

3. Northwestern sought – and the Evanston City Council purported to approve by a 5-4 vote – Ordinance 107-O-23, an amendment to the City of Evanston’s zoning ordinance. The amendment allows Northwestern to commercialize its university athletic facilities district located at 1501 Central Street, Evanston, IL (“U2 district”). Northwestern’s property at 1501 Central Street is the only U2-zoned property in Evanston.

4. Among other things, the amendment would permit Northwestern to use its college football stadium as an open-air performance entertainment venue inappropriately located in the midst of a residential neighborhood that includes parks, playgrounds, places of worship, schools, a fire station, and a major hospital with a Level 1 Trauma center. The new stadium’s seating capacity of 35,000 would make it one of the largest concert venues in Illinois – with only 7,000 fewer seats than Wrigley Field. Other major Chicago-area concert venues include the United Center (seating capacity: 23,500), Allstate Arena (seating capacity: 18,000), and Credit Union One Amphitheater in Tinley Park (seating capacity: 28,000).

5. Northwestern’s proposed amendment to the ordinance governing use of its U2 district athletics facilities and surrounding grounds, and the creation of a memorandum of understanding that was contingent on the passage of the rezoning amendment, created substantial discord within the Evanston community. Residents of Evanston and residents of Wilmette, a village that borders the U2 district, submitted substantial evidence that the operation of the U2 district as a regional commercial entertainment district would have substantial adverse impacts on surrounding homeowners, families, residents, properties, and businesses, including intensive traffic congestion, lack of parking, noise pollution at levels violating state and local laws, litter, and public safety concerns, as well as adverse impacts on nearby property values. Further,

substantial evidence showed that use of the U2 district as Northwestern proposed would be disruptive to Evanston and Wilmette.

6. Members of the Council who voted in favor of the zoning amendment and memorandum of understanding ignored this evidence. They also ignored applicable laws and rules. Instead, the proceedings revealed that Mayor Biss and certain councilmembers cut a backroom deal in which they agreed to disregard applicable laws and evidence in exchange for monetary contributions from Northwestern.

7. An actual controversy exists between Plaintiffs and Defendant over the purported passage of Ordinance 107-O-23 in an arbitrary and capricious manner and in derogation of Plaintiffs' due process rights.

8. Plaintiffs now turn to this Court for relief, seeking declaratory judgment pursuant to section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701), as well as injunctive and other relief available to them under the Constitution and laws of this State.

9. As set forth in Count I of this Complaint, the approval of Northwestern's requested zoning changes was arbitrary, capricious and a deprivation of Plaintiffs' substantive and procedural due process rights.

10. As set forth in Counts II, III and IV, Ordinance 107-O-23 is invalid because it failed to garner at least six favorable votes, as required by both the City of Evanston's ordinances and rules and Illinois law.

THE PARTIES

11. Plaintiffs Judith and David Berg, Susan Davis Friedman, Margaret and Richard Forst, Allison Farnum, and Andy Crossen each own property in Evanston within 500 feet of the boundary of the U2 district. Each owner signed a protest objecting to Northwestern's proposed

amendment to the zoning ordinance that governs use of the U2 district. Plaintiff Deidre Robinson also resides in Evanston within 500 feet of the boundary of the U2 district.

12. Plaintiffs Alla Rusz, Elizabeth Deady, Tracy Pintchman, William French, and Colleen K Caughlin each own property in Wilmette within 500 feet of the boundary of the U2 district. Each owner signed a protest objecting to Northwestern's proposed amendment to the zoning ordinance that governs use of the U2 district.

13. The property owned by Plaintiffs Alla Rusz and Elizabeth Deady has frontage directly opposite the U2 district.

14. Plaintiff Most Livable City Association ("MLCA") is an Illinois non-profit organization. Founded by Evanston residents, it is a grass-roots vehicle that organized opposition to Northwestern's proposed zoning changes, seeking to prevent commercialization of the U2 university athletics district.

15. Individual Plaintiffs and MLCA were harmed by the arbitrary and capricious approval of Northwestern's requested zoning changes and the deprivation of their substantive and procedural due process rights.

16. Defendant City of Evanston ("City" or "Evanston") is a municipal corporation and home rule unit of government organized and existing under the constitution and laws of the State of Illinois. Evanston was incorporated in 1857.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this matter which challenges the validity of Ordinance 107-O-23, amending Section 6-15-7-2 of the Evanston City Code, "Permitted Uses" in the U2 University Athletic Facilities District.

18. This Court has personal jurisdiction over the City, and venue is proper in this judicial district pursuant to 735 ILCS 5/2-101, because the City, a public body, is located in Cook County, Illinois.

FACTS

19. Northwestern University is a not-for-profit educational institution created and operating pursuant to its charter issued by the Illinois General Assembly on January 28, 1851. The charter requires that Northwestern's trustees use the property "solely for purposes of education." An 1855 amendment to the charter provides that Northwestern's property would be "forever free from taxation." According to its current mission statement, "Northwestern is committed to excellent teaching, innovative research and the personal and intellectual growth of its students in a diverse academic community."

20. Northwestern owns all of the property in the U2 university athletic facilities district that is the subject of this Complaint. The neighborhoods immediately surrounding the U2 district are primarily residential in nature, with over 500 homes within 1000 feet of the district.

21. Northwestern has an endowment exceeding \$14 billion and ended its 2022 fiscal year with an annual budget surplus of \$138.7 million after operating expenses totaling \$2.7 billion.

22. In August 2022, the Big 10 concluded a \$7 billion media rights contract with Fox, NBC, and CBS that will provide each of its 16 schools – including Northwestern – \$80 million to \$100 million annually through the academic year 2029-2030.

23. For over 50 years, Northwestern has tried to commercialize the U2 district. With support from neighboring Wilmette, which shares a border with Evanston immediately across the street from the U2 district, the City consistently rejected Northwestern's requests on the grounds that commercial use of the district is inconsistent with and would harm the surrounding residential neighborhood.

24. For example, in 1977 the City Council unanimously rejected Northwestern's application for a variation to host a professional tennis tournament, finding that denial would not harm Northwestern's economic interests and that approval would harm the surrounding residential neighborhood:

FINDINGS AND DECISION OF THE CITY COUNCIL

Application of Variation Standards, Section XII.D.4.

a. Based on the application and testimony presented, we are unable to find that there is a particular hardship in the way of carrying out the strict letter of the provisions of the Ordinance, namely:

(1) The applicant failed to present evidence that the property would either be greatly reduced in value, could not yield a reasonable return, or that the owner would be deprived of all reasonable use of the property if it is permitted to be used only for the conditions allowed by the regulations applicable to the U2 University District.

(a) We are unable to find that the property owner would suffer a particular hardship as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out. The applicant's evidence, in fact, established only that the proposed variations would allow the athletic facilities to be used more often than the existing regulations. Every property in the City is capable of being put to a more intense use than that for which it is zoned, so this argument falls far short of establishing a particular hardship.

(b) The application did not establish that the purpose of the variation was based on anything except the desire to make more money out of the property. The clear thrust of the applicant's request was that they be allowed to put on additional events so as to obtain additional revenue for the athletic budget of the University. While this may be a noble motive for the applicant, it is expressly prohibited as constituting ground for obtaining a variation.

* * *

(d) We find that the alleged difficulty or hardship has been created by the applicant. When the property was developed the underlying regulations controlling its use were known and recognized by the University. Any resulting difficulty or hardship must therefore be attributed to their decisions in developing and improving the property, not in any

unforeseen peculiarities in the way the Zoning Ordinance applies to the property.

* * *

- b. We find that the proposed variations would not be in harmony with the general purpose and intent of the Ordinance and:
- (1) Would alter the essential character of the locality by increasing the intensity of the use so as to detract from the essential character of the surrounding residential neighborhood.
 - (2) Would be injurious to and depreciate the value of other property and improvement in the neighborhood in which it is located due to increased traffic congestion, pedestrian traffic, noise, and litter, all of which would be an unavoidable consequence of the proposed intensifications of use of the property.
 - (3) Would have no adverse effect upon the supply of light and air to adjacent properties, but would increase the danger of fire and the public safety by making it more difficult for emergency vehicles to carry out their functions over congested residential streets.

(Appeal of Northwestern University for a Variation from Use Regulations at 1501 Central Street, before the Zoning Board of Appeals, April 20, 1971 (13-71-1A), decided by the Evanston City Council, September 19, 1977.)

25. On September 28, 2022, Northwestern announced plans to “rebuild Ryan Field” with a new college football stadium. Northwestern stated that whether the venue would host concerts was “under consideration.”

26. Two weeks later, on October 12, 2022, Northwestern declared that the new venue would host concerts and sell alcohol.

27. On November 3, 2022, Northwestern announced its intent to demolish the existing stadium and complete its new performance entertainment venue by the fall of 2026. Mobilization and demolition would begin in the fall of 2023 – shortly after Northwestern’s last home football game on November 18, 2023.

28. On January 27, 2023, Northwestern submitted a zoning amendment application for its proposed performance entertainment venue. Pursuant to Northwestern’s updated zoning amendment application submitted August 18, 2023, the site would include a new open-air stadium with a seating capacity of 35,000, outdoor events (including musical performances) for 60 days annually, and an unlimited number of events for up to 10,000 attendees “within an enclosed building.”

29. Daniel Biss (“Biss”) is the mayor of the City of Evanston.

30. There are nine duly elected aldermen (now commonly known as “councilmembers”). These nine councilmembers and Biss make up the Evanston City Council (“City Council” or “Council”). Due to a conflict of interest, one councilmember recused himself from all City Council votes on Northwestern’s requested zoning changes for the U2 district.

COUNT I: The City Acted Arbitrarily and Capriciously in Approving Ordinance 107-O-23 and Violated Plaintiffs’ Substantive and Procedural Due Process Rights

31. Plaintiffs adopt and incorporate by reference the allegations of paragraphs 1 through 30.

32. Evanston systematically aided Northwestern throughout the zoning process, seeking a predetermined outcome: the approval of Northwestern’s proposed zoning amendment. That outcome ignored substantial evidence of harmful impacts on neighboring homeowners, families, residents, properties, and businesses, and was contrary to the City’s own zoning standards. Evanston’s improper conduct violated Plaintiffs’ due process rights and culminated in Evanston’s arbitrary and capricious zoning change.

Aiding Northwestern: Joining Northwestern to Quash Dissent over Northwestern’s Plan

33. In 2004, a federal consent decree resolving litigation between Northwestern and the City established a “town-gown” committee of residents and Northwestern representatives (“NU-

City Committee”). One purpose of the NU-City Committee was to discuss Northwestern’s planned use of its Evanston property, including “transition” property zoned T1. One such T1 parcel is the west parking lot used for Ryan Field and other U2 district events.

34. After Northwestern’s September 2022 announcement that it planned to demolish the existing football stadium and replace it with a performance entertainment venue, neighborhood resistance to Northwestern’s plan became more organized, more vocal and the subject of increasing media attention.

35. On April 12, 2023, the NU-City Committee met, but Northwestern’s representatives refused to answer residents’ and committee members’ questions relating to Northwestern’s Ryan Field proposal.

36. On April 18, 2023, councilmember Kelly, chair of the NU-City Committee, learned from Northwestern’s student newspaper, *The Daily Northwestern*, that a meeting between the City and Northwestern was scheduled for the following day – April 19. The purpose of that meeting was to discuss Northwestern’s refusal to answer questions about the Ryan Field project at the April 12 NU-City Committee session.

37. On April 18, 2023, at 3:48 p.m., Kelly informed the City’s corporation counsel, Nicholas Cummings, that the scope of permissible topics for the NU-City Committee should be discussed with the entire committee, which was scheduled to meet again in June. Kelly instructed Cummings to cancel “any tentative meetings to discuss this tomorrow or any time outside and separate from the committee.”

38. On April 18, 2023, at 3:50 p.m. – two minutes after receiving Kelly’s email instructing him to cancel the previously planned meeting between Northwestern and the City –

Cummings sent an email to Northwestern's Associate Vice President and Deputy General Counsel Priya Harjani confirming his previously planned meeting with Harjani on April 19.

39. On April 19, 2023, at 5:00 a.m., Cummings sent an email to Biss (with a copy to City Manager Luke Stowe) stating that he was "proceeding with meeting with NU's lawyer but excluding anyone else..." Cummings informed Biss that Kelly's insistence on the inclusion of herself and NU-City Committee member David Schoenfeld (a community representative) in discussions about the committee's consideration of the Ryan Field project would likely lead the issue to be "brought before the district court."

40. On April 19, 2023, Cummings and Deputy City Attorney Alexandra Ruggie met with Harjani. Later that afternoon, Cummings sent Harjani a draft of the City's motion to modify the 2004 consent decree and asked whom at Northwestern the City should serve upon its filing.

41. On April 27, 2023, Harjani emailed Cummings that she had "informed my clients that the City will be filing this motion." She said that upon filing, Cummings could serve her with the document.

42. Unbeknownst to Kelly and other City representatives on the NU-City Committee, on May 1, 2023, the City filed its motion asking a federal court to *modify* the 2004 decree to *restrict* residents from objecting to the Ryan Field stadium proposal at NU-City Committee meetings. Cummings sent a copy of the filing to Stowe, Ruggie, and City Policy Manager Alison Leipsiger.

43. On information and belief, Alison Leipsiger is one of Biss' closest advisers, working at Biss' direction in the performance of her duties.

44. On May 25, 2023, Leipsiger informed Shayla Butler, Northwestern's manager of campus and community engagement, that Northwestern need not send its representatives to the

NU-City Committee meeting scheduled for June 14, 2023, because the City “took it back to the courts.”

45. On June 14, 2023, Northwestern officials failed to appear for the previously scheduled NU-City Committee meeting.

46. On June 29, 2023, Kelly and the City’s representatives on the NU-City Committee were still unaware of the City’s motion when Northwestern and the City filed their joint memorandum supporting it. The court set a hearing on the matter for July 25, 2023, at 10:30 a.m.

47. Kelly first learned about the joint NU/City motion on the evening of July 19, 2023, after an Evanston resident notified her that, pursuant to the resident’s demand under the Freedom of Information Act, the City had provided copies of the motion, joint memorandum in support, and related materials.

48. David Schoenfeld filed an emergency motion to intervene in the consent decree proceedings. His supporting brief argued that the NU/City joint motion should be denied. Prior to his filing, the joint motion had been unopposed.

49. On July 24, 2023, the media broke the story of the City’s previously unreported joint motion with Northwestern.

50. On July 25, 2023 at 9:30 a.m. – an hour before the scheduled court hearing on the NU/City joint motion – the City announced Cummings’ resignation as corporation counsel.

51. At the hearing on July 25, 2023, the court denied the NU/City joint motion, saying, “I have crystal clear contractual language, and you all are asking me to read in this limitation. No one put this in there, no one limited the discussion of the committee...”

52. Shortly after the court ruled, councilmember Kelly asked City Manager Luke Stowe, “Who directed Nick Cummings to file the motion in federal court to modify the 2004 Consent Decree?”

53. Stowe responded, “[I]n an attempt to address the impasse, the Law Department recommended filing the motion and I was aware of their intent to file the motion.”

54. In a subsequent email exchange on July 31, 2023, an Evanston resident asked Biss, “Who gave Corporation Counsel Nicholas Cummings instructions to file a motion in court to block the NU Committee and Evanston residents from open discussions regarding Northwestern and Ryan Stadium land? What was the legal basis of this motion?”

55. In his August 4, 2023, response, Biss did not answer either question, instead claiming, “The City was just seeking clarification from the courts since it had become otherwise impossible to resolve disputes about what should go on these committee agendas. The court ruled in favor of an expansive interpretation which should end these disputes in favor of an inclusive discussion going forward.”

56. Biss’ response was disingenuous. The City had not sought “clarification” of the consent decree. It had *joined* with NU to *silence* residents seeking to discuss their objections to the proposed Ryan Field project in court-ordered NU-City Committee meetings that had occurred for the prior 19 years.

57. Cummings’ contemporaneous emails demonstrate that only days before the City filed its motion to modify, Biss knew that Cummings was meeting with Northwestern’s lawyers. Biss also knew that: (a) Northwestern was concerned about residents who objected to the Ryan Field project and voiced those objections in NU-City Committee meetings; (b) those objections were attracting media attention; and (c) the City’s effort to silence them was likely headed to court.

58. Biss, City staff, and Northwestern joined forces to prevent residents who objected to the Ryan Field project from participating in NU-City Committee meetings.

Aiding Northwestern: Secret Negotiations

59. In late 2022, shortly after announcing plans to create a new performance entertainment venue, Northwestern said that it wanted 15 major concerts at the stadium. Encountering resistance from residents, Northwestern reduced its demand, but claimed that 12 concerts were required to make the project financially viable. Then in January 2023, Northwestern reduced its demand again, to 10 concerts.

60. Northwestern also sought 60 days of events – including musical performances – outside the stadium for up to 7,500 individuals, as well as an unlimited number of events for up to 10,000 attendees “within an enclosed building.” The only fully enclosed building at the site – Welsh-Ryan Arena – has a maximum seating capacity of 7,500. Northwestern proposed eliminating the existing requirement of Evanston Mun. Code § 6-15-7-2 that the 10,000-person events be “conducted in association with” a Northwestern activity.

61. In response to residents’ Freedom of Information Act requests, the City provided the following calendar entries showing phone calls and meetings about Ryan Field (“RF”) involving Biss (“DB”), councilmember Jonathan Nieuwsma (“JN”), and key Northwestern representatives involved in the Ryan Field project – including Northwestern President Michael Schill (“MS”), Community Liaison Dave Davis (“DD”), and Chief Operating Officer Luke Figora (“LF”):

- a. 1/23/2023: “DB and DD check in” (zoom)
- b. 2/10/2023: “MS will call DB cell – President Schill/Mayor Biss/1:1 phone call”
- c. 3/14/2023: “COE/NU lunch – taco diablo”

- d. 3/16/2023: “Nieuwsma/Davis lunch – Firehouse Grill”
- e. 3/20/2023: “Mayor meeting with DD and LF – Lorraine H. Morton Civic Center”
- f. 3/29/2023: “Davis/Nieuwsma - Firehouse Grill”
- g. 4/14/2023: “Mayor meeting with DD and LF – Lorraine H. Morton Civic Center”
- h. 5/1/2023: “RF meeting with JN, LF and DD – Council Library – Lorraine H. Morton Civic Center”
- i. 5/18/2023: “RF meeting with DB, LF and DD – Evanston Mayor’s Office”
- j. 6/5/2023: “Meeting with DB, JN, LF and DD to discuss RF project – Evanston Mayor’s Office”
- k. 7/5/2023: “12:30 pm President Schill/Mayor Biss/1:1 – 633 Clark Street [Schill’s office address]”
- l. 7/10/2023: “Schill/Biss/Nieuwsma - Michael Schill’s office”
- m. 7/18/2023: “Davis/Nieuwsma – Fountain Square”
- n. 7/19/2023: “12:30 pm President Schill/Mayor Biss/1:1 Lunch – 633 Clark Street [Schill’s office address]”

There were over a dozen meetings between Biss or Nieuwsma, and various Northwestern leaders.

62. On August 17, 2023, two weeks after Northwestern and the City lost their joint motion to silence residents voicing objections to Northwestern’s stadium proposal in NU-City Committee meetings, President Schill sent an open letter to the “Evanston community.” In that letter, he reduced Northwestern’s concert demand again. Rather than 10 concerts, Schill now asserted that six were necessary to “ensuring financial viability for the project” and “to realistically operate the venue.” He also stated that Northwestern was no longer seeking an unlimited number of events for up to 10,000 attendees, but Northwestern’s zoning amendment submissions never reflected the withdrawal of that request.

63. Schill's letter also offered the following financial benefits to the City "tied to the Ryan Field redevelopment":

- a. The Patrick G. Ryan family – which had contributed \$450 million toward the new Ryan Field stadium and other programs – would contribute \$10 million to create an "Evanston workforce upskilling program."
- b. Northwestern would guarantee \$2 million in tax and fee revenue tied to events at the new stadium.
- c. Northwestern would apply a ticket surcharge to concerts at the new stadium, thereby generating \$500,000 yearly to support Evanston Public Schools.
- d. Northwestern would provide \$250,000 annually for a "signature Evanston/Northwestern event" that the "City leadership" would direct.

64. On the same day that President Schill issued his letter to the Evanston community, he sent a letter to the Northwestern community. With more than 250 Northwestern faculty members objecting publicly to the project, which would potentially divert hundreds of millions of Northwestern dollars beyond what its billionaire donor Patrick G. Ryan had committed, Schill wrote, "The rapidly decaying condition of Ryan Field will require a major investment by the University in any case... It is important to note that Northwestern would have to make a similar financial investment to restore the current, crumbling Ryan Field to an adequate level to play seven football games per year as it will to create the new Ryan Field."

65. Based on President Schill's admission, concerts in the venue were never necessary to assure the financial viability of the stadium.

66. The following day – August 18, 2023 – this new filing appeared on the City's website for Northwestern's proposed Ryan Field: "Letter of Intent – Memorandum of Understanding (Ryan Field)." Marked "Draft," the document described a framework for Northwestern and the City to "share" a "commitment...regarding the operation of Ryan Field for events ticketed for at least ten thousand individuals following its redevelopment."

67. The draft assumed that the City would approve Northwestern’s request to transform the U2 district into a performance entertainment venue that included concerts at the site of its existing stadium. The following sentence near the end of the draft suggested that – out of public view – the City and Northwestern were negotiating the price that Northwestern would pay for its requested zoning changes:

“[NOTE: *As discussed with City staff*, final public benefits associated with the redevelopment of Ryan Field, including additional financial contributions by the University, remain under negotiation between the City Council and University and will be finalized prior to submission of the application for City Council review.]” (Emphasis supplied.)

68. On August 20, 2023, an Evanston resident asked City officials to reveal who had negotiated with Northwestern about the proposed project. Councilmember Kelly responded that she was “not clear on the status of the document or how it came to be” and forwarded the resident’s question to Biss, City Manager Luke Stowe, and councilmember Eleanor Revelle. Kelly asked them what, if anything, they knew about any such negotiations between the City and NU.

69. Stowe responded that the letter was just “boilerplate” that “could become an agreed upon MOU [Memorandum of Understanding] if directed and approved by the city council.”

70. The resident then asked Stowe if the City staff had worked with Northwestern on the “boilerplate” and if the City’s staff planned to join Northwestern in presenting the document to the Evanston Land Use Commission (“LUC”) at its upcoming September 6 hearing on Northwestern’s application for a zoning change. Rather than answer, on August 23, 2023, Stowe responded that he had passed the resident’s inquiry along to Evanston Planning and Zoning Manager Elizabeth Williams.

71. Meanwhile, on August 21, 2023, Biss responded to the resident, saying “[W]hat’s been done is not only appropriate but positive and important.” Then he dissembled about the value

of having a repository of information online and that “[u]nderstanding what an MOU could look like if the project were to go forward is important for decision-makers at the LUC (and, potentially, eventually the Council).”

72. The resident answered Biss: “I don’t want to remove any information. I want to remove the idea that the City is a participant in Northwestern’s proposal.”

73. Quoting directly from the draft letter of intent, which referred to “discussions with City staff” and “negotiations” between Northwestern and the City, the resident’s response to Biss concluded:

It is not in keeping with your promises to the community to negotiate with Northwestern in secret from us, before the LUC hearing (that Northwestern has cancelled so many times), which we have been promised is an unbiased, uncompromised hearing in which we can participate, and BEFORE the City Council votes. You will be sitting as the tie breaking vote on that Council. You’re supposed to be listening, with an open mind, not negotiating.

74. Councilmember Bobby Burns later admitted that he had “discussed with Northwestern” that he “was looking for a serious \$3 million commitment to affordable housing out of this.”

75. Councilmember Devon Reid later admitted that he had been involved in negotiations with Northwestern over monetary benefits in a memorandum of understanding between Northwestern and the City.

76. Early during the week of August 21, 2023, councilmember Nieuwsma met with councilmember Kelly and Joey Hailpern, an Evanston school district 65 board member. Hailpern asked Nieuwsma about Schill’s August 17, 2023, financial offer to the City. Hailpern expressed concern that, despite Schill’s rhetorical characterization as aiding the Evanston public schools, on a net basis Schill’s offer didn’t really provide significant additional funds for schools. Nieuwsma responded, “If I had it to do over again, I would have asked for more.”

77. On August 23, 2023: Biss emailed a councilmember stating: “Individual Council members have been in touch with Northwestern and may have articulated what they can and cannot vote for.”

78. Councilmember Burns later admitted that, in effect, Biss helped Northwestern identify which councilmembers were willing to consider Northwestern’s proposed zoning changes and what it would cost Northwestern to persuade those members to support the changes:

“[Mayor Biss] reached out to the Council[members] to understand what information we needed from Northwestern University (NU) and *what minimum requirements we had to even consider their new Stadium/concert proposal. He then shared that information with Northwestern leadership.*” (Emphasis supplied.)

**Aiding Northwestern: Scuttling a Meaningful Peer Review
of Northwestern’s Noise Pollution Analysis**

79. Sound is measured in decibels, which increase on a logarithmic scale. For every 10-decibel (dB) increase, loudness to the human ear doubles. Northwestern knew or should have known that noise pollution from rock concerts in the U2 district posed a serious concern for nearby residents in an area that includes parks, playgrounds, schools, places of worship, a fire station, and a major hospital with a Level 1 trauma center.

80. On April 20, 2023, Northwestern submitted the first summary by its consultant Wrightson, Johnson, Haddon, and Williams (“WJHW”) of projected noise pollution from concerts at the proposed open-air stadium (“WJHW Summary”).

81. Initially, the City itself expressed concerns about the credibility of the WJHW Summary. The City’s economic development manager, Paul Zalmezak (“Zalmezak”), contacted Arup Acoustics – one of the world’s leading sound consultants for music performance venues – and solicited a proposal from Arup to conduct a peer review of the WJHW Summary.

82. On April 28, 2023, Zalmezak wrote to Arup: “Northwestern is claiming that the sound/noise that will travel into the surrounding residential areas will be ‘no louder’ than a football

game. This claim seems questionable to some residents and City officials. Given Arup’s extensive experience in designing music entertainment venues, particularly venues which are also surrounded by residential areas, the City is looking to Arup for objective, outside advice on the likely impact of sound/noise from the proposed concerts.”

83. Zalmezak continued: “Subjects of importance to the City of Evanston and its residents are:

- “How to draft an effective noise ordinance or MOU that would address sound/noise from the proposed concerts and from the construction/dismantling of the concert staging.
- “The possible conflicts between artistic expression, audience enjoyment, and being a good neighbor to the residents who live nearby.
- “The transmission of sound/noise beyond the nearby area due to wind, cold air layers, refraction, and other weather anomalies.
- “How sound/noise ordinances can be enforced, particularly with touring acts who set up, perform, and then leave town.
- “Sound/noise issues arising from vehicles required for load-in and load-out.
- “Sound/noise issues from construction and dismantling of the staging, lighting, video screens, sound systems, and other equipment required by touring acts.
- “A lack of peer review for reports submitted by Northwestern or its agents regarding sound/noise nuisance before, during, and after concert events.
- “Lack of computer-generated simulations to illustrate to City officials and others how the nearby residents could be affected by sound/noise emanating from the proposed entertainment complex.
- “Other areas of concern based on Arup’s extensive experience consulting/designing music performance venues situated in residential areas. What has the City of Evanston overlooked that Arup Acoustics knows are key to decision making?”

84. On May 18, 2023, Arup submitted its proposal to the City, along with budget estimate of \$80,000 – one-hundredth of one percent of Northwestern’s \$800 million project.

85. On June 7, 2023, Arup sent a follow-up message and received this response: “We are still working through a decision making process.”

86. Concerned about the delay, councilmember Revelle asked Michael S. Pettersen, an Evanston resident who is a 47-year veteran of the professional sound industry, to work with Arup to develop a revised proposal costing less than \$25,000.

87. Meanwhile on June 27, 2023, Northwestern submitted WJHW’s First Revised Summary (“WJHW First Revised Summary”). Except for the addition at the City’s request of a computer-generated noise simulation map for low-frequency sounds (measured in C-weighted decibels – “dBC” – described in greater detail below), the analysis and conclusions of the WJHW First Revised Summary did not differ from the initial WJHW Summary.

88. Pettersen agreed to work with Arup on a revised proposal to review WJHW’s work. On July 7, Arup submitted a revised proposal for a phased work plan. Arup’s proposed Phase 1 budget was less than \$25,000 and included a peer review of WJHW’s Summary and WJHW First Revised Summary.

89. On July 9 – around the same time that Biss was meeting privately with President Schill and only one month before the hearing before the LUC, then scheduled for August 9, Zalmezak rejected Arup’s proposal. He said that the city had retained SAFEbuilt and its subsidiary, Interwest. City staff failed to independently verify Interwest’s assurance that it had “sound expertise” on its team.

90. On information and belief, neither SAFEbuilt nor Interwest had expertise or experience in the highly specialized field of acoustical design of entertainment venues, sound system design, prediction of sound levels in surrounding areas, and other technical audio fields relating to the concert sound/noise issues that the Ryan Field proposal presented.

91. Nevertheless, the City's website for the Ryan Field project added this description of its third-party review of Northwestern's consultant's reports:

Staff is using a 3rd party company, Interwest Consulting Group, whose parent company is SAFEbuilt, to do a **Peer Review** of the traffic study and **environmental assessment review (sound study)** submitted by Northwestern as part of their application documents. Interwest provides engineering and planning services and staff we are working with has experience in those fields and specifically with California Environmental Quality Act (CEQA) and The National Environmental Policy Act (NEPA) which are stricter guidelines that speak to mitigating environmental impacts (to air/water quality, noise, or nature) that a project may create. (Emphasis supplied)

The City has since deleted that entry.

92. Village of Wilmette officials, including Village Manager Michael Braiman, repeatedly requested that the City engage a qualified independent third-party to conduct a peer review of the WJHW First Revised Summary. Throughout this period, City officials repeatedly assured Braiman that they had done so. Braiman, in turn, reported the City's assurances to the Wilmette Village Board and Wilmette residents at public meetings on July 11 and July 25. However, these assurances were false.

93. When neither the City nor the Village retained a qualified independent third-party expert to perform a peer review of WJHW's acoustic summary, Village residents themselves personally hired Arup for that task.

94. An attachment to the City's July 31, 2023 Staff Review Letter to Northwestern included the only publicly available results of Interwest's supposed "peer review" of the WJHW First Revised Summary. It was one-and-one-half pages long, consisting of: 1) a one-half page list of items from the WJHW First Revised Summary, along with one-line "requests" or "recommendations," 2) a one-half-page list of "Other Recommendations," and 3) a one-half-page list of "Recommended Mitigation Measures."

95. On August 8, 2023, the Village of Wilmette Board of Trustees unanimously adopted a resolution objecting to Northwestern’s commercialization of the U2 district, stating in part:

“SECTION 1: The Village of Wilmette strenuously objects to Northwestern University’s commercialization of the athletic campus and use of the property for anything other than its originally designed and narrowly intended purpose of University programs and school athletics.

“SECTION 2: The Village of Wilmette strenuously objects to the granting of the proposed Text Amendment to permit any outdoor concerts at Ryan Field and any other outdoor events which include amplified sound.”

96. In its August 15, 2023, submission to the LUC, the Village included its resolution and Arup’s peer review of the WJHW First Revised Summary.

97. In their August 28, 2023 submission to the LUC, Wilmette residents included Arup’s peer reviews of both the WJHW First Revised Summary and the WJHW Second Revised Summary dated August 2, 2023 (“WJHW Second Revised Summary”).

Aiding Northwestern: Ignoring the Clear and Convincing Evidence

98. Pursuant to the Illinois Municipal Code 65 ILCS 5/11-13-14, Evanston Municipal Code § 6-3-4-6 and the Rules and Procedures of the Evanston Land Use Commission, Northwestern’s application for a zoning change to permit commercial entertainment events at the U2 district could not proceed to the City Council for a final decision until the LUC provided notice and held public hearings on Northwestern’s proposal.

99. Over three days – September 6, September 27, and October 11, 2023 – the LUC conducted approximately 15 hours of public hearings on Northwestern’s application. During those hearings, the LUC accepted more than 1,500 pages of written submissions and heard live testimony from dozens of witnesses.

100. Throughout the LUC hearings, Northwestern stated its intent to begin demolition of the existing stadium shortly after its final home football game on November 18, 2023. Northwestern claimed that it needed a projected \$2 million in profits from six open-air concerts to make the stadium financially viable. Northwestern also issued this threat: If the City did not approve the zoning required for those concerts, it would not proceed with the project at all.

101. Northwestern had strategic reason to make this threat. As described below, its proposed zoning amendment could not, and did not, satisfy the factors the City should consider in deciding whether to approve a party's proposed amendment to Evanston's zoning ordinance.

102. The evidence demonstrated that, under *LaSalle National Bank of Chicago v. County of Cook*, 12 Ill. 2d 40, 47 (1957), and *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370, 378 (1960), Northwestern's proposed zoning change was arbitrary, irrational, and unreasonable, in that it would: (1) transform the existing Northwestern U2 athletic district surrounded by a residential area into a commercial district; (2) diminish surrounding property values; (3) negatively impact the health and safety of the public; (4) provide little relative gain compared to the hardship for neighboring property owners; (5) be unsuitable for the zoning change requested; (6) not address any vacancy on the land; (7) fail to satisfy any existing community need for Northwestern's proposed performance entertainment venue; and (8) violate the community's existing planned land use development.

103. The evidence before the LUC included testimony from Wilmette Village Board President Senta Plunkett, who presented the resolution that the Wilmette Board of Trustees had adopted unanimously on August 8, 2023, along with her transmittal letter to the City.

In pertinent part, President Plunkett's transmittal letter stated:

"This Resolution was adopted unanimously by the Wilmette Board of Trustees on August 8, 2023 and was the culmination of more than nine months of study by

Village officials and staff. This Resolution is the official position of the Village and comes with the support from and upon strenuous objections of Wilmette's most directly impacted residents... [T]he Village remains steadfast in our objection to the commercialization of the athletic campus, particularly the requested outdoor concerts at Ryan Field.

“Since the 1970s, the Village of Wilmette (along with City of Evanston) has consistently objected to the commercialization of the NU athletic campus. The City of Evanston and the Village of Wilmette have enjoyed a partnership that served to protect residents of both neighboring communities from such commercialization. This partnership, including twice joining together in lawsuits as partners against NU, has served our communities and residents well. The athletic campus was designed for a narrowly intended purpose to serve Northwestern University programs and school athletics, a use in which Wilmette has and continues to support. However, increasingly, Northwestern has attempted to expand the allotted zoning not for scholastic purposes, but for profits; a use in which not only Wilmette, but Evanston has historically opposed.

“The proposed 28,500-person outdoor concert venue would be among the four largest venues in the State of Illinois. If you have recently attended a concert of this size, you will quickly recognize the astounding impacts that the noise and traffic, both vehicular and pedestrian, has upon the immediate area. Such impacts are compounded when envisioned in the middle of a residential neighborhood. Ultimately, the noise, traffic, parking and public safety concerns associated with for-profit concerts of this magnitude at Ryan Field are too numerous to list in this transmittal and cannot in anyway be sufficiently remedied or mitigated. For these reasons, the Village of Wilmette opposes allowing any number of concerts at Ryan Field.”

In pertinent part, the Village of Wilmette resolution stated:

- Northwestern's proposal to permit outdoor concerts at Ryan Field “is a gross infringement upon the quiet enjoyment of Wilmette residents' property and will forever change the character of the residential neighborhood in which the Northwestern athletic campus resides;...
- “Northwestern University's proposal intentionally and offensively directs noise into Wilmette, specifically residential properties in Wilmette.... well above the noise ordinances of both Evanston and Wilmette...
- “[T]he proposed...concert venue has less than 1,500 parking spaces for onsite parking, thereby creating significant traffic and parking issues in both Evanston and Wilmette;...
- “Evanston and Wilmette residents will be further negatively impacted by the thousands of concert attendees who will be required to traverse residential

neighborhoods and the hundreds of shuttle buses necessary to accommodate the lack of on-site parking;...

- “The sale of alcohol at Ryan Field has not been properly studied to determine secondary effects upon traffic and pedestrian safety as well as the impacts upon residential neighborhoods adjacent to the property;...”

Clear and Convincing Evidence Demonstrated that Northwestern Had No Viable Plan to Deal with Concert Traffic, Transportation, and Parking

104. The City’s existing ordinance requires a minimum of 4,364 parking spaces within 1,000 feet of the stadium. But Northwestern’s proposal included only 1,408 spaces. Northwestern’s proposed zoning change required the City to allow a deviation from the zoning minimum parking space requirement.

105. For concerts at the new stadium, Northwestern assumed that 52 percent of 28,500 concertgoers would drive to the venue with an average of 2.5 passengers in each car.

106. The streets surrounding the U2 district are non-arterial, with one lane in each direction and traffic lights every few blocks. Northwestern’s own traffic study, which was criticized as deficient, vague, and unrealistic by several experts, demonstrated that multiple intersections near the stadium would operate at unacceptably slow levels before and after each concert. Moreover, even that poor level of functionality depended on the assistance of Evanston police officers at 12 intersections, assistance that would be highly unlikely given the current level of understaffing at the Evanston police department.

107. To provide parking for the concertgoers, Northwestern calculated that nearly 6,000 parking spaces would be needed. Northwestern’s proposals to achieve that number were moving targets that failed to even meet Northwestern’s own calculations. And, if Northwestern’s assumption about the percentage of concertgoers who would drive was too low by even a small amount, its parking plan would collapse completely. Even accepting Northwestern’s assumption

that each car would carry an average of 2.5 passengers, a one percent increase in the percentage of concertgoers who drive would increase the demand for parking spaces by more than 110 spaces.

108. Northwestern initially proposed using, among other facilities, three downtown Evanston garages (Maple Street, Sherman Plaza, and Church Street), which have a combined total capacity of 3,583 spaces. Recognizing that not all of those spaces would be available for concert parking, Northwestern assumed a vacancy rate of 80 percent, yielding a net garage parking availability for concerts totaling 2,866 spaces for all three garages.

109. During the review process for Northwestern's application, the City asked Northwestern to support its assumption that those downtown parking garages would have an 80 percent vacancy rate. In response, Northwestern conceded that the actual availability based on existing use patterns at likely concert times was far lower than what it had told the City. The result: Northwestern now had a shortfall of almost 750 spaces.

110. To deal with its parking shortfall, Northwestern proposed adding four *different* downtown garages to make up for the loss of previously projected parking spaces. This revised plan would consume essentially all of the space available in downtown parking garages, leaving none available for patrons of other downtown Evanston businesses and shops.

111. Northwestern proposed using 75 to 115 school bus-sized shuttle buses to transport more than 9,000 concertgoers from and to downtown garages and other remote parking locations. Parked end to end, 75 shuttle buses would form a line more than a half-mile long, and their operation would only add to the traffic congestion near the stadium.

112. Northwestern also unrealistically assumed that 30 percent of concertgoers (8,550 people) would use the CTA Purple Line for transportation to and from events.

113. Northwestern failed to consider physical limitations on the maximum number of passenger cars (six) that certain Evanston CTA platforms can accommodate. Taking those limits into account and assuming all passenger cars are fully loaded with 550-600 passengers per six-car train, it would take at least four hours to transport all concertgoers from the stadium after an evening concert ends. The time required for that exodus would extend past the last Purple Line run for the night.

114. Throughout the LUC hearings in September and October, Northwestern asserted that it would work with the CTA and Metra to accommodate anticipated additional demand from concerts. But apart from an introductory letter that Northwestern received from the CTA dated September 27, 2023 – the same day as the second day of LUC hearings – Northwestern offered no evidence of any viable plan to create the additional mass transit capacity required to meet its *own* projections of concert ridership demand. If Northwestern’s assumption that 30 percent of concertgoers would take the CTA were too high, its parking and transportation plan would collapse even more quickly.

**Clear and Convincing Evidence Demonstrated that Northwestern Had
No Viable Plan to Prevent Concerts from Generating Unlawful Noise Pollution**

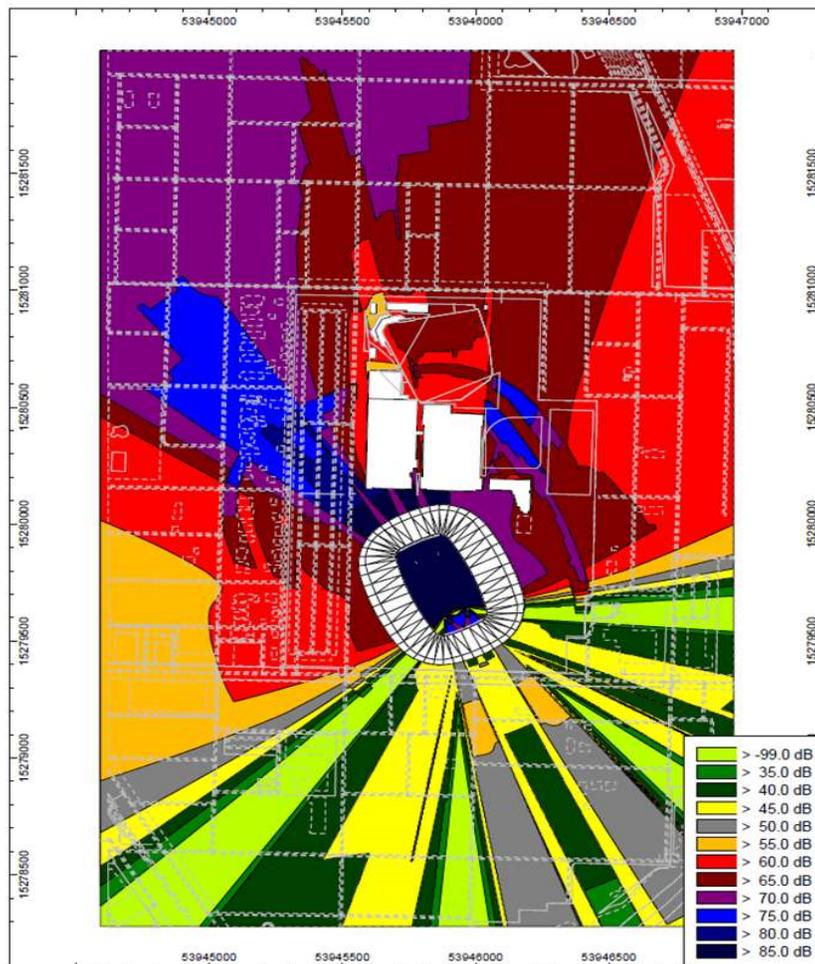
115. In seeking to defend Northwestern’s plan to generate concert noise pollution, its consultant, Wrightson, Johnson, Haddon, and Williams (WJHW”) submitted three sequential versions of its “Environmental Assessment Review and Summary,” dated April 20, 2023, June 27, 2023, and August 2, 2023, respectively.

116. According to the WJHW August 2 Summary, common sounds equivalent to 70 dBA (decibels) and 80 dbA include a nearby vacuum cleaner and garbage disposal, respectively.

117. The WJHW chart also shows that a “hard rock band (with electronic amplification)” generates 120 dBA. But WJHW’s analysis assumed that bands performing in the proposed stadium would generate significantly less noise – 101 dBA.

118. From the initial WJHW Summary, its simulation map of noise pollution from concerts inside Northwestern’s proposed stadium showed sound levels exceeding 70 dBA-SPL (“A”-weighted decibels, sound pressure level) – the sound of a vacuum cleaner running next to the listener for hours – reaching hundreds of homes and public areas in the neighborhood. WJHW projected that such noise pollution would extend further than 500 feet beyond Northwestern’s property line.

Figure 3: Concert Environmental Assessment Results



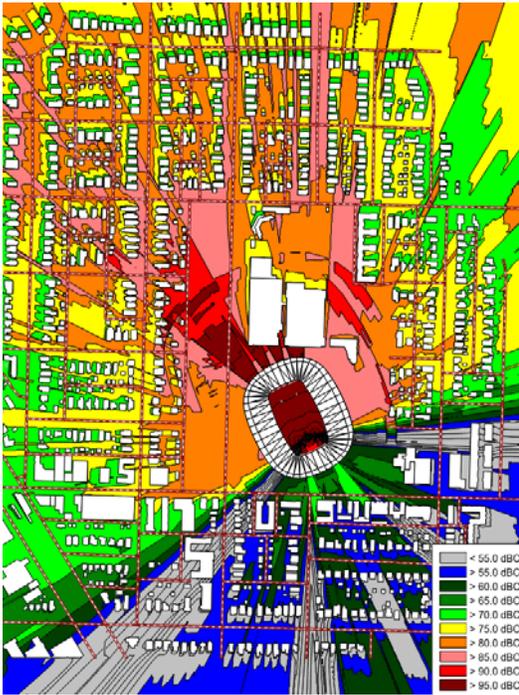
119. Even accepting WJHW's assumption that concerts in the proposed stadium would generate a maximum of 101 dBA rather than the 120 dBA that WJHW's own chart depicted, noise pollution in excess of 55 dBA would reach public places and hundreds of homes in the neighborhood. WJHW's Second Revised Summary showed similar noise pollution levels.

120. None of WJHW's Summaries considered noise pollution resulting from musical performances held *outside* the proposed new stadium, as would be allowed under the proposed zoning amendment. The undisputed record before the LUC demonstrated that such outdoor concerts could generate even more noise pollution than those from *inside* the stadium.

121. Despite repeated requests from the City and the Village, Northwestern refused to expand the scope of WJHW's map to show the distance and severity of noise pollution at other nearby locations such as Evanston Hospital.

122. WJHW's August 2 Summary also included a map showing low-frequency noise pollution – measured in “C”-weighted decibels (dBC-SPL). Such low-frequency sounds, which are generated by a band's bass, kickdrum and synthesizer, are not captured through “A”-weighted decibel (dBA) measurements. The map showed even higher dbC levels spreading throughout the surrounding residential neighborhoods:

Figure 5: Concert Environmental Assessment Results (dBC)



123. WJHW’s August 2 Summary also described potential sound mitigation options that Northwestern was *considering* to reduce noise pollution. But even Northwestern’s computer-simulated maps (which took into account such items that Northwestern had not yet incorporated into its design for the stadium) showed noise pollution far exceeding 55 dBA at Northwestern’s U2 district property line, reaching public places and hundreds of homes in the neighborhood.

Northwestern’s Own Projections Show that Concerts Would Generate Noise that Violates Illinois, Evanston, and Wilmette Laws

124. The “Environment” section in article XI of the Illinois Constitution provides:

“SECTION 1. PUBLIC POLICY - LEGISLATIVE RESPONSIBILITY

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General

Assembly shall provide by law for the implementation and enforcement of this public policy.

SECTION 2. RIGHTS OF INDIVIDUALS

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.” (Ill. Const. 1970, art. XI, §§ 1-2.)

125. Under Illinois law, “It is a public nuisance *** (8) To erect, continue, or use a building or other place for the exercise of a trade, employment, or manufacture that, by occasioning noxious exhalations, offensive smells, or otherwise, is offensive or dangerous to the health of individuals or of the public.” (720 ILCS 5/47-5.)

126. Illinois law specifies a maximum noise limit of 55 dBA-SPL in residential areas prior to 10:00 p.m., and 45 dBA-SPL thereafter. (35 Ill. Admin. Code §§ 901 and 901.02.)

127. The City’s noise pollution ordinance prohibits any “unnecessary or unusual noise which annoys a reasonable person of ordinary sensibilities, disturbs, injures, or endangers the comfort, health, peace or safety of others within the limits of the city.” (Evanston Mun. Code § 9-5-20.)

128. The City’s noise pollution ordinance includes additional specific prohibitions relating to “loudspeakers, amplifiers, musical instruments,” and it provides special protections from noise pollution for “schools, churches, and hospitals.” (Evanston Mun. Code § 9-5-20.)

129. The Village’s noise pollution ordinance specifies a maximum limit of 45 dBA-SPL after 7:00 p.m. (Wilmette *Code of Ordinances*, Appendix A, Art. 30-13, §30-13.7.)

130. Northwestern’s analysis from its own consultant demonstrated that concerts in the new stadium would violate those statutes and ordinances. Amendments proposed later by councilmember Neiuwsma would not cure those violations but instead would enshrine them in the City code.

Clear and Convincing Evidence Undermined Northwestern's Economic Impact Study

131. In an effort to demonstrate that musical performances at its proposed performance entertainment venue would have a positive financial impact on the City, Northwestern presented what it called an "Economic Impact Study."

132. Northwestern's study considered only the potential positive impact of such concerts and failed to take into account any negative impacts.

133. At the LUC hearing, economist Timothy Guimond testified that "Northwestern's study has a lot of errors in it." He wished that Northwestern's athletic department had asked "their elite Economics Department... to take a look at their study."

134. Guimond's accompanying written submission concluded, "Northwestern has not produced a legitimate economic impact study since they only address positive impacts. Moreover, their projections of positive impacts are grossly overstated... Northwestern's 'economic impact study' ignores both 'economics' and 'impacts.'" Guimond reiterated that testimony in his appearance before a special City Council meeting on October 30, 2023.

135. An independent economist whom neither side had retained, Jeff Cohen, testified before the LUC that relying on Northwestern's economic impact study or a similar study that the City commissioned "would be inappropriate and irresponsible" because they were "wildly inaccurate." Cohen testified that neither Northwestern's study nor the City's study considered any negative impacts from the proposed concerts and that the assumptions in both studies were either undisclosed, incorrect, or dubious. He also testified that the best case, according to the City's consultant, was that the financial benefits to the City were at most about \$200,000 annually. Cohen provided supporting written testimony.

136. Expert evidence also demonstrated that the noise, traffic, crowds, and litter generated by Northwestern’s proposed entertainment venue would negatively impact neighboring property values.

The LUC Found that Northwestern Failed to Satisfy the Standards for a Zoning Amendment

137. Immediately after the LUC concluded its public hearings on Northwestern’s proposals on October 11, 2023, it began deliberations publicly over whether Northwestern had satisfied all of the requirements for a zoning amendment. Members of the public were not allowed to participate or comment during those deliberations.

138. Evanston Mun. Code § 6-3-4-5(A) specifies that the City’s standards for zoning amendments require a determination of “whether the proposed amendment is consistent with the goals, objectives, and policies of the Comprehensive General Plan, as adopted and amended from time to time by the City Council.” The proposed amendment did not meet this standard.

139. The City’s Comprehensive General Plan seeks to protect “surrounding neighborhoods” from “institutional” development. Chapter 6 provides: “As a goal, Evanston should support the growth and evolution of institutions *so long as the growth does not have an adverse impact upon the residentially-zoned adjacent neighborhoods.*” (Emphasis added.) In furtherance of that stated goal, the Plan states, “enforcing the standards of the City’s Zoning Ordinance is essential if proposed changes would disrupt the residential character and environment of surrounding neighborhoods.”

140. Evanston Mun. Code § 6-15-7-1, the “purpose” provision for the U2 district, recognizes the need to preserve the surrounding residential neighborhood: “The U2 university athletic facilities district is intended to permit the utilization of university facilities within the district in a manner that is compatible with the surrounding development, which is predominately residential.”

141. Evanston Mun. Code § 6-15-7-2 relates specifically to the U2 district and, prior to its amendment by Ordinance 107-O-23, allowed a limited number of “community and cultural events of a nonprofit nature intended primarily for residents of the City and athletic events” but included strict regulations on such events so as “to ensure that temporary uses shall not impose an undue adverse effect on neighboring streets or property.”

142. As the LUC deliberated, six of the nine commissioners announced that they would vote against Northwestern’s proposed zoning amendment that sought to commercialize the U2 district. Commenting on Northwestern’s assertion that a university with a \$14 billion endowment “needed” \$2 million a year from six concerts to maintain the new stadium, commissioners found the claim “unconvincing,” “unfortunate,” “not credible,” and even “laughable.”

143. With Northwestern’s proposed zoning amendment on the verge of defeat, Chairman Matt Rodgers (“Rodgers”) spoke last. To the surprise of many fellow commissioners, he proposed an amendment (“Rodgers Amendment”) to Northwestern’s proposal. If approved, the Rodgers Amendment would have rescued Northwestern from certain defeat on its proposed zoning amendment.

144. Specifically, a majority of the commissioners had already announced their intent to vote against commercializing the U2 site. If the City Council followed that LUC recommendation, Northwestern would not be able to hold concerts in the new stadium or the 60 days of events (including musical performance) for up to 7,500 attendees outside the stadium.

145. But the Rodgers Amendment proposed *striking* all language in Northwestern’s proposed zoning amendment that imposed *any* restriction on Northwestern’s right to commercialize the U2 district. In its place, he proposed an amorphous plan whereby Northwestern

and the City would negotiate a separate “Memorandum of Understanding” encompassing all such issues.

146. Rodgers’ proposal echoed Northwestern’s draft “Letter of Intent – Memorandum of Understanding” that the City had posted on its website on August 18, 2023. That draft had suggested that in exchange for financial payments from Northwestern, the City would amend its zoning ordinance so that Northwestern could commercialize the U2 district, including the ability to hold concerts in the new stadium. Residents and councilmember Kelly had inquired about that document’s reference to such secret negotiations between Northwestern and the City. Only days after that earlier controversy, the City withdrew that draft.

147. The Rodgers Amendment sought to render moot the prior three days of hearings during which opponents presented expert evidence and arguments against Northwestern’s proposed zoning amendment.

148. If adopted, the Rodgers Amendment would have allowed Northwestern to negotiate an outcome that commercialized the U2 district, even though six of the nine LUC members had just declared their opposition to Northwestern’s proposed zoning amendment seeking to do exactly that. The LUC majority members had declared that they could *not* vote to recommend that the City Council approve Northwestern’s proposed zoning amendment.

149. Members of the public had neither notice nor an opportunity to be heard on the Rodgers Amendment.

150. The submission of the Rodgers Amendment violated Illinois law, the City’s Municipal Code, the LUC’s own Rules and Procedures for the consideration of zoning changes, and Plaintiffs’ due process rights to notice and an opportunity to be heard.

151. After the only two commissioners who had previously announced their support for Northwestern's zoning amendment moved and seconded the motion to approve the Rodgers Amendment, it failed by a vote of six to three.

152. The LUC, by a seven-to-two vote, recommended that the City Council reject Northwestern's plan. Six of the nine commissioners found that Northwestern had met *none* of the four required standards for a zoning amendment. The LUC's majority findings included the following, as summarized by LUC Commissioner Jeanne Lindwall immediately prior to the vote:

- Standard #1: "It's hard to see what public-facing large-capacity concerts have to do with the educational mission of the university... NU's undergrad enrollment is only about 7,500. It's hard to see what concerts for 28,500 attendees would have to do with NU's mission as an educational institution... The balancing that is really the test in the [City's] Comprehensive Plan is not met."
- Standard #2: "The proposed text amendment contemplates transforming a university athletic facilities district to include high-capacity entertainment uses... Given the well-documented lack of nearby parking and the need to transport large numbers of people to the contemplated concerts, this standard ['compatibility with the overall character of existing development in the immediate vicinity'] cannot be met... The way people come and go at football games is very different from the way people come and go to concerts... It really represents a change in the impact to the surrounding neighborhood."
- Standard #3: "The [property value impact] studies provided by the applicant [NU] do not appear to be particularly relevant to the proposed amendment. They focus on sports facilities and not concert venues. In contrast, the neighbors provided a study specifically related to the impact of concert venues on the surrounding neighborhood... The neighbors have submitted strong evidence to support their conclusion that property value will be adversely impacted...."
- Standard #4: "This [the adequacy of public facilities and services] standard is not met with respect to the public transportation infrastructure that would be required to get people to and from the contemplated concerts and other possible events. The Central Street sidewalks and parkway are narrow, as is the Central Street CTA platform. Even with additional CTA service, there does not appear to be sufficient capacity to meet NU's projection of anticipated transit ridership... The standard is not met."

*Aiding Northwestern: Biss Eliminates a Step in the Process
for Consideration of Northwestern’s Proposed Zoning Amendment*

153. After the LUC recommended that the City Council reject Northwestern’s zoning amendment, the next step in the process of considering Northwestern’s proposed zoning amendment typically should have been a public hearing before the Evanston City Council’s Planning and Development Committee. But on October 12, 2023 – less than 18 hours after the LUC vote against Northwestern – Biss announced a special meeting of the City Council to bypass that committee. Biss’ announcement read:

“The two ordinances related to Northwestern’s Ryan Field proposal will appear for introduction as special orders of business, serving as the *sole substantive items on the agenda* of a special City Council meeting scheduled for Mon., Oct. 30, at 5:30 p.m.” (Emphasis supplied)

154. Biss’ announcement also specified that each resident would receive “at least one and one half minutes” to speak on the proposed zoning change at the October 30 hearing.

155. Bypassing the Planning and Development Committee accelerated Northwestern’s requested zoning amendment. It put the amendment on the fastest possible track for City Council final action on November 13, 2023 – five days before Northwestern’s final home football game of the season, thereby satisfying Northwestern’s stated desire to begin demolition of the existing stadium immediately thereafter.

156. Two weeks later, on Friday, October 27, 2023, the City posted publicly the “packet” of materials for the Council and the public to consider prior to the special meeting on Monday, October 30. Although Biss had said on October 12 that the Council would devote that special meeting “solely” to Northwestern’s zoning request, the materials in the packet revealed publicly for the first time that Biss had added two other items to the meeting agenda. Both related to the imposition of new taxes that had not been the subject of prior Council hearings.

157. In particular, Biss proposed increasing the liquor tax for “amusement events with over 5,000 people in attendance” from six percent to 12 percent. Biss’ stated purpose for the increases was “to help offset the costs to the City associated with these large events, including but not limited to traffic congestion, parking, and the need for an elevated police and security presence.”

158. Biss also proposed increasing the tax on “amusement events for events with more than 5,001 patrons” from seven percent to nine percent. At the October 30, 2023 City Council meeting, Biss admitted that the tax was “hypothetical” and would apply only if the City approved Northwestern’s plan for concerts at the new stadium.

159. Two weeks earlier, on Friday, October 13, 2023 – the day after Biss announced the special meeting of the City Council – the City’s Liquor Board delayed action on a repeal of the liquor tax. Biss, who is also the City’s liquor commissioner, said that he favored a go-slow approach to any tax changes.

160. By proposing liquor and amusement-event tax increases on October 27, Biss was acting directly contrary to: 1) his statement two weeks earlier that Northwestern’s proposed zoning amendments would be the “sole” items on the special meeting agenda; and 2) the “go-slow” approach to tax changes that he had supported – again only two weeks earlier – as the city’s liquor commissioner. Instead, Biss offered surprise 11th-hour tax increase proposals and added them to the special City Council meeting agenda.

161. On information and belief, Biss’ addition of his last-minute proposed tax increases to the special City Council meeting agenda was an effort to: 1) cement approval for the Northwestern zoning amendment because approving the increases aimed at Northwestern would

generate more tax revenue to the City from concerts and alcohol sales at the new stadium; and 2) soften popular outrage at Biss' ultimate vote in favor of Northwestern's zoning amendment.

Aiding Northwestern: Helping Northwestern Across the Finish Line

162. In addition to Biss' proposed liquor and amusement tax increases aimed at generating revenue from concerts at Northwestern's proposed stadium, the City Council's packet of materials for the October 30 special meeting also included a "Memorandum to the City Council" prepared by City planning and development staff ("Staff Memo"). The Staff Memo perpetuated the City's effort to help Northwestern gain approval of its proposed zoning amendment.

163. The Staff Memo included a draft "Memorandum of Understanding" ("MOU") that Northwestern had prepared. But rather than adhere to the LUC's rejection of Northwestern's requested zoning changes and the MOU approach that Rodgers had advocated, the Staff Memo assumed that the MOU would become the central element in City approval of Northwestern's zoning changes. The Staff Memo noted that the MOU included only the terms sought by Northwestern University.

164. Likewise, although the LUC had found that it could *not* recommend approval of Northwestern's requested zoning amendment, the Staff Memo nevertheless suggested that "the City Council consider additional provisions within the proposed zoning amendment to mitigate potential land use impacts associated with sound, parking, traffic, circulation, and public safety."

165. Among the plainly inadequate "mitigation" suggestions in the Staff Memo that clear and convincing evidence at the LUC hearings had already rebutted were the following: 1) a maximum sound limit that itself exceeded Illinois state law and governing noise pollution ordinances in Evanston and Wilmette; 2) after-the-fact noise and curfew financial penalties that would not protect residents from dangerous and unlawful concert noise levels; 3) traffic and parking monitors that would not solve the underlying infrastructure and other problems highlighted

in the LUC hearings; and 4) reimbursements for three police officers or private security personnel and documenting additional 911 calls for concerts as compared to football games.

166. No evidence at the LUC supported any of the “mitigation” suggestions in the Staff Memo. To the contrary, evidence demonstrated that those suggestions would *not* mitigate the problems that had led six of the nine LUC commissioners to conclude that Northwestern had failed to satisfy any of the standards required for a zoning amendment.

167. The Staff Memo also included the City’s proposed revised draft of the ordinance relating to Northwestern’s requested amendment. The City’s revised draft included supposed factual recitals based on minutes of the LUC hearings. But the packet itself included none of the evidence before the LUC. The minutes of the LUC’s October 11, 2023 meeting also failed to include: (a) any discussion of how individual commissioners voted on whether Northwestern had met the standards for a zoning amendment; (b) reasons that commissioners gave for their votes; (c) the factual basis that led six of the nine commissioners to conclude that Northwestern had met *none* of the required standards for a zoning amendment; or (d) the other aspects of a proper record upon which the Council could rely in accepting or rejecting the LUC’s recommendation.

168. Insofar as the Staff Memo relied on the LUC minutes, it misstated the LUC’s majority findings and slanted *all four findings* in a way that minimized the decisive vote against Northwestern. The Staff Memo suggested incorrectly that the fatal flaws in Northwestern’s proposed zoning amendment could be cured to satisfy the City’s four standards for a zoning amendment – a position that six of the nine LUC commissioners had expressly rejected.

169. For example, with respect to the LUC’s finding as to standard #1, the Staff Memo stated:

“Whether the proposed amendment is consistent with the goals, objectives and policies of the Comprehensive General Plan as adopted and amended from time to

time by the City Council: The Comprehensive General Plan and the Zoning Ordinance support the growth and evolution of the University while recognizing its place in a residential environment meeting the standard. Large-capacity public-facing concerts have little to do with the educational mission of the University and do not meet the intent and goals of the Comprehensive Plan. *There was some disagreement, with the explanation that construction of a new stadium for only 7 football games is not the highest and best use of the property.* (Emphasis supplied.)

What the Staff Memo characterized as “some disagreement” in the italicized sentence above was, in fact, nothing more than Rodgers’ dissenting statement as he presented his “Rodgers Amendment” that *failed*. In fact, Commissioner George Halik responded to Rodgers’ comment, noting that “highest and best use” was not a proper zoning consideration under the Comprehensive General Plan.

170. With respect to the LUC’s finding as to standard #2, the Staff Memo stated:

“Whether the proposed amendment is compatible with the overall character of existing development in the immediate vicinity of the subject property: Given the lack of nearby parking and the challenges of transporting large numbers of people for concerts, the standard cannot be met. *However, with appropriate conditions and an MOU, the amendment can be adapted to better suit the immediate neighborhood and then the standard would be met.* (Emphasis supplied.)

The italicized sentence above was merely Rodgers’ dissenting statement as he presented his “Rodgers Amendment” that *failed*. The majority voting against the “Rodgers Amendment” did *not* state that the standard could be met “with appropriate conditions and a MOU.”

171. With respect to the LUC’s finding as to standard #3, the Staff Memo stated:

“Whether the proposed amendment will have an adverse effect on the value of adjacent properties: Studies provided by the applicant mainly focus on sports facilities and not concert venues. Neighbors presented evidence to support their assertion that property values will be adversely affected by a comparable concert venue. That leads to the standard not being met. *Some disagreement was expressed that the evidence and testimony submitted shows there would be impacts from the proposed uses on adjacent properties, however, an MOU which would regulate how these uses are managed as part of the Planned Development Ordinance could ensure necessary mitigations to address any concerns and thus meet the standard.* (Emphasis supplied.)

The italicized sentence above was merely Rodgers' dissenting statement as he presented his "Rodgers Amendment" that *failed*. The majority voting against the "Rodgers Amendment" did *not* state that the standard could be met with an MOU to "ensure necessary mitigations to address any concerns...." To the contrary, the only expert testimony presented regarding this standard concluded that there would be a measurable adverse impact on nearby property values.

172. With respect to the LUC's finding as to standard #4, the Staff Memo stated:

"The adequacy of public facilities and services: There was discussion that the standard is not met with regards to existing public transportation infrastructure and the projected reduction in the level of service at certain intersections for the contemplated concerts and events. However, there was testimony provided that indicated that the infrastructure was sufficient for football games and implementing a Traffic Management Plan and negotiating improvements with the university can lead to the adequacy of public facilities and services being met for the contemplated concerts and events. (Emphasis supplied.)"

The italicized sentence above was merely Rodgers' dissenting statement as he presented the "Rodgers Amendment" that *failed*. The majority voting against the "Rodgers Amendment" did *not* state that the standard could be met.

173. The Staff Memo contemplated that the Council would override the LUC's findings and grant Northwestern's request to convert its U2 athletic facilities district into a performance entertainment venue. Among other things, the Staff Memo included a proposed draft ordinance that would allow "public-facing concerts" with attendance up "to the capacity of the facility," permit 60 days of outdoor events (including musical performances), and remove existing restrictions on Northwestern's ability to hold an unlimited number of 10,000-person events "within an enclosed building."

174. Because the packet omitted all LUC hearing evidence and because the Staff Memo slanted the LUC's factual findings in a way that minimized the LUC's unqualified rejection of Northwestern's proposal, the Council was being asked to – and did in fact – make an uninformed

and misinformed decision on Northwestern's zoning amendment. Provided with insufficient evidence and incorrect descriptions of the LUC proceedings, the Council had no basis for deciding whether Northwestern's proposal met the governing zoning standards.

175. At 2:00 p.m. on October 30, 2023 – less than four hours before the special City Council meeting on Northwestern's proposed zoning amendment – Northwestern submitted its proposed MOU to the City. That MOU was not part of the packet that had been provided to Council or the public prior to the special meeting.

176. At 9:07 p.m. on October 30, 2023 – almost four hours into the Council hearing, councilmember Nieuwsma emailed to the other councilmembers a proposed amendment ("Nieuwsma Amendment") to Northwestern's zoning amendment. Among other things, the Nieuwsma Amendment would permit average noise levels from concerts of 80 dbA at unspecified locations in the surrounding neighborhoods. With this amendment, Ordinance 107-O-23 would purport to legitimize a level of noise pollution that would violate State and local noise laws.

177. The Nieuwsma Amendment echoed Rodgers' previously unsuccessful motion to amend Northwestern's proposal and commercialize the U2 district. It included the City staff's inadequate recommendations set forth in the Staff Memo and proposed pushing important and unresolved issues into a yet-to-be-negotiated MOU. Nieuwsma admitted that City staff had prepared the Nieuwsma Amendment.

178. Members of the public had neither notice nor an opportunity to be heard on Nieuwsma's newly-revived version of the Rodgers Amendment.

179. The Nieuwsma Amendment sought to bypass the process for the City's consideration of an applicant's proposed zoning amendment. It violated Illinois law, the City's Municipal Code, the City's rules and procedures for the consideration of zoning amendment

applications, and Plaintiffs' due process rights to notice and an opportunity to be heard on key problems with Northwestern's proposal, including noise pollution, traffic congestion, inadequate parking, fanciful transportation assumptions and concerns about public health and safety.

180. In its earlier legal memorandum dated June 28, 2021, the City itself acknowledged the very due process requirements that it was now violating with Northwestern's 12th-hour draft MOU and the last-minute Nieuwsma Amendment that proposed drastic changes to Northwestern's submission.

181. On October 30, 2023, the Council failed to consider the zoning amendment standards of Evanston Mun. Code § 6-3-4-5: only councilmember Revelle even mentioned the standards or her findings thereunder.

182. Another councilmember explained that his reason for voting in favor of Northwestern's zoning amendment was the amount of money that Northwestern was promising to provide the City. Councilmembers did not discuss the evidence that concerts would have an adverse impact on property values, would increase traffic congestion, and that every concert at Northwestern's proposed stadium would violate the noise ordinances of Evanston and Wilmette, as well as Illinois state law.

183. The councilmembers approved the Nieuwsma Amendment and then voted to formally "introduce" Ordinance 107-O-23 so that it could be voted on at the next regularly-scheduled City Council meeting on November 13, 2023. On that date, the Council tabled the matter for an additional week, to a special Council meeting to be held on November 20, 2023.

184. On November 20, 2023, the Council purported to adopt Ordinance 107-O-23, amending the zoning code in conjunction with a memorandum of understanding negotiated by Mayor Biss and a few councilmembers. The Council also approved a planned development

ordinance that allowed Northwestern to rebuild its stadium. The councilmembers voted four-to-four (with one abstention) on the zoning amendment, and Mayor Biss cast the tie-breaking vote in favor of the amendment.

185. Ordinance 107-O-23 is unconstitutional as applied to Plaintiffs' property and rights under the *LaSalle-Sinclair* factors as set forth in *LaSalle Nat'l Bank of Chicago v. County of Cook*, 12 Ill. 2d 40 (1957) and *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370 (1960), in that, among other considerations:

(A) The existing uses and zoning of nearby property is predominantly residential, and the use of all of the property in the area except for the U2 district is consistent with that residential zoning. Ordinance 107-O-23 is not consistent with the existing residential zoning surrounding the affected parcel.

(B) The value of Plaintiffs' property will be diminished as a result of Ordinance 107-O-23. The annual doubling of very large events at the U2 district (the only such events now are 6 or 7 collegiate football games, with an average attendance near 20,000), plus the addition of up to 60 new outdoor events of up to 7,500, will greatly increase the average traffic, noise, and trash levels in the surrounding area. Plaintiffs presented to the LUC a property appraisal expert's testimony and report documenting a measurable decline in property values in a similar residential area situated immediately next to an open-air concert venue, as well as studies showing that both increased traffic congestion and higher noise levels have measurable negative impacts on housing prices. Northwestern's own property appraisal expert offered no contrary evidence, and even agreed that increases in traffic correlate with decreased property values. Northwestern's intent to sell alcohol to concertgoers heightens the likelihood of trespassing and property damage.

(C) The diminution and destruction of Plaintiffs' property values and right to quiet enjoyment of their property does not promote the health, safety, or general welfare of the public at large. The addition of commercial entertainment uses for the benefit of a private institution does not contribute to the general welfare of the public at large. Northwestern has admitted that its primary motivation for seeking the zoning change to allow large concerts at the stadium is to make it easier to sell the luxury suites it proposes to include in the new stadium. This is the same private financial gain that a previous Council found insufficient to justify the harms to the surrounding residential neighborhood.

(D) The relative gain to the public from the commercial entertainment uses permitted by Ordinance 107-O-23 is slight, as the public has many other options for viewing commercial concerts. By comparison, the hardship on Plaintiffs and other nearby residents from the crowds, traffic congestion, lack of parking, noise pollution, litter, and alcohol-related negative encounters is substantial.

(E) The U2 district is not suitable for a very large commercial entertainment venue because of its immediate proximity to residences and its lack of easy access from arterial roads. There are over 500 homes within 1000 feet, and the closest homes are directly adjacent to the U2 district. By contrast, other “Big Ten” football stadiums are located near highways or other major arteries and have few if any private homes nearby. Northwestern’s concert operations consultant admitted that the staging and equipment for a stadium-sized concert requires at least a dozen large semi-trailers to transport. However, because of the U2 district’s location between two rail lines and the lack of sufficiently tall viaducts, there is only one potentially viable route for such semi-trailers to reach the U2 district, which requires routing the semi-trailers through downtown Evanston streets. A land use expert testified at the LUC hearing that, other than the happenstance that Northwestern’s existing football stadium is located there, there were no factors favoring the creation of a commercial entertainment site at the proposed location.

(F) The U2 district has not been vacant. Its university athletic facilities are in regular use.

(G) There is no community need for a stadium-sized venue for commercial concerts. Community residents have a plethora of alternate venues for such concerts to choose among in the Chicago area.

(H) Evanston has historically taken great care in planning its land use development, and this care is especially evident in the Central Street corridor where the U2 district is located. That area is covered not only by the city’s Comprehensive General Plan but by the Central Street Corridor Plan, which advocates the support of the small businesses located along the corridor. Ordinance 107-O-23 is not only inconsistent with the goals of these planning documents, it is inconsistent with the city’s recently adopted Evanston Thrives! plan, which recommends “place-making” initiatives that build on the individual character of each of Evanston’s small business districts, not the creation of a large commercial entertainment venue on Northwestern property.

186. By ignoring evidence of the adverse impacts of the proposed rezoning on nearby residents and trading a zoning change for monetary benefits promised by Northwestern that were unrelated to its proposed demolition and rebuild of its stadium, the City engaged in improper contract zoning.

187. The zoning amendment was improper in another manner as well. Under the City’s zoning ordinance, the new use of the U2 district granted to Northwestern under Ordinance 107-O-23 was defined as a “performance entertainment venue”: a commercial land use involving “the

provision of performance entertainment in a nontheatrical setting.” (Evanston Mun. Code § 6-18-3.)

188. Under the City’s zoning ordinance, performance entertainment venues are highly regulated. Prior to November 20, 2023, they were not permitted uses (that is, allowed as of right) in *any* Evanston zoning districts. Instead, they had been allowed only as special uses and only in certain districts. Anyone who wished to engage in such a use was required to undergo a rigorous special use permitting process.

189. The City improperly granted Northwestern the right to operate a performance entertainment venue on its property in the U2 district—a use out of harmony with the surrounding residential land uses and the comprehensive general plan, and a right denied to all other property owners in Evanston.

190. Even apart from the City’s improper conduct of contract zoning, the City acted arbitrarily and capriciously by refusing to consider in good faith the voluminous evidence of the harm that would be done to residents and by adhering to a predetermined outcome granting a zoning change to operate a performance entertainment venue.

191. The City’s arbitrary and capricious actions rendered futile Plaintiffs’ expenditures of time and money in marshalling evidence that persuaded the LUC, by an overwhelming vote, to reject Northwestern’s proposed zoning amendment.

192. The City’s arbitrary and capricious actions deprived Plaintiffs of their due process rights to object to commercialization of the U2 district and protect their rights, including the right to quiet enjoyment of their property. The result was an arbitrary and capricious zoning change in favor of Northwestern.

193. The City willfully, wantonly, knowingly and intentionally disregarded Plaintiffs' rights.

WHEREFORE, Plaintiffs seek:

- A. A declaratory judgment pursuant to 735 ILCS 5/2-701 that the City's approval of ordinance 107-O-23 adopted on November 20, 2023, violated Plaintiffs' substantive and procedural due process rights, including but not limited to their rights under article I, section 2 and under article XI, section 2 of the Illinois Constitution of 1970, was arbitrary and capricious, is illegal, is null and void and is of no force and effect;
- B. An order enjoining the City from enforcing the ordinance;
- C. An order awarding Plaintiffs damages;
- D. An order awarding Plaintiffs the fees and costs incurred to enforce their rights, including prosecution of this lawsuit; and
- E. An order awarding such other and additional relief to Plaintiffs as the court deems just and proper.

COUNT II: The Ordinance is Invalid Under § 6-3-4-6(F) of the Evanston Zoning Code

194. Plaintiffs adopt and incorporate by reference the allegations of paragraphs 1 through 193.

195. City municipal code Section 1-5-1 provides that "the Council" comprises the nine elected Aldermen (commonly referred to as "councilmembers") and the Mayor – ten people:

"1-5-1. – COMPOSITION OF CITY COUNCIL; MEMBERSHIP

The city Council shall consist of the Mayor and Aldermen, and said Council shall be the sole judge of the election of its members and their eligibility, in accordance with 65 ILCS 5/3.1-40-10." (Evanston Mun. Code § 1-5-1.)

196. City zoning ordinance Section 6-3-4-6(F) requires the vote of a "majority of the Council" (that is, six votes, since ten people make up the Council) to adopt an amendment to the zoning code:

"City Council Action: The City Council shall either adopt or reject the recommendation of the Land Use Commission or adopt some modification of the recommendation of the Land Use Commission. Except as provided in Section 6-3-4-7, no amendment to the

Zoning Ordinance shall be adopted except by a vote of the majority of the Council.” (Evanston Mun. Code § 6-3-4-6(F).)

197. On November 20, 2023, the councilmembers were evenly divided on Northwestern’s proposed zoning amendment (four-to-four with one abstention). The four affirmative votes were insufficient to meet the majority requirement of Section 6-3-4-6(F).

198. Biss purported to cast a fifth, tie-breaking vote in favor of Northwestern’s proposed amendment.

199. However, five affirmative votes did not meet the majority requirement – six affirmative votes – of Section 6-3-4-6(F).

200. Nonetheless, the City maintains that five votes were sufficient to enact Ordinance 107-O-23.

201. Plaintiffs reasonably expected that the City would adhere to Evanston ordinances that govern the City Council’s vote on a proposed zoning amendment, including the six-vote minimum needed to pass a proposed amendment to a zoning ordinance.

202. Upon information and belief, the City deviated from its own rules and laws without any valid, rational basis, because it could not meet the requirement of six affirmative votes for passage of the ordinance.

203. The purported passage of Ordinance 107-O-23 without six affirmative votes as required by Section 6-3-4-6(F) was arbitrary and capricious and deprived Plaintiffs of their rights to substantive and procedural due process.

WHEREFORE, Plaintiffs seek:

- A. A declaratory judgment pursuant to 735 ILCS 5/2-701 that Ordinance 107-O-23 purportedly adopted on November 20, 2023, is invalid pursuant to Evanston Mun. Code § 6-3-4-6(F) because it failed to receive six votes, is null and void, and it is of no force and effect;
- B. An order enjoining the City from enforcing the ordinance;

- C. An order awarding Plaintiffs the fees and costs incurred to enforce their rights, including prosecution of this lawsuit; and
- D. An order awarding such other and additional relief to Plaintiffs as the court deems just and proper.

COUNT III: The Ordinance is Invalid Under § 6-3-4-7 of the Evanston Zoning Code

204. Plaintiffs Judith Berg, David Berg, Susan Davis Friedman, Margaret Forst, Richard Forst, Allison Farnum, Andy Crossen, Alla Ruzs, Elizabeth Deady, Tracy Pintchman, William French, and Colleen Caughlin adopt and incorporate by reference the allegations of paragraphs 1 through 193.

205. Although Northwestern styled its application as seeking only a text amendment modifying the uses permitted in the U2 district, the application properly required a map amendment as well, because the change in zoning affected only a single property and involved substantial changes in use that were far outside its designation as a university athletic facilities district.

206. The U2 district comprises only one property, located at 1501 Central Street, Evanston. There are no other properties zoned U2 in Evanston.

207. As such, Northwestern's application sought to change the zoning of only one piece of property for its own benefit.

208. Changing the uses permitted on a single property is usually accomplished by a change to the zoning map: *e.g.*, a property formerly zoned as residential at which the owner seeks to operate a commercial establishment must now be considered part of the appropriate commercial zone, a change reflected in the map of the residential and commercial zones.

209. The Evanston municipal code does not define the terms "map amendment" or "text amendment."

210. However, Illinois state law provides guidance about how to interpret these terms. The County Code states that “the term ‘text amendment’ means an amendment to the text of a zoning ordinance, which affects the whole county, and the term ‘map amendment’ means an amendment to the map of a zoning ordinance, which affects an individual parcel or parcels of land.” 55 ILCS 5/5-12014(a) (emphasis added). Applying the above to Evanston, a “text amendment” is an amendment that changes the zoning code in ways that affect the whole city, while a “map amendment” affects only an individual parcel of land.

211. Because the zoning change sought by Northwestern affected only a single property, it should have been classified as involving a map amendment.

212. The zoning change also required a map amendment because it worked a fundamental change in the type of uses permitted on the property.

213. Under the City’s zoning code, Northwestern’s proposed use of the U2 district would render it a “performance entertainment venue”: a commercial land use involving “the provision of performance entertainment in a nontheatrical setting.” (Evanston Mun. Code § 6-18-3.)

214. Under the City’s zoning code, performance entertainment venues are highly regulated. They have not been permitted uses (that is, allowed as of right) in *any* Evanston zoning districts. Instead, they have been allowed only as special uses and only in certain districts.

215. Northwestern proposed to change the zoning of the U2 district from its historic primary use for university athletic facilities, grafting on a new use as a commercial performance entertainment venue. Allowing Northwestern to add “performance entertainment venue” as a use permitted as of right in its athletic facilities district was a departure from the Comprehensive General Plan and the overall structure of Evanston zoning.

216. The combination that Northwestern sought was not allowed under the City's existing zoning code that regulates performance entertainment venues, allowing them only as **special uses** in a limited number of zoning districts. By adding a performance entertainment venue as a use permitted **as of right** in the U2 district, Northwestern sought to create a fundamentally new zoning classification. The creation of a new zoning classification required a corresponding change to the City's zoning map.

217. Northwestern's application sought to change a parcel used for university athletic facilities and non-profit community events by adding a year-round commercial performance entertainment venue. The change would work not only a rezoning of the U2 district, but also a significant change in the way that the City's zoning districts are understood. It therefore required a map amendment, not merely a text amendment.

218. Adding Northwestern's proposed new permitted uses to the district would result in the creation of a mixed-use district, one that combines, as of right, commercial performance entertainment events with the prior use of the property for university athletics. The City's zoning map required alteration to reflect the shift of the prior university athletic facilities district to the new, mixed-use zoning. For that reason as well, what Northwestern called a text amendment also required a map amendment.

219. Section 6-3-4-7 of the City's zoning code states:

"If prior to the close of a Land Use Commission hearing held pursuant to Subsection 6-3-4-6(E), a written protest against any proposed map amendment, signed and acknowledged by thirty percent (30%) of the owners of property whose lot lines are located within five hundred (500) feet of the boundary of the area to be amended, inclusive of public rights-of-way, is filed with the City Clerk, passage of the amendment shall require a favorable vote of three-fourths ($\frac{3}{4}$) of all the Aldermen elected to the City Council."

220. On September 1, 2023, MLCA filed with the City clerk on behalf of City and Village residents an objection to and protest of Northwestern's application for a zoning amendment

(23PLND-0010). The protest included the signatures of 165 property owners comprising approximately 55% of the 298 properties located within 500 feet of the U2 district.

221. Because Northwestern's purported text amendment also involved a map amendment, and because the protest filed with the City Clerk documented the objection and protest of more than 30% of the property owners within 500 feet of the U2 district, under Section 6-3-4-7 of the Evanston Zoning Code, the amendment required an affirmative vote of three-fourths ($\frac{3}{4}$) of the nine elected councilmembers – seven councilmembers – for approval.

222. At the special City Council meeting on October 30, 2023, interim Corporation Counsel Ruggie rejected the map amendment protest. Councilmember Kelly responded, "The state [of Illinois] is very clear on what a map amendment is... We're setting ourselves up for generational litigation... I don't know why we wouldn't recognize this as a map amendment. We're not just tweaking this a little. These are drastic changes."

223. The City's determination that Northwestern's application involved only a text amendment and not a map amendment was arbitrary and capricious, and without legal basis.

224. On November 20, 2023, the councilmembers were evenly divided on Northwestern's proposed zoning amendment (four-to-four with one abstention), and Biss cast a fifth vote in favor. The five affirmative votes were insufficient to meet the supermajority requirement of Evanston Mun. Code § 6-3-4-7.

225. Nonetheless, the City maintained that five votes were sufficient to enact Ordinance 107-O-23.

226. Upon information and belief, the City deviated from its own rules and laws without any valid, rational basis, because it could not meet the requirement of seven affirmative votes for passage of the ordinance.

227. The purported passage of Ordinance 107-O-23 without seven affirmative votes as required by Section 6-3-4-7 was arbitrary and capricious and deprived Plaintiffs Judith Berg, David Berg, Susan Davis Friedman, Margaret Forst, Richard Forst, Allison Farnum, Andy Crossen, Alla Ruzs, Elizabeth Deady, Tracy Pintchman, William French, and Colleen Caughlin of their rights to substantive and procedural due process.

WHEREFORE, Plaintiffs Judith Berg, David Berg, Susan Davis Friedman, Margaret Forst, Richard Forst, Allison Farnum, Andy Crossen, Alla Ruzs, Elizabeth Deady, Tracy Pintchman, William French, and Colleen Caughlin seek:

- A. A declaratory judgment pursuant to 735 ILCS 5/2-701 that Ordinance 107-O-23 purportedly adopted on November 20, 2023, is invalid pursuant to Evanston Mun. Code § 6-3-4-7 because it failed to receive seven votes, is null and void, and is of no force and effect;
- B. An order enjoining the City from enforcing the ordinance; and
- C. An order awarding Plaintiffs the fees and costs incurred to enforce their rights, including prosecution of this lawsuit; and
- D. An order awarding such other and additional relief to Plaintiffs as the court deems just and proper.

COUNT IV: The Ordinance is Invalid Under the Illinois Municipal Code

228. Plaintiffs Alla Ruzs and Elizabeth Deady adopt and incorporate by reference the allegations of paragraphs 1 through 193.

229. Section 11-13-14 of the Illinois Municipal Code (65 ILCS 5/11-13-14) states in relevant part:

“In case of a written protest against any proposed amendment of the regulations or districts, signed and acknowledged

[1] by the owners of 20% of the frontage proposed to be altered, or

[2] by the owners of 20% of the frontage immediately adjoining or across an alley therefrom, or

[3] by the owners of the 20% of the frontage directly opposite the frontage proposed to be altered, is filed with the clerk of the municipality, the amendment shall not be passed except by a favorable vote of two-thirds of the alderpersons or trustees of the municipality then holding office.”

65 ILCS 5/11-13-14 (formatting and numbering added for ease of reference).

230. Pursuant to Section 11-13-14, on November 6, 2023, MLCA filed on behalf of Evanston and Wilmette property owners with the City Clerk a protest objecting to Northwestern’s proposed zoning amendment. The protest was signed and acknowledged by the owners of more than 20 percent of “the frontage directly opposite the frontage proposed to be altered.”

231. On November 6, 2023, MLCA served a copy of the written protest on Northwestern and its attorney by certified mail at the addresses shown in Northwestern’s application for the proposed amendment.

232. The protest triggered the requirements of Section 11-13-14 requiring a two-thirds supermajority for approval of Northwestern’s application. Accordingly, Ordinance 107-O-23 required an affirmative vote of six of the nine aldermen (commonly known as councilmembers) for adoption.

233. On November 20, 2023, councilmembers were evenly divided on Northwestern’s proposed zoning amendment (four-to-four with one recusal), and Biss cast a fifth vote in favor. The five affirmative votes were insufficient to meet the supermajority requirement of Section 11-13-14.

234. Upon information and belief, the City failed to follow the requirements of Section 11-13-14 of the Illinois Municipal Code without any valid, rational basis, because it could not meet the requirement of six affirmative votes for passage of the ordinance.

235. The purported passage of Ordinance 107-O-23 without six affirmative votes as required by Section 11-13-14 of the Illinois Municipal Code was arbitrary and capricious and

deprived Plaintiffs Alla Ruzs and Elizabeth Deady of their rights to substantive and procedural due process.

WHEREFORE, Plaintiffs Alla Ruzs and Elizabeth Deady seek:

- A. A declaratory judgment pursuant to 735 ILCS 5/2-701 that Ordinance 107-O-23 purportedly adopted on November 20, 2023, is invalid pursuant to 65 ILCS 5/11-13-14, as it failed to receive six votes, is null and void, and is of no force and effect;
- B. An order enjoining the City from enforcing the ordinance;
- C. An order awarding Plaintiffs the fees and costs incurred to enforce their rights, including prosecution of this lawsuit; and
- D. An order awarding such other and additional relief to Plaintiffs as the court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ANY ISSUES
WHICH ARE, OR MAY BECOME TRIABLE BY JURY

November 30, 2023

Respectfully submitted,

/s/ John T. Shapiro

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