

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

IN THE MATTER OF:

The Application of  
American University  
for a Special Exemption and  
further processing of the  
Campus Plan

Case No.  
00-36CP

Thursday  
March 15, 2001

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

The Public Hearing of Case No. 00-36CP by  
the District of Columbia Zoning Commission convened at  
7:00 p.m. in the Office of Zoning Hearing Room at 441  
4th Street, Northwest, Washington, D.C., Carol J.  
Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

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## COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, ZC  
Gerald Forsburg, Office of Zoning

## OTHER AGENCY STAFF PRESENT:

John Fondersmith, Office of Planning  
Ellen McCarthy, Deputy Director,  
Office of Planning  
Steve Cochran, Office of Planning

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

(7:03 p.m.)

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. Welcome back. Tonight is March 15, 2001, and we resume the public hearing of the Zoning Commission for the District of Columbia for Case No. 00-36CP the Campus Plan and three further processing cases for American University.

This hearing has been continued from February 15th and February 26th, 2001. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioner Herb Franklin and we expect to be joined shortly by Commissioner John Parsons and Kwasi Holman.

Copies of the hearing agenda are available to you and are located on the table near the door. When we adjourned last time, we stopped just prior to Mr. Elliott commencing his cross examination of the Office of Planning representatives. We have a request tonight from Mr. Ken Laden of the Department of Public Works to defer the cross examination of the Office of Planning and allow him to testify and be cross examined because he has another engagement later. And if there are no objections, we will accommodate Mr. Laden's request.

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1           After Mr. Laden testifies and we conclude  
2 the cross examination of the Office of Planning, we  
3 will then proceed to reports of Advisory Neighborhood  
4 Commissions 3D and 3E, parties and persons in support,  
5 parties and persons in opposition, rebuttal by the  
6 applicant and closing remarks by the applicant.

7           Before we proceed this evening, I would  
8 like to begin by asking that all beepers and cell  
9 phones be turned off so as not to disturb this  
10 hearing. I would also like to remind you not to  
11 engage the Commissioners in conversation so as to  
12 avoid any ex parte communication or the appearance  
13 thereof.

14           Our goal is to conclude this hearing this  
15 evening. If not, we will make an assessment at  
16 approximately 9:30 p.m. as to whether we can conclude  
17 or whether another, now what about that beeper, cell  
18 phone, we'll make an assessment at 9:30 about whether  
19 we can conclude or whether another hearing date will  
20 be scheduled.

21           We received submission of additional  
22 information requested at the conclusion of the last  
23 hearing and among those items was the resume of Ms.  
24 Pamela Hayne. Mr. Elliott, is it Hayne?

25           MR. ELLIOTT: Hayne, H-a-y-n-e.

1 CHAIRPERSON MITTEN: Hayne, to be  
2 qualified as an expert in, is it in architecture?

3 MR. ELLIOTT: Compliance with the  
4 Comprehensive Plan, architecture and similar matters,  
5 planning.

6 CHAIRPERSON MITTEN: Are there any  
7 objections or questions by the Commissioners, the  
8 applicant or ANC representatives so that we can  
9 dispatch with this now?

10 MS. DWYER: Madam Chair, I have a question  
11 about the qualifications of the witness that Mr.  
12 Elliott has just proffered. We reviewed her resume  
13 and while we believe that she does qualify as a  
14 residential expert in a very specialized area, her  
15 qualifications seem to be primarily in light and  
16 mirrors and glazing. We do not believe that she's  
17 qualified as an expert in campus plan design, land use  
18 or campus plan architecture. We did not see anything  
19 in her resume that would indicate her qualifications  
20 in those areas.

21 CHAIRPERSON MITTEN: So are you objecting  
22 to the specific nature of compliance with the  
23 Comprehensive Plan and campus architecture per se. I  
24 mean, would you agree that she's an expert in  
25 architecture?

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1 MS. DWYER: Well, her expertise is in  
2 residential architecture, not in campus plan or  
3 institutional architecture. So, if her testimony is  
4 going to be limited to specific features of a building  
5 having to do with lighting or glass or glazing, she is  
6 certainly qualified. If it goes beyond that, we would  
7 challenge her qualifications in those areas.

8 CHAIRPERSON MITTEN: Mr. Elliott, do you  
9 have a response or shall we bring her forward to  
10 answer a few questions?

11 MR. ELLIOTT: I think voir dire is then in  
12 order. She is the author of two books, she is a  
13 distinguished graduate of Yale in architecture. I  
14 can't imagine that she cannot express expert opinions  
15 on the Comprehensive Plan issues with respect to the  
16 Art Center building, with respect to the very things  
17 that the Commission has expressed concern about. She  
18 certainly experienced and trained in those areas,  
19 compatibility with the architecture in the area, the  
20 urban component of the Ward 3 Comprehensive Plan etc.

21 CHAIRPERSON MITTEN: Could we bring her  
22 forward to answer a few questions, please?

23 MR. ELLIOTT: Madam Chair, she may not  
24 have arrived yet. Perhaps this should be postponed to  
25 the beginning of our case.

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1 CHAIRPERSON MITTEN: All right, that's  
2 fine. That's great.

3 MS. DWYER: And Madam Chair, I have one  
4 other comment at the time that after DPW gives its  
5 report and cross examination, if there are any  
6 questions that the commission members have concerning  
7 any of the materials that we filed, we are prepared to  
8 address those. I think some of the drawings when they  
9 were copied are not as clear as we would have liked  
10 and we do have large scale copies of all of the  
11 drawings. So we have the architects here to address  
12 those issues and any questions the Commission may  
13 have.

14 CHAIRPERSON MITTEN: Thank you.

15 MR. ELLIOTT: Madam Chair, as a  
16 preliminary matter, I did have a question. I thought  
17 that the Commission had requested American University,  
18 when they were having some difficulty explaining how  
19 they compute FTE, that the Commission had asked the  
20 University to submit a breakdown and technical  
21 explanation of the methodology. Instead what the  
22 American University has filed is a simple table of  
23 head count. It has nothing really to do with the  
24 issue that was at hand.

25 At the time the Commission requested that,

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1 I think the witness from the University was addressing  
2 the subject of how non-degree students are included in  
3 FTE and we had hoped to see this response in order to  
4 know how the FTE concept is actually defined in the  
5 event that the Commission as the University request  
6 moves from a head count concept to an FTE concept.  
7 Because if FTE is undefined, then there's too much  
8 room for maneuver and massage so that should the  
9 University exceed the head count cap --

10 CHAIRPERSON MITTEN: I understand. We  
11 asked for the material and Ms. Dwyer said she'll  
12 respond to questions about the material after Mr.  
13 Laden testifies and to the extent we have questions,  
14 we'll raise those then.

15 MR. ELLIOTT: All right. But that hasn't  
16 been submitted. Also, I haven't seen the land use  
17 breakdown that was to be submitted.

18 CHAIRPERSON MITTEN: I believe that was  
19 one of the exhibits.

20 MS. DWYER: Yes, one of the exhibits was a  
21 map showing the corrected land use categories for the  
22 campus, one of the maps and materials that you  
23 received. And with regard to the FTE issue, Mr. Obu  
24 testified as to the formula and what the Commission  
25 asked for then was the actual number of students that

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1 would fit into the formula. So the formula was  
2 already on the record for both the graduate formula  
3 and the undergraduate formula but we can repeat that  
4 at the appropriate time.

5 CHAIRPERSON MITTEN: Thank you. And the  
6 material, weren't the land use categories and then  
7 there was one other exhibit and they were submitted  
8 under a separate cover. Maybe Mr. Elliott doesn't  
9 have that, if I remember correctly, they were  
10 submitted separately.

11 MR. ELLIOTT: I'm confused because I  
12 thought they were going to clarify the uses of the  
13 buildings and then I saw this table, it just says to  
14 be submitted March 9 and I haven't seen that  
15 submission.

16 CHAIRPERSON MITTEN: Okay. Then we have  
17 that and if you'd give Mr. Elliott a copy of that.

18 MR. HERZSTEIN: Madam Chair, I have a  
19 preliminary matter I'd like to raise also.

20 CHAIRPERSON MITTEN: Well, that's, now is  
21 the time, I was just going to ask staff if they have  
22 any preliminary matters. So have you raised it with  
23 staff?

24 MR. HERZSTEIN: No, I have not.

25 CHAIRPERSON MITTEN: Okay. Do you have

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1 anything Mr. Bastida?

2 MR. BASTIDA: Yes, I would like to make an  
3 announcement. The ladies room on the section of the  
4 floor is locked so if anybody, any ladies have to go  
5 to the bathroom, they have to go to the north end of  
6 the building and the bathroom is basically located in  
7 the same section that is over here. Sorry about that  
8 inconvenience. Thank you.

9 CHAIRPERSON MITTEN: And let the record  
10 reflect that we've been joined by Commissioners  
11 Parsons and Holman. Mr. Herzstein.

12 MR. HERZSTEIN: Thank you. Madam Chair,  
13 yesterday afternoon we received a package of materials  
14 consisting of correspondence between neighbors and the  
15 University about various matters over the years and  
16 some internal University documents relating to those.  
17 We simply, in the time available, have not been able  
18 to look through that and look through our own files,  
19 so we would ask that that be held until we can submit  
20 relevant materials for the Commission's consideration  
21 also.

22 CHAIRPERSON MITTEN: If we conclude  
23 tonight, we'll make sure that there's adequate time  
24 for you to submit a written response to those  
25 materials.

1 MR. HERZSTEIN: Thank you.

2 CHAIRPERSON MITTEN: Anything else?

3 COMMISSIONER HOOD: Madam Chair, I just  
4 wanted to ask Mr. Herzstein. Are you speaking in  
5 terms to, I guess, is this the package you're speaking  
6 in terms of?

7 MR. HERZSTEIN: Yes.

8 COMMISSIONER HOOD: Okay. Well, I concur  
9 with you.

10 CHAIRPERSON MITTEN: Is there anyone  
11 planning to testify this evening that was not sworn at  
12 either of the previous two hearings? If you'd please  
13 stand to be sworn now, Mr. Bastida.

14 MR. BASTIDA: Do you swear or affirm that  
15 the testimony you are about to give is the truth?  
16 Thank you.

17 CHAIRPERSON MITTEN: And I'd like to  
18 remind you that all persons planning to testify need  
19 to fill out two witness cards and then hand them to  
20 the reporter upon coming forward to testify.

21 MR. ELLIOTT: Madam Chair, I have one  
22 preliminary matter. I learned for the first time  
23 yesterday, if it's correct, that neighbors within 200  
24 feet of the Tenley Campus, the eight acre property  
25 near Wisconsin Avenue, were not given, did not receive

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1 certified letters regarding this proceeding. And I  
2 hadn't actually realized it but the, one of the  
3 students associations closest to that area does not  
4 consider its territory to come that close that it  
5 actually represents the citizens near the Tenley  
6 property either. That would be AU Park Citizens  
7 Association, Mr. Rottenburg can speak to that, the  
8 president of it. But, as a result, it seems that the  
9 citizens right near the Tenley Campus are not  
10 represented by any of the citizens associations and  
11 did not receive the 200 foot notice.

12 In fact, I believe one of them I passed  
13 along to the ANC, the e-mail address of your secretary  
14 and I believe one of the citizens, I don't know his  
15 name, was going to e-mail something to the Commission  
16 because he was not even aware of this entire  
17 proceeding until after the first hearing of February  
18 15th. Also, well, I don't really know whether that  
19 person is present, but I think he might be called  
20 forward or any citizens from there who didn't receive  
21 the 200 foot notice might be called forward at this  
22 time to have this try to be cleared up.

23 CHAIRPERSON MITTEN: Well, maybe I would  
24 ask Ms. Dwyer first, is it your belief, at least, that  
25 that was accomplished?

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1 MS. DWYER: Yes. It is our understanding  
2 that the names of everyone within 200 feet were  
3 provided and the notices were sent out. The ANC 3E  
4 certainly does represent those residents and I think  
5 the record reflects that there were many community  
6 meetings and public meetings of which the campus plan  
7 was discussed.

8 We have not seen anything in the record  
9 from anyone raising this issue and this is complete  
10 news to me. I don't know if Mr. Elliott represents  
11 this individual but if that person isn't here to raise  
12 the issue, we would object to it being raised at this  
13 point.

14 MR. ELLIOTT: I don't know if they're  
15 here.

16 CHAIRPERSON MITTEN: Well, a gentleman is  
17 raising his hand so maybe we could ask him to come  
18 forward if you are indeed the gentleman who believes  
19 that he lives within 200 feet and did not receive  
20 notice. Okay, we have a bunch of people. All right.  
21 Mr. Bastida, have you dealt at all with this issue?

22 MR. BASTIDA: I have not been advised of  
23 that case. I have not received any e-mail. The 200  
24 feet notice was provided for that part of the campus.  
25 It went through regular mail. It is not with

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1 certified mail. We don't serve notice with certified  
2 mail, just regular mail and I will check, I'll be glad  
3 to check how many letters, if any, were returned.

4 CHAIRPERSON MITTEN: Let me ask this  
5 perhaps. If the folks who did not, who believe they  
6 are within 200 feet and who did not receive notice, if  
7 you could just circulate a piece of paper among  
8 yourselves, give the names to Mr. Bastida and we'll  
9 verify, in fact, whether you're on the list and that  
10 can be done as we proceed through the evening.

11 MR. ELLIOTT: Madam Chair, I believe  
12 there's a list in the file of those persons who were  
13 mailed the notice so that can be checked against it.

14 CHAIRPERSON MITTEN: Yes, but we need to  
15 know the people that think they should have been  
16 mailed the notice and didn't get it.

17 MR. ELLIOTT: Correct. To match up the  
18 list.

19 CHAIRPERSON MITTEN: Exactly.

20 MR. ELLIOTT: One other thing, I hadn't  
21 realized that the Tenley Campus property where they  
22 proposed a hundred thousand foot building, I hadn't  
23 realized that the University wasn't planning to comply  
24 with the 1986 Tenley Agreement.

25 I believe it's, and perhaps Ms. Dwyer

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1 could clear this up, I believe she's about to tell you  
2 that the AU believes that that agreement no longer has  
3 any applicability. Whereas up until now, I had  
4 simply assumed that they viewed themselves bound by it  
5 and would comply with it. I think this needs to be  
6 cleared up as to what the University's position is on  
7 that.

8 MS. DWYER: Again, the issue he's raising  
9 is a private agreement. In 1986, there was an  
10 agreement with some of the neighbors concerning that  
11 campus and it was done because the plans for that  
12 campus were falling in between campus plan approval.  
13 In the 1989 campus plan, all of the conditions  
14 affecting the Tenley Campus were incorporated in the  
15 BZA's order and the University has fully complied with  
16 that order. What the University is proposing in this  
17 campus plan, is a building at that location and a  
18 change in some of the academic programs.

19 MR. ELLIOTT: If I understand Ms. Dwyer,  
20 she's saying that the agreement either stopped  
21 applying in 1989 or has stopped applying at the end of  
22 2000, I'm not sure which, but --

23 CHAIRPERSON MITTEN: Well, Mr. Elliott, I  
24 think this is very similar to the issue related to the  
25 1989 agreement and the position that we've taken is

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1 that the campus plan that formerly existed no longer  
2 is in force and if there's a private agreement in  
3 force, then it needs to, any further enforcement of  
4 that needs to be taken up privately. So I think  
5 they're exactly the same situation and I think you  
6 know how --

7 MR. ELLIOTT: They're different in this  
8 respect, if I may, though. The question we raised on  
9 the '89 agreement was whether the further processing  
10 application could be filed as early as August, 2000,  
11 was essentially procedural. The 1986 Tenley Agreement  
12 goes much farther. It says that nothing can ever be  
13 built on that property without neighbor support.  
14 Nothing ever can be built on that property without  
15 neighbor support. Until the other day, I had simply  
16 assumed that when the University proposed its building  
17 there, it would have to comply before building it with  
18 that provision and get neighbor support, which is  
19 unlikely, but possible.

20 Now I'm understanding, however, that the  
21 University thinks that the agreement has evaporated.  
22 This definitely goes to what the Commission is going  
23 to do with respect to approval of the campus plan  
24 because you really need to look at that agreement and  
25 see whether the original permission of American

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1 University to take this sleepy little Catholic  
2 secondary school campus and turn it into a thriving  
3 piece of the University, when the University got that  
4 approval with the consent of this --

5 CHAIRPERSON MITTEN: I think I understand  
6 what the issue is and is this a recorded instrument.  
7 I mean is this a covenant that runs with the land or  
8 not?

9 MR. ELLIOTT: I think it's clearly a  
10 negative covenant that runs with the land and it only  
11 need be recorded to give third parties notice but the  
12 actual parties and particularly the University, have  
13 notice, they signed it. I mean what you really have  
14 here --

15 CHAIRPERSON MITTEN: Well, you're  
16 suggesting that we need to take notice of it, too.

17 MR. ELLIOTT: Oh, very much so. But I  
18 think the main thing that I wanted to do at this  
19 point, and I think Ms. Dwyer has done it, is I wanted  
20 to know whether or not the University is going to  
21 comply with it. I think she's saying no.

22 MS. CRANE: May I interject just for a  
23 moment.

24 CHAIRPERSON MITTEN: Sure.

25 MS. CRANE: Just to correct something.

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1 CHAIRPERSON MITTEN: And just identify  
2 yourself for the record.

3 MS. CRANE: I'm Leslie Crane. I'm ANC 3E  
4 Commissioner. The '86 agreement was not with the  
5 community residents. It was with the ANC. I think  
6 that should be taken into account.

7 CHAIRPERSON MITTEN: All right. This is  
8 how I'd like to proceed on this which is just as you  
9 did with the posture that you took on the 1989  
10 agreement, I'd like to have briefs from both of you  
11 and then we'll take a position on this before we  
12 decide this case

13 MS. DWYER: All right. Madam Chair, I  
14 would submit that it's an identical issue with the  
15 1989 agreement. There's a private agreement and this  
16 is Mr. Elliott's interpretation of that.

17 CHAIRPERSON MITTEN: I understand.

18 MS. DWYER: They have rights to enforce it  
19 separate from what the Zoning Commissions jurisdiction  
20 is.

21 MR. ELLIOTT: Well, I'd like to be clear  
22 that these citizens --

23 CHAIRPERSON MITTEN: I'd like to get  
24 briefs and then we can just move on, please.

25 MR. ELLIOTT: All right.

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1 CHAIRPERSON MITTEN: Thank you.

2 MR. ELLIOTT: I do think you'll be hearing  
3 evidence on it tonight in any case.

4 CHAIRPERSON MITTEN: In your case.

5 MR. ELLIOTT: We'll try and whatever the  
6 witnesses want to testify to it because this was an  
7 absolute permanent bar against further development  
8 there. It's a very important item and a lot of these  
9 people are going to testify to it.

10 COMMISSIONER FRANKLIN: Madam Chair, if I  
11 could just interject at this time. This Commission is  
12 not going to grant a building permit. And at such  
13 time as the University decides to get a building  
14 permit, it seems to me, the time would be ripe for  
15 whatever litigation should ensue. We're not in the  
16 business of giving building permits.

17 CHAIRPERSON MITTEN: And now we'd like to  
18 ask Mr. Laden to come forward to testify. So if you  
19 could give him some room at the table now.

20 MR. LADEN: Thank you very much. I  
21 greatly appreciate the Chair's willingness to  
22 accommodate my schedule and allow me to testify out of  
23 turn. My name is Ken Laden. I am the Associate  
24 Director for Transportation Planning in the Department  
25 of Public Works, Division of Transportation.

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1           We have submitted testimony February 8th  
2 on this particular application. We've also been in  
3 consultation with the Office of Planning as they've  
4 developed subsequent information on this particular  
5 case and I'll just try to briefly summarize our  
6 position with respect to the campus plan.

7           We've reviewed the information provided by  
8 the Traffic Consultants and we found basically that  
9 their description of the existing transportation  
10 system was accurate. Their description of the level  
11 of service and the operations of the intersections  
12 were generally accurate. We also noted that they did  
13 provide a detailed description of the Metro bus routes  
14 and the relationship with the Tenley AU Metro Station  
15 and the types of services that they provided linking  
16 the Metro Station with the campus.

17           Our testimony focused on several different  
18 areas attempting to minimize the traffic impacts of  
19 the campus plan as proposed. They dealt with the  
20 issue of attempts to minimize the impact of traffic  
21 generated in the University, the level of circulation,  
22 I'm sorry the traffic circulation and level of  
23 service, pedestrian circulation, parking facilities  
24 and proposed traffic operational improvements.

25           With respect to minimizing traffic

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1 volumes, one of the things that the University can do  
2 that would be most helpful would be to provide  
3 sufficient housing on campus so that students wouldn't  
4 need to necessarily drive to get to their classes. We  
5 note that there is a significant amount of on-campus  
6 housing especially for undergraduates. Our comments  
7 in February were that we would like to see somewhere  
8 in the neighborhood of a goal established of 70-75  
9 percent of the undergraduate body being housed on  
10 campus. Right now, I believe the rate is about 66  
11 percent.

12 We also talked about the second best way  
13 of reducing traffic impact from the campus plan would  
14 be to have an effective transportation management  
15 program. We noted in the report provided by the  
16 Traffic Consultants that a significant number of the  
17 students, because of their living on campus, already  
18 walk to class. I think for the student body, we found  
19 60 percent walk, 23 percent drive, 13 percent take the  
20 shuttle and about 4 percent take Metro bus to the  
21 campus.

22 Faculty, most of the faculty drive to the  
23 campus and I think that was 68 percent with 9 percent  
24 using the shuttle. And of the visitors, again, a  
25 significant number end up having, I believe, to drive

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1 to the campus. Basically I think our recommendation  
2 was that the campus attempt to see if they can further  
3 influence both student and faculty and staff choice in  
4 terms of favoring mass transit over driving. This can  
5 be done by use of parking fees, by encouraging higher  
6 vehicle occupancy through carpooling or transit, the  
7 coordination that they already do, in fact, with  
8 respect to carpooling, and also Metro check benefits.

9 Now, the University already does this but  
10 to the extent they can increase their attempts to get  
11 faculty and staff to use Metro check, I think that  
12 would help benefit the overall traffic conditions in  
13 the area. With respect to circulation, again, we  
14 felt that the traffic studies that were performed by  
15 the Traffic Consultants were generally accurate and  
16 that we supported the findings of the their report  
17 with respect to level of service.

18 I think our review of this indicated that  
19 there are sections of, around the University that do  
20 have traffic problems during peak periods. But most  
21 of this is related to commuter traffic. The  
22 University does contribute to it somewhat and under  
23 the campus plan there could be additional growth  
24 within the amount of traffic coming to the American  
25 University area, but we felt overall that it really

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1 was this commuter traffic which is sort of beyond the  
2 control of the University which was the most  
3 significant contributor to the high levels of  
4 congestion in certain areas, especially around the  
5 Ward's Circle Area.

6 I think I've covered most of those points.

7 With respect to the pedestrian and vehicular  
8 circulation, at the time we wrote our report in  
9 February, we found that this section was kind of thin  
10 and that we asked for additional information. There  
11 has been some further documentation provided by the  
12 Traffic Consultants. I believe there was a package  
13 sent on either the 7th or 8th of February which  
14 provided some additional information on traffic  
15 circulation or pedestrian circulation within the  
16 campus. I believe some additional information has been  
17 provided subsequent to last month's hearing.

18 We have taken a look at that information  
19 and I think we're generally comfortable that  
20 pedestrian circulation would be improved if the campus  
21 plan were implemented. We're satisfied with the  
22 analysis that they performed of the potential  
23 pedestrian impacts from the new Katzen Art Center. We  
24 did suggest in some verbal communications with the  
25 University that are not part of our written comments

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1 but we'd be happy to add them to the file, that they  
2 might want to widen the proposed crossing, pedestrian  
3 crossing of Massachusetts Avenue. They were  
4 recommending, I believe, a 10 foot wide crosswalk and  
5 we think if they widen that to 15 feet, that might  
6 provide for easier pedestrian flow across the  
7 Massachusetts Avenue.

8 With respect to the specific  
9 recommendations in the December Campus Plan Traffic  
10 Report, there was a suggestion made of adding a left  
11 turn lane on Nebraska Avenue onto New Mexico Avenue  
12 which I believe we support. There were also some  
13 suggestions with respect to the access to garages and  
14 some driveways with respect to the parking lot across  
15 the street from the campus that we support.

16 And our general conclusion was that,  
17 again, we'd like to see the University have an  
18 aggressive transportation management program that  
19 encourages use of mass transit, that continues to  
20 build on their existing program of using Metro check  
21 with faculty and staff, providing bus services with  
22 the, linking the campus to the Metro Station and that  
23 they ensure that within their internal development  
24 that they properly mark pedestrian crossings within  
25 the campus so that persons driving through on the new

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1 road systems will know where the pedestrians are going  
2 to be crossing and that they are properly signed or  
3 otherwise designated as pedestrian crossings.

4 That pretty much concludes our testimony  
5 at this point. I'd be willing to try to answer  
6 questions you may have.

7 CHAIRPERSON MITTEN: Thank you. Any  
8 questions for Mr. Laden.

9 COMMISSIONER PARSONS: Mr. Laden, the left  
10 turn, the additional left turn onto New Mexico, off of  
11 Nebraska, is that something that you believe is  
12 required because of this campus plan or do you think  
13 it's required as we sit here today?

14 MR. LADEN: I think it would be required  
15 if there was additional growth within the campus.

16 COMMISSIONER PARSONS: But not otherwise?

17 MR. LADEN: Correct.

18 COMMISSIONER PARSONS: Thank you.

19 CHAIRPERSON MITTEN: I would just like to  
20 follow up on that because in your report of February  
21 8th, your recommendation was that that left turn lane  
22 be accommodated and also that the University would pay  
23 for it.

24 MR. LADEN: Correct.

25 CHAIRPERSON MITTEN: And is there any

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1 agreement on the part of the University to do that?

2 MR. LADEN: We don't have any written  
3 agreement yet on that.

4 CHAIRPERSON MITTEN: And what have your  
5 conversations with them yielded in terms of their  
6 willingness to pay for it?

7 MR. LADEN: My recollection was that they  
8 were willing to agree to that but I think if we move  
9 forward, there should be some sort of documentation of  
10 that.

11 CHAIRPERSON MITTEN: Okay. Thank you.  
12 I'd like to know, you raised the issue that the  
13 University should increase the number of beds that it  
14 has on campus as part of their overall goal of  
15 controlling, you know, parking and so on, and traffic  
16 in the area. Is it your recommendation that the  
17 Traffic Management Plan and all of that is adequate,  
18 is that contingent on there being some implementation  
19 of a requirement for more beds on campus to work  
20 towards that goal or is that just, how important is  
21 that notion to your recommendation that this be  
22 approved?

23 MR. LADEN: Well, it's not critical. I  
24 think that what we were trying to state in our  
25 comments was that the first line of defense with

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1 respect to trying to keep traffic under control is to  
2 minimize the amount of cars having to drive to the  
3 campus and to the extent they could provide additional  
4 on-campus housing, it reduces congestion, it reduces  
5 air pollution associated with traffic and that we  
6 would like to see a general goal of increasing the  
7 amount of on-campus housing.

8 If I remember correctly, the plan called  
9 for some additional 200 beds but it was in the Tenley,  
10 I'm sorry, in the, I think it was off the Main Campus,  
11 closer to the law school. It's a recommendation but  
12 it's not critical to the overall position with respect  
13 to the plan.

14 CHAIRPERSON MITTEN: How about the notion  
15 that, I mean, there's been a transportation management  
16 program proposed to us by the University and then  
17 you've suggested some additional measures. I take it  
18 from what you've said that what does need to happen in  
19 order for the proposed increase in parking spaces to  
20 be adequate to accommodate the potential increases for  
21 enrollment and faculty and staff, that a more  
22 aggressive plan needs to be in place in order for  
23 everything to work out. Is that more aggressive than  
24 what's been proposed and that we really do need to  
25 incorporate your suggestions or, what I'm trying to

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1 get at is how do you feel about what they proposed  
2 relative to these additional suggestions that you've  
3 made.

4 MR. LADEN: Our position is that if  
5 enrollment and faculty and staffing is to increase  
6 that the University as part of their expansion should  
7 increase their current transportation control measures  
8 by further use of carpooling, of a commuter  
9 connections type program that would link students and  
10 faculty to carpool more effectively, to increase the  
11 amount, the frequency of the buses perhaps connecting  
12 with the American University Tenley Metro Station, to  
13 perhaps look at increasing or attempting to market  
14 more aggressively the Metro check program. To take  
15 whatever steps they can to reduce the faculty and the  
16 staff driving rates and the student driving rates.  
17 And that at a minimum we would like to see any  
18 expansion not make the existing situation with respect  
19 to traffic there worse than it is today. And, if  
20 possible, better than it is today.

21 CHAIRPERSON MITTEN: Well, is it your  
22 experience, for instance, I thought your suggestion  
23 was a good one about increasing the rates that are  
24 charged for parking on campus but that could also have  
25 an offsetting effect which is that people wouldn't

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1 want to pay and then they'd park in the community.

2 MR. LADEN: Correct.

3 CHAIRPERSON MITTEN: What's your  
4 experience been with the effectiveness of raising the  
5 rates versus the ill effect that might come with that.

6 MR. LADEN: Well, I think there needs to  
7 be a balancing of carrots and sticks. I think you  
8 need to have perhaps an additional stick that's needed  
9 in addition to the market rate parking fees would be a  
10 more aggressive neighborhood parking enforcement  
11 program around the campus. I think one of the issues  
12 that's come up subsequent to the hearing last month  
13 was some discussions the planning office had with our  
14 Bureau of Parking or our Parking Enforcement  
15 Administration about parking enforcement in the area.

16 Perhaps partnering with the University to  
17 attempt to reduce the number of either faculty, staff  
18 or students who are parking in the residential  
19 neighborhood through additional patrols. We wouldn't  
20 suggest that the University should be ticketing. That  
21 would be a responsibility solely of the district  
22 government but they could perhaps help our parking  
23 enforcement in identifying cars that were university  
24 related that were parking in the neighborhood or they  
25 could adopt their own policies with respect to

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1 notifying students who have registered vehicles who  
2 are parking in the residential neighborhood. So I  
3 think there can be more aggressive policing policies  
4 established by the University to ensure that if they  
5 do establish market rates or something approaching  
6 market rates at their parking facilities that there  
7 will be an equal discouragement to bleeding over into  
8 the residential neighborhood.

9 CHAIRPERSON MITTEN: Okay. Thank you.

10 COMMISSIONER FRANKLIN: Could I just  
11 follow up just for a moment. Mr. Laden, with respect  
12 to discouraging scoff laws, to be very brief about it,  
13 is there a way for the University to know from the  
14 Department of Transportation or Motor Vehicles who has  
15 been ticketed, not only in the neighborhood but  
16 elsewhere and hasn't paid those tickets. I mean, how  
17 is it possible to coordinate the information with  
18 respect to student owned vehicles and the records of  
19 the DMV or whoever with respect to those who have been ignoring  
20 traffic requirements of the District.

21 MR. LADEN: I believe our parking  
22 enforcement officers are now using hand held computers  
23 as they're going through the neighborhoods and doing  
24 residential parking and other kinds of enforcement.  
25 That, I believe, does call up prior infractions.

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1 That's basically how they can tell whether or not a  
2 booting is warranted or not in some instances because  
3 of repeat ticketing.

4 COMMISSIONER FRANKLIN: How can they or  
5 how can the University tell that the car belongs to a  
6 student?

7 MR. LADEN: Well, a reporting mechanism  
8 would have to be developed between the University and  
9 our Parking Services Administration so that, for  
10 instance, if the University is patrolling the  
11 residential neighborhood and identifies a certain car  
12 that is registered to a student, they can presumably  
13 get that registration information from the Department  
14 of Motor Vehicles. Then, again through coordination  
15 of weekly or monthly reports sent to our Traffic  
16 Services Administration, get a sense as to whether or  
17 not a particular tag was getting repeat hits for RPP  
18 violations or other kinds of violations.

19 So, it would require some work between the  
20 University and the Department of Public Works and the  
21 Department of Motor Vehicles but I think, I know at  
22 least talking to our Administrator for Parking  
23 Services, she indicated a willingness to work with the  
24 University to develop a working system.

25 COMMISSIONER FRANKLIN: Thank you.

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1 CHAIRPERSON MITTEN: Mr. Parsons.

2 COMMISSIONER PARSONS: Mr. Laden, this may  
3 be outside your area of expertise but the right of way  
4 of Massachusetts Avenue, it's quite wide here and  
5 contains a number of shade trees especially on the  
6 north section, north side of Massachusetts Avenue and  
7 the proposal before us would build right to the  
8 property line and require substantial grading,  
9 regrading of that right of way, an underground  
10 structure under, I guess, about 40 feet of the right  
11 of way. What is the process that the Department goes  
12 through in evaluating something like that?

13 MR. LADEN: Well, any sort of building  
14 process now requires an environmental screening form  
15 be filled out. That process is managed by the  
16 Department of Consumer and Regulatory Affairs. We  
17 participate in the review of those environmental  
18 screening forms and we would certainly take a look at  
19 the impacts on adjacent trees and other structures in  
20 the right of way.

21 Presuming that this proceeded through the  
22 environmental screening process, then there is public  
23 space permitting required. And again, I think permits  
24 would be required to remove any sort of street trees  
25 or any other street furniture, sidewalks, curb cuts,

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1 whatever adjustments, so we would have several cuts at  
2 any proposal to modify Massachusetts Avenue.

3 COMMISSIONER PARSONS: And is your  
4 influence on that, not you personally, but your  
5 influence on that a veto in any way or just an  
6 opinion?

7 MR. LADEN: Our comments would go to the  
8 Department of Consumer and Regulatory Affairs and  
9 ultimately they pool the results or the comments from  
10 a number of different agencies to come up with a  
11 District government position with respect to the  
12 environmental permitting or the environmental  
13 screening process. With respect to the issuance of  
14 permits, I think the Department has pretty much a veto  
15 authority over those operations with respect to use of  
16 the public space.

17 COMMISSIONER PARSONS: Thank you.

18 CHAIRPERSON MITTEN: I'd just like to ask  
19 if that list that was being circulated of folks is  
20 done. You could give it to Mr. Bastida and he could  
21 be working on verifying the information.

22 Any more questions by the Commissioners?  
23 Mr. Tummins.

24 MR. FONDERSMITH: Just a couple of quick  
25 questions. Good evening, Mr. Laden. The first

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1 question is in your opinion, the proposed AU campus  
2 plan will not worsen traffic operations in the area  
3 surrounding the AU campus?

4 MR. LADEN: Well I think the University  
5 would need to commit to their traffic mitigation plan  
6 and again, I think a more aggressive traffic  
7 mitigation plan would help ensure that the University  
8 wouldn't be a source of additional congestion in the  
9 area. But, again, anytime you bring more students and  
10 faculty in there is a, you know, potential for  
11 additional problems. We just didn't think it  
12 significantly affected the level of service of the  
13 roads.

14 MR. FONDERSMITH: And that's because the  
15 predominant number of users affecting those level  
16 service in the intersection surrounding the campus are  
17 commuters?

18 MR. LADEN: Again, that's part of it, yes.  
19 Especially for peak congestion, the primary issue is  
20 commuter congestion.

21 MR. FONDERSMITH: Moving to the provision  
22 of parking spaces, the proposed campus plan will  
23 provide 2,959 parking spaces and is it your opinion  
24 that this will be adequate to meet the future parking  
25 demands on campus?

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1 MR. LADEN: Again, I think this is sort of  
2 a balancing issue between providing enough parking and  
3 not providing too much parking and I would indicate  
4 that, yes, that's probably, that we believe that would  
5 be adequate. However, again, we would like to see an  
6 aggressive program to try to encourage students and  
7 faculty and staff to use alternative forms of  
8 transportation.

9 MR. FONDERSMITH: And the raising of the  
10 parking rates would be part of that? And again, in  
11 the balancing act, correct.

12 MR. LADEN: Correct.

13 MR. FONDERSMITH: That's all I have.

14 CHAIRPERSON MITTEN: Thank you. Ms.  
15 Hamilton from 3D, did you have any questions on cross  
16 examination for Mr. Laden? Ms. Quynn? Mr. Elliott.

17 MR. ELLIOTT: Good evening, Mr. Laden. I  
18 had a few questions. One, something came up during  
19 the applicant's case and cross examination and that  
20 was that I believe the traffic study reports that  
21 fourteen percent of the PM rush hour traffic in the  
22 immediate area is trips related to American University  
23 and at the same time, is it your understanding that  
24 fourteen percent of trips, all involved turning cars?

25 MR. LADEN: I'd have to go back and take a

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1 look. I would assume that traffic generated by the  
2 University would require that the cars would turn from  
3 Nebraska or Massachusetts or any of the other adjacent  
4 streets into the campus or into the parking areas.  
5 So, yes, most of those would involve some turning  
6 motion.

7 MR. ELLIOTT: And in terms of traffic  
8 engineering, is there some ratio of the impact on  
9 traffic of turning cars versus through traffic, do  
10 they have three times the impact? Or is it more  
11 complicated than that or how does that work?

12 MR. LADEN: Unfortunately that's beyond my  
13 area of expertise in that I'm not a Traffic Engineer  
14 but if you'd like, I could, you know, try to respond  
15 to any written questions you have with respect to  
16 those impacts.

17 MR. ELLIOTT: Let me ask you one other  
18 area. There was testimony from the Traffic Consultant  
19 about the Glover Gate and you have just testified  
20 about the recommendation to widen a pedestrian  
21 crossway. Now understand that the pedestrian's will  
22 have to go about 42 feet to get from one side of the  
23 street to the other?

24 MR. LADEN: Correct.

25 MR. ELLIOTT: And, I believe it's correct

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1 to just tell you that Ms. Wright from the Traffic  
2 Consultant did acknowledge that to project the levels  
3 of service at that intersection, the Traffic  
4 Consultant assumed that the period which the light is  
5 green, north/south, between the Art Center and the  
6 Main Campus was reduced in the year 2005 from 18  
7 seconds to 10 seconds. Were you aware of that?

8 MR. LADEN: Yes, I took another look at  
9 the report today and noticed that that provision was  
10 there. I think it probably would be beneficial to  
11 have the Traffic Consultants look at what the impact  
12 would be if they were to re-establish the 18 second  
13 cycle.

14 MR. ELLIOTT: To see what the level of  
15 service would be?

16 MR. LADEN: Correct.

17 MR. ELLIOTT: And let me ask one other  
18 question on that, or two other questions. One, I'd  
19 like to know about vehicles entering and exiting the  
20 University from either north or south at the same time  
21 pedestrians are crossing, wouldn't those vehicles have  
22 to turn through the path of the pedestrians?

23 MR. LADEN: Well, that issue exists at  
24 virtually every intersection in the city.

25 MR. ELLIOTT: Okay.

1 MR. LADEN: One has to, you know, examine  
2 exactly how many pedestrians are crossing, how many  
3 cars are turning and, yes, that is a potential issue.

4 MR. ELLIOTT: Do you know whether the  
5 Traffic Engineer studied that in determining the  
6 levels of service, the conflict of vehicles with  
7 pedestrians?

8 MR. LADEN: I think you'd have to ask the  
9 Traffic Consultants that question.

10 MR. ELLIOTT: Now, the final thing I  
11 wanted to ask you is how do the walk, don't walk signs  
12 work? Let's say that the period to cross the  
13 intersection is brought back up to 18 seconds but I  
14 think the Traffic Consultant said it takes about 13  
15 seconds to walk across, does that mean that each  
16 cycle, the walk sign would be on for a few seconds and  
17 then it would turn to don't walk because the remaining  
18 people who hadn't started wouldn't make it?

19 MR. LADEN: Well, there would need to be a  
20 sequencing that would give the pedestrians who had  
21 queued up on one side of the sidewalk a couple of  
22 seconds to start across but a significant period of  
23 that 18 seconds or 14 or 15, however many seconds is  
24 ultimately selected, would be a flashing sign  
25 indicating that pedestrians should not be starting

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1 across and then ultimately it would go to a steady  
2 don't walk.

3 MR. ELLIOTT: Thank you, no more  
4 questions.

5 CHAIRPERSON MITTEN: If I could just ask,  
6 you had said perhaps the Traffic Engineer in your  
7 office could take a look at the traffic study in  
8 particular to look at the impact, if there would be  
9 any difference in conclusions if turning cars were  
10 considered versus through traffic. Is that something  
11 that we could look forward to getting from you?

12 MR. LADEN: Definitely.

13 CHAIRPERSON MITTEN: Thank you. Mr.  
14 Herzstein, did you have any?

15 MR. HERZSTEIN: I have just one or two  
16 questions. Are you aware of the arrangement that the  
17 law school has with its students under which they are  
18 not to park in streets around the law school and if  
19 they are found to be doing so, they are subject to  
20 penalties imposed by the University?

21 MR. LADEN: I'm not specifically aware of  
22 what agreements or instructions the University has  
23 placed on its students with respect to parking in the  
24 neighborhood.

25 MR. HERZSTEIN: If the University had such

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1 a program for all of its students, would that not  
2 supplement the efforts of the DPW to keep students  
3 from parking in the neighborhood streets?

4 MR. LADEN: I think such a policy, if  
5 implemented by the school and somehow enforced by the  
6 school, would definitely have an impact. Again, our  
7 parking enforcement officers are instructed to enforce  
8 whatever the parking regulations are on each  
9 particular block of the city whether it's a  
10 residential parking restriction or meters or no  
11 parking/loading zones. Again, what they do is enforce  
12 the laws that or the regulations that are in place on  
13 each block to the extent that the University  
14 supplemented that with policies and threats and other  
15 kinds of actions that would certainly be a  
16 contributing factor.

17 MR. HERZSTEIN: No further questions.

18 CHAIRPERSON MITTEN: Thank you. And thank  
19 you, Mr. Laden, for bearing with us through the other  
20 hearings and coming tonight and answering the  
21 questions. Can you tell me just what would be a  
22 reasonable time to expect that we would get a  
23 supplemental response?

24 MR. LADEN: The question doesn't seem to  
25 be that complicated provided that the staff are

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1 available tomorrow, I should be able to pose the  
2 question and get an answer to you midweek next week.

3 CHAIRPERSON MITTEN: Oh, that's great.  
4 Okay, thank you. At this point, I think we would have  
5 any questions raised regarding the supplemental  
6 materials that were provided by the applicant or by  
7 the Office of Planning but maybe prior to that I know  
8 that Mr. Fondersmith had said that there was an  
9 additional statement on behalf of the Department of  
10 Health that you wanted to make and then if there were  
11 any questions about that.

12 MR. FONDERSMITH: Thank you, Madam Chair.

13 In our initial report, and this is on Page 10, we  
14 addressed rather in summary form or alluded to the  
15 issue of soil contamination in the Spring Valley  
16 neighborhood and indicated that at that time recently  
17 when that report had been done some problems had been  
18 identified on the south side of American University  
19 around the Children's Development Center.

20 And we indicated there that if  
21 contaminated soil is found the Army Corp of Engineers  
22 will have to remove it. As you, I think everybody's  
23 aware, there's been continued interest in this matter  
24 and public meetings and so on, one as recently as last  
25 night really concerning the whole neighborhood.

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1           We've had additional conversations as  
2 we've had had before but additional conversations with  
3 the Department of Health, primarily Ted Gordon, the  
4 Chief Operating Officer and he asked that we amplify  
5 our discussion a little bit tonight. So as a result  
6 of these conversations, we are suggesting that the  
7 American University should coordinate with the Army  
8 Corp of Engineers and the DC Department of Health  
9 before applying for a permit for new construction and  
10 the Corp of Engineers, have the Corp of Engineers and  
11 working with the Department of Health certify that  
12 there's no contamination on the site before a building  
13 permit would be issued.

14           And obviously if contamination were found,  
15 the Corp would have to remove the contaminated soil  
16 and remedy the situation. I think in reality in all  
17 the discussions and the ongoing coordination between  
18 the University and Department of Health and the Corp  
19 of Engineers, this would be addressed and it certainly  
20 would be addressed in the environmental screening  
21 process that Mr. Laden, for example, alluded to.

22           But because this is such a unique  
23 situation and because there's so much concern and  
24 interest to it, we thought we should make that  
25 recommendation more specific and we're doing this at

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1 the request of the Department of Health and really  
2 kind of lifting it up and we think that that should be  
3 indicated in the order.

4 CHAIRPERSON MITTEN: Thank you. Now, are  
5 there any questions for either the Office of Planning  
6 on the supplemental materials or the report that Mr.  
7 Fondersmith just made regarding the contamination or  
8 anything that we received from the applicant?

9 I have just a few questions as I went  
10 through the material that discussed what conditions  
11 from the previous order were going to be included.  
12 I'm a little bit unclear about the Liaison Committee  
13 versus the Traffic Sub-committee and the relative  
14 success of either of them. And if you could just  
15 explain if the Liaison Committee has been successful  
16 and it's composition, I know, has been limited to the  
17 folks that were signatories on the 1989 agreement and  
18 whether or not you would recommend a change in  
19 composition going forward and so on.

20 MS. DWYER: All right. We are  
21 recommending as one of the conditions going forward, a  
22 more formalized process. We're recommending that it  
23 include as a condition that the Liaison Committee meet  
24 at a minimum three times a year and we are also  
25 recommending that the composition of the committee be

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1 50 percent University representatives and 50 percent  
2 community representatives.

3 One of the issues during the last campus  
4 plan approval, I think, was this whole question of who  
5 should serve on the Liaison Committee and the  
6 University took the position that all of the community  
7 organizations should be able to have a representative  
8 on it and there was concern by some community  
9 associations that only those who, in fact, signed the  
10 agreement. As you also know from the history of the  
11 last Campus plan, there was litigation up until 1997  
12 and I think because of the litigation there was not a  
13 regular meeting process with the Liaison Committee.  
14 Generally when parties are in litigation, they are  
15 instructed by counsel not to be meeting.

16 But I think going forward, it would be  
17 important to have in here a condition that provides a  
18 minimum number of meetings, as to whether there should  
19 be a Traffic Sub-committee.

20 I think it's something that the Liaison  
21 Committee can decide, that there may be sub-committees  
22 from time to time that they want to create rather than  
23 having a formalized traffic sub-committee at this  
24 point in time. We thought it might be up to the  
25 discretion of the group when they got together at

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1 their first meeting to decide what kind of sub-  
2 committees they may want. There may be one for  
3 traffic, there may be one for student conduct, there  
4 may be a number of issues they want to address in sub-  
5 committees. But we do want a committee composition  
6 that's half University, half community with all of the  
7 community organizations having the opportunity to have  
8 a representative on the committee.

9 CHAIRPERSON MITTEN: With all of them. So  
10 you would match them with University people one for  
11 one or how would that work?

12 MS. DWYER: Well, generally there are a  
13 lot of University people that attend these meetings  
14 anyway because the questions are very specific to  
15 issues having to do with facilities or issues having  
16 to do with traffic management, so I don't think it's  
17 ever been a concern that there weren't enough  
18 University people that needed to be at the meeting.

19 CHAIRPERSON MITTEN: Okay.

20 MS. DWYER: But I think that it may be  
21 that the University might want to have as one of its  
22 representatives another institution that is also in  
23 the neighborhood as opposed to the University itself  
24 because of an issue that may affect that institution  
25 and, I think that there should be that kind of

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1 flexibility.

2 CHAIRPERSON MITTEN: And since the  
3 litigation was concluded, has the Liaison Committee in  
4 at least the University's perception, functioned well?

5 MS. DWYER: I can ask the representatives  
6 of AU to come up and address that but my understanding  
7 is that it's been very much on an ad hoc basis.  
8 There's not been a formalized process of meeting and a  
9 lot of the correspondence, as indicated by our filing,  
10 has been, you know, one individual contacting the  
11 University as opposed to the Liaison Committee  
12 convening. So I think at this point, it would be  
13 better to have it formalized with a clear  
14 understanding that it had to meet regularly and like  
15 other Campus Plan Liaison Committees.

16 CHAIRPERSON MITTEN: Okay. And there was  
17 an exhibit that outlined the use of the athletic  
18 fields?

19 MS. DWYER: Yes, what we did is we went  
20 back to the '89 agreement because that seemed to spell  
21 out in greater detail some of the commitments that the  
22 University was willing to make ten years ago. And we  
23 wanted to see which of those would be continued today.

24 So we looked at the lighting plan, we looked at the  
25 use of the athletic fields and we updated that so that

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1 that is part of the conditions of this campus plan.

2 CHAIRPERSON MITTEN: And in that agreement  
3 regarding the use of the athletic fields, there's the  
4 discussion about special events?

5 MS. DWYER: Yes.

6 CHAIRPERSON MITTEN: Is there any reason  
7 why there couldn't be a cap or a limit on the number  
8 of special events given that the characterization of  
9 them is that they are not integral to the functioning  
10 of the University?

11 MS. DWYER: Again, I can ask the  
12 University, we can file something in the record to  
13 address that. I know with the Mt. Vernon Campus Plan,  
14 I believe there was a cap put on the number of those  
15 kinds of events and we can certainly come back with  
16 something that we feel would be a number that the  
17 University could live with.

18 CHAIRPERSON MITTEN: I think that would be  
19 helpful just because then it won't be as open ended  
20 and uncertain for the community.

21 I had a couple of questions for the Office  
22 of Planning also and your supplemental report. On  
23 Page 3, it said there would be further discussion of  
24 the building design. It was referring to Katzen at  
25 the March 15th hearing session. And I was wondering

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1 is that something that the Office of Planning is going  
2 to orchestrate or whose going to have this discussion?

3 MR. FONDERSMITH: That's the issue of how,  
4 where we are with, where the University is with the  
5 design of the center and how the commission pins that  
6 down in the order and the concern that some members of  
7 the community expressed that in the time between  
8 approval of the further processing design before you  
9 and in the normal refinement of the building design  
10 that there might be some things happen in the design  
11 that they didn't know about and would be concerned.  
12 We had talked to the University about this and we  
13 understand from them that they have done additional  
14 work and are in a position or want to be in a  
15 position, and let them speak for themselves, to nail  
16 down as many aspects of the design here tonight as  
17 possible.

18 Now what we discussed in our supplemental  
19 report was a process perhaps somewhat unique in this  
20 case of once the Commission, if the Commission  
21 approves this for further processing, some procedure  
22 between when the University, between that point when  
23 the University comes in building permit to have some  
24 review at the staff level and with the community.  
25 That's a question, of course, for the Commission to

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1 decide.

2 CHAIRPERSON MITTEN: All right. But it's  
3 your understanding that there's some additional detail  
4 that will be shared with us this evening?

5 MS. DWYER: Yes, I think the Office of  
6 Planning assumed that we would be getting to our  
7 rebuttal testimony and in our rebuttal we do plan to  
8 address in further detail the Art Center and pin down  
9 some of the issues.

10 CHAIRPERSON MITTEN: All right. I just  
11 wanted to figure out where that was going to be  
12 fitting in. Okay, on Page 4 of the Supplemental  
13 Report, there's a discussion about a parking  
14 enforcement program that requires the students to sign  
15 an agreement not to park on the neighborhood streets  
16 and it says it's based on the 1989 agreement and will  
17 expire in 2006. Now is that all AU students or are  
18 you referring to law school students?

19 MR. FONDERSMITH: We're referring there to  
20 law school students and this is a reference to the  
21 area around the law school which seems to be, from  
22 discussions with the community that we've had at  
23 least, that the major parking problem now, the  
24 concerns we heard was with on future parking  
25 enforcement had to do with what about if the

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1 University enrollment does grow and everybody doesn't  
2 park on campus, then what about further spillover.  
3 But they are kind of two separate things and, of  
4 course, the law school is not strictly part of this  
5 campus plan discussion.

6 CHAIRPERSON MITTEN: Right. I just wanted  
7 to understand what that was referring to.

8 MR. FONDERSMITH: But it's a problem.  
9 Yes, that's what that refers to.

10 CHAIRPERSON MITTEN: Is there any reason  
11 why the University couldn't have a similar agreement  
12 with students on the Main and Tenley Campuses to give  
13 the University the ability to enforce parking off  
14 campus?

15 MS. SPEAKER: No, and in fact that's what  
16 we propose in our Exhibit H. We proposed a parking  
17 enforcement policy for the neighborhood. We took the  
18 Mt. Vernon College model which had followed the AU law  
19 school model and this would be a, it would have to  
20 start at the following school year because the  
21 students would have to understand this is a  
22 contractual obligation and it would have penalties,  
23 fines and administrative actions. So it would be  
24 patterned after what many believe is a successful  
25 program at the law school but it would apply to the

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1 Main Campus and the Tenley Campus.

2 CHAIRPERSON MITTEN: So, I didn't read  
3 that specifically in the exhibit but what you're  
4 saying is that there will be an agreement.

5 MS. SPEAKER: Yes, because that's the only  
6 way the University can require it. So it has to be an  
7 agreement, a contractual agreement, at the start of  
8 the school year between the student and the  
9 University.

10 CHAIRPERSON MITTEN: Okay. Thank you.  
11 And then finally on the enforcement discussion in your  
12 report. There's a section that says the Commission  
13 cannot, for example, promulgate fines and so on. Now,  
14 you don't mean to say that the University cannot be  
15 fined by the Zoning Administrator for a zoning  
16 violation, you don't mean that.

17 They're shaking their heads no for the  
18 record.

19 MS. SPEAKER: That is correct. We don't  
20 mean that the University can't be fined or to put it  
21 more positively, yes, the University can be fined. It  
22 was just a matter that the Commission could not  
23 establish a separate fee schedule for those  
24 violations.

25 CHAIRPERSON MITTEN: All right. I just

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1 wanted to have a little clarity about that. Any other  
2 questions on the supplemental materials.

3 MR. HOLMAN: Well, this is not a question.

4 It's fairly obvious in answer to the question of  
5 whether it was feasible to create a monitoring  
6 program, the answer, the simple answer is yes. And  
7 that's what you propose.

8 MS. DWYER: Yes, we are going to do that.

9 MR. HOLMAN: Thank you.

10 CHAIRPERSON MITTEN: Mr. Elliott, are you  
11 ready to proceed with your cross examination of the  
12 Office of Planning?

13 MR. ELLIOTT: Yes, Madam Chair. Also I  
14 did want to mention, I wanted to clear up one thing.  
15 The University has had agreements with the neighbors  
16 for about 18 years. There was only a two year period  
17 where there was that litigation as Ms. Dwyer knows  
18 because she and I handled it and the Liaison  
19 Committee, I believe, met for seven years before it,  
20 it met during it and it met after it. So I think it  
21 has been quite successful and wasn't interfered with  
22 by the one two-year period of litigation over the law  
23 school issues.

24 CHAIRPERSON MITTEN: Okay. Thank you.

25 MR. HERZSTEIN: Madam Chair, on the

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1 questions you've been asking about the supplemental  
2 material, we will have some comments. Should we  
3 submit them in writing to you?

4 CHAIRPERSON MITTEN: That would be most  
5 helpful.

6 MR. HERZSTEIN: For example, on the  
7 question of the use of athletic fields, they left out  
8 a paragraph from the 1989 agreement which we consider  
9 quite important, we'd like to be able to point things  
10 like that out.

11 CHAIRPERSON MITTEN: Please do.

12 MR. HERZSTEIN: Thank you.

13 CHAIRPERSON MITTEN: Thank you. I'm going  
14 to have to interrupt upi and Mr. Parsons had a few  
15 questions on the supplemental materials from the  
16 applicant.

17 MS. DWYER: All right. If I could ask the  
18 architect, both architects to come forward. They have  
19 large scale exhibits that are much clearer than the  
20 xerox copies you have. For some reason, the copying  
21 did not come out well for some of those which is why  
22 we brought the large exhibits tonight.

23 COMMISSIONER PARSONS: Well, I guess I  
24 wasn't clear in what I was asking for and maybe it's  
25 technologically impossible in two weeks to do what I

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1 asked for. What I had imagined is, and I'm holding up  
2 here your exhibit No. 3 and 4 here, is this  
3 photograph, is the one that I was talking about. The  
4 view up the street and it's a great photograph.

5 What I had hoped is that somehow we could  
6 simulate what it will look like when we're done. And  
7 that wasn't here. So if that's what you've brought,  
8 we can look at that but if you haven't, then I would  
9 ask you to do that.

10 MS. DWYER: All right. We did bring that.

11 It took longer than our filing deadline, so we did  
12 bring a drawing that takes the photograph No. 4 and  
13 superimposes the new building and I'll ask the  
14 architect to come forward and address that.

15 Steve, you need to hold it so that the  
16 audience can see it as well. Do we have reduced  
17 copies of that or are we going to file those for the  
18 record. All right. You need to use the microphone.

19 MR. SPEAKER: This is showing the proposed  
20 building looking east on Massachusetts Avenue and  
21 Marsha, you can address the landscape.

22 MS. SPEAKER: I'm not sure you can see it  
23 from you where you are but there are lighter brown  
24 trees in the image such as these that are the proposed  
25 trees. These are obviously the existing trees that

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1 would remain in the streetscape.

2 MS. DWYER: And does that photograph  
3 depict what the trees would look like at installation  
4 as opposed to a five or ten year growth?

5 MS. SPEAKER: Just about. This was taken  
6 probably two weeks ago, this photograph. So it's  
7 obviously without leaves and the insulation height is  
8 a bit taller than it would be so maybe it's five years  
9 down the road.

10 MR. SPEAKER: And also just as a point of  
11 clarification, that proposed underground vault for the  
12 parking garage extends fourteen feet beyond the  
13 property line in public space. It goes fourteen feet  
14 beyond the property line.

15 COMMISSIONER PARSONS: If one inch equals  
16 forty feet, this is at least an inch, if not more.  
17 I'm sorry, one inch equals twenty feet. All right, I  
18 don't have a scale.

19 MR. SPEAKER: I have a scale, if you like.

20 COMMISSIONER PARSONS: No, that's all  
21 right, it's about an inch so --

22 MS. SPEAKER: I'm not sure that that  
23 hasn't been --

24 COMMISSIONER PARSONS: Somewhere between  
25 fourteen and twenty.

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1 MR. SPEAKER: It's fourteen feet.

2 MR. SPEAKER: Oh, Mr. Laden has left.

3 MS. SPEAKER: I'd also like to point out  
4 that the existing, proposed grade along the building  
5 pretty much replicates what the existing type of hill  
6 elevations, as you can probably see if you look at the  
7 existing photograph. We're recreating the grade that  
8 you see along, that's also shown in the cross section,  
9 two cross sections.

10 COMMISSIONER PARSONS: The cross section  
11 shows existing grade and then a new series of  
12 retaining walls.

13 MR. SPEAKER: We're not going to do the  
14 retaining walls.

15 COMMISSIONER PARSONS: Oh, you're not.

16 MS. SPEAKER: It will be, the grade will  
17 be achieved without retaining walls.

18 MR. SPEAKER: What we're going to do is  
19 maintain the natural grade along Massachusetts Avenue.

20 And we're really not altering the existing grading a  
21 whole lot particularly from the rotunda, from the  
22 center portion of the building going west. All that  
23 grade is going to be very natural which is why we  
24 eliminated the retaining walls.

25 MS. SPEAKER: And actually from about here

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1 to the, it would be the west, the existing trees and  
2 the existing grade remains unchanged.

3 MR. ELLIOTT: Madam Chair, if I could  
4 plant a question while they're setting up. I'm  
5 curious whether those photographs are sort of wide  
6 angle camera photographs that make things recede  
7 compared to the natural view one sees from those  
8 points of --

9 MS. MCCARTHY: No, they are not. They're  
10 taken using a digital camera and it's a, just to  
11 quickly go through these photos that you have in your  
12 package, this photograph is taken in the western end  
13 of the site which shows the existing vegetation in  
14 that bowl shaped area that all remains untouched.

15 MR. ELLIOTT: What I would urge you to do,  
16 the record has trouble with the photo, so if you could  
17 refer to one, two three, thanks.

18 MS. MCCARTHY: Photo No. 1, sure. Photo  
19 No. 2 shows you the character of Massachusetts Avenue  
20 with its street trees. Likewise, Photo No. 3 and you  
21 can see some of the street trees that would remain  
22 untouched by the development.

23 MR. ELLIOTT: So those trees in No. 3  
24 which appear to be evergreen trees in the center,  
25 pines or something.

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1 MS. McCARTHY: Right.

2 MR. ELLIOTT: Those are far enough south,  
3 or not south, down the avenue that they won't be  
4 affected by your project, is that right?

5 MS. McCARTHY: That's correct. The trees  
6 as you approach the building get a little bit more  
7 informal. They're lower quality trees for the most  
8 part, looser, many of them are leaning. The street  
9 trees are irregular in that area. Photograph No. 5 is  
10 taken from Glover Gate looking directly at the Cassell  
11 Center site and you can see the character of the  
12 street trees there or the trees behind the street  
13 trees are very irregular and the street trees  
14 themselves are fairly small. There's a red oak and a  
15 red oak about a four or five, six inch caliper tree.

16 Photograph No. 7 is just after you leave  
17 Ward Circle. There the trees are a little bit more  
18 significant and those trees were showing to remain on  
19 our site plan. These are a cluster of trees that are  
20 in Photograph 8 that are on the top of the knoll,  
21 those would be lost and replaced with new planting.  
22 So just briefly, the light colored trees on this end  
23 of the site from about here over, which is about a  
24 third of the site, would not be disturbed by  
25 construction. The street trees in this area would not

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1 be disturbed by construction, as well in this area.  
2 And then we would replace this zone with new shade  
3 trees, street trees and understory to replicate that  
4 feeling of natural landscape openness that you see  
5 along Mass. Ave. in this area.

6 MR. SPEAKER: I think one of the other  
7 important things that we're doing here is we're  
8 creating a public plaza, I don't know if that's clear.

9 But this whole area goes back about 40 or 50 feet  
10 from the existing buildings and what we're trying to  
11 do is create a meaningful public space which is very  
12 consistent with the Comprehensive Plan and it's an  
13 area for sculpture and for water features. So what  
14 we're trying to do along Massachusetts Avenue is  
15 maintain the natural grade but then also create a very  
16 accessible public plaza.

17 COMMISSIONER PARSONS: Can we go back to  
18 the first photograph you showed, that is the visual  
19 sim. So what you have done here is to remove the  
20 trees that you'll be removing.

21 MR. SPEAKER: And replant the new trees  
22 without leaves on them.

23 MS. DWYER: To replicate the winter  
24 condition. Is it fair to say that this would be the  
25 worst case view for maybe three months of the year

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1 when there are no leaves on the trees?

2 MS. MCCARTHY: Yes. And perhaps Mr.  
3 Parsons knew this when he requested this view but  
4 because you're looking uphill from a lower elevation,  
5 you do really see the most of the mass of the building  
6 at this point.

7 COMMISSIONER PARSONS: That's exactly  
8 right. That's why I asked for this view.

9 MS. MCCARTHY: If you're looking downhill,  
10 you will obviously, it does not look as --

11 COMMISSIONER PARSONS: At least from my  
12 standpoint, it proves my point. Thank you. So we'll  
13 get a copy of that for sure. Special picture?

14 MS. DWYER: Yes, we will.

15 COMMISSIONER PARSONS: And you will amend  
16 this one? No retaining wall, existing grade?

17 CHAIRPERSON MITTEN: Anybody else before  
18 we go on? Now, finally, cross examination for the  
19 Office of Planning.

20 MR. ELLIOTT: Good evening. I wanted to  
21 start with a question for either of you, I guess, or  
22 Mr. Altman can substitute for Ms. Wagner perhaps. The  
23 Campus Plan Application has quite a few proposed  
24 buildings in it as you know, and directing your  
25 attention to this handwritten chart that we used in an

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1 earlier hearing, it has 862,000 square feet of  
2 construction proposed but at the same time, the  
3 University says it won't build it all if you go over  
4 to the right column where the total is 573,000 square  
5 feet of FAR, the University has said they're only  
6 asking for a maximum of 400, so by their own terms,  
7 they would eliminate some projects.

8 If the Commission were to want to  
9 eliminate some projects to scope back this  
10 application, for instance, to take that total of 573  
11 there and reduce it to 400 by eliminating some  
12 projects, do you have any thoughts as to which of the  
13 projects A through M might be prime candidates for  
14 elimination?

15 MR. FONDERSMITH: Well, first of all, we,  
16 there are thirteen sites altogether, twelve on the  
17 Main Campus and the one on the Tenley Campus including  
18 some that are relatively small. We looked at them, of  
19 course, all of them in the course of this work and  
20 then what you say is very obvious since the University  
21 says it's only going to commit, will commit to not  
22 building to more than 400,000 that some of these  
23 buildings will not be built in the next ten year  
24 period.

25 The University has said in their plan that

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1 they want to have the flexibility because of funding  
2 and so on to deal with those and, of course, there are  
3 three that are in for further processing now. In  
4 looking at it, we felt that these were logical  
5 building sites. Now, as you know, we outlined a  
6 number of development guidelines or conditions I  
7 should say, because we had some concerns with  
8 potential impacts of some sites. But we did not get  
9 into the process for us of, in effect, second guessing  
10 the University and saying, you know, which ones might  
11 not be built in that period. We certainly agree with  
12 you that given their commitment on the 400,000, some  
13 of them will not be built.

14 MS. McCARTHY: Plus, I think, we also felt  
15 that that would be inappropriate for us to make that  
16 choice for the University. They've explained why  
17 they're trying to get that flexibility but I think  
18 it's important to point out that we thought this  
19 approach compared to the approach that some other  
20 Universities have used is far fairer to the community  
21 in that you are not being given a map which has five  
22 different color stripes saying, well, this could be  
23 one of any five uses and it could be configured this  
24 way or that way. That the University was spelling out  
25 in detail what all the possibilities were and where

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1 they were going to be so that the community had the  
2 benefit of knowing what the possibilities were and  
3 responding to those in the campus plan.

4 MR. ELLIOTT: Well, the buildings do have  
5 multiple uses, any particular building, doesn't it.  
6 In fact, the University made a point that it had  
7 flexibility in using these buildings for various uses.

8 MS. MCCARTHY: Some flexibility, I guess  
9 I'm trying to contrast it to in some other University  
10 cases where it was virtually impossible to know what  
11 the use might be. In many instances, these are very  
12 specifically spelled out and others there's more  
13 flexibility provided.

14 MR. ELLIOTT: Well, I passed out to the  
15 Commission a list of the uses proposed. They are  
16 usually two or three words, I think you probably have  
17 that but did they, in fact, if you look at the, I'll  
18 point to this other chart, it's not the University's  
19 entire campus but if you look at the main part of the  
20 campus, I think it's 55 acres or so, did they in fact  
21 propose a building for virtually every conceivable  
22 building site on the 55 acres or did they skip any  
23 building sites?

24 MR. FONDERSMITH: They show a building for  
25 most building sites. I think there are some

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1 potentially other sites.

2 MR. ELLIOTT: There might be some other  
3 sites, one or two, something like that? I see. Now,  
4 do you have a view as to the University's proposed 25  
5 percent population growth that it's asking the  
6 Commission to authorize. Do you think that the  
7 Commission ought to impose a lesser population cap  
8 than that or are you comfortable with 25 percent  
9 growth?

10 MR. FONDERSMITH: Our approach to that was  
11 looking at the distribution of students in housing on  
12 campus, excuse me, and the distribution of students  
13 off campus as in the zip codes around American  
14 University and the four zip codes around that we  
15 called around University are actually all of the city  
16 west of Rock Creek Park, it's a pie area. When we  
17 broke that out, or actually asked the University and  
18 they broke that out, which was in our submittal last  
19 time, our conclusion was that the distribution of that  
20 growth if it were to come, and of course there's a  
21 question of whether that growth comes or not, would be  
22 so distributed at least given present patterns  
23 interpolate from that that we did not see that being  
24 an impact on the community.

25 MR. ELLIOTT: Well, let me ask you this.

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1 I understand from the testimony the University gave  
2 that they actually do not intend to grow but they want  
3 flexibility so that in certain years when they have,  
4 for instance, more freshman offers accepted, a good  
5 year as they put it, they could go up some and they  
6 would come back down, some fluctuations would be  
7 expected, good years, not so good years.

8 If they're not planning any growth but  
9 just need fluctuation, does the Office of Planning  
10 have any reservations about some other type of  
11 population cap that's more tailored to what they say  
12 they're actually going to do in the next ten years.  
13 In other words, a population cap that's geared to  
14 current levels with some room for fluctuations,  
15 temporary fluctuations. Do you think that would be a  
16 sensible approach?

17 Mr. FONDERSMITH: I don't, first of all,  
18 I'm not sure that that's, and the University can  
19 respond more, I don't think that that's a fully and  
20 accurate description of just up and down but although  
21 there is a question of whether they will, in fact,  
22 grow to the amount shown in the population cap.

23 MR. ELLIOTT: In other words, you're not -

24 -

25 MS. MCCARTHY: I think we tried to address

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1 ourselves more directly to what the adverse impacts of  
2 growth might be in terms of the recommendations on  
3 traffic and enforcement, looking at whether there was  
4 a problem or likely to be a problem with regard to  
5 housing and so that rather than articulate a cap which  
6 is a rather broadbrush approach, we tried to look at  
7 the specific areas in which an increased enrollment  
8 might be associated with adverse impacts and either  
9 mitigate those or assess that there was unlikely to be  
10 a problem caused by that.

11 MR. ELLIOTT: And in analyzing those  
12 patterns, do you happen to know, for instance, how  
13 many AU undergraduate and graduate students live  
14 within say half a mile of the University, apartment  
15 housing, sharing houses of residents whatever, any  
16 type of housing.

17 MR. FONDERSMITH: We had the, I'm not sure  
18 we know by half a mile. We got the breakdown based on  
19 the zip codes which was in --

20 MR. ELLIOTT: Well, they're much larger  
21 but in terms of the, after the last hearing quite a  
22 few neighbors came to me and said well, really there  
23 are an awful lot of students living right near this  
24 campus and if the population grows and there's no  
25 additional student housing, they're all going to flood

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1 the neighborhoods. And I'm just wondering if you have  
2 any information about when you made your analysis,  
3 about how many students live nearby, half mile, a  
4 mile, within that area.

5 MR. FONDERSMITH: We understand although  
6 we don't have the exact numbers that there are a  
7 considerable number of students, I think both  
8 undergraduate and graduate, in the apartments to the  
9 east. If you look at the breakdown, in terms of  
10 undergraduate now, 3400 on campus, 441 in the four zip  
11 codes, this is undergraduates near the University,  
12 meaning all four zip codes, all the area west of Rock  
13 Creek Park.

14 MR. ELLIOTT: Yes, that's a pretty vast  
15 area but let me ask you another question. The  
16 University has urged upon both the community and the  
17 Zoning Commission and the public, I think, that they  
18 are rather deficient in square feet of facilities per  
19 student. Do you think it would be a sound approach to  
20 condition any actual population growth upon the  
21 completion of additional square feet of space so that  
22 their low square feet per student doesn't deteriorate?

23 MR. FONDERSMITH: Well, we're primarily  
24 concerned with the impact, as the zoning regulations  
25 require, with the impact on the community. It's, what

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1 you're kind of getting into really is the quality of  
2 the University. And, of course, every University says  
3 they want to be a better university and they want to  
4 improve ratios and so on. We have not, I don't think  
5 it would be appropriate for us to in effect try to get  
6 into the educational policy of the University per se.

7 MR. ELLIOTT: Okay.

8 MR. FONDERSMITH: But they obviously they  
9 are concerned about improvements.

10 MR. ELLIOTT: With respect to additional  
11 parking, do you think that you might want to see the  
12 Commission condition any population growth on the  
13 actual provision of corresponding increased parking or  
14 do, you know, care about that?

15 MR. FONDERSMITH: The increased parking  
16 that's provided is based on a calculation that that  
17 parking will be adequate to deal with the increased  
18 growth.

19 MR. ELLIOTT: But if I may interrupt to  
20 just speed this up a bit. There's nothing in the plan  
21 where the University would be restricted in its 25  
22 percent growth. It could do that tomorrow and build  
23 the parking ten years from now or never, isn't that  
24 correct. I mean, there's no tie between the two,  
25 that's what I'm getting at.

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1 MS. McCARTHY: Yes, but, you know, it's  
2 always a mixed bag if you expand the amount of  
3 parking, it essentially is accommodating an increased  
4 number of automobiles and to a certain extent,  
5 encouraging the use of that mode to the campus.  
6 That's been an issue in many university cases but by  
7 keeping the parking at a level, and combining that  
8 with the kind of enforcement and monitoring procedures  
9 that we're recommending, we thought that that was the  
10 best way to address that to encourage higher occupancy  
11 modes to the campus and yet provide sufficient parking  
12 and not inconvenience the neighborhood through having  
13 improved monitoring and enforcement.

14 MR. ELLIOTT: I wanted to ask you about  
15 the Cassell Building. Do you think that regardless of  
16 what happens in these proceedings the Cassell Building  
17 ought to be removed fairly soon, I understand it's  
18 been vacant for five years?

19 MR. FONDERSMITH: It's boarded up and, as  
20 we said in our report, it's an eyesore and it may at  
21 some point, well.

22 MR. ELLIOTT: All right. Now, I believe,  
23 I don't want to revisit this because I think you, just  
24 make sure I understand it, I was listening to your  
25 testimony last time. In the issue raised by Mr.

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1 Parsons and of concern to the community as to why the  
2 University went ahead with the Cassell site for the  
3 Art Center rather than looking at the Nebraska lot.  
4 Is it correct, Mr. Fondersmith, you basically said you  
5 responded to what was presented to you and basically  
6 analyzed Cassell, analyzed the Art Center for the  
7 Cassell site without much regard to whether it could  
8 have been put anywhere else. In other words, that's  
9 what the University proposed and that's what you  
10 analyzed.

11 MR. FONDERSMITH: Yes, I would say that's  
12 correct.

13 MR. ELLIOTT: I wanted to ask you about  
14 this interesting discussion of enforcement and some  
15 sort of procedure, I believe Ms. Wagner threw out the  
16 idea of some sort of community involvement after  
17 further processing but before the building is built  
18 during further refinements of the design. I don't  
19 really follow what the Office of Planning had in mind  
20 there but I wanted to ask you this, and I might say  
21 the Chair pointed out that one wouldn't want to create  
22 false hopes that the citizens subsequent of further  
23 processing approval would actually have some say if  
24 they're not going to have any say. Wouldn't it be  
25 perhaps a better approach for the Zoning Commission to

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1 ask that the refinements be presented to the  
2 Commission before it makes its final decision on  
3 further processing?

4 MR. FONDERSMITH: Well, the Commission  
5 normally, when they make a decision on further  
6 processing, they're satisfied that they're seeing what  
7 they need to see and they approve it and then there  
8 are, then, of course, the design goes on and it's  
9 submitted for permitting. Our suggestion in the  
10 supplemental report for possibly some additional  
11 process really came out of the unique siting of this  
12 building and out of some of the community meetings  
13 that we had.

14 Where the concern was expressed by some  
15 members of the community, especially in the Fort  
16 Gaines area, that after a building was approved, as  
17 the construction drawings were developed and so on,  
18 there might be some, we're not talking about major  
19 changes, but relatively small changes that somehow  
20 would impact the community, those living nearby. And  
21 there was some discussion in some of the meetings  
22 about having a process to deal with that.

23 We thought that there was a possibility of  
24 building in that kind of process but we've said in our  
25 report that it's very important for the Commission, I

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1 mean the Commission obviously has to, you know, make  
2 the decision on the basic building features. Then we  
3 talked to the University about this and they said they  
4 really wanted to work to clear up some of these  
5 outstanding questions which we understand they're in a  
6 position to do tonight.

7 MR. ELLIOTT: Madam Chair, this is the  
8 final subject I wanted to inquire into but I do have a  
9 question or two about it then I'll be finished.

10 Mr. Fondersmith, a couple things on what  
11 you just said. One, the unique siting, I believe Ms.  
12 McCarthy said that this was a difficult site, didn't  
13 you in your testimony and basically it's difficult  
14 because it's long and narrow and you're trying to, you  
15 need to say yes for the record.

16 MS. MCCARTHY: Yes, it's long and narrow.

17 MR. ELLIOTT: And you're trying, the  
18 University is trying to put a very large building on  
19 the site. It wouldn't be difficult if it were a  
20 smaller building, I take it.

21 MS. MCCARTHY: No, I think that what I was  
22 saying made it difficult was that it was a long and  
23 narrow site, it was a sloping site, it was a site that  
24 was very close to the neighboring houses, there was  
25 differing terrains that needed to be taken into

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1 account and we just, as an architect does with any  
2 site, those are the constraints and the program is  
3 shaped to that the University in response to some of  
4 the concerns of the Fort Gaines neighbors has trimmed  
5 back the program on that building substantially and  
6 tried to accommodate vistas and sitelines and so, but  
7 all that is a difficult process.

8 MR. ELLIOTT: That's the difficult  
9 process.

10 MS. MCCARTHY: And clearly more difficult  
11 than if one has a site where one doesn't have to deal  
12 with constraints.

13 MR. ELLIOTT: I believe the project  
14 architect also testified it is a difficult site or  
15 challenging site, I think he put it. Now, if you have  
16 a difficult site like that and you have that much  
17 exposure to Massachusetts Avenue, one thing that  
18 struck me in looking at these materials, I show you  
19 this blown up exhibit that's in the application up  
20 there, I forgot the number of it, but it's the  
21 elevation of the side facing Massachusetts Avenue and  
22 you recognize that Mr. Fondersmith?

23 MR. FONDERSMITH: Yes, I do.

24 MR. ELLIOTT: And then there are floor  
25 plans, one for each floor and there's a couple of

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1 renderings we've seen. We've seen some new material  
2 tonight but in terms of what you were just saying  
3 about the process that you envision because of this  
4 unique project, the community really doesn't have very  
5 much detail here, does it. It has this type of  
6 drawing that I'm showing you here for one elevation of  
7 the south side, I don't think it even has a west side  
8 elevation. In other words, there's a lot of room here  
9 for refinement of this building, isn't there?

10 MR. FONDERSMITH: No, I would say that  
11 they will not, from our understanding, that there will  
12 not be a lot of change, there won't be essentially any  
13 change past this point. I mean, the University can  
14 and their architect can testify more on that but their  
15 objective, they've told us, is that they're pretty  
16 much there and they want to clarify any design issues  
17 that remain. Our suggestion was really to address the  
18 community concerns that in the final construction  
19 drawings and so on that there, as somebody said, there  
20 might be a vent or there might be something added not  
21 anticipated and the chance to deal with that kind of  
22 thing, that's what we were looking at.

23 MR. ELLIOTT: And these drawings that one  
24 does have at this point, at this proceeding, they  
25 don't have minor vents and things shown on them, I

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1 mean, do they. They wouldn't in any case.

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

4 MR. FONDERSMITH: Yes.

5 MR. ELLIOTT: I'll withdraw that. I think  
6 we've gone through this enough. Thank you very much,  
7 those are all my questions Madam Chair.

8 CHAIRPERSON MITTEN: Thank you.

9 Mr. Herzstein, did you have a few questions for OP?

10 MR. HERZSTEIN: Just a couple of  
11 questions, please. Mr. Fondersmith, with regard to  
12 Building A, if I understand correctly, that would be  
13 30,000 square feet as proposed and it would be  
14 connected to the Cregar and the Watkins Buildings, is  
15 that right?

16 MR. FONDERSMITH: That's right.

17 MR. HERZSTEIN: Do you remember the square  
18 footage of the Cregar and Watkins Buildings?

19 MR. FONDERSMITH: I remember we looked at  
20 that. I don't remember off hand. As you know very  
21 well --

22 MR. HERZSTEIN: We have a chart here from  
23 the '89 plan that shows the size of each of the  
24 buildings.

25 MR. FONDERSMITH: Cregar being 19,000 and

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1 Watkins about 13,000.

2 MR. HERZSTEIN: So together they are  
3 almost 29 or 30 thousand, those two existing  
4 buildings.

5 MR. FONDERSMITH: About 30, a little bit  
6 more actually.

7 MR. HERZSTEIN: And so the total structure  
8 with the new building would be some 60,000 square  
9 feet, is that right?

10 MR. FONDERSMITH: Counting what's already  
11 there, right.

12 MR. HERZSTEIN: So the mechanical noise,  
13 for example, that's created would be not the noise of  
14 a 30,000 square foot building but the noise of a  
15 60,000 square foot building or the noise of three  
16 buildings totalling 60,000 square feet.

17 MR. FONDERSMITH: It would be that  
18 presumably there's whatever noise there is or lack of  
19 noise now is already there. Those are two, as you  
20 know, two separate buildings that are on either side  
21 of that ridge there at the south end of the campus.

22 MR. HERZSTEIN: Right. Could you tell me  
23 what you had in mind in the OP report when you said,  
24 sounds like a very helpful suggestion but you suggest  
25 that the design be formulated, that they formulate a

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1 design that is more domestic in character and scale in  
2 order to help the building relate better to  
3 residential buildings around it. I was sort of  
4 intrigued by the idea of taking a new 30,000 square  
5 foot building combined with another 30,000 square feet  
6 and making it residential in scale. I think even in  
7 Spring Valley we don't have residences that large.

8 MR. FONDERSMITH: What we really meant  
9 there was, and in some of the buildings on the campus  
10 now are I guess including these two, I would say a  
11 little boxy and they appear as institutional buildings  
12 rather than more residential.

13 So what we were suggesting both in A and  
14 B, and we didn't mean to suggest that you build  
15 something that looks like a house or something  
16 exactly, but that buildings be broken up. As you  
17 know, in terms of the visual aspect here, the big  
18 question is the views of both from the west but also  
19 from buildings down the hill in whatever might be used  
20 there. So the suggestion was that in effect those  
21 buildings be broken up or designed in such a way that  
22 they would not seem so institutional in scale. That's  
23 what we were trying to get at.

24 MR. HERZSTEIN: Just on another topic.  
25 I'd like to show you exhibit 12 from the plan which is

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1 the proposed circulation system. Do you have that  
2 handy or you can show him mine. You can look at my  
3 copy. This is just a clarifying question. That shows  
4 the circulation system and the proposed campus and  
5 there's a section that is commonly referred to as the  
6 Western Road, it's the little road that circles the  
7 intramural field, it starts at the communications,  
8 what used to be the communications building.

9 MR. FONDERSMITH: This is the little red  
10 arrow going up there.

11 MR. HERZSTEIN: Yes.

12 MR. FONDERSMITH: Yes, going west.

13 MR. HERZSTEIN: And that's shown proposed  
14 to be a secondary pedestrian way under the new plan,  
15 that right?

16 MR. FONDERSMITH: Right.

17 MR. HERZSTEIN: Needless to say, we  
18 welcome that, those of us who've lived near that road  
19 and have had to put up with the parking noise on it.  
20 My question simply is whether you got any  
21 understanding as you worked on this as to when that  
22 part of the circulation system would be accomplished,  
23 when that road would be closed?

24 MR. FONDERSMITH: I don't know exactly  
25 because Ms. Wagner had the detailed conversations both

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1 with the University and with you and others I guess.  
2 So I don't remember exactly when that was to happen  
3 but what was in there, and I'm looking for the place  
4 right now, the suggestion and we understand the  
5 commitment to put in a gate immediately, let me see  
6 where that is. Yes, on Page 2 under the discussions  
7 of refinements to the on campus road alignments.

8 CHAIRPERSON MITTEN: And this is Page 2 of  
9 what, please?

10 MR. FONDERSMITH: I'm sorry. This is Page  
11 2 of our supplemental report, March 8th.

12 CHAIRPERSON MITTEN: Thank you.

13 MR. FONDERSMITH: And this is the last  
14 bullet. It says until the road is converted to a  
15 pedestrian path as noted in the proposed campus plan,  
16 the existing road along the western perimeter of the  
17 campus will be closed to everyday traffic. A chain  
18 barrier or some kind of barrier, I think most likely a  
19 chain barrier, will be installed to prevent non-  
20 essential vehicles such as students and visitors from  
21 using the road. Now, University maintenance vehicles,  
22 of course, would have a key and to the extent they had  
23 to go down there, they would unlock the chain and go  
24 down there.

25 MR. HERZSTEIN: I don't believe I've seen

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1 that supplemental submission. Was that circulated to  
2 the neighbors?

3 MR. FONDERSMITH: I thought it was. It  
4 was filed last --

5 MR. HERZSTEIN: Well, we'll get a copy  
6 from you later.

7 MR. FONDERSMITH: Yes.

8 MR. HERZSTEIN: So the bottom line of the  
9 chaining off is that that would occur when?

10 MR. FONDERSMITH: That would occur  
11 essentially immediately, I mean, right away.

12 MR. HERZSTEIN: I see.

13 MR. FONDERSMITH: And I think the  
14 University had agreed to that. Let me see if we don't  
15 have --

16 MR. HERZSTEIN: You don't need to worry  
17 about it now, that's all the questions I have.

18 CHAIRPERSON MITTEN: Thank you. Maybe I  
19 should just ask if the ANC representatives had  
20 received a March 8th supplemental Office of Planning  
21 Report. Do you have any other copies, the ANC  
22 representatives have not received it. Do you have a  
23 clean copy, we can get a few copies made?

24 MR. FONDERSMITH: Yes. I think we have  
25 some extra.

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1 CHAIRPERSON MITTEN: Mr. Elliott, you've  
2 received it, haven't you?

3 MR. ELLIOTT: I don't think so.

4 CHAIRPERSON MITTEN: All right. So we'll  
5 need at least three. Thank you. So now we've  
6 concluded with the Office of Planning.

7 MR. ELLIOTT: Madam Chair, there is  
8 something that the AU Park Citizens Association asked  
9 me to ask Mr. Fondersmith and I forgot. They called  
10 me today, is it too late?

11 CHAIRPERSON MITTEN: No, it isn't.

12 MR. ELLIOTT: Mr. Fondersmith, they  
13 wanted, I think they had some discussions with you  
14 during the course of considering the campus plan about  
15 the Office of Planning's interest in including the law  
16 school within the campus and analyzing the law school  
17 as part of the overall campus and I really don't know  
18 what transpired after that but they wanted me to ask  
19 you whether the Office of Planning itself has any  
20 objection if the Commission wanted to, for instance,  
21 include the law school in the campus. Would the  
22 Office of Planning think that that's a good planning  
23 practice. Would you have a view pro or con as to  
24 that.

25 MR. FONDERSMITH: As you know and what

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1 we're dealing with is the existing situation versus  
2 where the city may go in the future, I mean, this is  
3 this issue which is really being talked about and  
4 discussed in terms of new campus regulations of how  
5 off campus, as we use the term today, off campus  
6 development is treated and I think we can say it's our  
7 assumption that in the future in some way that will be  
8 treated differently or at least proposed to be treated  
9 differently. But what we have here is a situation  
10 where the law school, as we all know, has moved off  
11 campus, it's fairly close by but it is not part of the  
12 campus under the existing regulations. And so we have  
13 not been able to, we've not been able to address it.

14 CHAIRPERSON MITTEN: You're going to need  
15 to turn on your microphone.

16 MR. HERZSTEIN: I did notice one thing in  
17 this report which Mr. Fondersmith gave me which  
18 prompts one further question, I apologize. Mr.  
19 Fondersmith, you refer in this supplemental report or  
20 the Office of Planning refers in this supplemental  
21 report to discussions that Ms. Wagner had with me and  
22 with AU regarding the realigned road and the screening  
23 of it from view by neighboring houses. And I think in  
24 large part, this reflects the discussions and I think  
25 the agreement that Ms. Wagner was very helpful in

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1 working out, but there is one element of it which I  
2 don't see in here.

3           The existing road where it circles  
4 Centennial is shown as 24 feet wide in the  
5 supplemental materials that the applicant filed on  
6 this subject. They filed a drawing which showed the  
7 width of the road and then another drawing which  
8 showed a proposed berm and plantings and my  
9 understanding from Ms. Wagner was that where the  
10 existing portions of the new, what will be called the  
11 new road would not be widened from their current  
12 condition, that the new sections might go up to 30  
13 feet but the existing sections would stay the same.  
14 She explained to me that 30 feet might be needed as  
15 the road goes down a hill and has to turn back and  
16 forth but that there was no need for it to be widened  
17 where it circles Centennial and that it would stay the  
18 same there. Am I correct in that?

19           MR. FONDERSMITH: That sounds generally  
20 correct, though I was not in on every detail of those  
21 discussions. Let me just say that this discussion on  
22 the road was a similar attempt because we had said  
23 before that the road was such an important element and  
24 there were some things that weren't defined that we  
25 thought that we had to build in or try to suggest

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1 building in a procedure to deal with those design  
2 issues at some future time.

3 And since the last hearing session, there  
4 has been this attempt with the neighbors, with the  
5 University and the office to, in effect, resolve these  
6 issues at this time and nail down the various aspects  
7 of the relocated road. So that's, I think everybody's  
8 together on that and to the extent there are any  
9 things that are not clear, we need to make sure  
10 they're clear.

11 MR. HERZSTEIN: You are quite correct. I  
12 think it's been a very useful process and it shows  
13 what can be done when you get into the very concrete  
14 details and try to work them out. It wasn't really  
15 very hard. I would appreciate it if you would clarify  
16 with Ms. Wagner and perhaps submit something on this  
17 question of retaining the width of the portions of the  
18 road that are currently in place.

19 MR. FONDERSMITH: We'll do that.

20 MS. MCCARTHY: We'd be glad to do that and  
21 as you know, she really would have liked to have been  
22 here tonight were she not in great pain and at home.

23 CHAIRPERSON MITTEN: Thank you. Staff has  
24 had an opportunity to check the list of individuals  
25 within 200 feet that is in the file and all the names

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1 that were submitted were on the list and should have  
2 received a mailing. None of the individuals whose  
3 names were on the list circulated tonight were among  
4 those returned to us. So we'll give you every  
5 opportunity, we can't turn the clock back certainly.  
6 We'll give you every opportunity to participate from  
7 here on forward and we'll continue to try and figure  
8 what happened. So, in the event that we don't finish  
9 tonight, we may want to take some other steps in that  
10 regard. So, I apologize and we will attempt to  
11 discern what happened.

12 MR. BASTIDA: Madam Chairperson, I would  
13 like just to notice that the notice was sent out on  
14 the Board of Zoning Adjustment for the 12th of  
15 December, the 12th of December meeting was postponed  
16 to a time certain and that might be the difference in  
17 perceived notice that it didn't take place.

18 CHAIRPERSON MITTEN: Yes, and maybe we  
19 could clarify that further at another time. Thank  
20 you. Now, I'd ask Ms. Hamilton to come forward and  
21 make the report for ANC 3D.

22 Would you identify yourself for the record  
23 when you begin speaking, thank you. Push the button,  
24 there's a button.

25 MS. HAMILTON: My name is Tonya Hamilton

1 and I am here representing Advisory Neighborhood  
2 Commission 3D. And I think the Zoning Commission for  
3 this opportunity to present briefly ANC 3D's position.

4 At our February 7th meeting, Advisory  
5 Neighborhood Commission passed the following  
6 resolution which we sent as our recommendation in a  
7 letter to the Zoning Commission. We unanimously  
8 passed this recommendation, I might add, and I would  
9 like to state it briefly for the Commission.

10 ANC 3D determined that the campus plan as  
11 presented to us and the specific building proposals  
12 needed further work. Additionally, the Commission  
13 believes that in the best interests of the University  
14 and the community, discussions should continue with a  
15 view to achieving a plan and an agreement that  
16 resolves adverse impacts on the community.

17 If this procedure is not followed, ANC  
18 3D's recommendation is that the plan, as presented, be  
19 rejected because of the clear adverse impacts on the  
20 community. Further ANC 3D strongly recommends that if  
21 the Zoning Commission does take further action prior  
22 to the promulgation of the new zoning regulations,  
23 that you leave as many elements of the plan as  
24 possible open for review under the new regulations.

25 I just want to make a few brief remarks

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1 about the Commissions position. The standard that we  
2 used in arriving at this determination was the zoning  
3 regulation that requires a University located in a  
4 residential area to prove that its structures and  
5 activities will not create adverse impacts or be  
6 objectionable to the neighboring community.

7 And I would like to just identify briefly  
8 some of, five of our major concerns in arriving at  
9 this decision. First, we felt that the lack of  
10 specificity in this plan about proposed buildings and  
11 landscaping made it very difficult to apply this  
12 standard. Another major concern is University related  
13 parking on residential streets. This has been a  
14 problem and it is increasingly so and there seems to  
15 be no significant improvement or resolution addressed  
16 to this in this plan.

17 We felt that this plan offered no  
18 significant protection to the community against  
19 substantial student and staff population increases  
20 which is perhaps the key issue here. We felt that  
21 there was the potential for the University occupying  
22 additional commercial and residential buildings in our  
23 neighborhood. And lastly, as you saw this evening, we  
24 were concerned about the visual impact of the Art  
25 Center, both from the prospective of Massachusetts

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1 Avenue as a boulevard into the city and from the  
2 prospective of its adjacent neighbors.

3 In summary, because of these and other  
4 issues that we identified in our letter to you, we  
5 felt that the University had not met the standard as  
6 required and therefore, we would respectfully ask the  
7 Zoning Commission to give great weight to our  
8 recommendations, to remand the proposed plan creating  
9 another opportunity for concerned citizens working  
10 together with the University, to mitigate the adverse  
11 impacts in the present plan and to include an  
12 agreement to enforce the plan. Thank you.

13 CHAIRPERSON MITTEN: Thank you, Ms.  
14 Hamilton. Any questions from the Commissioners for  
15 Ms. Hamilton?

16 Since you took your vote at the February  
17 7th meeting, has there been any opportunity for the  
18 ANC to have further discussions with the University?

19 MS. HAMILTON: No, and that's what I was  
20 somewhat concerned about here when I heard just a few,  
21 one or two changes that might have been made to the  
22 Art Center. This was not what was presented to us, of  
23 course. No, we have not had an, specifically to  
24 answer your question, no.

25 CHAIRPERSON MITTEN: Okay. Any questions?

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1 COMMISSIONER HOOD: Madam Chair, I seem  
2 not to have the ANC's letter and I have my whole  
3 package here with me. So I don't know, I need a copy  
4 of it so I can look at it. Just bear with us for a  
5 minute.

6 MS. HAMILTON: If I had a clean copy, I  
7 would happily provide it but I have mine.

8 COMMISSIONER HOOD: To make sure not to  
9 hold up time, I may have some questions later on if  
10 it's permissible, I'll ask Ms. Hamilton to come back.

11 CHAIRPERSON MITTEN: Absolutely. Or maybe  
12 after, if there are other questions by that time.

13 MS. HAMILTON: Would it be helpful to you  
14 Mr. Hood, if I just gave you my marked up copy?

15 COMMISSIONER HOOD: No, I don't want to  
16 take your copy. Thank you, though.

17 CHAIRPERSON MITTEN: Wait, don't leave yet  
18 because we might have cross examination from Ms.  
19 Dwyer.

20 MS. DWYER: Ms. Hamilton, I just have  
21 maybe one or two questions. I think as the Chair  
22 pointed out, at the time that your ANC took its vote,  
23 it did not have before it the conditions that the  
24 University has agreed to in terms of the parking  
25 program in the neighborhood or the additional

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1 landscaping or restriction on use at the athletic  
2 fields, all of those restrictions that are now part of  
3 the record were not before your ANC at that time, is  
4 that correct?

5 MS. HAMILTON: I think that's correct,  
6 yes.

7 MS. DWYER: Okay, thank you.

8 CHAIRPERSON MITTEN: Ms. Quynn, did you  
9 have any questions of Ms. Hamilton?

10 MS. QUYNN: I don't.

11 CHAIRPERSON MITTEN: All right. Mr.  
12 Elliott, any questions for Ms. Hamilton?

13 MR. ELLIOTT: No, Madam Chair.

14 CHAIRPERSON MITTEN: Mr. Herzstein?

15 MR. HERZSTEIN: I'd just like to ask Ms.  
16 Hamilton if the ANC would like to have a chance to  
17 consider these additional submissions or changes that  
18 have been made at some point so that its judgment can  
19 be based on those as well as what it saw before?

20 MS. HAMILTON: Certainly. Yes, we would  
21 very much appreciate that opportunity.

22 CHAIRPERSON MITTEN: Can you tell us  
23 what's your regular meeting schedule?

24 MS. HAMILTON: We meet the first Wednesday  
25 of every month. Would that be, would our next meeting

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1 be the 4th of April.

2 CHAIRPERSON MITTEN: All right.

3 MS. HAMILTON: I think so.

4 CHAIRPERSON MITTEN: Thank you. Anything  
5 else Mr. Herzstein? Mr. Hood?

6 COMMISSIONER HOOD: I just have one. Ms.  
7 Hamilton, are you the single member district  
8 represent?

9 MS. HAMILTON: Yes, I represent ANC 3D03  
10 which is primarily the Spring Valley area.

11 COMMISSIONER HOOD: Okay. I know you had  
12 a meeting of the other Commissioners but did you have  
13 a single member district meeting on the whole campus  
14 plan issue. I guess you've been doing it over a  
15 series, a period of time but have you been doing that  
16 with just the single member district?

17 MS. HAMILTON: We have, just to explain  
18 the process a little, we have heard from  
19 representatives of the University and from members of  
20 the community at the whole ANC meeting over about the  
21 past year. I have been involved in campus plan  
22 meetings representing my single member district and  
23 representing the commission over the period of the  
24 past year.

25 COMMISSIONER HOOD: Okay, thank you.

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1 CHAIRPERSON MITTEN: Thank you. Ms.  
2 Quynn, whenever you're ready. If you'd just begin by  
3 identifying yourself for the record.

4 MS. QUYNN: Yes, I'm Leslie Quynn ANC  
5 Commissioner of single member district 1 which include  
6 the Tenley Campus and the Law School.

7 Mr. Bastida has a copy of all of the  
8 slides and in them it shows a copy of the motion that  
9 was passed as well.

10 CHAIRPERSON MITTEN: We have the materials  
11 now whenever you're ready to start.

12 MS. QUYNN: Okay.

13 CHAIRPERSON MITTEN: I can see you've been  
14 taking lessons from the Office of Planning.

15 MS. QUYNN: I'm so sorry. Please don't  
16 let it be noted in the record that I am beet red.  
17 Let's just start, if it comes up, that's great.

18 My testimony is just simply going to focus  
19 on the six points that were highlighted in the motion  
20 that was passed which is to recommend that the Zoning  
21 Commission reject the plan and application as  
22 presented.

23 The first slide is population cap. And on  
24 this subject I'll cover two points. The first one is  
25 measurements and the second one is the importance of a

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1 meaningful cap. A letter from the BZA in 1988  
2 recognizes a population measurement in terms of number  
3 of students and segments of population. The DC Regs  
4 refer to a head count and the two agreements that AU  
5 entered into with ANC 3E and the community are stated  
6 in terms of head counts and segments of populations.  
7 Can I have two minutes?

8 CHAIRPERSON MITTEN: I'm sure it would  
9 help you be more comfortable.

10 MR. ELLIOTT: Madam Chair, Ms. Hayne is  
11 here if at some point you want to clear up her  
12 qualification as an expert.

13 CHAIRPERSON MITTEN: Why don't we do that  
14 right now while you take a few minutes and we'll go  
15 through the voir dire. If you could ask Ms. Hayne to  
16 come forward.

17 Ms. Hayne, there was some question about  
18 Mr. Elliott was seeking to have you qualified as an  
19 expert in architecture and an expert in compliance  
20 with the Comprehensive Plan and Ms. Dwyer has a few  
21 questions for you regarding your expertise in those  
22 areas.

23 MS. DWYER: Yes, Ms. Hayne, in looking at  
24 your resume, it states in your resume that you are an  
25 expert on reflective surfaces, using them for view,

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1 space and light enhancement. And in looking through  
2 the articles and the lectures, that seems to be the  
3 focus of your expertise. So my question to you is  
4 what expertise do you have in evaluating university  
5 campus plans.

6 MS. HAYNE: My expertise is fairly broad  
7 when it comes to planning. I did not indicate on my  
8 resume some of my earlier work which was with  
9 Skidmore, Owens & Merrill Doxciodis Associates where I  
10 did considerable planning such as in Louisville,  
11 Kentucky. Also Mills, Pedicourt & Mills where we  
12 worked on a number of large scale projects.  
13 Additionally, more recently I worked at Kyes, Condon &  
14 Florence and did site planning for plan unit  
15 developments. Additionally, I worked on projects with  
16 James Van Sweden, the noted landscape architect and as  
17 a result of that, have an intense interest in the  
18 environment and in the natural environment in  
19 particular.

20 I might add also, that my first book,  
21 Today's Architectural Mirror, published by Van Nost &  
22 Reinhold was a feature selection of the Library of  
23 Urban Affairs and it dealt very much with buildings in  
24 the environment so I basically criticized buildings in  
25 the environment.

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1 I've taught at Mt. Vernon College and  
2 architecture at Catholic University and in many of  
3 those instances teaching students to do large scale  
4 planning. And indeed, my partner and I are currently  
5 working on some fairly large scale projects that are  
6 in the very early stage.

7 Additionally, I sometimes mention planning  
8 issues in my newspaper column called This Old  
9 Townhouse. So I think my ability to comment on this  
10 particular building in its immediate environment is  
11 not too bad.

12 MS. DWYER: Can you tell me when you  
13 worked at Kyes, Condon & Florence, what year?

14 MS. HAYNE: I was with Kyes, Condon &  
15 Florence in, let's see, that would have been in about  
16 '78.

17 MS. DWYER: And you worked there as an  
18 architect, a licensed architect?

19 MS. HAYNE: Yes.

20 MS. DWYER: All right. I don't think  
21 we're disputing your ability to comment on planning  
22 issues. Our question still is whether you have the  
23 expertise to be qualified as an expert in university  
24 or campus plans. Have you had any experience in doing  
25 a land use plan or a campus plan for a large

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1 university?

2 MS. HAYNE: I have been, I was asked by  
3 various citizens to talk specifically about this  
4 building, not about the campus plan itself.

5 MS. DWYER: So is the focus of your  
6 expertise and testimony going to be on just the Art  
7 Center building?

8 MS. HAYNE: The Art Center building in its  
9 environment.

10 MS. DWYER: And is the focus of your  
11 testimony on that also going to be on the materials of  
12 the building which would be more compatible with some  
13 of your background or --

14 MS. HAYNE: Yes, indeed. Indeed some of  
15 the means of getting light into that building struck  
16 me as being rather unusual so I do plan to comment on  
17 that.

18 MS. DWYER: Well, we have no objection to  
19 her testifying on the lighting and those features of  
20 the Art Center building because that seems to be  
21 commensurate with her background. We had thought she  
22 was being offered as a witness on the larger campus  
23 plan issues and we still would state our objection on  
24 that basis. But if her testimony is going to be as  
25 expert dealing with the Art Center and it's materials

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1 and lighting, we have no objection to that.

2 MR. ELLIOTT: Madam Chair, her testimony  
3 is somewhere in between the two extremes that Ms.  
4 Dwyer pointed out. She's not going to testify about  
5 the campus plan in general, no. Obviously she's not  
6 going to limit herself to specifics as to that  
7 particular building proposal. She's going to talk  
8 generally about the site of that building and some of  
9 the concerns that Mr. Parsons and others have  
10 expressed and the possibility or comparison of putting  
11 it on the Nebraska lot. Those are within the area.

12 CHAIRPERSON MITTEN: But confining her  
13 area of expertise to architecture is not going to  
14 impair your case in any way.

15 MR. ELLIOTT: As long as she can testify  
16 to the things I just described, that's all she's going  
17 to do. I think Ms. Dwyer was concerned that she was  
18 going to critique the campus plan as such.

19 CHAIRPERSON MITTEN: Right.

20 MR. ELLIOTT: And she's not here to do  
21 that.

22 CHAIRPERSON MITTEN: Right. So I think we  
23 can agree that she's an expert in architecture and  
24 will comment on a specific building on its specific  
25 site.

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1 MR. ELLIOTT: And the alternative site and  
2 the compatibility with the environment the  
3 Comprehensive Plan compliance in putting it in that  
4 site.

5 CHAIRPERSON MITTEN: There isn't an  
6 alternative site. There is a site where its proposed  
7 and so we're going to, just so that we're clear when  
8 we get to that point, we're not searching the campus  
9 for a place to put the Art Center.

10 MR. ELLIOTT: Well, I thought that we  
11 could address the issue Mr. Parsons raised as to the  
12 possibility of having the other site used. Well, why  
13 don't we cross that bridge when we come to it but she  
14 is an expert in this area.

15 CHAIRPERSON MITTEN: All right. But I  
16 just warn you that we're not going to take a lot of  
17 time talking about alternative locations for the Art  
18 Center. I think you really need to focus on what's  
19 been proposed and how you feel that's not appropriate  
20 from a design standpoint, from an adverse impact  
21 standpoint and so on. Just for, be ready for later.

22 MR. ELLIOTT: We always appreciate  
23 guidance but we do have to stand up for our clients as  
24 well. There is an issue here.

25 CHAIRPERSON MITTEN: I understand.

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1 MR. ELLIOTT: Thank you.

2 CHAIRPERSON MITTEN: So she will be, if  
3 there's no objection from any of the Commissioners,  
4 she'll be accepted as an expert in architecture.  
5 Thank you. How we doing?

6 MS. QUINN: It doesn't appear to be  
7 working. My battery has died so we'll just go the  
8 traditional route, the old route. Goes on this slide  
9 that says Population Cap Measurement, yes, okay. And  
10 the letter from the BZA in '88 recognizing the  
11 importance of measuring a cap in students and not in  
12 fractions of students as an FTE does.

13 Next slide is population cap measurement.  
14 The regulatory standard, the DC regs state number of  
15 students and both existing agreements, the '86  
16 agreement with ANC 3E and the '89 agreement mention  
17 head counts and segments of populations. It's not  
18 just one population called students, it's broken down  
19 to undergraduates, graduates, part time, full time, on  
20 campus, off campus, it's really much more detailed and  
21 quite frankly I think it's, I think it would have  
22 helped the University to have used that since that's  
23 what the community was really very familiar with.

24 In Table 4, which is the next slide,  
25 mentions what I'm talking about. The students that

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1 are, and the faculty staff that are mentioned in  
2 FTE's, not head counts. On the slide that says  
3 population cap, importance, the law school impact. In  
4 '96 with the removal of the law school from the plan,  
5 the cap that was set originally was rendered  
6 meaningless.

7 Even though the law school was removed  
8 from the plan, the head count spaces and the FTE  
9 numbers remained in the plan and that, I think, and  
10 office planing I'm sure will testify to, was very  
11 troubling for the residents of that area.

12 An equitable solution would be to reduce  
13 the existing caps that are set now by the number of,  
14 not an FTE number, but by number of students and  
15 faculty that were moved off campus in '96. That would  
16 still allow for the flexibility that the University  
17 states that they need and, with a revised cap, it  
18 would still allow them nine to ten percent  
19 flexibility.

20 Okay. The slide that says what's wrong  
21 with the plan and goes to Item No. 2, parking and  
22 traffic. If I'm going too fast, Point A, parking, and  
23 this has been brought up a few times already. A  
24 simple sticker would solve all of our problems. It  
25 would identify what students are parking on the

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1 streets and which cars belong to residents. I,  
2 myself, have been ticketed a couple of times which, it  
3 doesn't bother me, but it clearly says that the  
4 University doesn't realize that I'm not a student,  
5 that I actually live there.

6 And then with the expiration of the 2006  
7 parking agreement, I know that the University has  
8 stated that they intend to renew it but I haven't seen  
9 anything, nor have any of the residents, and we can't  
10 simply go on intentions. Because when that expires,  
11 that will devastate that area around the law school  
12 and it really does need to be closely considered.

13 In addition, traffic, which is Point B,  
14 didn't take into account the law school. And I only  
15 bring this up because the shuttle that AU has been  
16 very successful with transports their students from  
17 the Main Campus to the Tenley Campus, to Metro and to  
18 the law school and some of the streets that they use  
19 are residential. So, it seems only fair that they,  
20 the University, should include those same streets,  
21 Mass Avenue around the law school, in their traffic  
22 study and they did not do that in the plan.

23 Roman numeral III, which is design  
24 concerns to Cathnard Center. Winston Churchill said  
25 we shape our buildings and thereafter they shape us

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1 which is a great concern of this community. Problems,  
2 the size, its relative to the site which you've heard  
3 already and then this wall of windows, the 200 to 300  
4 feet of windows that really creates a downtown effect,  
5 the light pollution that would result from that, it's  
6 a very quiet, dark community in the evening and I  
7 think it, that building with that huge wall of windows  
8 would change that. It's really quite overwhelming.

9 Point IV, excessive density. On the AU  
10 website, it states and I quote, our northwest  
11 Washington DC campus is in one of the country's most  
12 prestigious residential areas. This is important  
13 because the plan doesn't take into account the  
14 combined affects of certain buildings such as K and L  
15 on this prestigious residential area. It's really  
16 spot by spot planning.

17 The next slide, excessive density,  
18 Buildings K and L. The canyon effect has been  
19 mentioned. The impact of the two large parking  
20 structures together amounts to just less than a  
21 thousand parking spaces and this should, the combined  
22 affect should be considered in the plan, not just  
23 Building K and not just Building L but together they  
24 really need to be considered and they're not.

25 Building M is quite unique. The Tenley

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1 Campus, it's the only campus, the only area on the AU  
2 campus that's surrounded on three sides by homes, by  
3 residences. Prior to AU's purchase of the Immaculata  
4 School in '85 and '86, it was, from what I've heard, a  
5 sleepy little all girls Catholic school and in '86  
6 when the University tried to move its law school  
7 there, it didn't work. They requested to move their  
8 Washington semester program there and ANC 3E and the  
9 community gave the okay after assurances by the  
10 University that the use on the campus would never ever  
11 change and that the low intensity use would be  
12 consistent with the girls school that was there long  
13 before AU was.

14 The ANC agreed to support the BZA  
15 application in '86 of moving the Washington semester  
16 Program there provided that the use of the property  
17 wouldn't change. Building M that's proposed, while  
18 it's a proposal, it's a hundred thousand square feet.

19 It's larger than any existing structure that AUs  
20 built on that campus and it's really quite  
21 inconsistent with the area and with the agreement that  
22 AU entered into with ANC 3E.

23 The second part of the motion, second  
24 paragraph deals with an enforceable agreement which I  
25 think both sides have discussed and agree that that

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1 would be a very agreeable goal. But it's, an  
2 agreement is really the only way that a community can  
3 protect itself from the objectionable impacts of the  
4 University. It accomplishes what a campus plan  
5 cannot.

6 Roman Numeral I, Code of Conduct which  
7 applies to off campus students. The ANC focused on  
8 Exhibit 23 which is in the plan, the so called  
9 Neighborhood Action Plan and on Page 9 of the plan.  
10 AU presently houses approximately 85 percent of its  
11 freshman and sophomore students but I'm unclear as to  
12 where the other, where the juniors and seniors and  
13 graduate students live. That makes up over half of  
14 their population and that's not been presented. The  
15 majority of them, according to something that I  
16 received in November, do live in the community.

17 The ANC has twice requested at the monthly  
18 meetings that we have that AU enforce its Code of  
19 Student Conduct off campus. At the September meeting  
20 that AU presented at, AU said that they would study  
21 it. I haven't heard anything since then. The student  
22 conduct code states that it's designed to benefit the  
23 American University community but the University is  
24 expanding into our community with group housing and  
25 the law school and I would think that the University

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1 would want a better relationship with its neighbors.

2 The neighborhood action proposal in the  
3 plan is a very respectable first attempt, there's no  
4 question about that but it doesn't really do anything.

5 It offers to monitor, to receive complaints, to  
6 notify fraternity or greek organization leaders but it  
7 doesn't enforce its code of conduct to the students  
8 that live off campus. Attached, there's a list of  
9 complaints that were, that I received last fall from  
10 residents in the community about inappropriate  
11 behavior.

12 The second point and last point is  
13 limitation of the acquisition of off campus commercial  
14 and residential properties. It's a point that doesn't  
15 seem to go away and reason for such. The acquisition  
16 or lease of commercial off campus property for  
17 University purposes comes at the neighborhood's  
18 expense by squeezing out existing services,  
19 neighborhood services and amenities. That's it.

20 CHAIRPERSON MITTEN: That's well done  
21 considering you didn't have the visual aids that you  
22 expected.

23 MS. QUYNN: Thank you for your patience.

24 CHAIRPERSON MITTEN: Any questions for Ms.  
25 Quynn?

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1 COMMISSIONER FRANKLIN: Ms. Quynn, you  
2 referred to the canyon effect of Buildings K and L. I  
3 can see that L might be regarded as one-half of one  
4 side of the canyon, why is K part of that description?

5 MS. QUYNN: I'm not sure of the height of  
6 K but certainly there are about 450 parking  
7 structures, it's a sizeable building. I'm not quite  
8 sure what the square footage is on Building K. But  
9 the two together and it is a very high point in the  
10 area, considering what's there now, would completely  
11 change that corridor.

12 COMMISSIONER FRANKLIN: Well, perhaps,  
13 canyon is a little bit of a hyperbole?

14 MS. QUYNN: Yes.

15 CHAIRPERSON MITTEN: Thank you. Ms.  
16 Dwyer, did you have any questions? Ms. Hamilton, did  
17 you have any questions for Ms. Quynn? Mr. Elliott, do  
18 you have any questions?

19 MR. ELLIOTT: Just one. Ms. Quynn, is  
20 there a population cap on the Tenley Campus?

21 MS. QUYNN: 500 students.

22 MR. ELLIOTT: Oh, and is it being complied  
23 with?

24 MS. QUYNN: I don't know. I haven't  
25 received any numbers from the University on it.

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1 MR. ELLIOTT: I guess it's three  
2 questions. Is that in the '86 agreement?

3 MS. QUINN: Yes, it is.

4 MR. ELLIOTT: No further questions.

5 CHAIRPERSON MITTEN: Just so I'm clear and  
6 harkening back to your earlier, is that head count or  
7 is that FTE?

8 MS. QUINN: That's head count. Okay, good  
9 question.

10 CHAIRPERSON MITTEN: I'm paying attention.  
11 Okay, Mr. Herzstein, did you have any?

12 MR. ELLIOTT: One more. Ms. Quinn, is  
13 there evidence in the record that the problems  
14 associated with group homes and students in the  
15 neighborhood are associated with graduate students as  
16 distinguished from undergraduates?

17 MS. QUINN: There isn't, the community has  
18 no idea if they're undergraduates or graduates.  
19 There's no information out there about them. Does  
20 that answer your question?

21 MR. ELLIOTT: I guess so.

22 MS. QUINN: I mean, we can't tell.

23 MR. ELLIOTT: In other proceedings  
24 involving other universities, it's been my impression  
25 that graduate students tend to live at a further

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1 remove from the university and tend to be less  
2 oriented to group housing but I was interested in  
3 whether that was your impression at AU?

4 MS. QUINN: I really don't know.

5 CHAIRPERSON MITTEN: Thank you very much.

6 This is the point at which I said we would make an  
7 assessment about whether or not we thought we could  
8 get done tonight and it's clear to me that we won't  
9 get done tonight so I will just tell those folks here  
10 that we will continue the hearing, we'll get as far as  
11 we can tonight and it will be continued, I believe, on  
12 April 5th, is that right, Mr. Bastida?

13 MR. BASTIDA: That is correct.

14 CHAIRPERSON MITTEN: And that's a Monday.

15 MR. BASTIDA: Correct.

16 CHAIRPERSON MITTEN: And it will be at --

17 MR. BASTIDA: I mean a Thursday.

18 CHAIRPERSON MITTEN: A Thursday, okay.  
19 Thursday, April 5th and we will begin around 7:30  
20 because we have a short hearing prior to that that we  
21 should be able to complete in 30 minutes or less. So  
22 7:30 on Thursday, April 5th for those of you that  
23 might need to leave.

24 Are there any persons in support of this  
25 application. We heard from a few at our previous

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1 hearing. Any persons in support, please come forward.

2 Could you make room, there's maybe another, I don't  
3 know if there's another gentleman.

4 MR. ELLIOTT: Is it persons or parties,  
5 Madam Chair?

6 CHAIRPERSON MITTEN: There are no parties  
7 in support.

8 MR. ELLIOTT: That's why we didn't  
9 anticipate this. I thought --

10 CHAIRPERSON MITTEN: Well, there are  
11 persons --

12 MR. ELLIOTT: In support and opposition  
13 would be in the three minute section?

14 CHAIRPERSON MITTEN: That's right. We  
15 take persons and parties in support in turn.

16 MR. ELLIOTT: I see.

17 CHAIRPERSON MITTEN: It's not that all the  
18 three minute people are grouped together.

19 MR. ELLIOTT: I misunderstood. I didn't  
20 understand that, thank you very much.

21 CHAIRPERSON MITTEN: Perhaps, Mr.  
22 Herzstein, you could sit back, too, because I think we  
23 have three people coming forward. Thank you.

24 You need to turn on the microphone and  
25 when you begin speaking, please identify yourself for

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1 the record and we'll begin with the gentleman here.

2 MR. CARROLL: My name is Thomas Carroll.  
3 I live adjacent to the campus. I hope I, I am a bit  
4 of an aberration here tonight not only because I'm in  
5 favor but I don't have the expertise of some of these  
6 people and I just hope it doesn't end up in comic  
7 relief. I am very impressed by the patience and the  
8 expertise that you all have and the thoroughness with  
9 which you are doing this. I commend you on that  
10 greatly.

11 I learned that I am quite isolated from  
12 the world. Prior to being asked to come to this  
13 hearing by the Vice President of the University, Don  
14 Meyers, whom I knew only because I bought my house  
15 from the University through him. I have had no notice  
16 from my ANC, no notice from this Commission, no notice  
17 from the University, no notice from any community  
18 organization and I'm quite surprised, check my mailman  
19 but I think that I know why, perhaps.

20 I do not live in Spring Valley. I do not  
21 live in Wesley Heights. I live in something called  
22 Addison's Addition, it's one block between Rockwood  
23 Parkway and Nebraska Avenue. There are only seven  
24 houses in that area. I moved there in 1994 and  
25 actually it's the former house of the President of the

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1 University. I moved there, not because I'm in the  
2 backyard of the University where people in the front  
3 yard seem to be having some problems, I found out at  
4 this hearing the last time and this time, I'm quite  
5 lucky to be in the backyard, I guess.

6 I moved there because I liked the ambiance  
7 of being near the youth and the enthusiasm and energy  
8 of the University. I like the openness, I like the  
9 green campus, I like to run my dog over there. I  
10 believe being adjacent to the campus increases the  
11 value in my property in significant ways. I do hear  
12 the buses in the morning, ten minutes later I hear the  
13 airplanes from National Airport, so that issues gone.

14 I do have some views of cars in the  
15 parking lot of the south gate at the University. I  
16 solved that by planting leland cypress, these things  
17 grow four, five feet a year and they grow 35 feet  
18 high, no problem. I do see the two large residence  
19 halls in the wintertime, well, that was there when I  
20 moved in. I had the curious thought as to listening  
21 to some of these people in the last two hearings,  
22 which was there first, the University or some of the  
23 people that moved in next to condemned buildings but  
24 that's your problem not mine.

25 I enjoy going to the library. Unlike

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1 George Washington, that library is open to all  
2 neighbors and is a very pleasant library. They don't  
3 charge us for it and I use it in a variety of ways. I  
4 go to lectures over there, which I would not have the  
5 opportunity to do in other sections of the city. I go  
6 to sports events, go in the new basketball league next  
7 year and I welcome the Art Center. I've seen some of  
8 the University's art exhibits at the president's home  
9 and have all of this within walking distance of your  
10 house with a half a block is just a wonderful thing  
11 and with all the minutia and some of it, that I've  
12 been hearing in these exhibits, I just want to point  
13 out that there is a wonderful side living next to a  
14 university.

15 CHAIRPERSON MITTEN: Can I get you to  
16 summarize, Mr. Carroll?

17 MR. CARROLL: The students are fine, the  
18 students come there on holidays and to help us help  
19 them go to Honduras to help for earthquakes and my  
20 overall impression is having read this plan and going  
21 through it, I have no adverse objections that I see.

22 CHAIRPERSON MITTEN: Thank you, Mr.  
23 Carroll. Any questions for Mr. Carroll. I'll guess  
24 we'll wait but we'll wait and do the whole panel  
25 together. Please identify yourself or the record.

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1 MS. STAHL: I'm Katherine Stahl and I live  
2 at 4000 Cathedral Avenue N.W. I've lived in the  
3 District since 1987 and have been a property owner at  
4 Cathedral Avenue since 1993. I live at the  
5 Westchester, a member owned cooperative consisting of  
6 520 apartments.

7 The Westchester, like many of the  
8 neighborhood condominiums, has a high percentage of  
9 retirees who like me take long walks through the  
10 neighborhood to the national cathedral, to local  
11 amenities and around AU. I walk to work at American  
12 University where I am the Executive Director of the  
13 Career Center there.

14 The topic of AU often comes up in  
15 conversations with my neighbors and their sentiments  
16 have been uniformly positive over these past eight  
17 years. My neighbors are pleased to have access to the  
18 University functions and the library and have  
19 commented on the progress being made by AU in  
20 upgrading and beautifying the grounds.

21 Although I understand the concern of  
22 neighbors when some students behavior gets out of  
23 hand, most AU students are eager to be part of the  
24 solution. I'm proud to be part of the AU community.  
25 AU students by the hundreds are volunteers throughout

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1 this city. I personally helped to create DC Reads, a  
2 partnership between the DC public schools and the  
3 private institutions and now UDC here in the District.

4 We currently at AU have more than 120 students  
5 tutoring two to three elementary students each year  
6 throughout the year. AU students volunteer many  
7 thousands of hours each year to worthy district  
8 programs, in fact, compared to the thousands of this  
9 years freshmen across the country, I was delighted to  
10 see that AU freshmen are far more eager to become  
11 community leaders than their national peers, 51  
12 percent to 38 percent, and far more interested in  
13 promoting racial understanding, 53 percent to 37  
14 percent.

15 A month ago two AU students were selected  
16 as national finalists in the highly competitive Truman  
17 Scholarship competition which is run out of my office  
18 preparing our students. No other DC college had even  
19 one finalist for this important tribute to President  
20 Truman honoring students of great promise in public  
21 service.

22 AU also has a current Truman Scholar which  
23 is one out of 75 in the United States and she's  
24 finishing her senior year at AU at the moment and  
25 actually lives in the neighborhood with other people's

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1 children, taking care of them, to help work her way  
2 through school. As an employee of AU for the past ten  
3 years, I'm acutely aware of the need to upgrade our  
4 facilities to support scholarship of all kinds.

5 In the very competitive environment of DC  
6 based private universities vying for new students, we  
7 have an advantage in being in a beautiful green space  
8 within the city that's easily accessible to downtown  
9 internships and cultural sites. Students and their  
10 parents like the location but they're equally  
11 concerned about whether our facilities, our library,  
12 classrooms, dance studios, offices are up to date. I  
13 meet with many hundreds of parents and students who  
14 come to campus each year to look us over and I often  
15 field the question about the existing Cassell  
16 Building. I have been reassuring them that  
17 fundraising is well underway for the Art Center.

18 CHAIRPERSON MITTEN: Can you sum up now,  
19 please?

20 MS. STAHL: I'm very seriously hopeful  
21 that the Art Center will go through as close as  
22 possible to how it's planned. We all recognize the  
23 eyesore that's there. My neighbors are equally  
24 thrilled. I'm aware that more than a hundred  
25 neighbors have written letters of support for the AU

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1 campus plan and that the numerous projects that are in  
2 the plan are creative projects to try to deal with the  
3 footprint of our campus. I urge you to approve AU's  
4 ten-year campus plan. It represents a cultural,  
5 architectural and intellectual respect for the  
6 University community, the upper Northwest neighborhood  
7 and the city as a whole. Thank you.

8 CHAIRPERSON MITTEN: Thank you.

9 MS. MUSSELL: I very much appreciate the  
10 opportunity to make remarks here. My name is Kay  
11 Mussell, I'm the Dean of the College of Arts and  
12 Sciences at American University. I've lived in upper  
13 Northwest DC for 27 years and Tenley Town for the last  
14 25. I'm a former president of the Horace Mann PTA  
15 when my children were attending the school and I've  
16 also been a member of the AU Park Babysitting Co-op.  
17 So I'm deeply engaged in this neighborhood.

18 I want to talk tonight about the Art  
19 Center and what it will mean for American University  
20 and our students. We have small but very fine arts  
21 programs at the University, both visual and performing  
22 arts, in painting, graphic design, dance, theater,  
23 music theater, music and arts management. These  
24 programs serve all the students on campus in general  
25 education, they also serve all the students in terms

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1 of being able to participate in visual arts and  
2 performing arts activities.

3 Presently, these programs are scattered  
4 across the campus in seven buildings. The facilities  
5 are old, they're inadequate and most of them were not  
6 designed for their current use. For example, our  
7 theater productions occur in an old lecture hall and  
8 it was not designed for performance. Our orchestra  
9 performs in the chapel. It has inadequate acoustics  
10 and a platform that is too small for the growing and  
11 dramatically improved ensemble.

12 The Katzen Arts Center is designed as an  
13 educational facility to provide state of the art  
14 rehearsal and studio space for our talented students  
15 to provide performance and exhibit space for academic  
16 programs, to bring arts faculty and students together  
17 in the same place for exciting collaboration across  
18 disciplines and to give AU and the neighborhood a  
19 locus for arts activities. It will contain a gallery  
20 to display two outstanding and distinguished  
21 collections of art, the Katzen collection of  
22 Contemporary Art and the Watkins Collection of  
23 Washington D.C. Art. It will have rehearsal and  
24 performance spaces and teaching studios for the arts,  
25 the visual arts and for the performing arts.

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1           We believe that the Katzen Art Center will  
2 offer a significant benefit to Northwest DC. It's a  
3 beautiful design which will welcome visitors to the  
4 gallery and to concerts. Indeed, we encourage our  
5 neighbors to come see what our students have achieved  
6 and also to join and participate in our arts  
7 activities, including joining the choral and  
8 instrumental ensembles. This building would fulfill  
9 the plans and dreams of many years during which  
10 students in our arts programs have learned and created  
11 in spite of limitations in their facilities. There's  
12 no question that the quality of our student's  
13 education will be enhanced and enriched by having  
14 better facilities and also by an opportunity to work  
15 together so they can collaborate and fulfill their  
16 potential.

17           CHAIRPERSON MITTEN:       Thank you, Ms.  
18 Mussell. Any questions for this panel of witnesses?  
19 Ms. Dwyer, any questions?       Ms. Hamilton, any  
20 questions?

21           MS. HAMILTON: I do have a question --

22           CHAIRPERSON MITTEN:       You need to come  
23 forward to a microphone.

24           MS. HAMILTON: I do have a question for  
25 Mr. Carroll. I wonder, Mr. Carroll, if you've ever

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1 had an opportunity to attend any of the ANC 3D  
2 meetings which are advertised weekly in the Northwest  
3 Current or the Spring Valley Wesley Heights Citizen  
4 Association meetings. Those meetings are announced  
5 through the mail through residence.

6 MR. CARROLL: Yes, I have attended your  
7 meetings and, in fact, you approved the sort of wall  
8 fence that I put on public property around my  
9 property, you may recall that.

10 MS. HAMILTON: Yes, sir, and I remember.

11 MR. CARROLL: So I'm well aware.

12 MS. HAMILTON: Have you had an opportunity  
13 to attend any of the meetings on which we discussed  
14 the topic or the Spring Valley Wesley Heights Citizens  
15 Association discussed the topic of the American  
16 University campus plan?

17 MR. CARROLL: No, I have not. I was  
18 unaware of those. It was my fault probably.

19 MS. HAMILTON: Thank you.

20 CHAIRPERSON MITTEN: Thank you. Ms Quynn,  
21 any questions? Mr. Elliott, any questions? Mr.  
22 Herzstein, where'd he go? Is he out in the hall?  
23 Okay, he's missing his chance. Thank you all very  
24 much.

25 COMMISSIONER HOOD: Madam Chair, can I ask

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1 a question for this panel?

2 CHAIRPERSON MITTEN: Yes.

3 COMMISSIONER HOOD: I believe these are  
4 the only three supporters that we have in the  
5 audience. I just wanted to ask you, we've heard a lot  
6 of conversation about traffic concerns. Even though I  
7 know you all support the concept but do you also see  
8 traffic concerns? Anyone can answer or all can  
9 answer.

10 MR. CARROLL: Most of the traffic concerns  
11 that I'm aware of seem to revolve around the law  
12 school property. The only traffic that Nebraska  
13 Avenue on which I live is a pretty heavily traveled  
14 street. The only time I ever see impact, I've heard  
15 tonight, it's fourteen percent of the University  
16 traffic at rush hour, is sometimes at New Mexico is  
17 the students and others that are going from the  
18 parking lot to the campus and I do, the buses come out  
19 the south gate, they come right by my house. They  
20 don't bother me very much. I might just add that some  
21 trucks were tearing up my curb and my grass there and  
22 I called the University and we found it was the Corps  
23 of Engineers large trucks doing this and the  
24 University put in a new curb for me and it didn't cost  
25 the city a thing and fixed it and the problem was

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1 solved in a week and I thought that was very  
2 responsive.

3 COMMISSIONER HOOD: Okay. Anyone else  
4 want to answer. Okay, thank you.

5 CHAIRPERSON MITTEN: Thank you all very  
6 much. Any other persons in support. Well, the  
7 decision before us is whether to take the parties in  
8 opposition tonight or begin with the parties in  
9 opposition when we reconvene on the 5th and if it's  
10 not a hardship to you Mr. Elliott, the consensus up  
11 here is that we would rather be fresh when we start  
12 with you.

13 MR. ELLIOTT: I hope you'll never consider  
14 me to be fresh.

15 CHAIRPERSON MITTEN: We'll see. Is that  
16 going to cause you any problems?

17 MR. ELLIOTT: I operate a farm in Wyoming  
18 and I have to come back for every one of these  
19 hearings and right now the soil is frozen four feet  
20 deep but it's just beginning to thaw so we'll make it  
21 through this.

22 CHAIRPERSON MITTEN: Thank you.

23 MR. ELLIOTT: Ambassador Harrop can't.  
24 Perhaps you want to take his testimony. He has a four  
25 minute statement.

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1 CHAIRPERSON MITTEN: Okay. If there are  
2 any persons in opposition who will not be able to  
3 attend our concluding hearing on the evening of April  
4 5th, please indicate that now and come forward.

5 MS. DWYER: Madam Chair, can I make one  
6 comment.

7 CHAIRPERSON MITTEN: Yes.

8 MS. DWYER: We were looking forward to  
9 hearing the opposition testimony so that we had a  
10 chance between now and the next hearing to deal with  
11 cross examination. We have not received outlines of  
12 the testimony that the witnesses are going to be  
13 giving. Is there anything that Mr. Elliott brought  
14 this evening that he could provide us with so that we  
15 have an opportunity to conserve time between now and  
16 the next hearing and having some advance notice?

17 MR. ELLIOTT: I'll try to get Ms. Dwyer  
18 something within a day. I think she knows where we're  
19 coming from from our cross but I'll go over it with  
20 her.

21 CHAIRPERSON MITTEN: All right.

22 MS. DWYER: And also it's our  
23 understanding that the opposition parties will be  
24 limited to the same hour that the applicant was  
25 limited to?

1 CHAIRPERSON MITTEN: Absolutely. Yes.

2 MR. ELLIOTT: That's our understanding as  
3 well.

4 CHAIRPERSON MITTEN: Terrific.

5 MR. ELLIOTT: Well, we'll take Ambassador  
6 Harrop out of turn and he's primarily going to address  
7 the population cap but he has other things to say as  
8 well.

9 CHAIRPERSON MITTEN: And there's a three  
10 minute limit for persons in opposition.

11 MR. ELLIOTT: Two, no. Well, this is out  
12 of our hour. I hate to volunteer so he's planning  
13 four minutes.

14 CHAIRPERSON MITTEN: That's going to be,  
15 four minutes? Okay, we're going to keep track of  
16 this.

17 MR. ELLIOTT: Will you give him four  
18 minutes?

19 CHAIRPERSON MITTEN: Well, we'll keep  
20 track of however long he takes and then we'll dock  
21 you.

22 MR. ELLIOTT: Deduct it, I know.

23 CHAIRPERSON MITTEN: Please proceed, Mr.  
24 Ambassador and begin by identifying yourself for the  
25 record.

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1                   AMBASSADOR HARROP: Yes, my name is Bill  
2 Harrop, I'm the President of the Spring Valley Wesley  
3 Heights Citizens Association. We have about thirteen  
4 hundred households and are on the east southwest  
5 borders of AU. Our residential properties really are  
6 right on the border of about two-thirds of the Main  
7 Campus of American University. Our members are not  
8 hostile, I'd like to say at the outset to AU. We  
9 appreciate the University's courtesy in inviting  
10 neighbors to use the facilities as this gentleman  
11 mentioned a moment ago, the library, the track, the  
12 playing fields. It's nice to have a University in  
13 your neighborhood.

14                   However, we have two primary issues. We  
15 have issues over the population cap, the scale the  
16 University and over enforcement of conditions which we  
17 think you might propose or which might be involved in  
18 the Campus Plan. AU is the giant in our community.  
19 It dominates and it is growing. It is a large  
20 university on a small campus and growth will impinge  
21 on the community. It's already expanding importantly  
22 into the neighborhood, our neighborhood by purchasing  
23 large buildings very close to its present campus.  
24 Traffic congestion, noise, off campus housing, student  
25 behavior, parking in neighborhood streets, these are

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1 all really a function of scale so that if the  
2 expansion is not contained, the situation is really  
3 bound to become increasingly objectionable to the  
4 neighborhood.

5 The Commission has clear authority to  
6 establish a population cap. The University  
7 representatives have assured us repeatedly that AU has  
8 no intention of increasing its enrollment. They've  
9 told us that at repeated meetings over the last year.

10 In fact, their purpose, they've said, is to expand  
11 their facilities relative to enrollment so that they  
12 can have a more competitive relationship in their  
13 competition with other universities. Yet, they insist  
14 upon retaining the ability to grow by 25 percent in  
15 addition to the growth of the law school.

16 This is frankly, I think, chicanery. It's  
17 a shell game. They moved the law school three blocks  
18 off their campus into the heart of the surrounding  
19 residential neighborhood and then deducted the numbers  
20 allocated to the law school enrollment and staff from  
21 the BZA 1989 ruling population cap and from their  
22 ceiling. Meanwhile the law school enrollment has  
23 exceeded the 1988-1989 cap by 400 but this is a matter  
24 of no concern to the University because it's no longer  
25 regulated by their population cap.

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1           The Commission could rectify this  
2 situation in one of two ways and I urge you to do so.

3 First, we fully endorse the position of ANC 3E that  
4 you heard a moment ago unfortunately without the  
5 slides that the Commission should establish a cap  
6 based on the 1989 cap set up by the BZA but after  
7 deducting the figures for the law school student and  
8 staff which have been moved three blocks down the  
9 street. This would permit a comfortable eight percent  
10 bulge from the University's present size. It could  
11 take care of its up and down changes to deal with  
12 enrollment and would have no difficulties in that way.

13 The University has assured us that it intends to  
14 retain its present state, size, this would allow it to  
15 do so and it would simply enforce it doing so.

16           Alternatively, you will hear testimony  
17 shortly from, or on the 5th now from Mr. Rottenberg of  
18 American University Park who will suggest that the  
19 Commission simply redefine the AU campus to include  
20 the law school. That is a precedent which has been  
21 set in previous cases, in the case of George  
22 Washington University. That would give the University  
23 overall a somewhat more generous new ceiling because  
24 of the very large growth of the law school. However,  
25 it would also provide a cap for the future with a

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1 scope for reasonable growth which no one could object  
2 to on the part of the University.

3 The second issue I want to discuss briefly  
4 is enforcement. We are, we feel strongly that the  
5 neighbors should have a role in making sure that the  
6 University performs as has been provided by the Zoning  
7 Commission. We're concerned that the DC government  
8 and the Zoning Commission really aren't in a position  
9 to provide the enforcement required to be sure that  
10 these measures are carried out. And as you, Madam  
11 Chairman, mentioned the other day, it is really unfair  
12 to the citizens to tell them that you could approve a  
13 campus plan and then the citizens could consult on the  
14 further measures that are worked out to perfect it.

15 I think that simply isn't good enough and  
16 Mr. Herzstein and Mr. Elliott will be arguing, I  
17 think, very persuasively that the best course is to  
18 remand this application just as was done by the Board  
19 of Zoning Adjustment ten years ago and to request or  
20 direct the neighbors and the University to negotiate  
21 in good faith to reach a mutually satisfactory written  
22 agreement. This model was very successful in the past  
23 and I think it can be successful again.

24 We would be very prepared to take that  
25 course of action. Alternatively, the Commission could

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1 mandate that the principal issues between the  
2 University and the residential neighbors be settled by  
3 binding arbitration. Or these two approaches could be  
4 combined as will come out as we discuss the matters  
5 further.

6 Finally, I would like to tell you a word  
7 about something that came up earlier tonight in Mr.  
8 Fondersmith's remarks on behalf of the Department of  
9 Health. The arsenic issue in Spring Valley, I really  
10 wish to assure you, is extremely difficult. There are  
11 toxic materials there from World War I and the  
12 community has really been traumatized by the threat  
13 which appears now more and more acute. The Corps of  
14 Engineers has been working in the community since 1993  
15 and is nowhere finished in its work as yet.

16 As a matter of fact, there was a meeting  
17 just last night set up by the Corps and attended by  
18 Ted Gordon of the Executive Offices of Department of  
19 Health, by Deputy Secretary of EPA and by a General in  
20 charge of the whole eastern United States for the  
21 Corps of Engineers. It was attended by over 300  
22 citizens of Spring Valley. I was jealous, we could  
23 never get that many people at one of our meetings but  
24 they really care about this issue.

25 Now, at the issue, it was announced that

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1 they were going to be, it's going to be a  
2 comprehensive sampling of every single property in  
3 Spring Valley because of the arsenic concern. There's  
4 going to be a sampling, very intensive sampling of all  
5 the campus of American University. One reason for all  
6 this concern right now is that a few weeks ago the day  
7 care, kindergarten day care center on American  
8 University was found to have dangerously elevated  
9 levels of arsenic. It was closed down immediately,  
10 the University very responsively reacted quickly,  
11 moved it away and there's been extensive further  
12 testing, it appears the children are not endangered  
13 but their parents are very, very worried.

14 We were told last night by Ted Gordon of  
15 the Department of Health, we were warned that there  
16 should be very great care taken when using lawnmowers  
17 or using anything or leaf blowers. You should not be  
18 exposed to dust or dirt unnecessarily if you can  
19 possibly avoid it in Spring Valley.

20 Now, the Corps is responsible for doing a,  
21 under federal regulations, an engineering evaluation  
22 cost evaluation analysis for rehabilitation of the  
23 whole area. This will include limitations upon use of  
24 areas where it's been ascertained that there are very  
25 high levels of toxicity.

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1           The Corps of Engineers told us last night  
2 they were aware, not last night, last week, they were  
3 aware that there was a campus plan under  
4 consideration. There'd been no consultation between  
5 the Corps of Engineers, I understand that includes  
6 also EPA and Department of Health with the University  
7 about their campus plan. The campus plan includes  
8 extensive movement of earth. It includes excavations.

9           It includes the construction of a road we've been  
10 discussing several times which goes directly by the  
11 site of this children's day care center.

12           Now, I understand that the Office of  
13 Planning is required by regulation to prepare an  
14 environmental impact review of the campus plan. Now,  
15 I don't see how such a thing could possibly be done  
16 until the location of these noxious chemicals is  
17 ascertained. I don't really understand how a plan  
18 including so much excavation and so much earth  
19 movement given the conditions that the Department of  
20 Health has mentioned, could really be seriously  
21 considered right now. I would wonder if you would not  
22 want to suspend this whole process until the Corps of  
23 Engineers has had time to complete it's work. I'll  
24 just close there.

25                   CHAIRPERSON MITTEN:           Thank you, Mr.

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1 Ambassador.

2 AMBASSADOR HARROP: What's this.

3 COMMISSIONER FRANKLIN: 9:25.

4 CHAIRPERSON MITTEN: What's wrong, the  
5 clock said, I was going by the clock.

6 CHAIRPERSON MITTEN: It started with four  
7 minutes and then after you went past the four minutes  
8 it started counting up.

9 AMBASSADOR HARROP: Oh, I misunderstood  
10 completely. I thought I could watch the clock, I'm  
11 sorry.

12 CHAIRPERSON MITTEN: Well, I think you  
13 need to just respond to any questions that anyone  
14 might have. Any questions, please.

15 COMMISSIONER FRANKLIN: Mr. Ambassador,  
16 could you describe the testing or the assessment that  
17 the Corps is going to undertake with respect to the  
18 property owners and the campus?

19 AMBASSADOR HARROP: They're dividing each  
20 personal lot, private lot, into six zones or maybe  
21 it's eight, either six or eight zones in which they're  
22 going to take a sample both of the surface and then  
23 down six to eight feet below because no one is quite  
24 sure how much earth movement has taken place since the  
25 first world war when the arsenic was moved about. And

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1 then they're going to have this tested in a laboratory  
2 and find out.

3 They're going to do the, they'll divide  
4 the University campus up in the same relative way and  
5 test it also to try to really pinpoint where these  
6 noxious chemicals are. You may know they've taken  
7 several hundred large earth, truckloads of earth away  
8 from the Korean ambassadors house which was a center  
9 for some of the dumping of the chemicals and they just  
10 stripped the earth off his property and that's what'll  
11 have to be done if they find elevations of that sort  
12 in other locations.

13 COMMISSIONER FRANKLIN: Is it presumed  
14 that the toxicity is a result of dumping or other  
15 operations. In other words, are they likely to find  
16 concentrations scattered about or do they think that  
17 the records indicate that there was so much use of  
18 this stuff that --

19 AMBASSADOR HARROP: See, the area around  
20 the Korean ambassadors was a dump and that's what  
21 caused it there. However, they found other locations  
22 on the campus and in various parts of Spring Valley  
23 where there were particular testing done. They had, I  
24 might say, they captured animals, put goats there and  
25 then exposed them to arsenic to see how, what their

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1 effect would be. It was a rather cruel business.  
2 They also used shells with chemical weapons in various  
3 locations in that area and that's roughly known. The  
4 records are not really as good as they'd like them to  
5 be as to just where all this activity took place.

6 COMMISSIONER FRANKLIN: So how long will  
7 that assessment take, do you know?

8 AMBASSADOR HARROP: Well, I don't know.  
9 The Corps has said that it hopes to complete within  
10 about eight months all of the samplings. I have a lot  
11 of respect for the Corps but their record of meeting  
12 timetables they've set before has not been terribly  
13 encouraging but they speak about doing it all in about  
14 eight months, the sampling.

15 COMMISSIONER FRANKLIN: And if you  
16 understand, what would be the remedial action if there  
17 were some concentrations found?

18 AMBASSADOR HARROP: Well, they would have  
19 to decide. I'm not expert. They would either have to  
20 arrange to remove or shift earth to take it away to a  
21 place where it would not be dangerous or they would  
22 have to insist upon zoning of certain uses for land  
23 where there were high levels of toxicity. They have  
24 the authority to do that under this evaluation plan  
25 that they're undertaking.

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1 COMMISSIONER FRANKLIN: Thank you.

2 CHAIRPERSON MITTEN: Any other questions?  
3 Ms. Dwyer?

4 MS. DWYER: I just have a couple of  
5 questions. Did I understand your testimony to be that  
6 the law school population should be included in the  
7 Main Campus cap.

8 AMBASSADOR HARROP: No, my preference  
9 would be that the Zoning Commission establish a cap  
10 for the University which would deduct from the 1989  
11 cap that amount that was allocated to the law school.

12 You know the law school already is a great deal  
13 larger than was in that cap but I think that would be  
14 accepted by the community and the new cap for the  
15 University would be the original cap minus the staff  
16 and enrollment of the law school.

17 The alternative idea, which perhaps you're  
18 referring to, would be that the law school were simply  
19 taken in as part of the campus of AU. In that case, I  
20 think you would have to figure out what the  
21 appropriate population cap would be. I think the  
22 University would probably come off with a somewhat  
23 larger cap in that way.

24 MS. DWYER: I'm asking the question  
25 because I think you're aware of litigation from

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1 probably 1994 to 1997 over the whole issue of the law  
2 school and the population cap. Are you familiar with  
3 that litigation?

4 AMBASSADOR HARROP: Yes, I am.

5 MS. DWYER: And were you not a party to  
6 the settlement agreement that was filed with the court  
7 in which the parties agreed to an understanding as to  
8 how the law school population cap would be treated.  
9 Did you sign that document?

10 AMBASSADOR HARROP: I did but you know I  
11 don't recall that aspect of the population cap. Maybe  
12 you can refresh my memory.

13 MR. ELLIOTT: If you're going to go into  
14 this, it would be fair to read to Ambassador Harrop  
15 which provision you're talking about.

16 MS. DWYER: I certainly will and I can  
17 provide you with a copy of the settlement agreement.  
18 The agreement is dated, let me just get the date,  
19 March 17th, 1997 and it settled.

20 AMBASSADOR HARROP: I have a copy of it.

21 MS. DWYER: All right. And on Page 7 of  
22 that agreement, there's a whole section dealing with  
23 student population and that says that the parties  
24 agree that the population cap provisions of the campus  
25 do not apply to the commercially zoned property at

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1 4801 Massachusetts Avenue and that is the law school  
2 property, is it not?

3 AMBASSADOR HARROP: Yes.

4 MS. DWYER: And that the only students  
5 from the law school that are to be counted in the Main  
6 Campus are students who either have a dual degree  
7 program on the Main Campus or who use the Nebraska  
8 parking lot, is that correct, do you recall that?

9 AMBASSADOR HARROP: I don't. I'll have to  
10 refresh my memory.

11 MS. DWYER: And on Page 8 of that  
12 agreement, there's a whole section called General  
13 Agreements in which the parties agree not to take any  
14 position in any lawsuit or administrative proceeding  
15 which is inconsistent with the letter or spirit of  
16 this agreement.

17 MR. ELLIOTT: I'm going to object to this  
18 questioning. It goes beyond the scope of the direct.  
19 What Ambassador Harrop was testifying to is what he  
20 thinks should happen in the next ten years and indeed,  
21 the University came before the ANC on February 7th and  
22 actually proposed capping the law school.

23 MS. DWYER: I would object to Mr. Elliott  
24 testifying at this point. I think the witness can  
25 answer the question.

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1 MR. ELLIOTT: Excuse me. I'm just going  
2 to make my objection.

3 CHAIRPERSON MITTEN: I think, I think --

4 MR. ELLIOTT: This is beyond the scope.  
5 He's going forward, she's going back.

6 CHAIRPERSON MITTEN: I understand. I got  
7 it. Thank you. I think you're issue is --

8 MS. DWYER: What I'm trying to clarify is  
9 whether his testimony in any way was to suggest that  
10 the law school population should be part of the Main  
11 Campus cap.

12 MR. ELLIOTT: She means under the past  
13 agreement.

14 CHAIRPERSON MITTEN: You're going to have  
15 to let Mr. Ambassador respond to the question.

16 AMBASSADOR HARROP: No, what I suggested  
17 was that the allocation to the law school under the  
18 original cap that was established by the Board of  
19 Zoning Adjustment should be deducted from, in the next  
20 ten years, from the ceiling for the University as a  
21 whole because I think that it has now been exceeded so  
22 much that it makes the University able to grow to an  
23 extent that will make it very difficult for the  
24 community.

25 MS. DWYER: Let me ask you a follow up

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1 question. Is it your understanding when the Board of  
2 Zoning Adjustment in the past and the Zoning  
3 Commission going forward sets a population cap for a  
4 campus and let's say the population cap is a thousand  
5 students for a campus, is it your understanding that  
6 that cap is the number of students that can be  
7 accommodated on the campus without having an  
8 objectionable impact on the neighborhood. Is that  
9 your understanding of the purpose of the cap.

10 AMBASSADOR HARROP: Could you say it  
11 again. I'm sorry, I couldn't understand.

12 MS. DWYER: Is your understanding of the  
13 purpose of the cap to say that given the size of the  
14 campus, this number of students is appropriate and  
15 will not have an objectionable impact on the  
16 community. Is that the purpose of a cap?

17 AMBASSADOR HARROP: The purpose of a cap  
18 is to limit the size of the institution so that it  
19 will not be objectionable to the community, yes.

20 MS. DWYER: All right. And in an instance  
21 like that where the cap is placed on a campus, let's  
22 say of a thousand students, and the University then  
23 moves a program like the law school off campus, it's  
24 your position that the number on that campus has to be  
25 reduced because that specific program has been moved

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1 off campus?

2           AMBASSADOR HARROP: No, my position is, I  
3 don't know about in general, in this case, the law  
4 school moved three block exactly down the street,  
5 closer into the neighborhood in which the University  
6 exists. I just think it's appropriate that that be  
7 counted as part of the University population. I don't  
8 think it generically, that any school --

9           MS. DWYER: Well, then getting back to the  
10 earlier statement. Now you're saying that the law  
11 school should be counted as part of the campus  
12 population because it's only three blocks away from  
13 the Main Campus, is that your position?

14           AMBASSADOR HARROP: No, I'm saying that  
15 when a part of the population is moved three blocks  
16 away, the University should not be permitted to reduce  
17 it's population by that amount.

18           MS. DWYER: But if the purpose of the cap  
19 is to say for this campus, given these boundaries,  
20 this number of students is appropriate, why can't the  
21 University say instead of having 200 of those students  
22 be law students, we're now going to have 200 then be  
23 art students, what's the difference?

24           AMBASSADOR HARROP: The difference is to  
25 the 200 law students, they're still right smack in the

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1 middle of the community. They've not moved away,  
2 they're right there.

3 MS. DWYER: All right. Then this get to  
4 the --

5 AMBASSADOR HARROP: They've only moved  
6 away in quotation marks off the campus.

7 CHAIRPERSON MITTEN: Ms. Dwyer, we  
8 understand his position and I sense that you're trying  
9 to frame or to frame his position in such a way to  
10 determine whether or not it's in violation of this  
11 settlement agreement and I would like you to just base  
12 whatever --

13 MS. DWYER: Right. I don't think I need  
14 to frame his position.

15 CHAIRPERSON MITTEN: Okay.

16 MS. DWYER: I think our understanding of  
17 what's being said is, we understand what's being said.  
18 Thank you.

19 CHAIRPERSON MITTEN: Terrific. Thank you.  
20 Anything else?

21 MS. DWYER: That's it.

22 CHAIRPERSON MITTEN: Ms. Hamilton, did you  
23 have any questions for the Ambassador?

24 MS. HAMILTON: Yes, I do.

25 CHAIRPERSON MITTEN: Please come forward.

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1 MS. HAMILTON: Ambassador Harrop, my  
2 question deals with the meeting last evening about the  
3 munitions issue and information there. I'm wondering,  
4 was there any specific information at that meeting  
5 about the issuance of building permits in the testing  
6 area during the testing period?

7 AMBASSADOR HARROP: Yes, it was. Mr.  
8 Gordon said to my great surprise after announcing that  
9 people should not use their lawnmowers or their leaf  
10 blowers without wearing masks, they should not allow  
11 their children to touch, to get into the dirt anymore  
12 than they could help, he then said that existing  
13 construction underway would not be stopped but there  
14 would be a special review of any proposed new  
15 construction in Spring Valley from now on. No new  
16 permits would be permitted without review by the  
17 Department of Health.

18 MS. HAMILTON: So review but no  
19 moratorium. Just review was the only --

20 AMBASSADOR HARROP: It was not clear there  
21 was a moratorium but they have to have a special  
22 passing by the Department of Health before they could  
23 be approved.

24 MS. HAMILTON: So that we can infer that  
25 they are going to monitor any building that might go

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1 on?

2 AMBASSADOR HARROP: Yes, definitely.

3 MS. HAMILTON: Thank you.

4 CHAIRPERSON MITTEN: Ms. Quynn? Any  
5 questions.

6 AMBASSADOR HARROP: Excuse me. Could I  
7 ask one question. I'm very puzzled. I was taken  
8 completely by surprise that I began my four minutes at  
9 four minutes. I didn't understand how could that be.

10 CHAIRPERSON MITTEN: You began at four  
11 minutes and it counted down to zero and then after  
12 zero it started counting up again.

13 AMBASSADOR HARROP: Oh, I see. I didn't  
14 understand the clock, sorry.

15 CHAIRPERSON MITTEN: Sure. All right,  
16 sir. Do you have an issue about not being able to  
17 attend the next hearing, is that it? Please come  
18 forward. Please identify yourself for the record when  
19 you begin speaking and you will have three minutes.

20 MR. LIEBENTHAL: Madam Chair, with your  
21 indulgence I will not be able to be here on April 5  
22 and therefore would like to testify as a neighbor of  
23 American University. My name is Andres Liebenthal. I  
24 live at 4330 42nd Street which is across the street  
25 from the Tenley Campus of American University. And I

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1 have lived there since 1980. That is before the  
2 University came to the Tenley Campus and I enjoy the  
3 green character of the campus and the nice view of it  
4 in front of my house.

5 And my main concern is that it stays that  
6 way. And in order to assure that, 15 years ago in  
7 1986, we, the neighborhood and the Advisory  
8 Neighborhood Commission on our behalf, signed an  
9 agreement after extended discussions with the  
10 University which I trust has been entered on the  
11 record but if it's not, I would like to volunteer.

12 CHAIRPERSON MITTEN: We have it, thank  
13 you.

14 MR. LIEBENTHAL: And that agreement  
15 clearly says that the University will live within the  
16 existing structures and, you know, maintain its  
17 activities there and that is perfectly acceptable to  
18 us. There have been some minor violations in terms of  
19 the maintenance of the fence, the number of students,  
20 the absence of any traffic control on the traffic  
21 entering and exiting the parking lot but those are  
22 minor and they, you know, simply indicate a certain  
23 attitude of the University in relation to the rigor  
24 with which they stick to their agreements but no more  
25 than that.

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1           What really bothers me and brings me here  
2 is the fact that they are now planning a Project M  
3 which is a three foot, hundred thousand square foot  
4 building with parking for underground parking for 200  
5 spaces. It's a major intrusion into the residential  
6 character of that campus, of the neighborhood and the  
7 green character of the campus. It is almost a  
8 doubling of the square footage, a tripling of the  
9 number of parking spaces and it far exceeds, for  
10 example, the staff limit that we agreed, the staff  
11 ceiling under the agreement is 125 staff. Now, if you  
12 only have 125 staff and the students don't use cars,  
13 you know, why do you need 200 parking spaces.

14           And by the very, very sort of sneaky way,  
15 misleading information that was provided, for example,  
16 the notice that is attached to the fence doesn't say  
17 anything about a particular building being built there  
18 so, you know, it is there but it doesn't tell us  
19 anything. It makes references to various buildings on  
20 Massachusetts Avenue but not across the street.

21           CHAIRPERSON MITTEN:     Could you sum up,  
22 please, you have about fifteen seconds.

23           MR. LIEBENTHAL:        Fifteen years ago,  
24 American University made assurances to the community  
25 that it would not increase or add any building to this

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1 campus. And I'm very concerned about American  
2 University's position that this agreement is simply a  
3 private agreement. It's a very public agreement, was  
4 negotiated by the community with the University, it  
5 has no time limit and should not be superseded by  
6 anything as long as the parties to that agreement have  
7 not discussed and agreed to any change.

8 CHAIRPERSON MITTEN: Thank you. Any  
9 questions for this witness? Ms. Dwyer, any questions?  
10 Ms. Hamilton? Ms. Quynn? Mr. Elliott?

11 MR. ELLIOTT: Just one. Did you receive a  
12 letter from the Commission, notice to you personally  
13 in the mail?

14 MR. LIEBENTHAL: No.

15 CHAIRPERSON MITTEN: I'm sorry.

16 MR. LIEBENTHAL: I did not receive any  
17 notification.

18 CHAIRPERSON MITTEN: You did not receive  
19 notice.

20 MR. LIEBENTHAL: We were assured by the  
21 relevant official of American University at the time  
22 when they negotiated this that we, that is the  
23 neighbors within 200 feet of the property, would be  
24 informed of any changes in their plans or any plans  
25 that would have for this. And I'm really disappointed

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1 that the University has not done this.

2 CHAIRPERSON MITTEN: And we'll investigate  
3 further what happened with the notification.

4 MR. LIEBENTHAL: There seems to be a gap  
5 in the process, a sense that by approving this plan,  
6 if you should do so, by submitting this plan, the  
7 University acquires gradually by creeping in a very  
8 creeping form, acquires a right to build a three story  
9 building with 200 spaces that could be any of five  
10 uses contrary to what the Commission, what the thing  
11 says. And that by the time we get official notice or  
12 we, you know, the further processing comes along, all  
13 we are down to is the discussion of the landscaping  
14 and the lighting and ingress and egress and so on but  
15 essentially they've acquired the right to build a huge  
16 building right in front of our very residential and  
17 otherwise green and nice neighborhood.

18 CHAIRPERSON MITTEN: Thank you. Mr.  
19 Herzstein, did you have any questions. Okay. Thank  
20 you.

21 Now, before we conclude, we just need to  
22 run through the submissions that we expect prior to  
23 the next hearing. Mr. Bastida, did you want to go  
24 through the list? You need to turn on your  
25 microphone.

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1 MR. BASTIDA: We are looking for the  
2 response from Mr. Laden regarding the parking and  
3 traffic conditions. We are, I don't know if you've  
4 requested that, but it's a composition of the Liaison  
5 Committee that it would be further refined.

6 CHAIRPERSON MITTEN: No, we didn't request  
7 that.

8 MR. BASTIDA: Mr. Parsons' requesting a  
9 copy of that inspection picture that, in fact, shows  
10 the existing trees and the ones that are going to be -  
11 -

12 CHAIRPERSON MITTEN: The visual  
13 simulation.

14 MR. BASTIDA: Visual simulation and the  
15 new section that doesn't depict the retaining wall.

16 CHAIRPERSON MITTEN: Yes.

17 MR. BASTIDA: We also have a request for  
18 the road with how it's going to be kept and if there  
19 are any alterations are going to do that and we're  
20 talking about the road behind the Art Center.

21 CHAIRPERSON MITTEN: And that's coming  
22 from the Office of Planning.

23 MR. BASTIDA: Correct. And we, the Office  
24 of Zoning, will have to do further research on the  
25 notice of hearing.

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1 CHAIRPERSON MITTEN: Thank you. And we're  
2 also expecting briefs from Ms. Dwyer and Mr. Elliott  
3 on the issue of the applicability of the 1986 Tenley  
4 Agreement and this wasn't specifically requested at  
5 the time that Mr. Laden was testifying but he said  
6 that it would be helpful if the traffic expert would  
7 revisit the impact on traffic of changing the cycle on  
8 the light where the Katzen Art Center crosses, so if  
9 we could get that as well.

10 COMMISSIONER HOOD: Madam Chair, let me  
11 also state that I am not satisfied with the piece with  
12 security in the Metropolitan Police Department that  
13 was submitted. This is blatantly not from the police  
14 department. I would like to see that come from the  
15 Metropolitan Police Department, not from American  
16 University.

17 CHAIRPERSON MITTEN: So, we would have to  
18 ask the Office of Planning to request that then from  
19 the police department, is that correct?

20 COMMISSIONER HOOD: Well, I'm thinking  
21 since they already have a partnership and they're  
22 working together it should be just as easy for  
23 American University to be able to provide that as  
24 opposed to the Office of Planning because they already  
25 said, testified that they have something in existence.

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1 MS. DWYER: We would be happy to provide  
2 that. And let me also suggest instead of the Office  
3 of Planning providing information on the width of the  
4 roadway, that we can provide that.

5 CHAIRPERSON MITTEN: That would be great.  
6 Thank you.

7 MS. DWYER: And then there was one other  
8 issue you asked us to look at a limitation on the  
9 number of events.

10 CHAIRPERSON MITTEN: Yes, that's right.

11 MS. DWYER: And we will do that as well.

12 CHAIRPERSON MITTEN: Thank you. Mr.  
13 Forsburg, was that the one you were going to call out?

14 MR. FORSBURG: That was one of them. The  
15 other one was OP recommendation for AU to coordinate  
16 with Corps of Engineers to certify any contamination  
17 of soil which is kind of covered.

18 CHAIRPERSON MITTEN: Yes if we could get  
19 that, Mr. Fondersmith, get that formalized.

20 MR. FONDERSMITH: Yes, we'll coordinate  
21 further with the Department of Health and the Corps.

22 CHAIRPERSON MITTEN: Thank you. That  
23 would be very helpful.

24 MR. ELLIOTT: Madam Chair.

25 CHAIRPERSON MITTEN: Yes, sir.

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1 MR. ELLIOTT: On the submission of the  
2 briefs. I think it's really necessary for the  
3 neighbors to see what AU has to say so I'm wondering  
4 if we could establish a schedule where Ms. Dwyer could  
5 provide that brief and then the neighbors down there  
6 could look at it.

7 MS. DWYER: No, my understanding is that  
8 we are both to provide a brief as we did the last time  
9 on our respective position. It's not a  
10 response/counter.

11 MR. ELLIOTT: But I don't represent the  
12 neighbors there. I'm kind of reluctant to just turn  
13 in a brief without consulting with them and having  
14 them know what Ms. Dwyer has to say on this. I could  
15 probably get something back within 48 hours but, I  
16 mean, it's up to her to say why this agreement that  
17 has no termination date is being terminating.

18 MS. DWYER: Mr. Elliott, you raised the  
19 issue. I think you can file a brief on your  
20 interpretation of the issue since you raised it.

21 CHAIRPERSON MITTEN: Mr. Elliott, this is  
22 how we're going to leave it and she's absolutely  
23 right. You did raise it. So either the briefs come  
24 in together on the date that Mr. Bastida is going to  
25 specify or you're going to lose your opportunity to

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1 take a position so I would encourage you to avail  
2 yourself of the opportunity if it's important to you.

3 MR. ELLIOTT: Well, I'll do whatever you  
4 tell me. But I'm just asking you how you want to  
5 proceed.

6 CHAIRPERSON MITTEN: Well, it's up to you.  
7 I can't command you to write a brief. I would just  
8 suggest that you write a brief if you want to take, if  
9 you want to have your position known on the subject.

10 MR. ELLIOTT: Now, when is it you want  
11 that, Madam Chair?

12 CHAIRPERSON MITTEN: Mr. Bastida's about  
13 to tell us.

14 MR. BASTIDA: I would suggest that the  
15 brief will be filed by close of business on Thursday,  
16 March the 29th. And remember that the parties have to  
17 serve that brief not only on the Commission but on all  
18 the other parties.

19 MS. DWYER: That's correct. And all the  
20 other information requested would be at that same  
21 time. Not just the brief.

22 MR. BASTIDA: I'm sorry, yes, not only the  
23 brief.

24 CHAIRPERSON MITTEN: Yes and Mr. Herzstein  
25 had said that he wanted to file some responses to

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1 materials that we received from the applicant dated  
2 both today and yesterday and the opportunity to  
3 respond in writing is included with the additional  
4 materials so please be --

5 MR. BASTIDA: In addition, Madam Chairman,  
6 the staff requests that 12 copies would be filed with  
7 the Office of Zoning.

8 CHAIRPERSON MITTEN: Very good.

9 COMMISSIONER FRANKLIN: Madam Chair, just  
10 for the record I want to remind the Commission I will  
11 not be in the city on April 5th but I would dearly  
12 love to have the materials delivered to me so I can  
13 read them while I'm traveling.

14 CHAIRPERSON MITTEN: If they're delivered  
15 on the 30th, would that get to you before you leave?  
16 Terrific. And if you had any questions that you'd  
17 like asked on your behalf, we'd work on that.

18 COMMISSIONER FRANKLIN: Of course, I will  
19 read the record.

20 CHAIRPERSON MITTEN: Absolutely. Ladies  
21 and gentlemen, the other members of the Commission, I  
22 want to thank you for your patience and your  
23 participation in this hearing this evening. And as  
24 Mr. Bastida said, we will be expecting responses to  
25 the additional material to be submitted no later than

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1 the close of business on Thursday, March 29th in Suite  
2 210 of this building and we look forward to concluding  
3 this hearing on April 5th at 7:30. So we're starting  
4 a little bit later that evening and this hearing is  
5 adjourned.

6 (Whereupon, the hearing of the Zoning  
7 Commission was concluded at 10:30 p.m.)  
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