Tonight, we
11 have a very limited -- we're doing cross on
12 rebuttal and rebuttal only, any submissions
13 that came in for rebuttal, any testimony that
14 came in on rebuttal. Please do not open --
15 try to reopen the whole campus plan case.

16 We've heard a lot. We have a lot
17 to go through and we have it. So, let's just
18 cross examine. Make Mr. May and Mr.
19 Turnbull's job a lot easier tonight and please
20 let's not get into the whole case.

21 I want you all to understand this
22 Commission has heard it.

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1 Commissioners, anything else?
2 Anything you want to add?

3 Do you agree with my statement or
4 do you want me to take it back?

5 COMMISSIONER TURNBULL: Totally.

6 CHAIRMAN HOOD: Okay. All right.
7 Okay. So, Mr. Tummonds, do you have any
8 preliminary? Are you ready?

9 MR. TUMMONDS: We're ready.

10 CHAIRMAN HOOD: Okay. You may
11 begin.

12 What are we doing, Ms. Schellin?
13 Oh, that's right. We're doing cross
14 examination?

15 MS. SCHELLIN: Yes.

16 CHAIRMAN HOOD: Okay. Let's see
17 who we're going to start with. Chairman
18 Smith, ANC 3D

19 MR. SMITH: Thank you, Mr.
20 Chairman.

21 CHAIRMAN HOOD: Excuse me,
22 Chairman Smith. Let me just ask about how

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1 many questions do you have and about how much
2 time do you think you'll need.

3 MR. SMITH: I am hoping -- it will
4 depend upon the answers, but I think have
5 probably about 20/30 minutes.

6 CHAIRMAN HOOD: Okay. Good.

7 MR. SMITH: But, it will depend
8 upon the answers.

9 CHAIRMAN HOOD: Okay. All right.
10 Thank you.

11 MR. SMITH: I think most of my
12 questions are yes and no. If they are
13 answered that way, we'll be out of here fast I
14 promise you.

15 CHAIRMAN HOOD: My boss used to
16 tell me -- she'd say answer the question yes
17 or no. Sometimes -- I shouldn't say this.
18 Sometimes I can't do that. But, anyway, we'll
19 try. Okay.

20 MR. SMITH: First, Mr. Abud,
21 Jorge, if I could, just for clarification, are
22 you considering including a condition in the

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1 plan requiring students or any segment of the
2 student population to live on campus?

3 MR. ABUD: No, we're not.

4 MR. SMITH: Okay. In setting the
5 cap, should the cap number be set and linked
6 to the amount of campus provided housing that
7 you actually have available?

8 MR. TUMMONDS: Do you understand
9 the question, Mr. Abud?

10 MR. ABUD: Are you talking about
11 the overall enrollment cap?

12 MR. SMITH: Yes.

13 MR. ABUD: I don't think it's a
14 necessarily direct correlation. Obviously,
15 there's some relationship, but I don't think
16 it's a direct correlation.

17 MR. SMITH: Okay. Maybe I could
18 ask the question better by saying what you do
19 now is you outline the cap and then you talk
20 about the housing.

21 Should you determine the amount of
22 the housing you're going to have available and

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1 then work backwards to set the cap to insure
2 that your cap is no higher than what you would
3 be required to provide in terms of housing?

4 Does that provide any additional
5 clarification?

6 MR. ABUD: No. The issue is that
7 the cap addresses many different populations.
8 Whereas, housing only addressed the
9 undergraduate population.

10 MR. SMITH: Okay. Currently,
11 you're required to have enough housing
12 available to house about 85 percent of all
13 freshmen and sophomore, but your plan in March
14 originally proposed 100 percent.

15 Is that still what you're
16 proposing?

17 MR. ABUD: Yes, we can meet the
18 requirement.

19 MR. SMITH: Okay. Ms. Buffington,
20 since these hearings began on June 9th, have
21 any changes been made in the siting of the
22 buildings on the East Campus?

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1 MS. BUFFINGTON: No.

2 MR. SMITH: Jorge, would you mind
3 putting up slide 27 of your -- we know each
4 other. I feel like I can call you Jorge.
5 Okay?

6 MR. ABUD: Please.

7 MR. SMITH: No, 27. The one --

8 MR. ABUD: I'm getting that.

9 MR. SMITH: Okay. I think that's
10 it. Thank you. That's fine.

11 You compared the impact of the
12 East Campus on nearby residents by making
13 comparisons to the Katzen Center and Nebraska
14 Hall on Thursday. Katzen isn't really a
15 residential facility. Is that correct?

16 MS. BUFFINGTON: It is not a
17 resident facility.

18 MR. SMITH: Okay. Are you aware
19 that there's a berm between Katzen and the
20 neighboring homes and a six-foot solid fence
21 on top of that berm?

22 MS. BUFFINGTON: I don't know the

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1 details of the landscaping at Katzen.

2 MR. SMITH: Okay. Mr. Miller,
3 generally, does a berm help to reduce
4 undesirable noise?

5 MR. MILLER: If it's of the
6 correct type, yes, I testified last time.

7 MR. SMITH: Okay. Ms. Buffington,
8 are you aware that the majority of the windows
9 along the rear of Katzen do not open?

10 MR. TUMMONDS: Is that --

11 MR. SMITH: That's --

12 MR. TUMMONDS: Jorge, do you have
13 -- yes, but you want to see who -- I think
14 Jorge might be the most appropriate person to
15 tell you how many windows open in Katzen.

16 MR. SMITH: I don't really care
17 who, but I'm --

18 MR. TUMMONDS: Yes, and that's why
19 I'm going to get you Jorge --

20 MR. SMITH: This is in reference
21 to what -- to Ms. Buffington's --

22 MR. TUMMONDS: But, if you want

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1 the answer, Jorge can give you the answer.

2 MR. SMITH: Fine.

3 MR. ABUD: Looking at the picture
4 that's on the screen now, the windows
5 essentially to the -- to the right of the
6 slide operate. The rest do not. So, yes, it
7 looks like the majority do not open.

8 MR. SMITH: Okay. And, Ms.
9 Buffington, are you aware that those homes
10 there on Sedgwick Street are one-story
11 ramblers, 1950's ramblers homes as opposed to
12 townhomes?

13 MS. BUFFINGTON: I have seen the
14 houses and they are not townhomes.

15 MR. SMITH: Okay. And because of
16 the berm and the topography and the height of
17 the homes, are you aware that the residents in
18 those Sedgwick Street homes can't see the
19 windows at Katzen?

20 MS. BUFFINGTON: No.

21 MR. SMITH: Okay. Okay. Going to
22 Nebraska Hall, you show the 58-foot distance

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1 between Nebraska and that first house on
2 Sedgwick. That house is owned by AU. Is that
3 no correct?

4 MR. ABUD: Yes, that's correct.
5 But, the occupants are not related to the
6 university.

7 MR. SMITH: Okay. Are there any
8 windows on the sides of that house facing
9 Nebraska Hall? On the house facing Nebraska
10 Hall? There aren't. Are there?

11 MR. ABUD: I don't know. I don't
12 know.

13 MR. SMITH: Okay. What would be
14 the closest distance from Nebraska Hall to a
15 residence not owned by AU?

16 MR. ABUD: One hundred and forty
17 feet.

18 MR. SMITH: Okay. Thank you. Ms.
19 Buffington, you also referenced the
20 institutions along Nebraska Avenue to justify
21 the design of the East Campus.

22 How do the setbacks for those

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1 institutional buildings along Nebraska Avenue
2 compare with your plans for the East Campus?

3 MS. BUFFINGTON: I don't have
4 exact measurements for those.

5 MR. SMITH: Okay. How do the
6 finishes and facades compare?

7 MS. BUFFINGTON: There are a
8 variety of different architectural conditions
9 along Nebraska Avenue.

10 MR. SMITH: Okay. Are there any
11 high-rise residential units along this stretch
12 of Nebraska Avenue that you describe?

13 MS. BUFFINGTON: Not to my
14 knowledge.

15 MR. SMITH: Okay. There is
16 student housing along this stretch of
17 Nebraska. Isn't that right?

18 MS. BUFFINGTON: Nebraska Hall.
19 The others --

20 MR. SMITH: And opposite of the
21 East Campus isn't that correct? Opposite of
22 what is proposed on the East Campus? Aren't

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1 there student residences that --

2 MS. BUFFINGTON: Oh, yes. The --
3 yes.

4 MR. SMITH: Okay. And how many
5 floors is that housing?

6 MR. ABUD: The existing Clark and
7 Roper Halls are two stories.

8 MR. SMITH: Okay. And, Ms.
9 Buffington, what other retail is there along
10 that stretch of Nebraska that you referenced?

11 MS. BUFFINGTON: I don't believe
12 there's any retail.

13 MR. SMITH: Okay. Thank you.

14 Jorge, when did you complete the
15 retail study that's referenced in the retail
16 plan that you submitted last week?

17 MR. ABUD: The document that we
18 submitted evolved over a fair amount of time.

19 The -- a lot of the data that underlied it
20 was completed in 2010. Our thinking about how
21 we would go forward for the future was just
22 completed a few weeks ago.

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1 MR. SMITH: That's the BN study
2 that's referenced in your memo?

3 MR. ABUD: B&D.

4 MR. SMITH: B&D. I'm sorry. B&D.
5 Why will the East Campus students be in such
6 special need of non-AU provided dining options
7 when the vast majority of your other students
8 housed on campus actually are further away
9 from the Mary Graydon Center where you have
10 your dining facilities?

11 MR. ABUD: It's a matter of trying
12 to provide some convenience for having food
13 service on that site.

14 MR. SMITH: Even though they'll be
15 closer to Mary Graydon than the vast majority
16 of the other students housed on campus?

17 MR. ABUD: Yes.

18 MR. SMITH: Okay. If the retail
19 is targeted only to meet student demand, will
20 it be economically viable based on the
21 discussions you've had with possible tenants?

22 MR. ABUD: We haven't had any

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1 specific discussions with possible tenants,
2 but obviously, we would select retail that we
3 thought was economically viable based on
4 student -- university demand.

5 MR. SMITH: Do you need to have
6 community -- in order for it to be
7 economically viable, does the community also
8 -- do you need the community to also patronize
9 those retail establishments?

10 MR. ABUD: No. Whenever we make
11 selections about on-campus retail, we assume
12 that it needs to survive solely with
13 university business.

14 MR. SMITH: Okay. Thank you.

15 If you succeed in getting outlets
16 with strong brand recognition as indicated in
17 the comprehensive retail plan memo you did,
18 won't that retail though also attract people
19 from outside the AU student community and the
20 immediate surrounding neighborhood community?

21 MR. ABUD: Certainly, we think it
22 could, but our preference for strong brand

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1 recognition is based on preferences by
2 university population for those brands.

3 MR. SMITH: Okay. What is an
4 extended-hours café that you reference in the
5 memo?

6 MR. ABUD: You know, students do
7 have need for burgers, dining, some kind of
8 dining experience later at night and so, some
9 universities have concepts where that's
10 offered as something that's open until
11 midnight or something of that style as opposed
12 to the more traditional meal periods.

13 MR. SMITH: And what does it mean
14 that this facility is going to have
15 programming space? That's the phrase you use
16 in the memo.

17 MR. ABUD: It's -- programming is
18 that activities can be hosted there -- there
19 at various locations on the campus. Today,
20 you can have a speaker associated with a food
21 venue or we've even built that into a redesign
22 of our campus store and so, that's the kind of

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1 thing we have or way of having food along with
2 some activity that -- that is education or co-
3 curricular in nature.

4 MR. SMITH: I mean would this
5 feature possibly live music or recorded music?

6 MR. ABUD: Unlikely. That's
7 typically -- we certainly limit live music to
8 one location on the campus primarily in the
9 university center.

10 MR. SMITH: Would you agree to a
11 condition limiting that use on that basis?

12 MR. ABUD: Yes, I think we could.

13 MR. SMITH: And would this space
14 be available as a meeting space for non-AU
15 uses and groups?

16 MR. ABUD: No.

17 MR. SMITH: Okay. Will there be
18 an outdoor patio on the -- associated with any
19 of the retail?

20 MR. ABUD: There's certainly a lot
21 of outdoor space there. Whether it's
22 associated with the retail or not depends on

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1 the particular retail venue. We -- we could
2 see some outdoor seating for -- for our food
3 venue as an example.

4 MR. SMITH: Will there be music
5 on --

6 MR. ABUD: No.

7 MR. SMITH: And would you agree to
8 a condition related to that?

9 MR. ABUD: Yes.

10 MR. SMITH: Um-hum. Um-hum. Am
11 I correct that all the food outlets will be
12 located in Building 1 along Nebraska Avenue?
13 Is that correct?

14 MR. ABUD: One and 5.

15 MR. SMITH: Five, is that the
16 coffee shop on 5 in the President's Building?

17 MR. ABUD: Potentially yes.

18 MR. SMITH: Okay. Will liquor be
19 served in any of these establishments?

20 MR. ABUD: No.

21 MR. SMITH: Would you make that a
22 condition of the campus plan?

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1 MR. ABUD: Yes.

2 MR. SMITH: Your traffic study
3 indicated it would need to revisit some of the
4 data based on uses of the retail space
5 especially as it related to pedestrian traffic
6 and outside transportation experts have said
7 the same the thing. So, is there a reason why
8 this comprehensive plan doesn't include a
9 transportation update for the site especially
10 since it will involve some uses outside the
11 community?

12 MR. ABUD: We didn't talk about,
13 you know, the -- the retail discussion, we
14 didn't talk anything about our traffic study,
15 traffic issues. I would say that that is
16 outside the scope of our rebuttal testimony.

17 MR. SMITH: I'm asking really
18 about the uses of the retail and with regard
19 to whether the comprehensive retail plan
20 should include anything related to
21 transportation impacts.

22 CHAIRMAN HOOD: Let me just ask

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1 this and I don't remember if it was discussed.
2 Did we talk about the retail plan in
3 rebuttal?

4 MR. TUMMONDS: We submitted
5 Thursday night the retail plan. Yes.

6 CHAIRMAN HOOD: Okay. Well, let's
7 then answer the question.

8 MR. ABUD: I believe the reference
9 you're making in the transportation study said
10 that it would need to be updated if there were
11 significant non-university use of the retail.
12 We don't believe that's going to be the case.
13 So, we have not included transportation
14 impacts in the retail plan because we think
15 it's going to be -- outside use of the retail
16 will be limited.

17 MR. SMITH: Okay. Your plan
18 references a Kaplan facility on the East
19 Campus. Will non-AU students be able to use
20 the Kaplan Center?

21 MR. ABUD: Potentially, yes.

22 MR. SMITH: Am I correct in

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1 assuming that they -- since this would not be
2 offering an official AU course, that you would
3 not be counting them as part of the cap. Is
4 that correct?

5 MR. ABUD: Yes, that's correct.

6 MR. SMITH: Okay. Are you
7 targeting a specific center of the Kaplan
8 operation? A particular -- you know, they
9 offer so many different types of facilities.
10 Are you targeting a certain type of facility?

11 MR. ABUD: Primarily it's
12 targeting the services that they provide as
13 assistance to university students. So, test
14 preparation and tutoring services.

15 MR. SMITH: And what arrangements
16 for additional parking are you making for
17 people using the food outlets, the salon,
18 Kaplan and the other retail that might attract
19 people from beyond the campus?

20 MR. ABUD: There is parking
21 proposed on the East Campus site to the tune
22 of about 500 spaces. We believe that amount

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1 of parking is sufficient to meet what we think
2 is small outside demand.

3 MR. SMITH: Okay. Mr. Miller, in
4 response to a question from Commissioner
5 Turnbull the other night, you indicated that
6 you had done some work at the Katzen Arts
7 Center. Was that work on internal acoustics
8 or on exterior noise control?

9 MR. MILLER: Predominately
10 interior acoustics, but as part of our overall
11 design, we also watched exterior noise
12 primarily from mechanical equipment.

13 MR. SMITH: Okay. And the study
14 that you were here representing was done by
15 Douglas Koehn. Is that right? Am I saying
16 his name right?

17 MR. MILLER: Koehn.

18 MR. SMITH: Koehn. I'm sorry.
19 And is he an employee of your firm?

20 MR. MILLER: He is.

21 MR. SMITH: If the dorms are
22 taller than the buffer buildings, how does the

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1 buffer building block the noise?

2 MR. MILLER: Well, if it's -- if
3 you have line of sight, it doesn't block it.

4 MR. SMITH: Does distance play a
5 role in reducing noise levels?

6 MR. MILLER: Yes.

7 MR. SMITH: And is there some
8 formulate for how distance reduces noise
9 measurements?

10 MR. MILLER: The simplistic
11 formula is every time you double the distance,
12 you lose six decibels.

13 MR. SMITH: Thank you. Also,
14 isn't one of the first steps or at least an
15 important step in sound control to close and
16 seal windows?

17 MR. MILLER: It can be.

18 MR. SMITH: Okay. To your
19 knowledge, are any noise reduction materials
20 being used on the exterior of the buffer
21 buildings?

22 MR. MILLER: The building's haven

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1 been designed yet.

2 MR. SMITH: Okay. Okay. Mr.
3 Taylor has often cited atmospheric conditions
4 for some of the offending noise levels when
5 bands perform outdoors on campus. I'm
6 wondering if you could explain for us how
7 atmospheric conditions contribute to how noise
8 travels.

9 MR. TUMMONDS: I think that's a
10 little far removed from our rebuttal
11 testimony. Mr. Taylor didn't talk about that.

12 CHAIRMAN HOOD: I would agree. Go
13 to your next question. But, let me just say
14 this to you, Commissioner Smith. You want to
15 do rebuttal testimony -- well, you know how
16 you want to do it. But, let me just say you
17 want to do something that's helpful to us and
18 I'll just leave it at that.

19 You want to -- in your rebuttal,
20 you want to do what's helpful to us when we
21 get to our decision making.

22 MR. SMITH: I understand. I would

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1 like to pursue this atmospheric condition
2 piece because I'm trying to understand what
3 role atmospheric conditions play with regards
4 to noise traveling.

5 CHAIRMAN HOOD: Sure. I actually
6 have ruled on that line of questioning.

7 MR. SMITH: Okay.

8 CHAIRMAN HOOD: So, if we can move
9 to the next question.

10 MR. SMITH: Does the CADNA-A
11 Software that you used to develop the study
12 model account for seasonal vegetation changes
13 or I was going to ask atmospheric conditions,
14 but I'm really asking about the software.
15 Whether it accounts for that.

16 MR. MILLER: It can.

17 MR. SMITH: Okay. In your use of
18 the model, did you use it? Was that part of
19 the model that you developed?

20 MR. MILLER: No.

21 MR. SMITH: Okay. Thank you. And
22 my final question for you, Mr. Miller, is did

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1 you analyze that landscaping plan and it's
2 potential or adequacy for buffering the
3 unwanted noise?

4 MR. MILLER: Landscaping doesn't
5 make a very significant impact unless it's at
6 very depth -- great depth. So, generally, we
7 don't take the landscaping into consideration
8 and then that's a bonus meaning you have that
9 much more additional attenuation that will
10 happen. So, that we gave a conservative
11 estimate.

12 MR. SMITH: So, you did assess
13 the --

14 MR. MILLER: No, I'm saying we did
15 not take it into consideration.

16 MR. SMITH: Okay.

17 MR. MILLER: And then any buffer
18 that it provides is -- will mean that that
19 much less sound will get there.

20 MR. SMITH: Okay. Ms. Espinosa,
21 do you now -- I'm trying to understand a
22 little bit some of the testimony from the

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1 other night.

2 Do you require students who are
3 living off campus now to inform you of where
4 they live?

5 MS. ESPINOSA: As part of their
6 registration process for classes each
7 semester, they are asked to update their local
8 address.

9 MR. SMITH: And do you actually
10 require that? I mean if they don't do it, is
11 there some follow-up with them or something?
12 In other words, do you have like 100 percent
13 of the addresses of all the people who live
14 off campus?

15 MS. ESPINOSA: No, we would not
16 have 100 percent, but they do have to enter a
17 local address before they can register for
18 their classes.

19 MR. SMITH: Okay. So, then why
20 wouldn't you have 100 percent? If they have
21 to give their addresses to register for
22 classes, why wouldn't you have 100 percent of

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1 their addresses?

2 MS. ESPINOSA: Well, some of them
3 don't provide accurate information. Some of
4 them move mid-semester. There's a variety of
5 reasons.

6 MR. SMITH: Okay. And also, I was
7 a little confused by one thing and I just want
8 to -- did you say -- and I've listened to it
9 three or four times. Okay. So, did you say
10 that AU was not required under the July 19th,
11 2001 Zoning Commission Order to charge
12 students living off campus under the student
13 code of conduct for misconduct?

14 MS. ESPINOSA: No, that's not what
15 I said.

16 MR. SMITH: Okay. Do you have
17 numbers for the number of students who are
18 living off campus who were charged with
19 violations of the student code of conduct
20 between 2001 and 2010 for conduct off campus?

21 MS. ESPINOSA: All right. Our
22 records indicated that we had approximately 70

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1 students charged with misconduct between 2001
2 and 2010.

3 MR. SMITH: But, I mean under --
4 were they charged under the student code of
5 conduct is my question.

6 MS. ESPINOSA: Yes.

7 MR. SMITH: Okay. And that's
8 between 2001 and June of 2010?

9 MS. ESPINOSA: Correct.

10 MR. SMITH: Okay. And I could,
11 but I won't, take the time tonight to discuss
12 the wide range of issues of student misconduct
13 brought to the attention of AU officials that
14 have been referenced in testimony here. But,
15 you indicated in your rebuttal testimony last
16 week that you've made changes in how AU
17 administrators are handling these matters
18 going forward. Is that correct?

19 MS. ESPINOSA: Yes.

20 MR. SMITH: Can you explain why
21 there have been no quarterly liaison meetings
22 as mandated in the current campus plan in over

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1 a year to discuss these changes?

2 MR. TUMMONDS: It's probably more
3 appropriate for Mr. Taylor.

4 MR. TAYLOR: Tom, we have been
5 meeting dozens of times with the community
6 members and I think we could have discussed
7 any number of these issues at those meetings,
8 but in view of the fact that we've met for
9 some 50 or 60 times over the last two and a --
10 two and a half years suggests that we haven't
11 been holding those regular meetings. But,
12 indeed, we intend to as part of the
13 requirements.

14 MR. SMITH: Is there a reason --
15 okay. Is there a reason then why you --
16 separate from the quarterly liaison meetings
17 why you haven't initiated discussions with any
18 of the neighborhood associations in the ANC to
19 discuss these changes, Ms. Espinosa, that you
20 talked about back in June and referenced again
21 the other night?

22 MS. ESPINOSA: I believe that we

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1 have discussed them at different meetings and
2 at different times. We've hosted at least one
3 neighbor meeting on campus where we discussed
4 possible changes. We've identified some of
5 these changes as we've moved through the
6 summer and are now implementing them this fall
7 and they're currently under way.

8 MR. SMITH: Have you met with the
9 Spring Valley-Wesley Heights Citizen's
10 Association?

11 MS. ESPINOSA: No.

12 MR. SMITH: Have you met with
13 Neighbors for a Livable Community?

14 MS. ESPINOSA: No.

15 MR. SMITH: Have you met with ANC
16 3D?

17 MS. ESPINOSA: Not specifically
18 for that purpose, but I have attended --

19 MR. SMITH: No. Well, I'm talking
20 about for this --

21 MS. ESPINOSA: -- at least two ANC
22 3D meetings.

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1 MR. SMITH: Yes, I'm talking about
2 for this purpose. You have not done that.
3 Right?

4 MS. ESPINOSA: No.

5 MR. SMITH: Okay. One last
6 question. Actually, it's two, but they're
7 related. But, isn't it true as AU's Public
8 Safety Chief was quoted in this September
9 14th, 2010 issue of The Eagle where it
10 introduced the changes in the student code of
11 conduct that AU could not even investigate a
12 matter of off-campus conduct unless the MPD
13 issued a citation?

14 MS. ESPINOSA: I'm sorry. Can you
15 ask the question again?

16 MR. SMITH: Yes. In this article,
17 Chief McNair, AU's Public Safety Chief is
18 quoted as saying that AU could not even
19 investigate a matter taking place off campus
20 unless the MPD issued a citation.

21 My question is is that accurate to
22 the best of your knowledge or, you know, if

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1 that proceeded your coming to AU, is there
2 anyone else that could answer that?

3 MS. ESPINOSA: I would not be the
4 one that would answer whether they could
5 investigate criminally or not. So, I don't
6 know.

7 MR. ABUD: I don't think it's
8 accurate that we couldn't investigate. It's
9 just that we could not at that time charge a
10 student under the code of conduct if the
11 investigation, you know, revealed something
12 other than a violation of a law that had been
13 cited.

14 MR. SMITH: Okay. And one last
15 question. Can you explain why AU's Public
16 Safety Blotter's listing of safety issues is
17 no longer available to either the AU Eagle,
18 the community or the greater community?

19 MS. ESPINOSA: I don't -- I don't
20 have any information on that. I'm not
21 familiar with that issue right now.

22 MR. SMITH: Is there anyone who

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1 can explain that?

2 MR. TUMMONDS: And we didn't
3 testify to the blog posting. This is outside
4 the scope of our rebuttal testimony.

5 MR. SMITH: Well, actually, with
6 all due respect, the issue came up --

7 MR. TUMMONDS: I think I have an
8 objection for the Chair to rule on.

9 MR. SMITH: Well, I don't have any
10 more questions anyway, but with all due
11 respect --

12 CHAIRMAN HOOD: Well, if you don't
13 have any more questions, that's it.

14 MR. SMITH: Okay.

15 CHAIRMAN HOOD: So, cross -- no.
16 No. No. Cross examination, that's what --
17 you know, I was going to let you go with it,
18 but you said you don't have any more
19 questions.

20 In the court of law which this is
21 not, if you're doing cross examination, that's
22 what it is. It's about questioning.

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1 MR. SMITH: I think I did ask
2 questions, Chairman Hood.

3 CHAIRMAN HOOD: So, you need --
4 whatever your statement, you need to ask a
5 question.

6 MR. SMITH: I did.

7 CHAIRMAN HOOD: I'll allow for one
8 more question.

9 MR. SMITH: With all due respect,
10 I did ask a question. My question is with
11 respect to the Public Safety Plan issue that
12 came up during rebuttal, is there a reason
13 given the Public Safety Plan
14 that one of the methods of communicating about
15 safety issues related to AU students is no
16 longer being made available? That was my
17 question. About the Public Safety Plan.

18 CHAIRMAN HOOD: Did somebody
19 answer that?

20 MR. ABUD: None of us are aware of
21 that being --

22 CHAIRMAN HOOD: Okay.

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1 MR. ABUD: -- the case.

2 CHAIRMAN HOOD: Then that's the
3 answer. Okay.

4 MR. SMITH: Are you aware --

5 CHAIRMAN HOOD: But, I do want
6 to --

7 MR. SMITH: Can I ask one more
8 question? Are you aware --

9 CHAIRMAN HOOD: You're trying to
10 get like Commissioner May.

11 MR. SMITH: No. No. I --

12 CHAIRMAN HOOD: He always says I
13 got one last question.

14 MR. SMITH: This is --

15 CHAIRMAN HOOD: And we have 20 of
16 them after that.

17 MR. SMITH: Well, I'd like -- are
18 you aware that the AU Eagle has reported very
19 widely about that back in mid-September?

20 MR. TUMMONDS: Again, we didn't
21 talk about that -- their statement.

22 CHAIRMAN HOOD: Okay. But, I do

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1 want to expound. Thank you, Chairman Smith.

2 This liaison meeting, you said you
3 had 50 meetings, but it appeared in his line
4 of questioning that you -- who did you meet
5 with?

6 MR. TAYLOR: Well, what I meant
7 was in lieu of the campus plan meetings which
8 had been numerous. In the presentations we
9 have made with the task force, with a small
10 group before the ANCs, any question was fair
11 game, but in lieu of the numbers of meetings,
12 we have not been holding those regular
13 meetings.

14 But, nonetheless, a lot of the
15 members who attend those meetings have been
16 involved with our task force --

17 CHAIRMAN HOOD: But, we were
18 suppose to -- I think -- didn't the order
19 required continue as you -- it was a liaison.
20 Weren't you suppose to be having those
21 meetings? I think we -- we went through this.
22 Didn't we?

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1 MR. TAYLOR: Right. And we indeed
2 did hold liaison meetings in through -- I've
3 got into 2010 and then the pace of these
4 meetings is --

5 CHAIRMAN HOOD: I'm going to be
6 frankly honest. After the line of questioning
7 and the way that was answered, I'm clearly
8 confused. I don't know whether you had the
9 quarterly meetings, whether you met with some
10 of the neighborhood groups or whether you had
11 50 meetings like you said. I'm confused.

12 MR. TAYLOR: Okay. Well, liaison
13 meetings were established out of the last
14 campus plan process.

15 CHAIRMAN HOOD: And you didn't do
16 that?

17 MR. TAYLOR: Well, to keep an
18 ongoing dialogue --

19 MR. TUMMONDS: David, did you have
20 quarterly liaison meetings from 2001 through
21 2010?

22 MR. TAYLOR: Yes.

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1 MR. TUMMONDS: Every quarter?

2 MR. TAYLOR: And then -- and then
3 in 2010, the scope of the -- and the number of
4 meetings for the campus plan basically
5 overrode some of those. But, nonetheless,
6 we --

7 MR. TUMMONDS: But, during -- in
8 2010, was there a meeting between AU and
9 people who attend -- normally attended those?

10 MR. TAYLOR: Yes.

11 MR. TUMMONDS: More than one a
12 quarter?

13 MR. TAYLOR: Yes.

14 CHAIRMAN HOOD: In that order, Mr.
15 Tummonds, did it say specifically who to meet
16 with or who was on the liaison group and all
17 that? Did it identify that?

18 MR. TUMMONDS: I don't believe so.

19 CHAIRMAN HOOD: Okay.

20 MR. TAYLOR: It was a general
21 number of representatives from community and
22 university.

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1 MR. TUMMONDS: Mr. Abud knows the
2 complete answer to that question.

3 MR. ABUD: Yes, the order did
4 identify the groups and it also called for the
5 possibility of additional people attending. I
6 think the issue is because of the volume of
7 meetings that we've been having on the campus
8 plan essentially we slacked off on the liaison
9 committee meetings because we were having --
10 essentially, we were meeting with the same
11 people on campus plan issues and --

12 CHAIRMAN HOOD: So, you only
13 slacked off for a year.

14 MR. ABUD: Correct.

15 MR. TAYLOR: Mr. Hood, I've got --
16 for example, I've got, you know, March of '09,
17 June of '09, September of '09, December of '09
18 and then March of '10 and July of '10 as being
19 the cadence.

20 CHAIRMAN HOOD: Okay. All right.

21 MR. TAYLOR: Okay.

22 CHAIRMAN HOOD: I just wanted to

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1 make sure that that was being followed. Okay.

2 So, you only slacked off for a year.

3 MR. ABUD: Yes.

4 CHAIRMAN HOOD: Okay.

5 Commissioner Weiss. I'm sorry. I should have
6 went to 3E. I'll come back.

7 Let me ask. I've been informed to
8 ask this of everyone who comes up. How many
9 questions do you have and how much time do you
10 think it will be?

11 MS. WEISS: Oh, 15 minutes.

12 CHAIRMAN HOOD: Okay. So, 15
13 questions pretty much. Okay.

14 MS. WEISS: Commissioner Smith
15 already asked a few of my questions.

16 Cathy Weiss for ANC 3F.

17 I'm going to focus on the law
18 school and you did say in the materials that
19 you handed out that you are -- will agree to
20 cap the law students at 2000.

21 What type of students does this
22 include? Day students, night students, JD

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1 only, Master's program, foreign, special
2 studies, summer school, bar review?

3 MR. ABUD: All students who are
4 registered for regular academic programs
5 regardless of degree, regardless of full-time
6 or part-time. Includes all.

7 MS. WEISS: Okay. And that will
8 be per semester or quarter? Because --

9 MR. ABUD: We -- we set the head
10 counts as a maximum. We reach our maximum in
11 the fall semester of each year. So, that's
12 the way we -- that's when we do the
13 comparison.

14 MS. WEISS: Okay. Now, you say
15 that the law school facilities at Tenley will
16 be one-third larger than at the present site.

17 But, isn't 400 parking spaces fewer than the
18 law school uses now and considerably fewer if
19 one takes into account the students and
20 faculty members parking on the street?

21 MR. TUMMONDS: I'd -- I would
22 object. We didn't talk about the number of

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1 parking spaces at Tenley and again, I would
2 note that all these questions with regards to
3 Tenley, we have a further processing
4 application for Tenley two weeks from tonight
5 and I think that a lot of these issues will be
6 addressed in that further processing
7 application.

8 MS. WEISS: What I was really
9 getting at is that, you know, somebody
10 testified. They said the facility will be
11 one-third larger than at the present site.
12 That was spoken and so, I'm just asking why if
13 the parking lot at the facility is one-third
14 larger and the student body is larger why are
15 you not providing anywhere close to the amount
16 of parking that you are providing now?

17 CHAIRMAN HOOD: You know what?
18 Actually, Commissioner Weiss, I'm going to
19 have to agree with Mr. Tummonds. A lot of
20 that's going to be the further processing and
21 I understand two weeks from now we have
22 further process.

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1 MS. WEISS: Okay.

2 CHAIRMAN HOOD: We don't want to
3 have that hearing tonight. We can have that
4 two weeks from now. So, let's just basically
5 be germane and specific to the cross on
6 rebuttal.

7 MS. WEISS: Okay. Well, why did
8 AU opt for an enrollment cap of 2,000 which is
9 a few hundred more than you say you have now?
10 Why are you rejecting ANC 3F's call that you
11 keep enrollment at current levels until you
12 can assure the Zoning Commission and the
13 community that the traffic and parking for the
14 Tenley Campus will not present objectionable
15 conditions?

16 MR. ABUD: The traffic study that
17 we have done takes into account the growth in
18 population and -- and its impact on
19 transportation. So, we think it's been
20 accounted for and addressed.

21 MS. WEISS: What if you're not
22 able to control the law school traffic to the

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1 Tenley Campus so that no one associated with
2 law school parks in the neighborhood? What
3 measures will you take?

4 MR. TUMMONDS: Go ahead.

5 MR. ABUD: We do have as part of
6 our proposal continuing an off-campus -- off-
7 street, excuse me, off-campus parking
8 enforcement mechanism that we think will --
9 and we believe will be effective and will be
10 designed to be effective.

11 MS. WEISS: Okay. Let's turn then
12 to slide number 12 of the presentation. This
13 shows that the university generally enforces
14 off-campus parking in the areas shaded in
15 green, but these areas are not adjacent to the
16 law school. They're next to some parts of the
17 main campus and Spring Valley and AU Park.
18 Does this mean that you do not enforce parking
19 near the law school?

20 MR. ABUD: We -- we do. It's not
21 pictured here because that's a separate
22 program around the law school and we were

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1 asked specifically about campus plan property
2 parking enforcement.

3 MS. WEISS: So, because the law
4 school's not on your campus right now, you did
5 not show it as having enforcement?

6 MR. TUMMONDS: This slide was in
7 specific reference to a question that Mr.
8 Turnbull had raised.

9 MS. WEISS: Okay.

10 MR. TUMMONDS: That's why this
11 slide is presented last Thursday night.

12 MS. WEISS: Okay. But, you did
13 say that you would enforce parking near the
14 law school?

15 MR. ABUD: As we do today, yes.

16 MS. WEISS: Okay. On Tab D of
17 your handout, you relate some portions of the
18 comprehensive plan such as land use policy
19 LU1.3.2, development around Metro rail
20 stations. Which says "Concentrate
21 redevelopment efforts on those Metro rail
22 station areas which offer the greatest

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1 opportunities for in-fill development and
2 growth. Particularly stations in areas with
3 weak market demand and with large amounts of
4 vacant or poorly utilized land in the vicinity
5 of the station entrance."

6 Are you saying that Tenley Town
7 has vacant or poorly utilized land?

8 MR. TUMMONDS: I think we are
9 saying that we believe that Tenley Town could
10 be much more effectively used and we believe
11 that the law school coming to the Tenley Town
12 will help enliven and enhance the vibrancy of
13 the Tenley Town Metro Station area.

14 MS. WEISS: But, you're not saying
15 that any land is vacant?

16 MR. TUMMONDS: No, and again, the
17 notion of the comprehensive plan is intended
18 to -- you know, these -- this is intended to
19 be a guide. It is not proscriptive to say
20 that it is specific, but to give goals,
21 policies, ideas that the proposals be not
22 inconsistent with the comprehensive plan.

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1 MS. WEISS: So, but doesn't this
2 policy really refer to Metro station areas
3 like what Councilmember Michael Brown was
4 referring to last week. Other communities in
5 D.C. which could profit from development or
6 Southeastern University as proposed by Shirley
7 Buttrick.

8 MR. TUMMONDS: No, I would
9 respectively disagree with that. I would
10 think that in our discussions with say people
11 from Ward 3 Vision, they would say that the
12 Tenley Town Metro Station is a -- does have
13 opportunities for in-fill development and
14 growth and we believe that the law school
15 moving to Tenley Town would help further those
16 goals.

17 MS. WEISS: Do you agree with
18 policy LU3.2.3? "For nonprofits, private
19 schools and service organization, the Zoning
20 Commission should insure that the expansion of
21 these uses is not permitted if the quality of
22 life in adjacent residential areas is

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1 significantly adversely affected."

2 MR. TUMMONDS: Absolutely, we
3 agree with that.

4 MS. WEISS: Now, going to your
5 slides at --

6 CHAIRMAN HOOD: Ms. Weiss, I was
7 following you and I didn't say anything the
8 first time, but I think -- I'm not trying to
9 tell you how to cross examine, but we can't --
10 for me when I'm reading this, we're leaving
11 stuff out of this. We really need to make
12 sure we include the whole LU1.3.2.

13 MS. WEISS: Okay. I will.

14 CHAIRMAN HOOD: Because I think --
15 I think you --

16 MS. WEISS: I just wanted to --

17 CHAIRMAN HOOD: -- read three --

18 MS. WEISS: -- shorten my time.

19 CHAIRMAN HOOD: Right. I
20 understand that, but I think to get the full
21 gist of it because I think your answer was in
22 -- was in the part that you didn't read and I

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1 also look at how you're paraphrasing that.

2 MS. WEISS: Okay.

3 CHAIRMAN HOOD: So, it just sends
4 a different meaning. I think if we -- and we
5 should allow for that. So, that way it would
6 be clearer to us. If you get my -- I'm not
7 telling you how to cross examine, but I just
8 think we need to read the whole piece of it
9 and not leave anything out because it leads to
10 question for the -- and especially looking at
11 the transcript. So.

12 MS. WEISS: Okay. Well --

13 CHAIRMAN HOOD: That's just my two
14 cents.

15 MS. WEISS: -- do you want me to
16 read the whole thing?

17 CHAIRMAN HOOD: I just -- I want
18 you to finish doing cross examination. I
19 just --

20 MS. WEISS: Okay. Well, I was
21 trying to hurry it up. That was the problem.

22 CHAIRMAN HOOD: Well, I appreciate

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1 it. You know, I don't want to contradict
2 myself, but thank you for trying to help us.

3 MS. WEISS: Yes. That was the
4 only reason I could -- okay. On page 10, your
5 slide 10, which is student population and
6 projections. What does green for other mean?

7 MR. ABUD: It includes -- the
8 largest category in that group are Washington
9 semester students, but students who study here
10 from abroad for one semester and are not in
11 our regular academic programs are the two
12 biggest examples.

13 MS. WEISS: And what does the pink
14 mean in the bars? In the columns?

15 MR. ABUD: For years prior to 2015
16 when we are proposing to move the law school
17 to the Tenley campus, it is the law school
18 enrollment that is not counted in the campus
19 plan because it's in an off-campus facility.

20 MS. WEISS: Okay. Slide 18 talks
21 about off-campus housing. Are you aware that
22 AU students are living in the Van Ness South

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1 Apartments at 3003 Van Ness Street, N.W.? Is
2 this a contract the way UDC has a contract
3 with Van Ness?

4 MR. ABUD: No, we do not contract
5 with that building.

6 MS. WEISS: So, you don't have any
7 particular long-term plans to keep them there
8 or just they live there on their own? Okay.

9 This --

10 MR. ABUD: Could you --

11 MS. WEISS: I guess I was a
12 little --

13 MR. ABUD: Sorry. Could you
14 repeat the address again?

15 MS. WEISS: Three thousand -- 3003
16 -- 3002 Van Ness Street, N.W. It's east of
17 Connecticut Avenue by half a block.

18 MR. ABUD: Right. We do have a
19 contract to house students at an address on
20 Connecticut Avenue, but that's -- that's not
21 the building. So, if there are students --
22 our students living there, it seems like

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1 they'd be there on their own.

2 MS. WEISS: Now, that kind of gets
3 to my next question. What address on
4 Connecticut Avenue do you have a contract
5 with?

6 MR. ABUD: It's Woodley Park. I
7 don't have the exact address.

8 MS. WEISS: Okay. Now, slides 23
9 to 25 talk about East Campus noise and show
10 that your mechanical equipment will be placed
11 on the roof so that even administration
12 buildings will have some noise associated with
13 them.

14 Could your mechanical equipment be
15 placed in the basement or on the ground to
16 mitigate the noise?

17 MR. ABUD: Let me get to the site
18 plan.

19 MS. WEISS: I'm sorry. I've got
20 the wrong.

21 MR. ABUD: Buildings -- well, it's
22 easiest to illustrate here. The only

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1 buildings that will have rooftop mechanical
2 equipment are buildings one, two and three.
3 They're shown in the lighter lines signifying
4 the penthouses. Buildings four and six will
5 not have rooftop mechanical equipment.

6 MS. WEISS: Could they be put
7 though on the ground or in the basement to
8 mitigate the noise to the neighborhood?

9 MR. ABUD: For buildings one, two
10 and three, the only equipment they're putting
11 -- we're putting there is equipment that needs
12 to be out in the open in order to operate.
13 All the other equipment is located within the
14 building generally below grade.

15 MS. WEISS: And then slides 33 to
16 37, in all of these, you ask for flexibility
17 in materials, details, dimensions, cornices
18 and the like. How can the Zoning Commission
19 and community be sure that what is approved
20 will not be objectionable when built?

21 MR. TUMMONDS: I think I can
22 answer. As we mentioned in the North Hall for

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1 the processing application, the design
2 flexibility that we requested here is really
3 the standard design flexibility that the
4 Commission has agreed to in PUD cases, the
5 design review cases.

6 Again, the massing, height, siting
7 are not impacted by the final fenestration of
8 the building and that's why we think that the
9 flexibility that we're requesting is
10 appropriate for this special exception type
11 review.

12 MS. WEISS: Okay. That's all the
13 questions I have.

14 CHAIRMAN HOOD: Okay. You
15 finished? Thank you.

16 Okay. I think, Ms. Horvitz, you
17 said you didn't have any cross. Did you? You
18 didn't have any?

19 MS. HORVITZ: We have an ANC --
20 another ANC.

21 CHAIRMAN HOOD: Oh, I'm sorry.
22 3E. I'm so ready to get to Ms. Horvitz.

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1 Okay. 3E.

2 MS. SKLOVER: Beverly Sklover, ANC
3 3E.

4 David and Jorge, we've seen one
5 another for the last two and a half years and
6 you've held meetings over the last two and a
7 half years and you've made a very important
8 point about that both in your rebuttal last
9 week which I didn't attend because I was in
10 Prague and this evening. So, I want to ask
11 you a little bit about those two and a half
12 years of meetings that were, in fact, held.

13 Was there ever anything raised by
14 me regarding parking at the second meeting two
15 and a half years ago talking about how your
16 current parking plan didn't work and asking
17 you to please modify it and indeed presenting
18 a program that I thought you had accepted,
19 David, two and a half years ago?

20 MR. TAYLOR: Parking has been an
21 ongoing topic probably since meeting one.

22 MS. SKLOVER: But, what I'm trying

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1 to get at is was a specific plan proposed
2 among those meetings?

3 MR. TAYLOR: You mean the
4 Guildford Plan?

5 MS. SKLOVER: The Guildford Plan,
6 yes.

7 MR. TAYLOR: Yes.

8 MS. SKLOVER: Yes, it was and that
9 was not accepted by you or has not to date
10 been accepted by you?

11 MR. TAYLOR: Not to date. That's
12 correct.

13 MS. SKLOVER: Okay. Was --

14
15 CHAIRMAN HOOD: Yes, I guess the
16 question is the Guildford Plan, did we mention
17 that in rebuttal?

18 MR. TUMMONDS: No.

19 MS. SKLOVER: No, but they
20 mentioned parking and what I'm doing is
21 addressing the parking that doesn't work.

22 CHAIRMAN HOOD: Okay. But, let's

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1 ask the questions -- we all actually know
2 there's some things that need to be tweaked,
3 but let's stick with rebuttal please.

4 MS. SKLOVER: Okay. I'm not 100
5 percent clear about what I'm rebutting because
6 I'm not 100 percent of what you stated. So, I
7 may have to ask you to tell me if I'm wrong in
8 raising something.

9 The second question I wanted to
10 ask you again in the two and a half years have
11 you made changes during that two and a half
12 years to closing Yuma Street and removing all
13 surface parking from the Tenley plan?

14 MR. TUMMONDS: Jorge, is that --

15 MR. ABUD: The current plan has us
16 leaving one curb cut that's about the location
17 currently in place to serve a surface parking
18 lot that's existing. The exact location of
19 that curb cut has moved around a great deal
20 over this period of time from the first plan
21 to the current plan, but it is still having
22 one curb cut remain from today -- from the

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1 four that exist today and the surface
2 parking --

3 MS. SKLOVER: Remains.

4 MR. ABUD: -- that exists today.

5 MS. SKLOVER: The third area that
6 we've been talking about for two and a half
7 years is retention of or an agreement not to
8 construct upon the western portion of the
9 site. That's been talked about for two and a
10 half years. Have you modified your position
11 on that at all as of today or do you continue
12 to refuse to -- or do you continue to refuse
13 to promise not to construct on that site for a
14 period of time?

15 MR. ABUD: We have not modified
16 our position.

17 MS. SKLOVER: So, the essential
18 elements that have been raised over that two
19 and a half year period remain as they were on
20 day one of the meetings?

21 MR. TUMMONDS: I would object.
22 This is beyond the rebuttal testimony Thursday

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1 night.

2 CHAIRMAN HOOD: Okay. I think she
3 -- unlike others, she was nice enough to say
4 you would have to help her. So --

5 MS. SKLOVER: Okay.

6 CHAIRMAN HOOD: -- he just helped
7 you. So.

8 MR. TUMMONDS: Sure.

9 MS. SKLOVER: And I thank you for
10 your help.

11 Now, let me get to some material
12 that some other folks have asked me to talk
13 with you about. Some of my fellow
14 commissioners.

15 Is it true the only provisions in
16 the amended student conduct code that reach
17 conduct off campus are prohibitions against
18 conduct that, one, has a negative effect on
19 the university's pursuit of its mission or,
20 two, has a negative effect on the well-being
21 of the greater community in the university's
22 judgment?

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1 MS. ESPINOSA: That's the way the
2 code reads right now. It's a very broad
3 application to that.

4 MS. SKLOVER: And is it your
5 thought that might be tightened?

6 MS. ESPINOSA: I think as we
7 continue to go forward and we continue to
8 address behavior, we redefine what's
9 considered disruptive and infringing on the
10 rights of others in the community. Yes.

11 MS. SKLOVER: You stated the
12 conduct code prohibits among other things
13 interfering with the rights of others and
14 harassment. Isn't it true the code is
15 written, and I can read you that section if
16 you'd like -- would you like me to?

17 MS. ESPINOSA: No.

18 MS. SKLOVER: Okay. Prohibits
19 such conduct "Only if the university makes an
20 independent judgment that the interference or
21 harassment has a negative effect on the
22 university's pursuit of its mission or on the

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1 well-being of the general community." And
2 that's in quotation marks.

3 Is that correct?

4 MS. ESPINOSA: Is your question is
5 that what the code says? I'm sorry.

6 MS. SKLOVER: Is it true that you
7 stated -- you stated one thing and I think the
8 code indicates something different? I believe
9 that's what my fellow commissioner was getting
10 at.

11 MS. ESPINOSA: I'm sorry. I don't
12 understand the question.

13 MS. SKLOVER: You know what? I
14 don't understand it well enough to respond to
15 you either because it was handed to me as a
16 written thing and I was asked to -- okay. It
17 remains true, doesn't it, that for conduct on
18 campus and residence halls, AU continues to
19 specify -- prohibit conduct in much greater
20 detail than the two clauses that apply to off-
21 campus behavior?

22 MS. ESPINOSA: The codes in our

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1 code of conduct apply to behavior both on and
2 off campus.

3 MS. SKLOVER: I understand that,
4 but isn't it considerably more stringent for
5 on-campus behavior than for off-campus
6 behavior?

7 MS. ESPINOSA: It's no more
8 stringent. No.

9 MS. SKLOVER: Or it specifies
10 prohibited conduct in greater detail in on-
11 campus behavior than in off-campus behavior.

12 MS. ESPINOSA: In the sense that
13 there are residence hall regulations specific
14 to the residential facilities that we own and
15 supervisor and staff, yes, those are specific
16 to residential facilities.

17 MS. SKLOVER: And for off-campus
18 behavior, are there specific dos and don'ts?
19 As specific as you have for your on-campus
20 facilities?

21 MS. ESPINOSA: No.

22 MS. SKLOVER: Given what we've

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1 experienced with people in our area, I think
2 that that might be something you might want to
3 consider.

4 You mentioned the communication
5 with neighbors, students, AU and landlords led
6 to resolution of issues with two problem
7 houses to resolve. How long did it take to
8 resolve the situations?

9 MS. ESPINOSA: Those two houses
10 were at issue for at least the entire year
11 that -- that I was on staff after -- until
12 those students vacated in June and July I
13 believe respectively.

14 MS. SKLOVER: And was the
15 resolution that the student's lease has
16 expired. Now, the landlords having learned
17 their lesson will not rent properties to AU
18 students again or was it actually something
19 that you did?

20 MS. ESPINOSA: Well, we took
21 action against the student organization
22 affiliated with both of those houses. So, I

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1 believe --

2 MS. SKLOVER: Did that resolve it?

3 MS. ESPINOSA: It led to some
4 resolution, yes, of that issue and then the
5 landlord chose not to lease to them again.

6 MS. SKLOVER: Thank you very much.

7 CHAIRMAN HOOD: Thank you very
8 much, Commissioner. We appreciate it.

9 MS. SKLOVER: You're very welcome.

10 CHAIRMAN HOOD: Okay. Ms.
11 Horvitz.

12 My regular question is do you know
13 about how much time and how many questions you
14 have?

15 MS. HORVITZ: I would say about 25
16 minutes.

17 CHAIRMAN HOOD: Okay. Thank you.

18 MS. HORVITZ: Thank you. This is
19 Laurie Horvitz on behalf of Westover and
20 Neighbors for a Livable Community.

21 I'd like to start with some
22 questions for Mr. Miller.

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1 Mr. Miller, the noise study
2 explains that the decibel scale is
3 logarithmic. In layman's terms, what does
4 that mean?

5 MR. MILLER: If one scratches
6 their head and remembers their high school
7 logarithms which most people don't, a three
8 decibel change up or down is half or twice the
9 energy, but is perceived as only a very subtle
10 or slight difference.

11 MS. HORVITZ: Well, how would the
12 ear perceive an increase from say 50 decibels
13 to 60 decibels? A ten decibel increase.

14 MR. MILLER: Statistically, the
15 average person will determine a ten decibel
16 change up or down as half or twice as loud
17 subjectively.

18 MS. HORVITZ: An increase from 50
19 to 60 decibels would be perceived of as twice
20 as loud? Is that --

21 MR. MILLER: Affirmative.

22 MS. HORVITZ: Okay. Did your

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1 study consider the potential noise
2 disturbances emanating from the remaining
3 surface parking lot on East Campus?

4 MR. MILLER: It did not.

5 MS. HORVITZ: Have you formed any
6 opinions as to the likely noise effects of say
7 car stereos or loud student groups on that
8 parking lot?

9 MR. MILLER: No.

10 MS. HORVITZ: I saw a reference in
11 your study specifically on page 5 to the
12 observance of certain loud temporary events
13 which you ignored when taking your ambient or
14 background noise studies and specifically, you
15 mentioned temporary events in that parking
16 lot. Could you explain what were the louder
17 temporary events that you disregarded for
18 purposes of calculating background noise?

19 MR. MILLER: Primarily sirens and
20 helicopters.

21 MS. HORVITZ: Not any events in
22 the parking lot itself?

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1 MR. MILLER: Not that we're -- I'm
2 aware of. No.

3 MS. HORVITZ: Were you on site for
4 those studies?

5 MR. MILLER: I -- I was for -- for
6 most of them. I was not on site for the later
7 evening ambient measurements.

8 MS. HORVITZ: Did your study
9 consider the potential noise disturbances
10 emanating from the proposed retail operations
11 on East Campus?

12 MR. MILLER: No.

13 MS. HORVITZ: Did your study
14 consider the likely noise effects of delivery
15 trucks or trash pickups servicing the
16 dormitories or the retail spaces?

17 MR. MILLER: No.

18 MR. TUMMONDS: Ms. Buffington --
19 maybe this would help answer your question as
20 well. Where are the loading --

21 MS. BUFFINGTON: The trash, the
22 loading -- all the loading trash and any

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1 service vehicles would be in the below-grade
2 parking. There's no surface deliveries or
3 trash pickup on the site.

4 MS. HORVITZ: Thank you. Mr.
5 Miller, did your study consider the potential
6 noise disturbances emanating from the buffer
7 buildings themselves?

8 MR. MILLER: Indirectly, yes.

9 MS. HORVITZ: So, did you consider
10 the uses that -- the uses within the buffer
11 buildings and whether the windows would be
12 open and closed and the like?

13 MR. MILLER: No, when I said
14 indirectly, I was referring to the fact that
15 we understand they're going to have HVAC
16 equipment or heating, ventilating, air
17 conditioning equipment in those buildings
18 also. But, no, not actual potential sources
19 from those buildings.

20 MS. HORVITZ: All right. Just so
21 that I understand, you considered some
22 potential noise from mechanical equipment for

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1 the buffer buildings, but no noise that would
2 arise from the usage of the buildings by
3 people?

4 MR. MILLER: Affirmative.

5 MS. HORVITZ: A related question.
6 When you did the noise study which I
7 understand was done in mid-September, is that
8 correct?

9 MR. MILLER: I believe that's
10 correct. I've run so many of these I lose
11 track sometimes. Hold on. Yes. Correct.
12 Mid-September.

13 MS. HORVITZ: Had you at that time
14 seen AU's proposed layout of the interior
15 spaces in the buffer buildings?

16 MR. MILLER: I don't remember.

17 MS. HORVITZ: Did your study
18 consider the potential sources of outdoor
19 noise on the landscape buffer itself that will
20 be next to the Westover community?

21 MR. MILLER: I'm sorry. Repeat
22 that question please.

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1 MS. HORVITZ: Sure. Did you
2 consider in your noise analysis potential
3 sources of noise outdoor on the landscape
4 buffer itself?

5 MR. MILLER: No.

6 MS. HORVITZ: Okay. Did your
7 study consider potential sources of amplified
8 noise in the East Campus courtyards?

9 MR. MILLER: Yes.

10 MS. HORVITZ: Can you explain
11 that?

12 MR. MILLER: We generated four
13 generic classes of sound in our study. One of
14 what we considered normal talking and one of
15 elevated talking. One of background music
16 like say a student studying and then elevated
17 music.

18 MS. HORVITZ: So, would the
19 elevated music category which I assume would
20 have been the loudest --

21 MR. MILLER: Affirmative.

22 MS. HORVITZ: -- would that be

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1 consistent with a live performance by a band
2 in the courtyard for example?

3 MR. MILLER: Well, a band could
4 have an incredibly wide range of potential
5 sounds, but could it be amplified music
6 outdoors? It could be.

7 MS. HORVITZ: What kind of volume
8 were you anticipating with respect to your
9 louder music? Were you thinking of the kind
10 of loud music that's played by students inside
11 a dorm room or the kind of amplification one
12 would normally see in an outdoor event?

13 MR. MILLER: More of amplified
14 higher levels that a student would have inside
15 the dorm room or say a boombox outdoors.

16 MS. HORVITZ: But, nothing
17 comparable to a live performance with larger
18 speakers and a stage?

19 MR. MILLER: You mean like a rock
20 band? No.

21 MS. HORVITZ: Okay.

22 MR. TUMMONDS: Redirecting. In

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1 our proposed conditions on the use of the East
2 Campus, we stated that one of the conditions
3 would be there would be no amplified sound on
4 the East Campus.

5 MR. MILLER: That's correct.

6 MR. ABUD: No exterior amplified
7 sound.

8 MS. HORVITZ: Let me just --

9 MR. TUMMONDS: I think that was
10 trying to answer your question of if there was
11 a band playing in the courtyard and we're
12 saying --

13 MS. HORVITZ: Right.

14 MR. TUMMONDS: -- we are not going
15 to allow bands to play in the courtyard.

16 MS. HORVITZ: And I would be
17 delighted at that. I had read your proposed
18 amplified sound condition for East Campus and
19 I did not read it that way. But, if you're
20 representing that you're prepared to have no
21 outdoor amplification on East Campus at all
22 and submit that as a condition, that would

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1 great.

2 Is that your position?

3 MR. TUMMONDS: Yes, that's the
4 condition we submitted.

5 MR. MILLER: And that is why we
6 did not consider that as a source.

7 MS. HORVITZ: Now, I'd like to
8 talk about a few possible mitigations for
9 noise.

10 Could the university further
11 mitigate potential noise disturbances by
12 installing a barrier or a wall between the two
13 buffer buildings and specifically, I'm talking
14 about that spot where there's seepage of noise
15 as demonstrated on your study.

16 MR. MILLER: Yes.

17 MS. HORVITZ: And that would
18 eliminate some of that seepage?

19 MR. MILLER: Yes.

20 MS. HORVITZ: Would the results of
21 your noise analysis and the opinions that
22 you've expressed before this body be different

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1 if the buffer buildings were not, in fact,
2 built?

3 MR. MILLER: Well, the study would
4 indicate that there would be a higher noise
5 level then at the property line. Because the
6 buffer -- the buildings provide a buffer.

7 MS. HORVITZ: So, your assumption
8 was that the buffer buildings would be built
9 and they would provide certain characteristics
10 that would affect what Westover residents and
11 Wesley Heights residents would hear. Correct?

12 MR. MILLER: Correct.

13 MS. HORVITZ: And if the buffer
14 buildings were not, in fact, constructed or
15 constructed later, what would you expect would
16 be the noise levels experienced by Westover in
17 that circumstance?

18 MR. MILLER: I -- I don't know
19 without conducting that study.

20 MS. HORVITZ: Would it be a
21 greater noise or a lesser noise?

22 MR. MILLER: It would be higher.

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1 MS. HORVITZ: Would you recommend
2 the construction of the buffer buildings first
3 as a way to mitigate noise effects?

4 MR. MILLER: That -- from my
5 experience with construction in the industry
6 that I've been in, it's -- it's really
7 something that's decided as part of the
8 construction process as to what's the most
9 effective thing to build, but I'm assuming
10 they're all going up essentially at the same
11 time.

12 MS. HORVITZ: Did you consider any
13 effects relating to construction noise?

14 MR. MILLER: We did not.

15 MS. HORVITZ: A few questions
16 about your ambient noise/background noise
17 analysis.

18 Did I understand your testimony
19 correctly that you discontinued your efforts
20 to record background noise at about 9:00 p.m.?

21 MR. MILLER: About that. Yes.

22 MS. HORVITZ: At the East Campus

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1 site, is the background noise likely to be
2 greater when there is more traffic passing by?

3 MR. MILLER: Yes.

4 MS. HORVITZ: At midnight or 2:00
5 a.m., for example, would you expect to see
6 lower levels of background noise?

7 MR. MILLER: Depending on time of
8 year, yes.

9 MS. HORVITZ: And what is the
10 factor that you are citing that is driven by
11 the time of year?

12 MR. MILLER: Well, we stopped, as
13 was testified last time, at 9:00 because the
14 noise level went back up from 7:00 to 9:00.

15 MS. HORVITZ: Because of insects?

16 MR. MILLER: Affirmative.

17 MS. HORVITZ: So, say in March or
18 April, would you expect the same kind of
19 background noise from insects?

20 MR. MILLER: I don't know about
21 March or April, but if you get into the winter
22 months, there would likely be less noise.

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1 MS. HORVITZ: So, in that
2 circumstance, the background noise would be
3 lower than what you recorded and analyzed in
4 your study?

5 MR. MILLER: Yes.

6 MS. HORVITZ: If the students on
7 AU's East Campus generate 50, 60 or 70
8 decibels of noise for example, are the
9 neighbors more likely to hear that noise at
10 2:00 in the morning or at 7:00 p.m.?

11 MR. MILLER: It's -- it's not a
12 simple answer because it has -- there are a
13 lot of factors involved in one's perception of
14 noise and you'll get into an area that we sort
15 of tongue and cheek call psycho-acoustics.

16 MS. HORVITZ: Okay. So, the
17 perception by the person is it's louder
18 because it's 2:00 in the morning?

19 MR. MILLER: It certainly could be
20 louder or they may not hear it at all.

21 MS. HORVITZ: Well, does your
22 report specifically include any data that

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1 would allow the Commission to understand what
2 the background noise levels would be say at
3 2:00 in the morning in November?

4 MR. MILLER: Well, I wouldn't
5 expect our study to indicate any difference in
6 noise levels assuming that the levels were
7 actually being created by the students at that
8 time because there's also a general assumption
9 that there would probably be less noise at
10 2:00 in the morning from the students on the
11 average. But, if one assumes that they're
12 creating the same levels we generated before,
13 the levels at the property line and beyond
14 aren't going to change over what they are now.

15 But, the background noise levels may be
16 slightly less.

17 MS. HORVITZ: So, if the
18 background noise levels are slightly less and
19 the student noise is the same as you have
20 modeled, would that increase the likelihood
21 that the students' noise would be heard by the
22 Westover residents?

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1 MR. MILLER: The answer I gave
2 before I still will restate and that is it's
3 not a simple answer because at 2:00 in the
4 morning, could it be more -- could it be more
5 apparent, yes, but also it may be less
6 apparent because it depends on the state of
7 the person listening. If they're out there
8 listening at 2:00 in the morning for it, then
9 yes, it would be more apparent. But, if
10 they're in their house sleeping, they probably
11 wouldn't hear it.

12 MS. HORVITZ: With respect to the
13 mechanical equipment, the study states that
14 the noise mitigation measures may be necessary
15 to address mechanical noise. What are the
16 most effective mitigation measures to reduce
17 noise from air handling units?

18 MR. MILLER: Okay. This is
19 something we do on a regular basis for all
20 buildings not just this kind of a building.
21 It's something that's part of our bread and --
22 well, I would call it bread and butter.

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1 There's a whole litany of things that are
2 available and they're worked out with the
3 mechanical engineer once the mechanical
4 engineer is involved in designing the system.

5 But, to answer your question
6 without getting into excessive detail,
7 choosing the equipment to be quiet to begin
8 with. Where that's not enough, then you
9 attenuate the intakes and discharges and
10 sometimes put barriers.

11 MS. HORVITZ: Do you have an
12 understanding of what kind of barriers, if
13 any, are being proposed by AU for the
14 buildings on East Campus?

15 MR. MILLER: Are you referring
16 specifically to the mechanical equipment?

17 MS. HORVITZ: I am.

18 MR. MILLER: Okay. I don't think
19 they are that far along yet to get to that
20 point, but no, I'm not.

21 MS. HORVITZ: Was there some
22 reference to metal paneling? Do you know

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1 whether they were contemplating metal
2 paneling?

3 MR. MILLER: I don't know.

4 MS. HORVITZ: Okay. That's fine.

5 I was a little bit confused about
6 an answer that Mr. Abud gave. So, this may be
7 better directed to you.

8 Will the mechanical equipment be
9 underground for the buffer buildings? Or
10 maybe it was Ms. Buffington.

11 MR. ABUD: Most of the mechanical
12 equipment will be underground. There's some
13 equipment that needs to be out in the air and
14 that's the only equipment that will be there.

15 It depends on the exact design of the
16 mechanical system which has not happened yet.

17 But, anything that's outdoors or
18 on the rooftops is only occurring on buildings
19 one, two and three.

20 MS. HORVITZ: So, the mechanical
21 -- thank you. The mechanical equipment for
22 the buffer buildings, where will that be?

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1 MR. ABUD: Within the buildings
2 underground.

3 MS. HORVITZ: Okay. And back to
4 Mr. Miller for one more question.

5 Mr. Miller, did you or your firm
6 do any acoustical studies regarding sound from
7 either the athletic fields, the proposed
8 bleachers or South Hall? All of which are on
9 the south side of campus.

10 MR. MILLER: No.

11 MS. HORVITZ: I have a few
12 questions on retail and whoever can answer is
13 fine.

14 I take it from the answers that
15 there are -- is there any commitment by the
16 university as to what the hours of operation
17 of the retail establishments will be on East
18 Campus?

19 MR. ABUD: We just haven't gone to
20 that level of detail. I think we would want
21 to work with the community to determine, you
22 know, what those parameters ought to be.

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1 MS. HORVITZ: I know that
2 Commissioner Smith was asking about the
3 extended hours café, but I saw also a
4 reference to a convenience store as a possible
5 retail establishment.

6 Would that be an all-night type of
7 convenience store?

8 MR. ABUD: Not likely. Again,
9 we'd work that through with the community.
10 But, given its location, it's unlikely that
11 we'd make it a 24 hour.

12 MS. HORVITZ: Will East Campus
13 have any retail establishments that are open
14 later than the retail on Main Campus? In
15 other words, will East Campus have the last
16 open and available retail such that students
17 will migrate over to East Campus for late
18 night activities?

19 MR. ABUD: No, we'd -- our
20 preference would be to have the later
21 functions in the center of the campus because
22 that's where the bulk of the student

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1 population is.

2 MS. HORVITZ: Now, the Office of
3 Planning had recommended that the retail
4 proposal should be conditioned on the
5 submission of a comprehensive retail plan and
6 specifically, that there would be an analysis
7 of retail on East, Main Campus, commercially-
8 zoned properties and the like.

9 Was there an analysis performed
10 that encompassed the retail, all retail on the
11 Main Campus and all retail in the commercial
12 quadrant and is that driving the conclusions
13 that have been presented by the university
14 here?

15 MR. ABUD: The study we had done
16 addressed all the retail on the Main Campus.
17 It used as background information retail
18 located off the campus not only in university-
19 owned buildings, but on buildings owned by
20 others as well.

21 MS. HORVITZ: The university has
22 made reference to the -- I guess I'll call it

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1 B&D because I can never pronounce their name.
2 The B&D study. Is that what you're referring
3 to?

4 MR. ABUD: Yes.

5 MS. HORVITZ: And have you filed
6 that B&D study with the Commission?

7 MR. ABUD: No, we haven't filed
8 the entire study. No.

9 MS. HORVITZ: Do you know whether
10 B&D did a comprehensive survey of student
11 demand and preferences?

12 MR. ABUD: They did.

13 MS. HORVITZ: They did a
14 comprehensive survey?

15 MR. ABUD: It depends on how you
16 define comprehensive. They did a survey that
17 was statistically valid to be representative
18 of our student population.

19 MS. HORVITZ: How many students
20 did they speak to?

21 MR. ABUD: We did an online survey
22 and they did a series of focus groups. How

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1 many students, I don't have with me.

2 MS. HORVITZ: If B&D found that
3 there was unmet retail detail as has been
4 asserted by AU, couldn't that demand be met
5 with establishments in the middle of the
6 campus?

7 MR. ABUD: We currently don't have
8 any spare space in which to locate additional
9 retail in the center of the campus.

10 MS. HORVITZ: Ms. Buffington, you
11 testified that Westover is surrounded by
12 several buildings that serve institutional
13 uses. Do you recall that testimony?

14 MS. BUFFINGTON: Yes, I said there
15 were buildings with institutional uses that
16 border on Nebraska Avenue.

17 MS. HORVITZ: Do you know whether
18 the Westover residents can see, for example,
19 the NAC Building that you were referencing?

20 MS. BUFFINGTON: I have no idea.

21 MS. HORVITZ: Or hear that
22 building? Buildings I should say.

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1 MS. BUFFINGTON: I have no idea.

2 MS. HORVITZ: Are you contending
3 that the Westover residents can see and hear
4 the television station building other than
5 through their TVs?

6 MS. BUFFINGTON: No, I didn't mean
7 to imply that.

8 MS. HORVITZ: Okay. And you're
9 not saying are you that the -- say the usage
10 of the nearby church is comparable to the
11 proposed usage and development of the East
12 Campus? You're not saying that.

13 MS. BUFFINGTON: No.

14 MS. HORVITZ: Okay. So, the
15 institutional users that you referenced, are
16 any of them immediately adjacent to Westover?

17 MS. BUFFINGTON: No.

18 MS. HORVITZ: That's all I have.

19 CHAIRMAN HOOD: Thank you very
20 much. Excuse me. Let's go to Mr. Mazucchi.

21 MR. MAZUCCHI: Good evening, Mr.
22 Chair.

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1 CHAIRMAN HOOD: And if you can let
2 us know about how much time you need and
3 probably how many questions you may have.

4 MR. MAZUCCHI: Fifteen minutes.
5 About 20 questions.

6 CHAIRMAN HOOD: Thirty?

7 MR. MAZUCCHI: Fifteen minutes and
8 about 20 questions.

9 CHAIRMAN HOOD: Twenty. Okay.
10 Thank you.

11 MR. MAZUCCHI: Okay. The first
12 one is for Mr. Taylor.

13 David, in your rebuttal testimony,
14 you state that while you project "minimal
15 undergraduate growth" you believe that you
16 need flexibility to respond to potential
17 "market demand."

18 That could result in undergraduate
19 growth higher than what you project. Correct?

20 MR. TAYLOR: It could.

21 MR. MAZUCCHI: And would that mean
22 that without a cap on undergraduate

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1 enrollment, you could, in principle, enroll
2 hundreds of new undergraduates during this
3 campus plan?

4 MR. TAYLOR: What we were
5 suggesting was that the monitoring mechanism
6 would be the number of students housed, the 67
7 percent.

8 MR. MAZUCCHI: You've previously
9 failed to comply with that 67 percent
10 standard. Is that right?

11 MR. TAYLOR: We have had some off-
12 campus leases that indeed have helped us.

13 MR. MAZUCCHI: Okay. Next
14 question is for Jorge Abud.

15 In your original projections on
16 June 9th, you listed East Campus as being
17 completed in the fall of 2014 and in your
18 rebuttal testimony, it's listed as being
19 completed by fall of 2016. Why has this
20 changed?

21 MR. ABUD: Part of the reason is
22 that the -- this particular process is going

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1 longer than we originally envisioned and so,
2 typically, we plan housing buildings to be
3 open in August. If we miss a particular
4 August, really don't have the opportunity to
5 open it until the following August, so, we're
6 at least one year behind that 2014 time frame
7 and not exactly knowing when we'll be able to
8 get started, we're being conservative in
9 projecting that it could be 2016.

10 MR. MAZUCCHI: So, even though you
11 started this proceeding testifying that you
12 have a "housing deficit" that must be
13 addressed, you actually plan to build no new
14 net campus housing for the next five years.
15 Is that right?

16 MR. TUMMONDS: Mr. Abud, in order
17 to -- how long do we anticipate the
18 construction process would take for East
19 Campus?

20 MR. MAZUCCHI: No, actually,
21 that's not my question.

22 MR. MAZUCCHI: It gets to your

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1 idea. I think your question --

2 MR. MAZUCCHI: My question is
3 actually, what is the first year in your
4 projections where you would actually be --
5 there would be some net new on-campus housing?

6 MR. ABUD: It is 2016.

7 MR. MAZUCCHI: Okay. Thank you.
8 And in terms of compliance with the two-thirds
9 housing capacity standard, your capacity would
10 be less than that required to comply with the
11 standard until halfway through the new ten-
12 year campus plan even at the minimal
13 undergraduate growth you project. Correct?

14 MR. ABUD: It would be 2016.

15 MR. MAZUCCHI: Okay. With respect
16 to the two-thirds housing capacity standards,
17 do you recall that OP has testified that the
18 reference to "university-provided housing" was
19 "an oversight" and that they intended this
20 condition to refer to "on-campus housing?"

21 MR. ABUD: No.

22 MR. MAZUCCHI: Well, at hand-

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1 marked pages 17 and 18 of the exhibits, I have
2 an excerpt from the transcript of the July
3 14th hearing. Could you take a look at that?

4 MR. TUMMONDS: Again, we didn't
5 testify to what OP testified as --

6 CHAIRMAN HOOD: Mr. Tummonds, I
7 was wondering why you didn't do the last
8 question.

9 But, anyway, let me just say this,
10 Mr. Mazucchi. We're asking questions on
11 rebuttal. I don't think they responded to
12 Office of Planning's report in rebuttal. I'm
13 not sure. I can't remember everything, but
14 let's keep it to what they responded to in
15 rebuttal and the July whatever date it was.
16 The 14th. Whatever day that was. Let's go
17 with rebuttal. Rebuttal was just last week.

18 MR. MAZUCCHI: If I may say, there
19 was a change in the rebuttal testimony to say
20 that they were agreeing to the condition of 67
21 percent university-provided housing. That was
22 different from what --

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1 CHAIRMAN HOOD: So, you're making
2 a comparison of what they said last week as
3 opposed to what they said previously.

4 MR. MAZUCCHI: Correct.

5 CHAIRMAN HOOD: Let's make sure we
6 bring that out in your question.

7 MR. MAZUCCHI: And I'm really just
8 trying to see if AU has the same understanding
9 of OP's condition as OP appears to have.

10 CHAIRMAN HOOD: Okay. Okay.

11 MR. MAZUCCHI: So, my question is
12 do you disagree with OP about what this
13 provision is suppose to mean?

14 MR. TUMMONDS: I believe that, you
15 know, I was the one who testified or made the
16 reference. I quoted last week page 11 of the
17 OP report from June 2nd and we were relying on
18 what OP had submitted in their written
19 submission in their report.

20 MR. MAZUCCHI: Did you discuss
21 with OP the proposed correction of this
22 wording to refer to on-campus housing rather

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1 than university-provided housing?

2 MR. TUMMONDS: It is our
3 understanding that OP stood by their initial
4 June 2nd report.

5 MR. MAZUCCHI: My question is did
6 you discuss it with them?

7 MR. TUMMONDS: Did I have
8 discussions with OP about this? No, I did
9 not.

10 MR. MAZUCCHI: Did anybody from AU
11 have discussions with them?

12 MR. TUMMONDS: I think that there
13 were -- yes, members of our development team
14 had discussions with OP and if they were --

15 MR. MAZUCCHI: About this point?

16 MR. TUMMONDS: Yes, whether two-
17 thirds was university-provided housing.

18 MR. MAZUCCHI: Okay. Are any of
19 those people here?

20 MR. TUMMONDS: Yes, but they
21 didn't testify in rebuttal on Thursday night.

22 MR. MAZUCCHI: No, I'm asking a

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1 question about the university's rebuttal
2 testimony.

3 COMMISSIONER TURNBULL: Well, you
4 know, I think last week I brought up a
5 question about the housing. Sixty-seven
6 percent. And we clarified at that point that
7 it was provided and I said how much is on
8 campus and I thought the answer was somewhere
9 65/66 percent on campus.

10 MR. TUMMONDS: That is correct.

11 COMMISSIONER TURNBULL: That's the
12 answer that I got.

13 MR. ABUD: That's correct.

14 MR. MAZUCCHI: Other than those
15 parts -- yes. You state further in your
16 rebuttal submission response to OP on page 3
17 that "The creation of 590 beds on the East
18 Campus is critical to the university's goal of
19 creating university provided housing for 67
20 percent of its undergraduates."

21 Is it your testimony that AU would
22 not be able to satisfy the two-thirds housing

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1 requirement without building 590 beds on East
2 Campus?

3 MR. ABUD: Yes.

4 MR. MAZUCCHI: At hand-marked page
5 3 of these exhibits is an excerpt from an AU
6 campus plan proposal of May 2010. In May
7 2010, AU proposed building over 400 beds of
8 housing in the area between Rockwood Parkway
9 and the Campus Road marked as South Campus.
10 Did it not?

11 MR. TUMMONDS: Okay. And I'm
12 going to object to anything referring back to
13 testimony from May 25th.

14 MR. MAZUCCHI: Sir, I really -- I
15 have to say they had said something new in
16 their rebuttal testimony for the first time
17 which is that they actually need to build the
18 housing on the East Campus and indeed, they've
19 said that it's critical and I'd just like to
20 spend a couple of minutes showing that --
21 testing whether that statement is true. I
22 think that's fundamental to the cross

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1 examination.

2 CHAIRMAN HOOD: Mr. Tummonds, if
3 we could direct somebody to answer this
4 question.

5 MR. TUMMONDS: Sure. Mr. Abud.

6 MR. ABUD: Yes, the -- throughout
7 the campus plan community task force process,
8 we discussed a number of potential locations
9 for housing and this May 25th, 2010 proposed
10 plan had housing on the South Campus.

11 MR. MAZUCCHI: Similarly as noted
12 on the same hand-marked page 3 in the same
13 presentation, AU proposed potentially tearing
14 down the existing Clark-Roper housing and
15 building approximately 370 beds of new housing
16 and academic buildings on this site. Is that
17 correct?

18 MR. ABUD: Yes.

19 MR. MAZUCCHI: Would it not -- I'm
20 sorry. Would it not be possible for AU to
21 build housing to some extent in these two
22 areas and increase the number of beds at East

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1 Campus?

2 MR. ABUD: Not given where we are
3 today, we've -- as I said before, the plan is
4 -- has been evolving over two and a half
5 years. We've responded to our needs, to
6 community concerns and in the meantime, have
7 also continued to develop our campus. So,
8 part of this site, we've renovated buildings
9 -- invested in renovating buildings that we
10 need to get some economic life out of and so,
11 today, this isn't a viable solution.

12 MR. MAZUCCHI: Well, the May 2010
13 proposal was made after you had renovated
14 those Clark-Roper buildings. Is that right?

15 MR. ABUD: Possibly yes.

16 MR. MAZUCCHI: We also discussed
17 before two other proposed sites from the
18 Rhodeside Plan that were marked A3 and A4.

19 MR. TUMMONDS: I'm going to -- I'm
20 going to object to -- we didn't talk about the
21 Rhodeside Plan and Alternative Framework Plan
22 in last Thursday's rebuttal.

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1 MR. MAZUCCHI: There's only --
2 there's only one point that relates to his
3 rebuttal testimony I'd like to make about
4 that.

5 CHAIRMAN HOOD: Could we go
6 straight to the point? And I'll tell you what
7 I'm doing. I'm trying to see in their
8 submission stuff that's in the rebuttal. So,
9 I'm having to catch up myself. So, if you
10 could get right to the point.

11 MR. MAZUCCHI: Jorge, before when
12 we discussed these sites A3 and A4, you said
13 there would be a problem using them "because
14 of existing roadways" and "We need to build
15 the housing soon and prior to when we might
16 close the road."

17 So, now, that you're planning on
18 taking five years to build East Campus,
19 wouldn't you have enough time to build on
20 these sites in the same time frame?

21 MR. ABUD: No, that answer still
22 -- still holds. There are other things that

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1 need to happen. Replacement facilities being
2 built before we can relocate the road and
3 moving functions that are in our existing
4 buildings and tearing buildings down. So,
5 that sequence of events still we don't project
6 happening within the time frame of the East
7 Campus.

8 MR. MAZUCCHI: But, you agree,
9 right, that those A3 and A4 sites are
10 consistent with the eventual proposed
11 circulation plan as you've set it out in your
12 campus plan. Correct?

13 MR. ABUD: Well, I don't remember
14 exactly what A3 and A4 are.

15 MR. MAZUCCHI: Well, I'd be happy
16 to -- I mean we can take a look at them more
17 if you want.

18 MR. TUMMONDS: And I'm going to
19 raise my previous objection. We did not talk
20 about buildings A3 and A4 on Thursday night or
21 the Rhodeside Alternate Framework Plan.

22 CHAIRMAN HOOD: What are you

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1 referring to, Mr. Mazucchi? Are you referring
2 to one of the earlier submissions? A3 and A4.

3 MR. MAZUCCHI: I discussed with
4 Jorge in my earlier cross examination and then
5 also in the Rhodeside Plan that we submitted
6 and there's a diagram that's at hand-marked
7 page 16 of these exhibits. You can see those
8 buildings marked A4 and A3 there.

9 MR. ABUD: These are attachments I
10 just submitted this evening.

11 MR. MAZUCCHI: This is just
12 another copy of something we sent in.

13 CHAIRMAN HOOD: Okay. Let me ask
14 you this. Where did this come up at last
15 week? A3 and A4.

16 MR. MAZUCCHI: This is entirely
17 just based on my contention that -- I'm trying
18 to respond to their rebuttal testimony that
19 it's critical to build an East Campus. That's
20 the only way that this relates. I admit that.

21 CHAIRMAN HOOD: Okay. Let's close
22 out the questions. I'm going to allow one

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1 question. Let's do that and let's move on.

2 MR. MAZUCCHI: My one question
3 really is that -- aren't these buildings A4
4 and A3 actually consistent with your eventual
5 design for the road circulation plan?

6 MR. ABUD: No.

7 MR. MAZUCCHI: Why is that?

8 CHAIRMAN HOOD: You said one
9 question.

10 MR. MAZUCCHI: Okay.

11 CHAIRMAN HOOD: So --

12 MR. MAZUCCHI: Very well.

13 CHAIRMAN HOOD: I mean he said no
14 and then you say why is that? I mean go ahead
15 and answer it, but --

16 MR. ABUD: It's not just about the
17 location of the road. A4's on top of the
18 garden area. When we close the road, we still
19 need to maintain service access and fire truck
20 access. So, you can't put a building in the
21 way. So, there -- it's a much more complex
22 answer than just the roadway as it's used

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1 today.

2 MR. MAZUCCHI: Thank you. My next
3 questions are for Ms. Espinosa.

4 Just briefly, in the 70 cases that
5 you describe over ten years in your rebuttal
6 testimony, how many resulted in sanctions to
7 students?

8 MS. ESPINOSA: I don't have that
9 number in front of me. I don't know if
10 charges were held or if they were sanctioned.

11 But, 70 students were processed through the
12 conduct system.

13 MR. MAZUCCHI: So, you can't say
14 whether there was any sanction at all?

15 MS. ESPINOSA: No, I don't have
16 that information in my records.

17 CHAIRMAN HOOD: Could you get us
18 that information? I actually want that
19 information. Could you get us that
20 information and turn it into us? I'd like to
21 see that.

22 Because I think last week -- was

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1 it last week? I remember once before you
2 didn't have the information. So, now, let's
3 get the information. I'd like to see that.

4 MS. ESPINOSA: Certainly.

5 MR. MAZUCCHI: In the case of Ms.
6 Leamy's situation with the house at 4335 Van
7 Ness Street, there's no sanction of any kind
8 imposed on any student in that case. Is that
9 correct?

10 MS. ESPINOSA: That's correct. We
11 have two students currently living there among
12 the four or five that are on the lease.

13 MR. MAZUCCHI: I have a question
14 about traffic and I know the traffic folks
15 aren't here, Paul, but maybe you can answer
16 this.

17 In item 28 of your summary of
18 responses, you refer to your response to my
19 question on June 23rd regarding "Data or
20 location in the traffic report on projected
21 trip generation near Ward Circle that would
22 result from relocation of the law school to

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1 Tenley Campus as distinguished from trip
2 generation associated with increased
3 population of the Main Campus."

4 And you refer to a July 13th
5 letter. This letter, in fact, confirms that
6 the study -- the Gorove Slade study assumes
7 zero new trip generation near Ward Circle from
8 relocation of the law school. Is that right?

9 MR. TUMMONDS: I do not know what
10 the July 13th Gorove Slade submission said.

11 MR. MAZUCCHI: Is that a question
12 that you can answer for us and supplement the
13 record?

14 MR. TUMMONDS: Yes, I mean I think
15 it's probably consistent with what
16 Commissioner May asked last week about
17 providing more -- providing some of the more
18 details that we had noted in all of these
19 various exhibits that we had filed.

20 MR. MAZUCCHI: I'm not sure what
21 your response meant there, but what I mean is
22 can you answer the question I just put --

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1 MR. TUMMONDS: Yes, and I'll do it
2 consistent with what Commissioner May had
3 asked last Thursday.

4 MR. MAZUCCHI: Okay. Let's see.
5 Just a couple of questions for Ms. Buffington
6 further. You stated that Westover is
7 "surrounded by high density development." Are
8 you familiar with the Embassy Park
9 development?

10 MS. BUFFINGTON: No, not
11 specifically.

12 MR. MAZUCCHI: Okay. It's a low
13 -- it's a low density development that
14 occupies the entire southern border of
15 Westover. Isn't it?

16 MR. TUMMONDS: I think she
17 answered that she was not familiar with that.

18 MR. MAZUCCHI: You also testified
19 that the East Campus site is part of a
20 "institutional corridor." If that's true and
21 you say, why is most of the East Campus site
22 zoned R-5-A where only buildings of low height

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1 and density are permitted?

2 MS. BUFFINGTON: I have -- I can't
3 speak to the zoning of the site.

4 MR. MAZUCCHI: I think this is my
5 last question. I guess it's for Jorge.

6 Following up on a comment from
7 Commissioner Schlater, would AU be willing to
8 agree to any restrictions on its conversion of
9 off-campus retail or commercial properties to
10 university uses during the term of the campus
11 plan?

12 MR. ABUD: I'm sorry. Could you
13 repeat that?

14 MR. MAZUCCHI: Following up on a
15 comment from Commissioner Schlater the other
16 night, would AU be willing to agree to any
17 restrictions on its conversion of off-campus
18 retail or commercial properties to university
19 uses during the term of the campus plan?

20 MR. ABUD: No.

21 MR. MAZUCCHI: Had to ask. That's
22 all my questions. Thank you.

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1 CHAIRMAN HOOD: I thought the
2 answer to Commissioner Schlater last week was
3 yes.

4 MR. ABUD: Commissioner Schlater
5 made a comment and we didn't -- we didn't
6 address his comment.

7 CHAIRMAN HOOD: Okay. Okay.
8 Okay. Okay. I might have got it wrong.
9 Okay. Thank you very much.

10 MR. MAZUCCHI: Thank you.

11 CHAIRMAN HOOD: Okay. Mr. Wilson,
12 Tenley Campus Neighborhood Association.

13 MR. WILSON: Thank you, Chairman
14 Hood. David Wilson for the Tenley Campus
15 Neighbors Association.

16 CHAIRMAN HOOD: Mr. Wilson, my
17 normal question. Could you tell us about how
18 much time and how many questions?

19 MR. WILSON: Fifteen to 20
20 minutes. Approximately that number of
21 questions.

22 CHAIRMAN HOOD: Okay. Thank you.

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1 MR. WILSON: Maybe this one's for
2 Mr. Taylor. Mr. Taylor, you've talked about
3 the 50 or so meetings you've had with
4 community members. I take it you'd agree with
5 me that just simply having a lot of meetings
6 doesn't mean we're making a lot of progress.
7 Right?

8 MR. TAYLOR: We have made a lot of
9 progress.

10 MR. WILSON: Well, I guess
11 opinions on that can differ.

12 When was the first time that
13 someone from the Tenley Campus Neighbor's
14 Association asked you whether AU would be
15 willing to have a cap imposed on the law
16 school at Tenley?

17 MR. TAYLOR: I can't say. I don't
18 recall.

19 MR. WILSON: If I suggested to you
20 that it was more than a year ago, would you
21 have any reason to disagree with me?

22 MR. TAYLOR: No.

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1 MR. WILSON: And do you remember
2 how many times we asked you if you would
3 consider a cap on the number of students at
4 the law school?

5 MR. TAYLOR: Do I remember how
6 many times? No.

7 MR. WILSON: Yes. It was more
8 than once. Wasn't it?

9 MR. TAYLOR: Sure.

10 MR. WILSON: Probably more than
11 five times. Wasn't it?

12 MR. TAYLOR: A number of times.

13 MR. WILSON: And when was the
14 first time that you told anyone at the Tenley
15 Campus Neighbor's Association that the
16 university would agree to a cap at the law
17 school for Tenley?

18 MR. TAYLOR: We just made
19 testimony of it.

20 MR. WILSON: Right.

21 MR. TAYLOR: Yes.

22 MR. WILSON: The first time was

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1 when you testified in front of this
2 Commission. Wasn't it?

3 MR. TAYLOR: Right.

4 MR. WILSON: You didn't pick up
5 the phone and call anybody from Tenley Campus
6 Neighbor's Association to let us know that
7 you'd finally agreed to what we've been asking
8 you for for over a year. Did you?

9 CHAIRMAN HOOD: So, Mr. Wilson,
10 your question is -- you're saying since he's
11 been down here, in rebuttal last week, he
12 finally agreed to something you all have been
13 asking him to do for two years. Is that --

14 MR. WILSON: Well, my point is --
15 and Commissioner Hood --

16 CHAIRMAN HOOD: No, not your
17 point. Your question.

18 MR. WILSON: My question --

19 CHAIRMAN HOOD: Yes, we're asking
20 questions.

21 MR. WILSON: Commissioner Hood,
22 you raised the question about whether or not

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1 AU was engaged with members of the community
2 and my question is simply whether or not --
3 I'll ask it in the form of a question. Do you
4 consider that to be engagement with the
5 community? To come to this Zoning Commission
6 hearing and for the first time, inform the
7 members of the Tenley Campus Neighbor's
8 Association that you will agree to a cap.

9 MR. TAYLOR: Well, I think it's an
10 appropriate venue for all kinds of changes.
11 That being one of them.

12 MR. WILSON: Would it have been an
13 appropriate venue for you to let us know in
14 advance in the spirit of cooperation with the
15 community?

16 MR. TAYLOR: Yes.

17 MR. WILSON: And you recall we
18 never agreed that 2000 was the right number
19 for the cap. Right?

20 MR. TAYLOR: Correct.

21 MR. WILSON: One of the reasons
22 you now say you're willing to agree to a cap

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1 is because you would agree, wouldn't you, that
2 the total number of people under that cap is
3 going to affect traffic. Right?

4 MR. TAYLOR: We're suggesting
5 that, indeed, that's an appropriate cap
6 because of the law school, because of the
7 location of the campus, because of the
8 facility there, because of the transportation
9 options.

10 MR. WILSON: And one of those
11 factors -- a cap limits the amount of traffic
12 that's going to come to the site. Correct?

13 MR. TAYLOR: Well, the
14 transportation options would be the -- would
15 be the main factor. In other words, the Metro
16 accessibility could offset --

17 MR. WILSON: Sir. Sir, what's the
18 percentage of law students that you anticipate
19 are going to take the Metro to this campus?

20 MR. TAYLOR: We have -- Gorove
21 Slade has testified to that fact. What -- the
22 mode splits you're talking about?

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1 MR. WILSON: I'm asking -- I think
2 my question's clear. What's the projection
3 for the number of students you anticipate --

4 MR. TAYLOR: I didn't testify to
5 that, but I'm confident that Gorove Slade has
6 those numbers.

7 MR. WILSON: And do you know what
8 the number is of law students who currently go
9 by Metro?

10 MR. TAYLOR: Not off the top of my
11 head.

12 MR. ABUD: It's 49 percent.

13 MR. WILSON: No, that's not
14 correct, Mr. Abud.

15 MR. ABUD: Non-auto-modes, it's 49
16 percent.

17 MR. WILSON: And the number for
18 faculty?

19 MR. TUMMONDS: I'm concerned that
20 this is going to turn into a mini-Tenley
21 Campus Further Processing Hearing which as we
22 know is scheduled for two weeks from tonight.

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1 CHAIRMAN HOOD: Well, it was
2 mentioned to me if we're going to have it
3 tonight, we won't need to -- we won't show two
4 weeks from tonight.

5 So, I would ask, Mr. Wilson, if we
6 could -- let's go back to the campus plan not
7 to further processing.

8 MR. WILSON: I'm happy to go back
9 to the campus plan, but I think I'm entitled
10 to follow-up on answers that I get that are
11 inconsistent with the record, that raise new
12 questions.

13 CHAIRMAN HOOD: What you're
14 entitled to do is cross examination on
15 rebuttal and I will tell you I have let a
16 whole lot of stuff go just so people can try
17 to flush out the issues, but a lot of stuff
18 that I've heard this evening I haven't seen
19 the correlation between the rebuttal closing
20 that we heard -- the rebuttal we heard last
21 week to the questions I'm hearing tonight.

22 MR. WILSON: Sir, I'm simply

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1 asking questions about the cap.

2 CHAIRMAN HOOD: And not just you.

3 I've heard it long before you took the mike.

4 MR. WILSON: I understand. I'm
5 simply asking some questions about the cap and
6 the basis for it. All of a sudden now we get
7 this announcement that they want to do a cap.

8 What's the cap going to be for
9 faculty and staff?

10 MR. TAYLOR: For the law school?

11 MR. WILSON: Yes.

12 MR. TAYLOR: Five hundred I
13 believe was the number.

14 MR. WILSON: Is that going to be a
15 hard cap?

16 MR. TAYLOR: Yes.

17 MR. WILSON: And is that a cap for
18 all law school functions or just law school
19 functions at the Tenley Campus?

20 MR. TAYLOR: Right now, we
21 envision that all of our law school functions
22 would be at the Tenley Campus.

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1 MR. WILSON: You mean you envision
2 that right now or that may change in the
3 future? There may be law school functions
4 elsewhere or you just don't know?

5 MR. TAYLOR: Yes, I don't know.
6 Thanks for that.

7 MR. WILSON: Okay. You said that
8 you wanted the increase to 2,000 and one of
9 the things you said was that you wanted that
10 to be based on -- you wanted some flexibility
11 for trends in demand. What are the trends in
12 demand that you're talking about as they
13 pertain to the law school?

14 MR. TAYLOR: Well, regarding the
15 law school, I believe what I said was the
16 2,000 would be a capability rather than a --
17 so, it's not necessarily -- it's a target.
18 That we would hit that. But, that would be a
19 capability given the improve facility there.

20 MR. WILSON: Let me ask you about
21 the submission from Thursday night.
22 Specifically Tab A which has been stated as

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1 AU's written questions to issues and questions
2 raised prior to and during public hearings.

3 Is it the testimony of AU, I ask
4 this generally, that this is a list of every
5 question that we've asked you that you haven't
6 been able to answer?

7 MR. TUMMONDS: No, I think this
8 was in response to -- during the public
9 hearing process, questions have been raised
10 from the Commissioners. Some questions have
11 been raised from parties that the
12 Commissioners have decided would be
13 appropriate for us to submit information on
14 and that's what we've done and that's what
15 this chart has intended to encapsulate.

16 MR. WILSON: So, to the extent I
17 or somebody else in the community has asked a
18 question that you haven't been able to answer,
19 that question is not answered here?

20 MR. TUMMONDS: No, I think it's --
21 no, what the answer is is that questions that
22 were asked and that the Zoning Commissioners

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1 determined would be fruitful information for
2 them to have in their deliberations, that is
3 what is included in Exhibit A.

4 MR. WILSON: All right. So, you
5 have not attempted to provide an answer to the
6 question of whether or not you could put in
7 the record a schedule of classes that take
8 place at the law school during the day and in
9 the evening. Am I right about that? You
10 don't have such a schedule available or is it
11 not in here because the Commissioners didn't
12 ask for it?

13 MR. TUMMONDS: I don't remember
14 that that was -- that was information that was
15 requested of AU to provide into the record.

16 MR. WILSON: Well, I believe the
17 Tenley Campus Neighbor's Association has been
18 asking for that information for quite some
19 time. When the question of the number of
20 people on -- at the law school at any given
21 time was coming up, you just simply don't
22 remember us asking you for that information?

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1 MR. TUMMONDS: No, I don't
2 remember that the Zoning Commission requested
3 that information in the campus plan --

4 CHAIRMAN HOOD: And also, was this
5 a part of rebuttal? Again, is this a part of
6 rebuttal?

7 MR. WILSON: It was.

8 CHAIRMAN HOOD: Mr. Wilson, hold
9 on now. You're going to cut me off. You cut
10 me off the last time. I didn't say anything.

11 I'm asking you to ask questions on
12 rebuttal.

13 MR. WILSON: I am asking a
14 question on rebuttal, Chairman Hood. The
15 question was there was -- in number 12,
16 there's a question about the breakdown of day
17 and night law students. There is a question
18 on the -- we wanted a clear explanation in
19 number 34, Tab A of the number of attendees to
20 programs at the law school, CLE, et cetera and
21 the maximum number of people that would be on
22 the law school campus at one time.

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1 The response that has been
2 provided by AU is that it's included in Tenley
3 Campus Further Processing application and I've
4 looked at the Tenley Campus Further Processing
5 application and I see that the number has gone
6 from 800 to 950.

7 Do you have an explanation for how
8 that change occurred?

9 MR. TUMMONDS: That's it. We did
10 not testify last Thursday night, enter
11 rebuttal to testimony to this. These are all
12 issues that are, I believe, relevant in the
13 further processing application and we can
14 address these in the further processing
15 application.

16 CHAIRMAN HOOD: Thank you. Mr.
17 Wilson, next question.

18 MR. WILSON: You are talking about
19 your further processing application and let me
20 just ask you if you've done anything with
21 respect to the current building where the law
22 school is? Any plans at all?

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1 MR. ABUD: If you're asking have
2 we decided how we're going to use it in the
3 future, is that the question?

4 MR. WILSON: Yes. Yes.

5 MR. ABUD: We have not -- as we've
6 stated a number of times, our goal is to reuse
7 the building as much as possible for
8 classrooms and offices the way it's being used
9 today. Exactly which programs would be using
10 the building, we have not decided.

11 MR. WILSON: And is it the case
12 that those, however, many students use those
13 facilities would or would not be counted under
14 the cap?

15 MR. ABUD: Because the law
16 school's pretty unique in terms of being a
17 self-contained program, our assumption is that
18 new people who would be using the building
19 would be counted simply because they'd be
20 taking classes on the main campus and would be
21 counted there under that cap.

22 MR. WILSON: So, you are

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1 anticipating that law school building would be
2 used only for students who are counted under
3 the cap?

4 MR. ABUD: That's our assumption.
5 Yes.

6 MR. WILSON: So, that might be law
7 students?

8 MR. ABUD: No, the -- under the
9 campus plan proposal, when it's built out, all
10 the law students would be on the Tenley
11 Campus.

12 MR. WILSON: Okay. Let me just
13 ask. I mean I was under the impression, Mr.
14 Chairman, that this November 3rd submission
15 was part of the rebuttal program. If that is
16 the -- if that is not the case, then I have no
17 further questions.

18 CHAIRMAN HOOD: No, that is the
19 case and your last question you just asked,
20 we're very aware of it because actually I
21 asked that last week. So, yes, this is a part
22 of it. November the 3rd. If you're

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1 questioning from this, then you can go right
2 ahead. You're in line with rebuttal cross
3 examination.

4 MR. WILSON: Okay. Well, thank
5 you, sir. Then I guess I don't understand the
6 ruling out of my question about AU's testimony
7 about the number of people who are going to be
8 at the law school at any given time given that
9 that is specifically in number 34 and in
10 something that they have said is -- that's
11 part of what they have submitted as part of
12 their rebuttal.

13 MR. TUMMONDS: And we noted
14 included in the --

15 CHAIRMAN HOOD: Again, we got to
16 read the whole thing because it says including
17 the Tenley Campus Further Processing
18 application. That's another application
19 that's coming in front of this Commission.

20 MR. WILSON: Chairman Hood, with
21 all due respect, the frustration that we have
22 with this is that there's an assumption that

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1 the campus plan is being approved in order for
2 further processing to go forward and we can't
3 now question AU about some things that are in
4 the campus plan because now they're saying oh,
5 you can't ask about it until further
6 processing when it was a key part of what they
7 were telling us for the campus plan.

8 But, if that's the Chair's ruling,
9 I understand it and I'll abide by it. I
10 simply think that if they're going to say that
11 there's an 800-person cap at any particular
12 time, there's no more than that, we should be
13 entitled to ask about it if that's part of
14 what they submitted on November 3rd.

15 The numbers have changed. I
16 simply want to ask why.

17 CHAIRMAN HOOD: So, Mr. Wilson,
18 let me -- ask your question to me and let
19 me --

20 MR. WILSON: Okay.

21 CHAIRMAN HOOD: I'm not going to
22 answer it, but ask it to me and let me see if

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1 I can figure out what you're asking. Then
2 I'll see whether or not I want Mr. Tummonds
3 or --

4 MR. WILSON: Okay. My question is
5 in the initial campus plan and the testimony
6 -- the statement was made that at any given
7 time they're going to be no more than 800
8 people in the law school building.

9 In the submission on November 3rd,
10 there is what purports to be an answer to the
11 question about how many people are going to be
12 on -- at the law school building at any given
13 time and there's a reference to the further
14 processing application. My understanding is
15 that the November 3rd submission is part of
16 the rebuttal case.

17 Therefore, I go to the further
18 processing application and I listen to the
19 testimony from last Thursday in which the
20 statement was made that according to the
21 further processing application, the new number
22 is not 800, but it's 950. I simply would like

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1 to know how did we get from 800 to 950.

2 CHAIRMAN HOOD: Okay. Mr.

3 Tummonds --

4 MR. TUMMONDS: Mr. Abud.

5 CHAIRMAN HOOD: -- can somebody
6 answer that?

7 MR. ABUD: The 800 was stated as
8 the maximum number of people at the existing
9 law school. So, the 950 is the projection for
10 the new law school up to the population caps
11 that we've proposed.

12 MR. WILSON: And how was that
13 projection made?

14 MR. ABUD: The increase from 800
15 to 950?

16 MR. WILSON: Yes.

17 MR. ABUD: It was proportional to
18 the increase in population applied across the
19 periods of the day that show us today's use of
20 the building.

21 MR. WILSON: So, that the increase
22 from 1770 students and increase of 230

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1 students is going to result potentially in 150
2 more. Is it students or students and faculty
3 who are going to be present at any given time?

4 MR. ABUD: It's -- it's total
5 population. So, it's students and faculty and
6 staff.

7 MR. WILSON: And was that done
8 based on any particular formula? What
9 material was looked at in order to make that
10 projection if any?

11 MR. ABUD: We looked at our
12 current usage patterns in terms of students
13 attending class and used the student
14 population growth to proportionally add to
15 that. We looked at the number of employees we
16 employ today and used the projected employee
17 population growth to project that and then
18 added them together.

19 MR. WILSON: Straight percentages?

20 MR. ABUD: For each of the
21 subcategories.

22 MR. WILSON: And how many night

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1 students are there at AU right now?

2 MR. TUMMONDS: I think this is
3 going beyond what -- there was the limited
4 question of the discrepancy between 800 and
5 950. We answered that question. This I
6 believe is truly related to the further
7 processing of the Tenley --

8 CHAIRMAN HOOD: Do we know how
9 many night students?

10 MR. ABUD: I don't know off hand.
11 We actually --

12 CHAIRMAN HOOD: Okay. So, you'll
13 have that answer for us when we ask that
14 question at that hearing?

15 MR. ABUD: Yes.

16 CHAIRMAN HOOD: Okay.

17 MR. WILSON: All right. That's
18 all I have.

19 CHAIRMAN HOOD: Thank you very
20 much, Mr. Wilson.

21 Ms. Chesser.

22 MS. CHESSER: Good evening. Judy

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1 Chesser, Tenley Neighbor's Association.

2 I don't think I'll be more than
3 ten minutes. I just have a couple of
4 questions.

5 The OP condition says that they
6 would count every student who took one class
7 at the university and that it would seem would
8 include the CLE people who are clearly taking
9 one class at the university.

10 Are the CLE folks included in your
11 cap numbers?

12 MR. ABUD: No, we don't believe
13 that OP's definition includes the CLE classes
14 which are not regular ongoing classes. They
15 may be just held for a couple of days. It
16 varies by program. So, they're not included.

17 MS. CHESSER: And the teachers are
18 also not included for the CLEs or any of the
19 events or anything? None of that is included
20 in these caps?

21 MR. ABUD: The event participants
22 are not included in the caps. Typically, the

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1 CLE are taught by our own faculty. So, they
2 would be included.

3 MS. CHESSER: Okay.

4 MR. ABUD: Or adjuncts.

5 CHAIRMAN HOOD: Does the CLE pay
6 for -- do they pay for classes or they come
7 for free?

8 MR. ABUD: They pay.

9 CHAIRMAN HOOD: Okay. Thank you.

10 MR. CHESSER: Currently at the law
11 school -- and this is -- in your rebuttal, you
12 cited Exhibit 385 which has snappy information
13 on it.

14 Currently, at the law school, you
15 appear to have 1860 students. Correct?
16 That's in the exhibit that you are citing
17 here. At one point, we were doing 1770, but
18 this document says 1860.

19 MR. ABUD: No, it's still --

20 MS. CHESSER: Your document.

21 MR. ABUD: -- for fall 2010 --

22 MS. CHESSER: Fourteen thirty,

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1 430.

2 CHAIRMAN HOOD: That's something
3 we have up here.

4 MS. CHESSER: It's Exhibit 385.
5 It's cited in their rebuttal on quite a number
6 of their questions.

7 MR. ABUD: I think this document's
8 in error. The population count at the law
9 school for fall 2011 is 1760 -- 1771 head
10 count.

11 MS. CHESSER: So, this is -- it's
12 their document, but apparently wrong. This is
13 also the document -- also cited by them on the
14 parking spaces and you can look at it again.
15 It says how many spaces at the current law
16 school?

17 MR. ABUD: Well, at the law school
18 building itself, it's 300, but we also use
19 another 105 at various other -- or 155 at
20 various other packing facilities.

21 MS. CHESSER: For a total of?

22 MR. ABUD: Four hundred and

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1 eighty.

2 MS. CHESSER: So, as you're
3 increasing the number of students, you're
4 decreasing the number of parking spaces?

5 MR. ABUD: Correct. Because of
6 the proximity to the Metro, we believe it only
7 takes a small percentage increase in the
8 number of people using the Metro to be able to
9 accommodate or to lower the demand to 450
10 which is the amount of parking that we're
11 proposing.

12 MS. CHESSER: And throughout these
13 proceedings, you said 10 to 15 percent took
14 mass transit and tonight, you gave us a
15 different number. A much higher number --
16 percent.

17 Can you give us the reference for
18 that 49 percent that you used tonight?

19 MR. ABUD: The mode -- the mode
20 split is that 49 percent of law school
21 students do not drive. They either take
22 public transportation, walk or a passenger in

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1 a carpool or take a bike.

2 MS. CHESSER: This is your future
3 projection as opposed to 50.

4 MR. ABUD: This is -- this is
5 based on the survey that we did of our current
6 population.

7 MS. CHESSER: Okay. Then I guess
8 you have two conflicting surveys, but okay.

9 That's all I will ask tonight.
10 Thank you.

11 CHAIRMAN HOOD: Thank you very
12 much.

13 Mr. Herzstein.

14 MR. HERZSTEIN: I have about 20 or
15 30 questions, Mr. Chairman. I'll do my best
16 to provide comic relief and I know -- and to
17 move along. I think the amount of time it
18 takes will depend in part on the answers.

19 My questions relate to the
20 submission -- the rebuttal submission
21 regarding noise from the playing field and to
22 the submission regarding the bleachers and I

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1 think maybe David Taylor is the best person to
2 answer these questions.

3 David, in the AU response to the
4 Office of Planning Condition Number 2, it
5 states that "Amplified sound on the Jacobs
6 Field shall be permitted only for
7 intercollegiate athletic events, sporting
8 events sponsored by the university and for
9 limited special events."

10 Is this any change from the
11 current practice?

12 MR. TAYLOR: What we were trying
13 to do was cluster them a bit more clearly.

14 MR. HERZSTEIN: But, it's not
15 limiting what's going on at present. Right?

16 MR. TAYLOR: Well, amplified sound
17 for intercollegiate sporting activities for AU
18 teams or for those special exceptions. It
19 doesn't for special exceptions.

20 MR. HERZSTEIN: Isn't that what
21 amplified sound is used at present?

22 MR. TAYLOR: Excuse me.

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1 MR. HERZSTEIN: Isn't that --
2 aren't those the only occasions on which
3 amplified sound is used at present?

4 MR. TAYLOR: Except for it's more
5 -- we are suggesting more limiting -- a more
6 limited scope.

7 MR. HERZSTEIN: In what way is it
8 more limited?

9 MR. TAYLOR: In that previously,
10 the way the wording was was 12 special events,
11 sort of exceptions if you would. But, indeed,
12 what we're suggesting is that we would lump
13 together any non-athletic activity into that.

14 MR. ABUD: And also non -- any
15 athletic activity that involved non-AU.

16 MR. TAYLOR: Correct.

17 MR. HERZSTEIN: Involved what?

18 MR. ABUD: Non-AU. So, you know,
19 right now, Georgetown's hockey team is playing
20 on our field.

21 If we do that in the future, it
22 would count toward the 12 special events.

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1 MR. TAYLOR: So, we're trying to
2 clarify and simplify the understanding.

3 MR. HERZSTEIN: But, in terms of a
4 change in the actual practice that's been
5 taking place?

6 MR. TAYLOR: It actually would be.
7 It would be more limiting. More restricting
8 of us.

9 MR. HERZSTEIN: What being
10 limited?

11 MR. TAYLOR: It would be more
12 restrictive of university.

13 MR. HERZSTEIN: What is being
14 limited? What will you not be able to do in
15 the future that you've been doing?

16 MR. TAYLOR: Using Mr. Abud's
17 example, if, for example, we had additional
18 intercollegiate athletic activity, let's say
19 if Georgetown wanted to use our field six
20 times, that would count in that 12.

21 MR. HERZSTEIN: But, they're not
22 using amplified sound at present. Are they?

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1 MR. TAYLOR: It is my
2 understanding they are.

3 MR. HERZSTEIN: The Georgetown
4 practices?

5 MR. TAYLOR: No, not practice.
6 Excuse me. Competitive events.

7 MR. HERZSTEIN: You mean in a game
8 between teams not involving AU students --

9 MR. TAYLOR: Correct.

10 MR. HERZSTEIN: -- would not be
11 allowed to use amplified sound unless its part
12 of the --

13 MR. TAYLOR: Was one of the 12.
14 Correct.

15 MR. HERZSTEIN: -- the 12.

16 MR. TAYLOR: So, we are
17 restricting ourselves further and so, we're
18 trying to make it easier --

19 MR. HERZSTEIN: All right.

20 MR. TAYLOR: -- for everybody to
21 understand that. So, thank you.

22 COMMISSIONER MAY: Can I just add?

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1 It would be helpful to actually have that
2 explained a little bit more clearly. I mean
3 this response suggests that it might be more
4 restrictive, but even after your explanation,
5 it's not really clear to me how more
6 restrictive it is.

7 MR. TAYLOR: Okay.

8 COMMISSIONER MAY: So, all right.

9 MR. HERZSTEIN: You also state
10 that "Athletic team practices, intramural
11 sporting events, university club sports and
12 university Greek Life sports shall not use
13 amplified sound." Is that any change from the
14 present practice?

15 MR. TAYLOR: No.

16 MR. HERZSTEIN: They don't use
17 amplified sound now do they?

18 MR. TAYLOR: They do not.

19 MR. HERZSTEIN: Okay. And OP's
20 Condition 2 also called on AU to "Install an
21 alternative speaker sound system on the Jacobs
22 Field to more evenly distribute sound at

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1 ground level."

2 In response, you state the
3 university will explore alternative sound
4 systems on Jacobs Field.

5 Exploring it falls somewhat short
6 of installing it. Doesn't it?

7 MR. TAYLOR: We'll install it.
8 We'll get it done.

9 MR. HERZSTEIN: You will install
10 it?

11 MR. TAYLOR: Yes. We will find an
12 appropriate one and get it done.

13 MR. HERZSTEIN: Will you be
14 consulting with your neighbor as to its
15 adequacy for suppressing the sound?

16 MR. TAYLOR: We would love your
17 participation.

18 MR. HERZSTEIN: Before you commit
19 to what you install?

20 MR. TAYLOR: We will involve you.

21 MR. HERZSTEIN: Even though you've
22 had several years to explore this measure and

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1 could have had it resolved by now, do you feel
2 AU should be allowed to continue using
3 amplified sound now for the next undefined
4 period of time until action is taken that
5 reduces the sound to a satisfactory level?

6 MR. TAYLOR: What we have been
7 doing, Bob, is we have been doing our own
8 decibel counts and doing our own monitoring on
9 a game-by-game basis and having those records
10 and indeed that's our effort to wrestle it
11 down.

12 So, and again, it's part of the --
13 the testimony last week. As we go forward,
14 we'll be glad to share those readings with the
15 community, too. So, we'll get it done.

16 MR. HERZSTEIN: Who has been
17 taking the decibel readings?

18 MR. TAYLOR: Athletics Department
19 staff.

20 MR. HERZSTEIN: What kind of
21 instruments do they use?

22 MR. TAYLOR: The appropriate

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1 decibel reader.

2 MR. HERZSTEIN: Do you know if
3 they're calibrated by a certified acoustic
4 engineer?

5 MR. TAYLOR: I -- I don't know.

6 MR. HERZSTEIN: OP Condition 2
7 calls on AU to "Take such other measures along
8 the western boundary of the Jacobs Field
9 including sound curtains or other devices as
10 are effective in reducing the sound from the
11 field to an non-objectionable level and are
12 agreeable to neighboring homeowners."

13 Does the AU response state that it
14 will install a sound curtain?

15 MR. TAYLOR: At this point, we
16 don't believe that's necessary. We'd prefer
17 to have a vegetation buffer.

18 You're talking about like a --

19 MR. HERZSTEIN: I'm sorry.

20 MR. TAYLOR: You're talking like a
21 sound curtain like what is along the Beltway
22 or that type of device?

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1 MR. HERZSTEIN: Well, my
2 understanding is -- I'm not in a position to
3 testify, but my understanding is there are
4 both solid walls like those and there are also
5 more temporary kinds of curtains that are
6 designed to deflect sound.

7 MR. TAYLOR: We'd like to suggest
8 that -- to see if we could accomplish it
9 through vegetation. It might be aesthetically
10 more pleasing for the both of us.

11 MR. HERZSTEIN: So, you're not
12 planning on complying with what the OP
13 recommends at this point?

14 MR. TAYLOR: Not at this time.
15 Let's see if we can -- if these other
16 mitigation factors will get it done.

17 MR. HERZSTEIN: What do you
18 propose to do about the noise emitted by the
19 airhorn which seems to blast out a number of
20 times during each game and sometimes during
21 practice sessions and intramural games?

22 MR. TAYLOR: Are we planning to

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1 alter that in anyway?

2 MR. HERZSTEIN: Yes.

3 MR. TAYLOR: At this point, no,
4 I'd suggest because that's part of the game,
5 part of the intercollegiate contest to have a
6 --

7 MR. HERZSTEIN: But, doesn't the
8 D.C. Zoning Code call on you to avoid
9 objectionable conditions for your neighbors?

10 MR. TAYLOR: It does, but --

11 MR. HERZSTEIN: Does it have an
12 exception for airhorns that are important in
13 athletic games?

14 COMMISSIONER MAY: Were the
15 airhorns addressed in rebuttal? Is that
16 something there was testimony to or a
17 submission about?

18 MR. TUMMONDS: No.

19 MR. HERZSTEIN: Mr. Commissioner,
20 the rebuttal attempted to address the
21 conditions. They listed the conditions.
22 Listed --

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1 COMMISSIONER MAY: I understand
2 that and if you're going to address the
3 conditions, I think that would be fine. I
4 mean if you want to ask are the conditions
5 going to address the airhorn, you asked it and
6 answered it. It was answered.

7 MR. HERZSTEIN: I see. Okay. I
8 think we've gotten the essential answer there.

9 As you have heard, the sound from
10 cheers and screams of players and audiences
11 often exceeds 60 decibels and even when it
12 does not -- I'm talking about the sounds and
13 screams from players and audiences, not just
14 the amplified sound. Even when it doesn't
15 reach 60 decibels, its frequent repetition
16 over the course of several hours, sometimes
17 several sessions a day is objectionable to the
18 neighbors.

19 What does AU propose to do to
20 mitigate that condition?

21 MR. TAYLOR: That is unamplified
22 sound.

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1 MR. HERZSTEIN: Yes.

2 MR. TAYLOR: We agree on that.

3 MR. HERZSTEIN: That's right.
4 Where sometimes exceeds 60 decibels and
5 sometimes even though it's less is highly
6 objectionable because it goes on for such long
7 periods of time.

8 MR. MILLER: I believe that the
9 D.C. Code specifically excludes unamplified
10 sound from the human voice.

11 MR. HERZSTEIN: I'm sorry. I
12 couldn't heard that.

13 MR. MILLER: I believe that the
14 D.C. Code specifically excludes unamplified
15 sound from the human voice.

16 MR. HERZSTEIN: Yes, but not the
17 -- that's the sound law. It refers to the
18 human voice not to a mass of human voices and
19 I'm referring to a separate standard. Not
20 that under the sound law, but that under the
21 Zoning Law which states that the university in
22 a residential community has to avoid

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1 conditions objectionable to its neighbors.

2 MR. TAYLOR: Is your question
3 dealing with the number of people? I mean is
4 that what you're suggesting? That's there's
5 too many --

6 MR. HERZSTEIN: Collective sound
7 coming from masses of players, very
8 enthusiastic players --

9 MR. TAYLOR: Right.

10 MR. HERZSTEIN: -- and onlookers
11 during the course of the game.

12 MR. TAYLOR: Well, again, I think
13 perhaps my testimony suggested that the
14 attendees at the number of games -- at the
15 games are less than 200 for field hockey and
16 perhaps about 300 for lacrosse. So, it is
17 unamplified sound and the same thing for the
18 players. It's unamplified sound. So, I
19 guess --

20 MR. HERZSTEIN: Well, do I gather
21 that you would not object if someone stood
22 outside your home or your office or President

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1 Kerwin's home or office and created the sound
2 of 200 or 300 cheering voices over the course
3 of several hours let's say at 57 decibels?

4 MR. TAYLOR: Bob, again, we look
5 at the history of that use of that field. It
6 goes back for decades. It has always been
7 used for decades as an athletics field for,
8 again, intercollegiate athletics going back to
9 when we had a baseball team, for intramural,
10 for pickup, for PE classes, for sports camps.
11 It is an athletics field. It has been in use
12 for decades.

13 MR. HERZSTEIN: There's no
14 question it's been used as an athletic field
15 over the course of decades.

16 The question in this present
17 proceeding is whether the use as an athletic
18 field now is creating an objectionable
19 condition. Perhaps a baseball game conducted
20 40 years ago didn't create objectionable
21 conditions.

22 COMMISSIONER MAY: Mr. Herzstein,

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1 this is Commissioner May.

2 I'm still having difficulty
3 understanding how this relates to rebuttal
4 testimony.

5 MR. HERZSTEIN: Well --

6 COMMISSIONER MAY: If you could
7 explain that to me.

8 MR. HERZSTEIN: I'm bringing out
9 what they failed to include in their response
10 to the OP --

11 COMMISSIONER MAY: I understand,
12 but effectively, you're just testifying and
13 you've had the -- effectively, you're just
14 testifying.

15 MR. HERZSTEIN: Oh, well, I'm
16 sorry. I was --

17 COMMISSIONER MAY: You need to ask
18 them questions and have them answer them so
19 that they --

20 MR. HERZSTEIN: I'll put --

21 CHAIRMAN HOOD: -- elucidate for
22 us. Thanks.

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1 MR. HERZSTEIN: In your rebuttal
2 testimony last week, you referred to the fact
3 that AU some decades ago used the playing
4 field for varsity baseball and other sports.
5 Right?

6 MR. TAYLOR: Yes.

7 MR. HERZSTEIN: Is it your
8 understanding that the test of what is
9 objectionable to neighbors turns on what the
10 university did many years ago or does it turn
11 on what conditions are at the present time?

12 MR. TAYLOR: No, it is --

13 MR. HERZSTEIN: Hum?

14 MR. TAYLOR: -- it has been
15 historically used for that purpose for -- as
16 an athletics field.

17 MR. HERZSTEIN: Yes, but what is
18 the test for objectionable noise conditions?
19 Is it what happened in the past or what's
20 happening now?

21 MR. TAYLOR: Well, again, my
22 recollection just from this evening is that if

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1 you're talking about amplified sound versus
2 unamplified sound, we're talking about
3 unamplified sound for some of the activities
4 that you object to.

5 MR. HERZSTEIN: Right. We're
6 talking about -- my questions have been
7 addressed -- both now and in previous sessions
8 have been addressed both to amplified and
9 unamplified sound. So, I'm asking you my
10 question regarding either one.

11 MR. TAYLOR: We don't believe it's
12 objectionable use.

13 MR. HERZSTEIN: That you have a
14 grandfather -- are you saying you have a
15 grandfather right to create any amount of
16 noise now because you used the field decades
17 ago for athletic events?

18 MR. TAYLOR: We do not believe the
19 uses of the field are objectionable.

20 MR. HERZSTEIN: I'm sorry.

21 MR. TAYLOR: We do not believe the
22 uses of the field are objectionable.

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1 MR. HERZSTEIN: Okay. I guess we
2 will continue with our disagreement about
3 that.

4 What about -- excuse me one
5 second.

6 What about the -- we've talked
7 about the blast from the airhorn. What about
8 the sound of a field hockey drill when 15 or
9 20 or 30 field hockey balls hit the resident
10 sound board at the back of a hockey goal? Is
11 that covered by your proposed measures?

12 MR. TUMMONDS: Again, I think I
13 want to object along the same lines that
14 Commissioner May is. We've testified that we
15 don't believe that the use of the athletic
16 fields as conditioned, as will occur with the
17 conditions we've proposed will create
18 objectionable impacts. I think these are just
19 continual questions that go to that same core
20 issue.

21 Mr. Herzstein's had the
22 opportunity to ask that. We've responded. I

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1 think it's time to move on with this line of
2 questioning.

3 MR. HERZSTEIN: Well, I'm driving
4 the facts, Mr. Chairman.

5 CHAIRMAN HOOD: I'm going to up
6 hold -- I'm going to up hold the -- Mr.
7 Herzstein, I'm going to --

8 MR. HERZSTEIN: They're giving a
9 legal conclusion that they don't believe
10 it's --

11 CHAIRMAN HOOD: Mr. Herzstein, I'm
12 going to uphold the objection. Next question.

13 MR. HERZSTEIN: Does AU's proposal
14 limit in anyway the number of intercollegiate
15 games that may be played on Jacobs Field in
16 any given year or session or season?

17 MR. TAYLOR: We post our schedule.
18 So, what we're talking about is for use for
19 intercollegiate women's field hockey. We list
20 our schedule and indeed for field hockey and
21 for lacrosse, women's lacrosse and so those
22 games are posted and so, typically, it's maybe

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1 10 to 12 per season. Ten to 12 for field
2 hockey in the fall and ten to 12 or so for
3 lacrosse in the spring.

4 MR. HERZSTEIN: So, you are saying
5 you would agree to limit the number of
6 intercollegiate games.

7 MR. TAYLOR: No. No. That's not
8 what I'm saying. I'm saying that we would
9 post -- we post the schedule and indeed --

10 MR. HERZSTEIN: But, you're in no
11 way limiting the number. So, next year, you
12 could increase the schedule.

13 MR. TAYLOR: Well, for example,
14 our -- take for example our field hockey team.
15 If indeed they win the conference
16 championship, then they would host an extra
17 two games. So, we would need that flexibility
18 for them to complete their season.

19 MR. HERZSTEIN: Well, you could
20 put a limit on the flexibility. Couldn't you?

21 MR. TAYLOR: Not unless we ask
22 them to lose.

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1 MR. HERZSTEIN: So, you're not
2 willing to put any numerical limit on --

3 MR. TAYLOR: No.

4 MR. HERZSTEIN: -- the number of
5 intercollegiate games you hold?

6 MR. TAYLOR: Not for -- not for
7 intercollegiate programs, the field hockey and
8 lacrosse.

9 MR. HERZSTEIN: Well, do you limit
10 in anyway the number of such games that can be
11 played on the field by other teams where AU is
12 not involved?

13 MR. TAYLOR: That is where we get
14 into the previous discussion about the 12
15 special events.

16 MR. HERZSTEIN: Um-hum.

17 MR. TAYLOR: So, that would be a
18 limiting factor. For example, if a high
19 school playoff game or something wanted -- if
20 indeed we were asked to host that and we
21 needed amplified sound, that would count
22 against one of the 12. If Georgetown asked to

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1 play a game there, that would count as one of
2 the 12. If going back to previous testimony,
3 if the U.S. Olympic Team wanted to have an
4 exhibition game, that would count as one of
5 the 12.

6 MR. HERZSTEIN: So, your plan --
7 you view the playing field as sort of a
8 utility that you can make available to other
9 teams even when AU isn't playing. Not just as
10 a field on which the AU teams can play.

11 MR. TAYLOR: But, with the revised
12 understanding that we would have 12 additional
13 non-AU activities there that would be allowed
14 to have amplified sound.

15 MR. HERZSTEIN: What about use by
16 groups like the Sri Lankan rugby team and
17 other groups around town?

18 MR. TAYLOR: If they used
19 amplified sound, they would count as one of
20 the 12.

21 MR. HERZSTEIN: What if they don't
22 use amplified sound? They just make lots of

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1 shouting.

2 MR. TAYLOR: They wouldn't
3 necessarily be counted in the 12.

4 MR. HERZSTEIN: But, you're going
5 to make use -- you're going to make the field
6 available to them. Is that right? It's a
7 sort of public playing field.

8 MR. TAYLOR: Not necessarily, but
9 with permission. We are sought out by
10 external organizations, by Wilson High School,
11 by others. They do ask for permission to use
12 the field and again, going back to the earlier
13 point we were trying to make and the clarity
14 we will provide, what counts for those
15 additional 12 amplified sound activities in
16 the course of a year.

17 MR. HERZSTEIN: So, there's no
18 limit on the number of outside groups, civic
19 groups, informal clubs or whatever or the
20 number of events that you will allow to take
21 place on the field as long as they ask you for
22 permission ahead of time. Is that right?

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1 MR. TUMMONDS: Again, I think
2 we've -- this is a series of the same question
3 being asked over and over and over again.
4 We've answered that question.

5 MR. HERZSTEIN: Is the answer
6 clear? That's that -- that I'm correct in
7 that.

8 CHAIRMAN HOOD: Could you answer
9 that one more time?

10 MR. TAYLOR: Sure. Again, what
11 we're discussing in terms of special
12 exceptions --

13 MR. HERZSTEIN: The answer is yes
14 or no.

15 MR. TUMMONDS: I think we'll
16 provide the full answer so you can understand.

17 MR. HERZSTEIN: Hum?

18 MR. TUMMONDS: We'll provide the
19 full answer so you can understand so there
20 won't have to be any more questions.

21 MR. HERZSTEIN: Well, I can
22 understand a yes or no.

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1 CHAIRMAN HOOD: Mr. Herzstein,
2 Commissioner May has asked for a clarification
3 on all that. So, we'll be getting that and
4 you can read the record and you'll be able --
5 you'll be able to get a clarification in
6 writing because that -- actually, I think that
7 question -- at least the last I counted, it
8 was asked three times. So, I think --

9 MR. HERZSTEIN: Okay.

10 CHAIRMAN HOOD: -- we just all
11 need a clarification on exactly what you're
12 asking for.

13 MR. HERZSTEIN: All right. I'm
14 sorry.

15 CHAIRMAN HOOD: No, I think it's a
16 legitimate question. I just think that we
17 need to get the clarification in writing.

18 MR. HERZSTEIN: I have a question
19 or two about the enforcement policy that you
20 submitted in your rebuttal submission.

21 OP had proposed that you create an
22 enforcement policy for activities on the

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1 playing fields. In response, you're saying
2 that the Athletics Department staff will
3 monitor sound levels and lower the volume of
4 amplified sound if it exceeds 60 decibels.

5 What procedure is there in the
6 event your neighbor finds that the noise limit
7 is being exceeded?

8 MR. TAYLOR: Again, we suggest
9 that our public safety offices are 24/7 phone
10 number and indeed, a call to them would prompt
11 them to respond on your behalf.

12 MR. HERZSTEIN: That's not a
13 change from the current practice. Is it?

14 MR. TAYLOR: No. No.

15 MR. HERZSTEIN: To your knowledge,
16 has that procedure worked effectively in the
17 past? Let's say when a game is taking place
18 on a weekend and you're not available and Ms.
19 Pagano is not available and --

20 MR. TAYLOR: Again, they're the
21 ones that would be on-site. So, again,
22 they're the ones that would be responding to

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1 your call.

2 MR. HERZSTEIN: On weekends?

3 MR. TAYLOR: Yes. Yes. But,
4 again, Ms. Pagano typically will respond on
5 your behalf if she gets the call.

6 MR. HERZSTEIN: And the Athletics
7 Department staff will not be picking up the
8 noise from the airhorn or the other sources
9 that are not coming from your amplifiers. Is
10 that right?

11 MR. TAYLOR: Not necessarily. No.

12 MR. HERZSTEIN: Isn't it the
13 purpose of the amplified sound to build the
14 enthusiasm of the teams and observers? Is
15 that why you have amplified sound?

16 MR. TAYLOR: It's all for the
17 players in the competition so that they can
18 hear the announcements, so they can make the
19 substitutions. So, that's part of the
20 intercollegiate organization of those
21 contests.

22 MR. HERZSTEIN: Don't the

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1 employees of the Athletics Department have an
2 incentive to facilitate this, to facilitate
3 the enthusiasm and the communication with the
4 teams?

5 MR. TUMMONDS: I think I'm going
6 to object. The original question was about
7 was there a proper enforcement mechanism
8 related to OP Condition Number 4. We've
9 addressed how we believe that we have
10 adequately satisfied that and I think that
11 this is now just testimony on -- by Mr.
12 Herzstein.

13 MR. HERZSTEIN: No, I'm
14 questioning the adequacy of the submission.

15 CHAIRMAN HOOD: Mr. Herzstein,
16 while I wanted to know the answer to that
17 myself, I don't know how much we're really
18 getting beyond the scope of what was within
19 their rebuttal. So, if you could stick to
20 that and stop getting down into things that go
21 back into the prior testimony.

22 MR. HERZSTEIN: Go back to what,

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1 sir?

2 CHAIRMAN HOOD: If we can stop
3 going back into all the other hearings. Let's
4 just deal with the rebuttal. I would
5 appreciate it.

6 MR. HERZSTEIN: Your proposed
7 rules that you submitted as part of the
8 rebuttal state that the university will limit
9 activity on the Jacobs Field to the hours
10 between dawn and dusk.

11 So, am I right to fear that in the
12 spring and summer we can experience noise from
13 the playing field from around 5:30 or 6:00
14 a.m. until 8:00 or 8:30 p.m. right through the
15 pleasant evening hours when outdoor dining and
16 entertaining is one of the great pleasures of
17 Washington life?

18 COMMISSIONER MAY: Mr. Herzstein,
19 can you tell us where that is in the
20 conditions in the statement?

21 MR. HERZSTEIN: Their submission
22 said that the --

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1 COMMISSIONER MAY: Which
2 submission? I'm looking at their submission.
3 Can you tell me where?

4 MR. HERZSTEIN: Rules. I believe
5 it's in -- let's see. It's in the proposed
6 conditions for Jacobs Field use under Tab B.
7 Number 7.

8 MR. TUMMONDS: This is behind Tab
9 B, proposed conditions for Jacobs Field use

10 MR. HERZSTEIN: Tab B and then
11 there's -- it's about the third page in.

12 COMMISSIONER MAY: Okay. Thanks.

13 MR. TAYLOR: Let me respond. I
14 think the real suggestion here that we're
15 making is that we have no lights on that field
16 and so, we will not have intercollegiate use
17 or other use to be illuminated by lights, by
18 stadium lights or anything to that nature.

19 MR. HERZSTEIN: There haven't been
20 lights in the past either. Have there?

21 MR. TAYLOR: Correct. Except for
22 some streetlights and some parking lights that

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1 were down there, but the point is --

2 MR. HERZSTEIN: The field was not
3 illuminated for playing.

4 MR. TAYLOR: The field would not
5 be illuminated for playing. Which is a very
6 common feature of most college campuses and
7 with intercollegiate athletics, but we do not
8 have that. There will not be lit games.

9 MR. HERZSTEIN: A common feature
10 of those except those that have a residential
11 neighbor right next to their field.

12 Let me ask you again. Am I
13 correct that you're suggesting dawn until dusk
14 for the --

15 MR. TAYLOR: Yes.

16 MR. HERZSTEIN: You say the
17 purpose was to indicate that you don't plan to
18 illuminate the field. That doesn't preclude
19 you from limiting the daytime hours in which
20 you would use the field also. Does it?

21 MR. TAYLOR: Well, typically, the
22 morning -- the first use would typically be

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1 the ROTC program, perhaps a field hockey
2 practice, but those would be typically the
3 first users.

4 MR. HERZSTEIN: At 6:30 a.m.?

5 MR. TAYLOR: I'm not sure what
6 time they would start, but early morning.

7 MR. HERZSTEIN: So --

8 MR. TAYLOR: Those would be the
9 two primary ones I would suggest.

10 MR. HERZSTEIN: So, my
11 interpretation is correct that you go from
12 6:30 -- roughly 6:00 or 6:30 in the spring
13 during long daytimes until 8:00 or 8:30 at
14 night.

15 MR. TAYLOR: Very -- very limited
16 times. Very -- it's not year round.

17 MR. HERZSTEIN: Are you willing to
18 limit it to more than that -- more
19 restrictively than that?

20 MR. TAYLOR: I'm not sure that we
21 would. I'm not sure.

22 MR. HERZSTEIN: A question about

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1 the bleachers. What did you do to ascertain
2 the potential impact of the 250-seat bleachers
3 you're proposing on the residences of
4 University Avenue?

5 MR. TAYLOR: Well, I believe that
6 was actually a question from one of the
7 Commissioners last week seeking a bit of
8 clarification on that. We suggested it would
9 be, what, some 450 feet I believe as I recall
10 to the closest home on University Avenue, but
11 one of the Commissioners asked if we could use
12 a different yardstick or an additional
13 yardstick to determine impact.

14 MR. HERZSTEIN: And what is your
15 answer?

16 MR. TUMMONDS: We'll provide that
17 in our post-hearing submission.

18 MR. HERZSTEIN: How many persons
19 can be seated on the existing bleachers on
20 Reeves Field?

21 MR. TAYLOR: Roughly about 800,
22 perhaps 900. They're not actual seats.

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1 They're just bleacher seats, but roughly about
2 800 to 900.

3 MR. HERZSTEIN: Did you have
4 approval from the BZA or the Zoning Commission
5 when you install those bleachers a few -- some
6 years back?

7 MR. TAYLOR: I don't know. I
8 would not have been here at that time.

9 MR. HERZSTEIN: Jorge, do you
10 remember?

11 MR. ABUD: I don't recall. We've
12 had bleachers there since before my working at
13 the university which is --

14 MR. HERZSTEIN: No. No. There's
15 a new set of metal bleachers which were put in
16 about --

17 MR. ABUD: I understand they were
18 replaced.

19 MR. HERZSTEIN: -- 12 years ago.
20 Something like that. Well after your arrival.

21 MR. ABUD: We'd have to research
22 the installation date of the current

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1 bleachers, but there have been bleachers on
2 the field for a very long time.

3 MR. HERZSTEIN: Do you recall any
4 of the past Zoning Commission orders since
5 1989 or 2000 that provide for the installation
6 of those bleachers?

7 MR. TUMMONDS: Again, I think we
8 answered that question that we have no
9 knowledge of that.

10 MR. HERZSTEIN: No knowledge of --
11 of --

12 MR. TUMMONDS: I think we
13 answered.

14 CHAIRMAN HOOD: Mr. Herzstein,
15 next question. Next question.

16 MR. HERZSTEIN: Okay. Final set
17 of questions here. Similarly -- well, strike
18 that. You described in your rebuttal
19 testimony some measures AU has taken in the
20 past to improve conditions along the border of
21 the playing field between the playing field
22 and my home such as eliminating the parking

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1 lot, installing trees and building a fence.

2 These steps were taken pursuant to
3 the BZA order of 1990. Were they not?

4 MR. TAYLOR: Jorge, would that be
5 accurate?

6 MR. ABUD: Could you repeat the
7 question?

8 MR. HERZSTEIN: The removal of the
9 unsightly parking lot that used to be on the
10 boundary of my property and the installation
11 of the landscaping and the fence were done
12 pursuant to the rather detailed 1990 BZA
13 order. Were they not?

14 MR. ABUD: Yes, and a portion of
15 that work was done as a result of that. We
16 went beyond that in subsequent actions that we
17 took as we developed the field and the
18 landscape buffer between the fields and your
19 property.

20 MR. HERZSTEIN: I'm just trying to
21 point out the limited relevance of that
22 information that you submitted.

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1 Did any of those steps, the trees,
2 the fence, the parking lot, address the
3 current issue which is noise from the expanded
4 athletic activity on the Jacobs Recreational
5 Complex?

6 MR. TAYLOR: We believe so.

7 MR. HERZSTEIN: Pardon?

8 MR. TAYLOR: We believe so. Yes.

9 MR. HERZSTEIN: How did they --
10 how are they -- how did they reduce the noise
11 problem?

12 MR. TUMMONDS: Again, I think we
13 answered the question as posed. We answered
14 the question. This is moving beyond what the
15 cross examination of the rebuttal should be
16 about.

17 MR. HERZSTEIN: But, you submitted
18 a whole series of pictures showing the
19 different things you had done purportedly in
20 response to the OP directive to regulate noise
21 on the field.

22 MR. TUMMONDS: Right. I'm waiting

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1 for Commissioner Hood to respond to my
2 objection.

3 MR. HERZSTEIN: Yes, I'm
4 discussing the issue with him.

5 CHAIRMAN HOOD: Hood is -- Hood
6 got really tired actually. I think -- let me
7 just -- you're talking about the --
8 Commissioner Turnbull's just showing me.
9 You're talking about the photograph where it
10 talks about the 450 feet from the bleachers, I
11 think, to your home. Is that what you're
12 referring to, Mr. Herzstein?

13 MR. HERZSTEIN: Well, let me just
14 see if I can located them.

15 CHAIRMAN HOOD: Is that it?
16 That's one of them.

17 MR. HERZSTEIN: Yes, that's one of
18 them.

19 CHAIRMAN HOOD: It's another one.
20 Is that what you were referring to?

21 MR. HERZSTEIN: Yes, and I'm --
22 all I'm trying to do is find out whether they

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1 are -- that was submitted and somewhere
2 whether that's relevant --

3 MR. TAYLOR: Sure.

4 MR. HERZSTEIN: -- to the issue
5 that OP was raising about the noise.

6 MR. TAYLOR: I think -- help here.
7 I think what we were trying to show is that
8 through the past 10 to 20 years and beyond, we
9 have done a number of things to mitigate
10 impact of those fields for the adjoining
11 properties.

12 MR. HERZSTEIN: Right.

13 MR. TAYLOR: And so, in the
14 totality, it was a progression of steps that
15 we have taken to lessen the impact.

16 MR. HERZSTEIN: Okay. I
17 understand that. I'm just asking you if that
18 -- if any of those measures, useful as they
19 were and I'm not disagreeing with that, useful
20 as they were, if any of them alleviated the
21 noise problem that OP was asking you to take
22 care of?

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1 MR. TAYLOR: I believe they did.

2 Yes.

3 MR. HERZSTEIN: And I'm asking you
4 how.

5 MR. TAYLOR: Well, indeed, less
6 impact. The screening, the vegetation
7 screening, would help muffle the noise.

8 MR. HERZSTEIN: Your witness --
9 your noise expert just testified earlier this
10 evening that trees don't reduce noise.

11 MR. TAYLOR: The cars were another
12 thing because I remember, Bob. I know there's
13 been references to 10 years ago, you and I, 10
14 years ago, talking about removing the parking
15 down in that area.

16 MR. HERZSTEIN: Yes.

17 MR. TAYLOR: And not allowing cars
18 down there. So, yes, we have done a number of
19 things to lessen the impact on the adjoining
20 properties.

21 MR. HERZSTEIN: Of the noise from
22 the Jacobs Field?

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1 MR. TAYLOR: Of the noise. Of the
2 visual impacts.

3 MR. HERZSTEIN: The visual impact
4 or the noise?

5 MR. TAYLOR: The noise. And the
6 noise. And the noise.

7 MR. HERZSTEIN: What has reduced
8 the impact of the noise?

9 MR. TAYLOR: Less activity there
10 on the actual fence. If you're talking about
11 cars being down there. If you're talking
12 about the vegetation buffer that has grown.
13 The consultations that you'll had with our
14 landscaping staff.

15 MR. HERZSTEIN: OP -- you were
16 responding to OP's order or recommendations
17 regarding noise from the Jacobs Playing Field,
18 the current playing field.

19 COMMISSIONER MAY: May I interrupt
20 for a second? Mr. Herzstein, I think we
21 understand the point you're trying to make.
22 That there have been some improvements, but

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1 you don't feel that they've been very
2 effective when it comes to noise. Okay. We
3 got that.

4 If there's something else you want
5 to say or ask --

6 MR. HERZSTEIN: No, I just enjoyed
7 seeing David Taylor's squirm, Mr. May. So,
8 thank you very much. I have no further
9 questions.

10 COMMISSIONER MAY: No, it's -- I'm
11 getting a little tired and I want to -- thank
12 you.

13 CHAIRMAN HOOD: Thank you because
14 that's what it took. Thank you very much, Mr.
15 Herzstein.

16 Okay. Closing remarks, Mr.
17 Tummonds.

18 MR. TUMMONDS: Thank you very
19 much.

20 First of all, I'd like to thank
21 the Zoning Commissioners, the Office of Zoning
22 staff, the representative of the Office of

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1 Planning, DDOT if they were here, ANC
2 Commissioners, representatives for the party
3 opponents and residents of the surrounding
4 communities for your time and attention to
5 this important case.

6 This has been a long and
7 contentious case, but it's always been civil
8 and respectful of people's opinions. This
9 public process has effectively allowed
10 concerns and issues regarding AU's campus plan
11 and further processing applications to be
12 properly reviewed and analyzed which will
13 allow your decision to be made on a fair and
14 thorough examination of the relevant zoning
15 issues.

16 For the last 24-plus months since
17 we started the community dialogue process for
18 the 2011 Campus Plan in July 2009, AU has
19 sought to understand, balance and respect
20 competing multiple neighborhood and other
21 stakeholder interest in the evolution of its
22 campus plan and the further processing

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1 applications for East Campus and the additions
2 to the Mary Graydon Center and Nebraska Hall.

3 AU's proposal reflects its
4 commitment to reasonably incorporate the
5 concerns of its adjacent private and
6 institutional property owners and community
7 representatives. AU has taken its
8 responsibilities and commitments outlined in
9 the Zoning Commission's approval of the 2001
10 Campus Plan seriously and has always sought to
11 be a responsive and respectful member of the
12 neighborhood and the surrounding community.

13 The two seminal D.C. Court of
14 Appeals' cases which address the appropriate
15 standard of review the Zoning Commission
16 should engage in with regard to campus plan
17 and further processing cases are the Glenbrook
18 Road Association against the BZA which
19 addressed the order approving the 1987 to 2000
20 AU Campus Plan and the Citizen's Association
21 of Georgetown against the BZA which was
22 decided in 2003 for the last Georgetown Campus

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1 Plan.

2 Both the Glenbrook Road and the
3 Citizen's Association of Georgetown cases note
4 that uses of land for educational purposes are
5 highly favored and it has long been recognized
6 that universities serve the public welfare and
7 morals in important ways. The Court of
8 Appeals in the Glenbrook Road case went on
9 further to say a university, even a law
10 school, is not to be presumed for purpose of
11 the Zoning Regulations to be the land-use
12 equivalent of the bubonic plague.

13 These cases establish the standard
14 that the responsibility of the Zoning
15 Commission is to determine whether a
16 reasonable accommodation has been made between
17 the university and the neighbors which does
18 not interfere with the legitimate interest of
19 the latter or the legally protected interest
20 of the former.

21 American University has made
22 reasonable accommodations to address the

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1 concerns that had been raised regarding the
2 campus plan and the further processing
3 application for the East Campus.

4 The university has made the
5 following reasonable accommodations in
6 response to issues and concerns raised by ANC
7 3D, ANC 3E, ANC 3F and the party opponents.

8 First, with regards to enrollment,
9 AU has agreed to an overall cap of 13,600
10 students using OP's definition that any
11 student, undergraduate, graduate or other, who
12 enrolls in at least one class at any of the
13 properties that are included in the campus
14 plan will be counted. Within this overall
15 cap, the university has agreed to an
16 enrollment cap of 2,000 Washington College of
17 Law students at the Tenley Campus.

18 With regards to housing, American
19 University has agreed to make university-
20 provided housing available to 67 percent of
21 its undergraduate students as requested by the
22 Office of Planning. In addition and in order

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1 to achieve this commitment, AU moved forward
2 with a further processing application on the
3 North Hall site, a site that all parties agree
4 is appropriate for student housing, earlier
5 than it initially anticipated with the number
6 of beds, 360, that was considerably larger
7 than what was an initially anticipated 200
8 beds for that site.

9 In regards to university
10 operations and a mitigation of impacts, the
11 Applicant continues to take seriously concerns
12 raised about the use of Jacobs Field. AU is
13 proposing 14 conditions that guide the future
14 use of this field and we believe will mitigate
15 objectionable impacts.

16 AU has also proposed a series of
17 new measures that will help guide and help the
18 university better manage off-campus student
19 behavior and will supplement the neighborhood
20 action plan established in the previous campus
21 plan.

22 AU has also proposed a series of

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1 conditions that will guide the use of the East
2 Campus.

3 With regards to the East Campus,
4 AU initially proposed a series of residential
5 buildings on the East Campus that included
6 approximately 1,000 beds. As a result of
7 concerns raised by adjacent communities, the
8 initial campus plan application filed on March
9 18th reduced the number of beds on the East
10 Campus to 770. Thereafter, again in response
11 to issues and concerns raised by adjacent
12 community and in consultation with the Office
13 of Planning, AU further reduced the number of
14 beds to 590. The number of beds proposed on
15 the East Campus has been reduced by over 40
16 percent from the university's original
17 proposal and the amount of building square
18 footage was reduced by approximately 18
19 percent.

20 In response to concerns from the
21 Westover Place community, AU also increased
22 the setbacks from the Westover property line

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1 to the proposed residential buildings to a
2 distance of at least 100 feet. The
3 residential buildings were reoriented so that
4 no windows from residential units will face
5 the Westover Place property line.

6 AU has also agreed to prohibit
7 freshmen from living on East Campus.

8 In our post-hearing submission, we
9 will further address the issues raised by the
10 Commission at the November 3rd hearing and
11 again this evening regarding the proposed
12 landscape buffer and other issues related to
13 East Campus.

14 In response to concerns regarding
15 traffic impacts, AU agreed to the removal of
16 the proposed right in/right out vehicular
17 entrance/exit to Massachusetts Avenue. It
18 retained the existing right in/right out
19 vehicular entrance to Nebraska Avenue and
20 agreed to the installation of a mid-block
21 signalized crosswalk to allow pedestrians to
22 cross Nebraska Avenue.

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1 In conclusion, I would like again
2 to note that throughout this campus plan and
3 further processing application, AU has made a
4 priority of balancing the needs of the
5 university with the concerns of the
6 neighboring property owners. The changes that
7 were made by AU to the campus plan and the
8 East Campus Further Processing application are
9 exactly the type of accommodations that are
10 called for by the D.C. Court of Appeals. It
11 is through this understanding and balancing of
12 the needs of all parties that AU has satisfied
13 the objectionable impact standards of Section
14 210 of the Zoning Regulations.

15 All of the issues relevant to the
16 Zoning Commission's review of the campus plan
17 and further processing applications have been
18 extensively analyzed and discussed by the
19 Applicant, the Office of Planning, DDOT and
20 the parties. With the submission of the post-
21 hearing materials that were discussed on
22 November 7th, this evening, the record will be

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1 complete. This case is ready for the Zoning
2 Commission's deliberation and decision.

3 We ask that you approve American
4 University's Campus Plan for the period from
5 2011 to 2020 and that you approve the further
6 processing applications for the development of
7 the East Campus as proposed by American
8 University and the additions to the Mary
9 Graydon Center and Nebraska Hall.

10 Thank you again for your attention
11 this evening and throughout this process.

12 CHAIRMAN HOOD: Okay. Thank you
13 very much for your closing statement, Mr.
14 Tummonds.

15 Do we have anything to do?
16 Commissioners, are we ready to deliberate
17 tonight?

18 Figured I'd ask the question.

19 Ms. Schellin, do we have anything
20 that's do or where are we?

21 MS. SCHELLIN: I actually have a
22 very long list. I think that the Applicant

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1 may have provided a lot of these items.

2 Did OP provide a supplemental
3 report? I had just a couple of things down
4 here for OP.

5 I don't know if the Commission
6 wants me to go down the list because there may
7 have been other people that needed to provide
8 items, too. I could go --

9 CHAIRMAN HOOD: What is your
10 pleasure, Commissioners? Do we need --

11 MR. TUMMONDS: If it would be
12 helpful, we've prepared the list of the six
13 documents that were discussed at the November
14 7th hearing and then that might be --

15 MS. SCHELLIN: My list starts in
16 June.

17 MR. TUMMONDS: Okay.

18 CHAIRMAN HOOD: June?

19 MR. TUMMONDS: I'm sorry.
20 November 3rd.

21 CHAIRMAN HOOD: Okay. Let's see
22 what your list is and then we'll look at your

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1 list. Let's do that right quick, Mr.
2 Tummonds.

3 Ms. Schellin, I believe some stuff
4 probably has been provided.

5 MS. SCHELLIN: Right. A lot of it
6 has, but it's not necessarily all from the
7 Applicant either and, you know, there were
8 other people who may have asked questions or,
9 you know, I have things that you guys may have
10 asked for from the other -- other parties or
11 from OP. So, I mean whatever the Commission
12 wants to do I'm fine with.

13 COMMISSIONER MAY: How long is
14 your list?

15 CHAIRMAN HOOD: Yes, that's what I
16 really want to know.

17 COMMISSIONER MAY: How many pages?

18 MS. SCHELLIN: It's pretty long.

19 COMMISSIONER MAY: How many
20 questions will you have on cross examination?
21 Sorry.

22 MS. SCHELLIN: Mr. Tummonds, are

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1 you going to submit your closing statement?

2 MR. TUMMONDS: Yes, I'll submit
3 that.

4 CHAIRMAN HOOD: Okay. What we're
5 going to do is we'll go by your list and Ms.
6 Schellin, we'll just -- that list you have,
7 we'll recap it at a later point.

8 Things that the Commissioners
9 asked for -- let me try it like this. Things
10 that the Commissioners asked for and if you
11 have not submitted it, please submit it to --
12 other than what we've asked for because the
13 record's going to be closed. But, if you know
14 you've submitted it, don't worry about it. We
15 don't -- believe me, we don't need anything
16 else other than what we've asked for. Okay.

17 MS. SCHELLIN: Right. It's really
18 from the parties. It's not from any
19 individuals.

20 CHAIRMAN HOOD: So, Ms. Schellin
21 -- you all may -- the parties, you may want to
22 check with Ms. Schellin tomorrow. What time

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1 do you get in? Six o'clock.

2 MS. SCHELLIN: No, 7:30.

3 CHAIRMAN HOOD: Tomorrow sometime
4 and make sure that you have provided what
5 we've asked for so we can deliberate.

6 Do we need to go by this list
7 here? What do we need to do now? We don't
8 need to go down this list.

9 Okay. So, can we move in that
10 fashion? I don't think we need to --

11 MS. SCHELLIN: These are some of
12 the items that are on the list.

13 CHAIRMAN HOOD: -- all those seven
14 or eight pages that you have. We don't need
15 to do that. Just if you have no provided it,
16 parties --

17 MS. SCHELLIN: They're all in the
18 transcript. I mean it's anything that -- I
19 mean it's in the transcript.

20 CHAIRMAN HOOD: Let's leave that
21 alone.

22 MS. SCHELLIN: Yes.

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1 CHAIRMAN HOOD: Let's leave it
2 alone.

3 MS. SCHELLIN: So, how much time
4 do you need, Mr. Tummonds, so I can set a date
5 for the parties to respond?

6 MR. TUMMONDS: We believe --

7 MS. SCHELLIN: Two weeks?

8 MR. TUMMONDS: Yes. Well, I think
9 -- yes. In order to fully addressed the
10 issues that were raised I think in the last
11 session on November 3rd about the East Campus
12 and to have dialogue with some of our adjacent
13 communities, we believe that it would be
14 appropriate for the Zoning Commission to take
15 this up in their first hearing, public
16 meeting, in January.

17 And I think the importance, the
18 significance of that as well is that in order
19 for -- as Mr. Abud said this evening dorms
20 have to be up and operational in August. If
21 you don't get August, then you lose a whole
22 year. It doesn't do you any good to have a

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1 dorm ready to go in November. In order for
2 both the Nebraska Hall addition and North Hall
3 to be up and operational in August of 2013,
4 realistically, we need to have an order by the
5 end of the first quarter 2012.

6 So, we would ask that we have a
7 decision from the Zoning Commission in
8 January. We believe that that gives us
9 appropriate time to adequately address the
10 concerns that are raised, have discussions,
11 allow for appropriate submissions by the party
12 opponents.

13 CHAIRMAN HOOD: Ms. Schellin, how
14 many meetings do we have in January?

15 MS. SCHELLIN: We have two.

16 CHAIRMAN HOOD: So --

17 MS. SCHELLIN: But, I think that
18 we're going to do this at a special public
19 meeting. We're not going to do this at one of
20 our regular meetings.

21 MR. TUMMONDS: Okay.

22 MS. SCHELLIN: This needs to have

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1 its own.

2 CHAIRMAN HOOD: Yes, actually, it
3 does. Yes, I agree. We're going to do this
4 separately and this is going to be the only
5 thing on the agenda.

6 MS. SCHELLIN: Right.

7 CHAIRMAN HOOD: Okay. Do we want
8 to set a date or what do we want to do?

9 MS. SCHELLIN: I have January 12th
10 or the 23rd if the Commission wants -- I'm
11 thinking that maybe the 23rd because the
12 Commission probably needs to have some time to
13 meet with their attorney to have some
14 discussions.

15 CHAIRMAN HOOD: Is that on a
16 Monday or a --

17 MS. SCHELLIN: It's a Monday.

18 CHAIRMAN HOOD: Okay. All right.

19 MS. SCHELLIN: It's up to the
20 Commission though. I mean it's your schedule.

21 CHAIRMAN HOOD: The 23rd. We
22 don't have a lot in January?

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1 MS. SCHELLIN: I'm not going to
2 say that.

3 CHAIRMAN HOOD: Oh, well, I was
4 hoping you'd say yes.

5 Okay. So, the 23rd. Is that
6 okay?

7 COMMISSIONER MAY: Yes, I don't
8 mind setting that. I think that between now
9 and then --

10 CHAIRMAN HOOD: The changes.

11 COMMISSIONER MAY: -- you know,
12 we're going to have to -- we have a lot of
13 material to review.

14 MS. SCHELLIN: Right.

15 COMMISSIONER MAY: We will have to
16 consult with the attorney -- Office of the
17 Attorney General and --

18 MS. SCHELLIN: Right.

19 COMMISSIONER MAY: -- I think
20 that, you know, it's always possible that
21 we'll get part of the way through that and not
22 be quite ready, but --

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1 MS. SCHELLIN: Right. That's why
2 I need to set it earlier in the month.

3 COMMISSIONER MAY: -- we've known
4 it in advance. Yes, we'd know it in advance
5 if we're going to have trouble meeting that
6 date. But, I think it's a relatively safe
7 date.

8 CHAIRMAN HOOD: Okay.

9 COMMISSIONER MAY: My opinion,
10 but --

11 CHAIRMAN HOOD: Are we asking for
12 or do we have findings of facts? Are we
13 asking for that?

14 MS. SCHELLIN: Yes, I'm going to
15 set the date for that, but so, we'll go ahead
16 and schedule a special public meeting for 6:30
17 p.m. on January 23rd to take this case up.

18 And then, Mr. Tummonds, how much
19 time do you need to provide this post-hearing
20 submission?

21 MR. TUMMONDS: I think our thought
22 process is that if we would do this the end of

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1 December.

2 MS. SCHELLIN: No, we need it
3 before then because I need to give you time to
4 get the -- need time for the parties to
5 respond and findings of fact, conclusions of
6 law are going to be due on December 12th. So,
7 we need it before then. I was thinking three
8 weeks.

9 MR. TUMMONDS: Three weeks we can
10 do.

11 MS. SCHELLIN: Okay. So, three
12 weeks would be the 28th of November and then
13 the parties would have -- actually, the
14 parties get one week to respond. So, we
15 actually want you to give a full response.
16 So, we'll give you four weeks. We'll give you
17 until December 5th because this will work with
18 our schedule. December 5th, 3:00 p.m.

19 The parties have until December
20 12th to provide responses to what you file and
21 findings of fact, conclusions of law are also
22 do on December 12th.

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1 That will allow OAG enough time to
2 review and still have our meeting and meet the
3 special public meeting deadline.

4 MR. TUMMONDS: That schedule works
5 for us.

6 MS. SCHELLIN: Okay.

7 MR. FERENBACH: Commissioner Hood,
8 can I ask a question please?

9 CHAIRMAN HOOD: Sure.

10 MR. FERENBACH: I'm not a land-use
11 attorney and I'm not clear with all your
12 procedures, but one of the concerns that we
13 have at TCNA, and I think some of my neighbors
14 share, is the way that the further processing
15 of Tenley has been separated from the Main
16 Campus Plan and it's our view that there's
17 elements of the Tenley Plan that were --
18 simply should have been submitted as part of
19 the Campus Plan, but were not and then we're
20 going to hear them again. We're going to that
21 -- about that in end of November and then
22 there's another hearing on December and it's

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1 quite possible we may then be having a further
2 hearing depending on how those go in December.

3 So, I think it puts us in a
4 difficult position in the community to have to
5 put together all these proposed findings of
6 fact, conclusions of law while the Tenley
7 hearings are going on and I think it would
8 serve the Commission well, if you'll consider
9 it, to wait until the further processing is
10 done for Tenley. It's all one plan and what
11 goes on there, you know, affects the rest of
12 the campus and vice versa. Let us finish that
13 and then let's build the calendar after we've
14 got the record complete.

15 Because otherwise, it just seems
16 like we have a lot of confusion, you know, and
17 this was going on between you and Mr. Wilson
18 tonight about, you know, what fits into one
19 proceeding. Well, it's all related to the
20 same thing.

21 So, I ask that you consider
22 pushing back the deadlines so that we can put

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1 in our proposed findings of fact and
2 conclusions of law in a little more reasonable
3 time frame and after we've had a chance to go
4 through further processing for Tenley.

5 CHAIRMAN HOOD: While I appreciate
6 the concern and I understand the concern, that
7 process of campus plan and further processing,
8 it superseded me and everybody sitting up
9 here. That's the way it's been. This
10 Commission has handled that in the past and I
11 don't see us deviating from that process.

12 While I understand your concern
13 and you think it's all tied together, but this
14 Commission, before I even got here, has done
15 the campus plan first and further processing
16 second.

17 While I understand your issue
18 about they're all related and why we're going
19 to make a decision on the campus plan before
20 we hear some of the concerns of the further
21 processing, I think it must have been the
22 wisdom of the people who came long before me.

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1 They put that process in place for a reason.

2 I don't think we even revisited that even
3 during the zoning rewrite. So, obviously, it
4 must work.

5 So, we're going to continue in
6 that process and I think this Commission has
7 the -- well, my two colleagues, I don't give
8 myself a -- I'm not going to give myself a
9 whole lot of credit, but these guys have the
10 wisdom. We have the wisdom and know how to
11 deal with that.

12 So, just let us work with the
13 process because the process has been in place
14 long before all of us have gotten here. The
15 campus plan, the further processing issues
16 come up, we will deal with them accordingly in
17 that fashion.

18 Might not be the answer you want
19 to hear, but the regulations are the
20 regulations.

21 MR. FERENBACH: I appreciate what
22 you're saying and I understanding that, but in

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1 the -- if things are left out of the campus
2 plan such as, for example, a traffic plan that
3 includes Tenley that complies with DDOT
4 requirements, how are we to respond to that in
5 the campus plan if they didn't meet the
6 requirements for a campus plan?

7 Another example is there's no --
8 there's nothing in the record about all
9 anticipated uses at the law school site and
10 so --

11 MR. TUMMONDS: Again, I think I'm
12 going to object. This is testimony.

13 MR. FERENBACH: Well --

14 MR. TUMMONDS: This is testimony
15 that was raised earlier by TCNA in the -- it's
16 in the record of this case and that is -- that
17 is before the Commission.

18 CHAIRMAN HOOD: Let me do this.

19 MR. TUMMONDS: Raise these issues
20 and that's part of your deliberation.

21 CHAIRMAN HOOD: Let me say this,
22 Mr. Tummonds. He's actually -- I wanted it to

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1 go on for a few minutes, but I don't think
2 he's testified. He's asking a question. He
3 has a concern. So, what I'm trying --

4 MR. FERENBACH: Yes, I'm just
5 using an example.

6 CHAIRMAN HOOD: What I'm trying to
7 do is just get to the bottom of his concern.
8 I know that we can deal with that accordingly
9 and I don't want to say what could happen, but
10 this Commission can deal with whatever comes
11 before us. We can deal with the further
12 processing. If we have problems with further
13 processing, we'll deal with it accordingly.

14 MR. FERENBACH: Thank you.

15 CHAIRMAN HOOD: Okay. All right.

16 MS. PERRY: Mr. Hood, if I may.
17 Karen Perry from ANC 3F.

18 CHAIRMAN HOOD: Okay.

19 MS. PERRY: I think you can
20 appreciate that we're all citizens and
21 volunteers in this effort and we're going to
22 be getting all of the submissions, the other

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1 documents from AU on November the 28th if I
2 heard you correctly and our responses are due
3 by December the 12th along with -- no, they're
4 giving us their responses on December the 5th.

5 All of the new submissions on December 5th.
6 That's giving us less -- about seven days to
7 do not only responses to the six or seven
8 documents they're going to provide, but also
9 findings of fact.

10 Could we at least have an
11 additional week to do all of this?

12 CHAIRMAN HOOD: What do our
13 regulations say about that?

14 MS. SCHELLIN: Section 3024.3
15 allows parties seven days to file a response
16 to written submissions.

17 MS. PERRY: I'm just asking for
18 findings of fact to be a week later.

19 MS. SCHELLIN: We typically allow
20 two weeks for findings of fact, conclusions of
21 law. We're giving you five weeks.

22 MS. PERRY: Not really because we

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1 aren't going to have these other documents
2 until December 5th.

3 MS. SCHELLIN: We could cut
4 everything way back, Ms. Perry. We're giving
5 you five weeks instead of two.

6 MS. PERRY: I just think it's
7 unrealistic to ask us to have those documents
8 by December 12th. Well, especially since --

9 MS. SCHELLIN: But, that's how we
10 always do it. We always make responses and
11 findings of fact due on the same --

12 CHAIRMAN HOOD: Ms. Perry, I'm not
13 understanding. We're giving you five weeks.
14 Maybe I'm missing something.

15 MS. PERRY: Well, you know, the
16 five weeks like to do the findings of fact.

17 MS. SCHELLIN: Okay. Well, let me
18 do this. Mr. Tummonds --

19 MS. PERRY: The findings of fact
20 also include the new documents and that's what
21 we're not going to have until the 5th.

22 MS. SCHELLIN: Chairman Hood, we

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1 can fix this. Mr. Tummonds, could you please
2 file your responses on November 28th and we'll
3 make the responses due on December 5th and the
4 findings of fact due on December 12th?

5 MR. TUMMONDS: Absolutely.

6 MS. SCHELLIN: Okay.

7 MS. PERRY: Better for us.

8 CHAIRMAN HOOD: And that will
9 give, what, six weeks now?

10 MS. SCHELLIN: No, it's still five
11 weeks. It's just that they won't be due on
12 the same day.

13 MS. PERRY: We'll just have more
14 time to do two separate documents.

15 CHAIRMAN HOOD: That solves your
16 issue?

17 MS. PERRY: Yes.

18 MS. SCHELLIN: Yes.

19 CHAIRMAN HOOD: Okay. As long as
20 it -- I really don't understand it, but as
21 long as it solves it, I'm fine.

22 MS. SCHELLIN: It's done.

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1 CHAIRMAN HOOD: Okay. Good.
2 Thank you very much.

3 MS. SCHELLIN: I got it.

4 CHAIRMAN HOOD: Thank you, Ms.
5 Schellin.

6 Anything else?

7 MS. PERRY: That's it.

8 MS. SCHELLIN: And just if there's
9 any individual in the audience, I just want to
10 make it clear, if they have testimony they
11 want to submit, please give it to me tonight
12 because the record is closed to them after
13 tonight. If anybody has anything, I just want
14 to give them the opportunity to give it to me
15 tonight because after tonight they won't be
16 able to do that.

17 CHAIRMAN HOOD: Okay. Do we have
18 anything else?

19 MS. SCHELLIN: That would be it.

20 CHAIRMAN HOOD: Okay. I really
21 want to thank everyone. We've had, what,
22 seven/eight, however many hearings. It's been

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1 a long process. I think our deliberations are
2 going to be even harder, but I want to thank
3 everyone for their participation whether
4 you're pro, con, disagree with me, disagree
5 with my colleagues or, you know, didn't cross
6 examine correctly or whatever you did or did
7 not do. I really appreciate it.

8 And I think it's good when you
9 have people involved in their community and
10 want to do the best and get the right result
11 and also, it's good when you have a university
12 in your community that wants to be -- possibly
13 working to achieve to be a good neighbor. So,
14 at the end of the day, we all got to coexist
15 and we're going to do our best to make the
16 best decision possible.

17 So, really truly, on behalf of the
18 Commission and all of us, we thank you all for
19 your participation in this process and look
20 forward to seeing you when we deliberate
21 whatever day that is.

22 Okay. So, with that, this --

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1 believe it or not --

2 COMMISSIONER TURNBULL: Mr. Chair,
3 Commissioner May and I appreciate all your
4 efforts and we like you.

5 CHAIRMAN HOOD: Yes, well, I
6 appreciate that, Mr. Turnbull. Thank you very
7 much. Thank you.

8 I just hope everybody claps when
9 we all finish. So, with that, this hearing is
10 adjourned.

11 (Whereupon, at 9:34 p.m., the
12 hearing was adjourned.)

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