

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

SPECIAL PUBLIC HEARING

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IN THE MATTER OF: :
   
:
   
CASCO, Inc. & :
   
K Street Developers, LLC : Case No.
   
: 05-36G
   
:
   
-----:

Thursday, September 26, 2013

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

The Public Hearing of Case No. 05-36G by the District of Columbia Zoning Commission convened at 6:03 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- MARCIE COHEN, Vice Chair
- PETER MAY, Commissioner (NPS)
- ROBERT MILLER, Commissioner
- MICHAEL G. TURNBULL, FAIA,  
Commissioner (AOC)

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON  
STEVEN COCHRANE  
ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on September 26, 2013.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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Cross-Examination of Mr. Sher ..... 16

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

2 6:03 p.m.

3 CHAIRMAN HOOD: Good morning,  
4 ladies and gentlemen.

5 This is special public meeting.  
6 We're continuing a case which was reopened by the  
7 Commission: Zoning Commission Case Number  
8 0536G.

9 My name is Anthony Hood. Joining me  
10 are Vice Chair Cohen, Commissioners May, Miller,  
11 and Turnbull. Also joined by the Office of  
12 Zoning staff, Ms. Sharon Schellin. Also from  
13 the Office of Planning, Mr. Lawson, Mr. Cochrane  
14 and Mr. Jackson.

15 Again, as stated, this is for  
16 cross-examination. Zoning Commission Case  
17 Number 0536G.

18 This hearing will consist of the  
19 direct testimony of Mr. Sher, his  
20 cross-examination by Union Place Phase 1, LLC  
21 and the redirect testimony.

22 Mr. Sher's direct testimony may not

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1 exceed 10 minutes in length.

2 So I'd like for all the parties to  
3 come forward: Mr. Brown and Mr. Sher.

4 Does anyone have to take the oath?  
5 Okay.

6 Ms. Schellin, would you please  
7 administer the oath.

8 MS. SCHELLIN: Yes. Do you  
9 solemnly swear or affirm the testimony you will  
10 give this evening will be the truth, the whole  
11 truth, and nothing but the truth?

12 MR. SHER: I do.

13 MS. SCHELLIN: Thank you.

14 CHAIRMAN HOOD: Do we have any  
15 preliminary matters?

16 (No audible response.)

17 Okay. Let's go straight into  
18 cross-examination. Oh -- I'm sorry. Let's --  
19 Mr. Sher, if you want to make a presentation.

20 MR. SHER: Good evening, Mr.  
21 Chairman and members of the Commission.

22 For the record, my name is Steven E.

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1 Sher, the director of zoning and land-use  
2 services with the law firm of Holland & Knight.

3 Since it's been a while, I think,  
4 since you had this case before you I'm going to  
5 take a minute or two to set the stage again. So  
6 instead of taking only six minutes, I might take  
7 eight.

8 This is property at the southwest  
9 corner of the intersection of 3rd and L  
10 streets, Northeast, contains about 5295 square  
11 feet of land area. Has frontage on both 3rd and  
12 L streets. It's vacant now. The remainder of  
13 this square is devoted to properties or is  
14 included in properties which are part of actions  
15 that this Commission has already had before it.

16 To the west and southwest there's  
17 vacant land which is the site of a 500 unit  
18 apartment house comprising phases 2A and 2B of  
19 the PUD. And to the south, there's an apartment  
20 house already there containing 217 units which  
21 is Phase 1 of the PUD.

22 The site is zoned C-2-B. C-2-B with

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1 the IZ requirements on it allows a height of 70  
2 feet and a maximum FAR of 4.2. That's the base  
3 FAR of 3.5 plus the 20 percent bonus for IZ.

4 The zoning proposed for the site is  
5 C-3-C. That's the same zone that applies to the  
6 rest of the square. The matter of right  
7 parameters for C-3-C are 90 feet in height and  
8 6.5 FAR, under a PUD that could go to 130 feet  
9 and 8 FAR.

10 And as I've indicated, the remainder  
11 of the square is already C-3-C under the PUD and  
12 that constitutes 95 percent of the square.

13 On the bottom of page 5 and  
14 continuing on to page 6 are a listing of the  
15 various pieces of the PUD which have been before  
16 the Commission. There's actually history that  
17 goes back prior to this. But basically, it  
18 shows you what you had before you already.

19 What this building is, is an  
20 apartment house with 41 units. It'd be seven  
21 stories, 63 feet 8 inches high. And would have  
22 a floor area ratio of 6.48 on its own lot.

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1 That's 34,293 square feet of gross floor area.  
2 It has no parking and no loading provided for  
3 this building.

4 Now, when you combine that as part  
5 of the overall PUD for the square, you find that  
6 the FAR that's out there today, which is 7.84,  
7 gets reduced slightly to 7.77 because this  
8 building is a little bit smaller on its own site  
9 than the other two. The maximum building height  
10 for Phase 1 is 90 feet, for Phase 2 is 121 feet.  
11 For this Phase 3, 63 feet 8 inches. The overall  
12 ratio of parking spaces in the square, .71 spaces  
13 per unit now, .67 spaces per unit with Phase 3  
14 included.

15 With respect to the PUD evaluation  
16 standards of Section 2403 of the Regulations,  
17 the Commission is required to determine that the  
18 impact of the project shall be favorable,  
19 capable of being mitigated or acceptable. What  
20 you have here is a new apartment house, the third  
21 apartment building in the square completing the  
22 development of the square and contributing to

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1 the continued resurgence of the area.

2 The property's in reasonable  
3 proximity to both Metro rail and Metro bus. It  
4 causes no adverse traffic impacts and no on-site  
5 parking is necessary. I think you've heard all  
6 of that through testimony in the prior hearings.  
7 And I'm not going to try and explain that any  
8 further.

9 The proposed height is less than  
10 what was approved for Phases 1 and 2. And it's  
11 actually less than what is permitted as a matter  
12 of right on the property today.

13 C-2-B without IZ is 65 feet, with IZ  
14 is 70 feet. This, again, this is 63 feet 8  
15 inches.

16 The project is not inconsistent with  
17 the Comprehensive Plan. And I'm going to go  
18 into that a little bit.

19 The Commission, as you all know, is  
20 required to judge balance, and reconcile the  
21 relative value of the project amenities and  
22 public benefits, the degree of development

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1 incentives, and any potential adverse effect.

2 On pages 9 and 10, 9 at the bottom  
3 going over onto 10, I've listed what the, what  
4 I believe the amenities and benefits of the  
5 projects are.

6 I will digress for half a second and  
7 to note that I am basically referring to my  
8 report dated June 26th, 2013, which was  
9 submitted to you at the time of the earlier  
10 hearing. I haven't updated that or changed the  
11 written reporting.

12 What I think is probably the most  
13 important benefit of this project, again, is the  
14 housing and affordable housing that it provides.  
15 And the Commission in its regulations has said,  
16 and in fact, you've clarified this a little bit  
17 with amendments earlier this year, that housing  
18 and affordable housing in excess of what would  
19 have been required for the matter of right zone  
20 applicable to the property today, not the matter  
21 of right under the PUD as proposed, but today,  
22 anything in excess of that is a benefit.

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1 Well, we talked about this before.  
2 Under C-2-B with the IZ 20 percent bonus compared  
3 to what we have, we are increasing by about  
4 12,000 square feet. A little over 12,000 square  
5 feet. 10.34 percent of that building is going  
6 to be for affordable housing. That's about 2644  
7 square feet. All of that is benefit to the city  
8 under the regulations. So every square foot  
9 extra that we're getting is a benefit. And I  
10 think that's an important point to remember.

11 In terms of the development centers,  
12 as I've said before, we're not increasing the  
13 height. The FAR is what it is and it's relative  
14 to the other things.

15 The one area of flexibility that we  
16 had was the question of an appropriate yard for  
17 the property. This is a corner lot, fronts on  
18 two streets. If you call 3rd Street the front,  
19 you could call L Street the front, you have a side  
20 yard or a rear yard. We've asked for the  
21 appropriate flexibility in order to have the  
22 building designed as we've shown it. And I

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1 think that's appropriate given the site and  
2 what's around it.

3 Starting on page 11 and continuing  
4 for quite a number of pages, is a very complete  
5 and detailed analysis of the Comprehensive Plan.

6 I point out two pieces of that. The  
7 generalized policy map includes the site in a  
8 land-use change area which is part of the New  
9 York Avenue Metro area. And it obviously  
10 suggests that things should happen in that area  
11 that are perhaps are different than what has been  
12 happening before. The site's vacant. So  
13 anything that happens there would be different.  
14 But clearly, the residential development, we  
15 think, is appropriate.

16 Under the future land-use map, it's  
17 mixed-use moderate density residential,  
18 moderate density commercial. That's the same  
19 designation that applies to the east side of the  
20 square to the south of this project. The  
21 frontage along 3rd Street going south is in that  
22 same Comprehensive Plan mixed-use designation.

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1           The Commission found in Order Number  
2           0536, for the original consideration of the PUD,  
3           that that proposed, the proposed height, bulk,  
4           and density were not inconsistent with the  
5           Comprehensive Plan. And I've said here, we're  
6           a little bit lower in height and a little but  
7           lower in density than what the Commission's  
8           already approved.

9           I think I'm not going to spend any  
10          more time on the Comp Plan.

11          Though, I'm happy to answer any  
12          questions that you have.

13          And as I've said, that analysis goes  
14          through in fairly detailed fashion the various  
15          elements and policies of the plan and details,  
16          in my opinion, why this is not inconsistent with  
17          the same.

18          I would close with noting two  
19          points. In terms of the compatibility with the  
20          area, this third piece of residential  
21          development on the square completes the square.  
22          The entire building, the entire block is

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1 residential with a little bit of ground floor  
2 commercial. Of the proposed FAR of 6.84 84 is  
3 less than that, that's already been approved for  
4 the remainder of the square. The height is less  
5 than that, which has been approved for the  
6 remainder of the square. And it's less than the  
7 matter of right today. I've said all those  
8 things before.

9 My conclusions: the project is not  
10 inconsistent with the Comprehensive Plan, it's  
11 within the applicable height and bulk standards  
12 of the regulations; it provides an appropriate  
13 balance between the development proposed, the  
14 flexibility requested, and the benefits and  
15 amenities provided.

16 Obviously, the PUD allows the  
17 Commission to condition approval to what it  
18 specifically proposed. And we're, we will give  
19 you an order when we get to the appropriate  
20 stage.

21 The project is compatible with the  
22 Phase 1 of the PUD to the south. And in the same

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1 mixed-use land designation, land-use  
2 designation on the future land-use map.

3 And in my opinion, the project  
4 should be approved.

5 Thank you.

6 CHAIRMAN HOOD: Okay. Thank you,  
7 Mr. Sher.

8 Commissioners, do we have any quick  
9 questions you want to ask Mr. Sher? Any? Okay.  
10 I'm not seeing any.

11 Okay, Mr. Brown, do you have any  
12 cross?

13 MR. BROWN: Briefly.

14 Good evening Mr. Chairman and  
15 members of the Commission.

16 Patrick Brown from Greenstein,  
17 DeLorme & Luchs on behalf of the Phase 1 property  
18 owner, Union Place Phase 1, LLC.

19 Quickly, Mr. Sher, this situation is  
20 unusual in a PUD modification because of the  
21 active opposition and nonparticipation of one of  
22 the original parts of the PUD?

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1 MR. SHER: Is that a question?

2 MR. BROWN: Yes.

3 Is it unusual?

4 MR. SHER: Oh. It may be unusual  
5 but it's not unprecedented.

6 MR. BROWN: Okay. One of the  
7 concerns that's been raised by the ANC and others  
8 is the lack of integration between Phase 1, 2 and  
9 now 3. If this project had been Phase 3, had  
10 been integrated with Phase 1 and Phase 2, would  
11 there have been benefits to that process?

12 MR. SHER: I don't know.

13 MR. BROWN: You promised yes or no  
14 answers. But I understand.

15 MR. SHER: That's the third answer.  
16 I don't know.

17 MR. BROWN: If this project had been  
18 integrated, would there have been an opportunity  
19 to provide parking facilities commensurate with  
20 the use?

21 MR. SHER: There might have been.

22 MR. BROWN: Would there have been

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1 opportunities to provide loading facilities  
2 that would be useful to Phase 3?

3 MR. SHER: There might have been but  
4 there are many PUDs that have had multiple  
5 buildings within the PUD. And they sometimes  
6 work together and they sometimes don't.

7 So I, you know, if you ask me if the  
8 whole square had been assembled at one time by  
9 an owner and that owner had planned the whole  
10 thing, in a way, it may look like it looks now  
11 and it might look different.

12 But that wasn't the case. So what  
13 you have is what you have.

14 CHAIRMAN HOOD: Mr. Brown, a lot of  
15 the questions -- and I think my colleagues might  
16 agree with me -- are a lot of speculation.

17 This is cross-examination on his  
18 testimony. You're trying to help us, that's how  
19 you would help us.

20 MR. BROWN: I'm trying.

21 CHAIRMAN HOOD: Okay.

22 MR. BROWN: I'll move on.

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1                   And correct me if I'm wrong, Mr.  
2                   Sher, you mentioned that of the gross floor area  
3                   being provided by Phase 3, 10.7 something  
4                   percent is IZ housing.

5                   MR. SHER: I believe the percentage  
6                   is 10.34 percent.

7                   MR. BROWN: And that would include  
8                   both what IZ is required as a matter of right as  
9                   well as additional arising out of the bonus  
10                  achieved by the project?

11                  MR. SHER: It's, the amount of  
12                  square footage is 2644 square feet. That is the  
13                  equivalent of 10.34 percent of the residential  
14                  unit space in the building.

15                  MR. BROWN: Okay. And you didn't  
16                  quantify but it's been quantified, the cost of  
17                  providing the additional IZ, correct?

18                  MR. SHER: That's correct.

19                  MR. BROWN: But there's also a  
20                  benefit obtained from the additional 12,000  
21                  square feet of gross floor area that's  
22                  permitted, correct?

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1           MR. SHER: There's a benefit to the  
2 city. There's a benefit to the owner. There's  
3 a benefit to -- it seems to me, there's a benefit  
4 to just about every aspect of that.

5           MR. BROWN: Can you quantify the  
6 benefit in dollars and cents, much like it was  
7 done for the IZ? The benefit. And to put it  
8 bluntly, it was submitted that the cost for the  
9 additional IZ was \$173,000 discounted back  
10 present value to today.

11           MR. GLASGOW: Mr. Chairman, Mr.  
12 Sher didn't do those computations.

13           MR. BROWN: But I'm asking -- he's  
14 -- and one of the pressing questions on the  
15 Commissions's mind is, is, in fact, the IZ being  
16 provided of sufficient quantity to justify the  
17 Commission's approval? Is it a sufficient  
18 amenity? And I think, particularly of  
19 Commissioner Cohen, but others have raised that  
20 question. They've attempted to quantify the  
21 cost of the additional IZ they're providing.  
22 And I think it's a fair question to say what the

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1 benefit is of the other 10,000 square feet of  
2 additional FAR they're obtaining.

3 Because again, the Commission -- I  
4 think it's appropriate -- essentially, you're  
5 getting 10 percent more IZ balanced against 90  
6 percent going to market rate additional FAR.  
7 And the Commission being able to weigh the costs  
8 and benefits of that in making a determination  
9 as appropriate.

10 CHAIRMAN HOOD: This is  
11 cross-examination.

12 But let me just say this. When you  
13 started asking the first question, your words  
14 were, "You didn't do this, oh you didn't mention  
15 this, but." That was what you said. So  
16 basically, that's not in this testimony.

17 But hold on one second.

18 VICE CHAIR COHEN: I did ask the  
19 question. I'm hoping to get a response from the  
20 applicant with regard to quantifying.

21 But it isn't part of the testimony  
22 tonight, to my knowledge.

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1 MR. BROWN: The calculation of the  
2 cost of the IZ isn't.

3 But as part of -- and he's  
4 incorporated his lengthy submission into his  
5 testimony. And clearly, he's making an  
6 argument that the additional IZ is a substantial  
7 benefit and he's testified to that.

8 And I'm asking him to -- he's saying  
9 the plus and now I'm asking him, if he can, to  
10 quantify the other pluses which he's well aware  
11 of that the applicant's obtaining. Which is, I  
12 think, a pressing question for you Ms. Cohen and  
13 others.

14 MR. GLASGOW: Mr. Chairman and Ms.  
15 Vice Chairman, we understood that when we did our  
16 prior submission there was discussion by that  
17 Commission members and it was clearly said to us,  
18 "Provide the economic cost of the additional  
19 IZ." So we provided that information for the  
20 record. So we had thought that we had addressed  
21 the question that had been proposed by the  
22 Commission.

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1                   Now with respect to Mr. Sher's  
2 testimony as to the other, in the Regulations it  
3 says that housing in above and the Commission has  
4 found that housing above that that's provided as  
5 a matter of right is in the benefit and amenity  
6 category. Which is, every square foot that's in  
7 addition is in that category.

8                   VICE CHAIR COHEN: First of all, I  
9 didn't get the latest submission to review other  
10 than what was, you know, provided for tonight's  
11 cross, hearing and cross-examination.

12                   I understand what you're saying. I  
13 just feel we're arguing over something which, in  
14 your mind, is a benefit, and in my mind, is maybe  
15 a benefit based on your analysis. But I  
16 wouldn't start congratulating myself because  
17 it's such a de minimis amount. But I understand  
18 what you're saying.

19                   And we will take that into  
20 consideration when we deliberate.

21                   MR. GLASGOW: Commissioner Cohen,  
22 you got the August 30th? I may not have

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1 understood one of the comments.

2 CHAIRMAN HOOD: We haven't, we  
3 haven't got to that point. That will probably  
4 come to us. So that may be something that's in  
5 the hopper.

6 MR. GLASGOW: All right. Okay.  
7 All right.

8 CHAIRMAN HOOD: That hasn't got to  
9 us yet.

10 MR. GLASGOW: There is a submission  
11 --

12 CHAIRMAN HOOD: So it's there.

13 MR. GLASGOW: It's there.

14 CHAIRMAN HOOD: So that question --  
15 okay.

16 So I'm going to sustain your  
17 objection.

18 You, Mr. Brown, if you could move on  
19 to the next question. We haven't had time to  
20 review that. That's -- and actually, you  
21 mentioned it yourself whether -- he didn't bring  
22 it up. So let's go with his testimony.

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1           We understand that he's supplied -- Ms.  
2           Cohen, since you, since you -- on behalf of Ms.  
3           Cohen, are you looking out for Ms. Cohen, I  
4           appreciate it.     But obviously, they have  
5           submitted something for Ms. Cohen to review when  
6           we get to that point.

7           So the next question.

8           MR. BROWN:   Mr. Sher, by virtue of  
9           the project not providing Phase 3, not providing  
10          loading and parking, did the applicant achieve  
11          substantial savings?   Cost savings in the  
12          project?   Yes or no?   I think this is a good yes  
13          or no question.

14          CHAIRMAN HOOD:   Let him answer.  
15          Yes, no, maybe so, whatever.   Let him answer.

16          MR. SHER:   All right.   I would say,  
17          again, I don't know because I didn't cost out the  
18          project.   And I don't know what the cost of, or  
19          how the building would cost out if you had more  
20          parking or if you had a parking or loading.

21                 I would say that the site is small  
22                 enough that it's unlikely that you could have

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1 put parking in there under any circumstance. So  
2 I don't know whether saying that the applicant  
3 might have achieved some benefit is a reasonable  
4 way to look at that premise.

5 If you could provide one or two  
6 parking spaces per level and you had to go down  
7 six levels, you wouldn't have done it. So I  
8 don't know that we've saved anything one way or  
9 the other.

10 And the same is pretty much true of  
11 loading. The site is, the mentions of the site  
12 are 56 feet by 95 feet. If you had to provide  
13 a 55 foot loading berth on the site,  
14 it doesn't make any sense. You don't have  
15 anything leftover for your, the first floor of  
16 your building.

17 MR. GLASGOW: And Mr. Sher, is there  
18 any loading required for this building as a  
19 separate building?

20 MR. SHER: Thank you, Mr. Glasgow.

21 There is no loading required for  
22 this building because it doesn't have 50 units

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1 or more.

2 MR. BROWN: I think I'm finished.

3 CHAIRMAN HOOD: All right. I want  
4 to thank everyone.

5 Ms. Schellin, do we need to do  
6 anything else?

7 MS. SCHELLIN: No, sir. This case  
8 is scheduled for Monday for proposed action.

9 CHAIRMAN HOOD: Okay. All right.

10 And we will see that in our packages,  
11 the information that Ms. Cohen has asked for.

12 I want to thank everyone for your  
13 participation and coming back for the special  
14 scope of this hearing.

15 And with that, this special hearing  
16 is adjourned.

17 (Whereupon, the above-entitled  
18 matter was concluded at 6:25 p.m.)

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