

District Of Columbia Court Of Appeals
430 E Street, Nw
Washington, Dc 20001

William Shickler,
Pro Se Petitioner,

v.

District of Columbia Zoning
Commission,
Respondent

DC Zoning Commission
Order No. 16-07

MOTION FOR SUMMARY REVERSAL

I, William Shickler, proceeding Pro se, submit this Motion for Summary Reversal per Court Rule 27(c).

I am a resident living in close proximity to the PUD site where now an approved gigantic soccer stadium may be built.

I am asking for summary reversal because the Zoning Commission makes no findings or conclusions as to how the development of a stadium at a site, on polluted soil mind you, contends at all with flooding issues we must anticipate as residents of Buzzard Point.

Moreover, the Commission says they believe Metro will be the primary means of transportation for Buzzard Point -- public ingress and egress including on multiple game nights. However, the Commission's conclusion relies on no evidence that I can

find from the very provider of these transportation services, WMATA demonstrating the needed efficacy and capacity in expecting to be the primary public means of transportation to the stadiums, and to the the community in which I live.

I understand the standard of review of summary reversal by *Oliver T. Carr Mgmt. Inc., v. Nat'l Delicatessen, Inc.* 397 A.2d 914, 915 (D.C. 1979), whereby the facts and the law are so clear cut, and the lack of required here so obvious, that the Court can summarily reverse this PUD approval without further deliberations.

The Zoning Commission has failed to fulfill its fundamental statutory role in conducting a comprehensive development review, with written relevant agency documents on the record, and in consideration of potential adverse affects on the surrounding area to protect the community's quality of life, environment, and public services in that area. 11-DCMR §2400.2, 11-DCMR §2400.3, 11-DCMR 2403.3, 11-DCMR §2403.8, 11-DCMR §2407.3, 11-DCMR §2408.4, and D.C. Code § 6- 641.02.

These rules exist to protect me and my community. These rules were ignored by the Commission. And some of the Commission's conclusions were made arbitrarily, that is they don't flow from substantial evidence on the record.

For example, in searching the Final Order the Court will

not find anything related to the fact that Buzzard Point stands within a flood plain as identified by the Federal Government.

Attachment 2.

Given icesheets the size of Delaware are cracking off the top of the planet, and given the obvious concerns covered in the Mayor's recent climate resiliency plans, the Commission erred by not considering flooding concerns vis-a-vis the PUD project, the surrounding areas, and mitigation thereof at all. This stadium project does nothing to protect Buzzard Point from flooding, and if anything will exacerbate it.

I personally raised this contested fact during my verbal testimony, as well associated myself with others who raised these environmental issues before the Commission, however there are no findings on the record. See Attachment 1.

Thus, the Commission has arbitrarily approved a project that constructs a gigantic stadium at the forefront of the confluence of the Potomac and Anacostia rivers in spite of the contested fact and heightened understanding of the growing climate catastrophe facing me and my community in the form of flooding.

The decision of the Commission must be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or if it is unsupported by substantial

evidence in the record." *Cathedral Park Condo.Comm. v. District of Columbia Zoning Comm'n.*, 743 A.2d 1231, 1239 (D.C. 2000).

Also, the Commission makes conclusions about transportation issues that do not flow from evidence on the record. In reviewing the Commission's Final Order, under Findings of Fact, Point #99, the Court will read ...

"While some of the Buzzard Point studies cited a streetcar, Metrobus, or Circulator line extension as components of a transportation plan for the stadium, that these modes are not necessary for a viable plan. The CTR and DC United Environmental Mitigation Study ("EMS") state that the primary means of transit use for stadium access is Metrorail and walking from the station."

Besides not discussing the ability of the residents living in Buzzard Point, like me, in using the existing public transit systems during gamenights (only discussing a "plan" for those heading to the stadiums), the Commission takes on face value that WMATA and Metro is to be relied upon as the "primary means" of ingress for stadium patrons. But the fact is there is not one WMATA Metro study or report that I can find on the record describing the existing and anticipated capacities and abilities of the Metro system to handle the proposed PUD stadium's abuse on our public transit thoroughfares. This lack of reporting is unforgivable at a significant Metro woes -- the so-called Safe Track repairs, projected transit service cuts, fare hikes, and

uncertain future. The Commission errs by under expressing its role in over promising what Metro can do vis-a-vis this new stadium project and may not be able to do for my community.

We must affirm such legal conclusions if they rationally flow from findings of fact supported by substantial evidence in the record as a whole. *Citizens Ass'n of Georgetown v. District of Columbia Zoning Comm'n*, 402 A.2d 36, 41-42 (D.C. 1979).

The Commission also wholly fails to review how the actual impacted community surrounding the PUD site will have its transit options adversely affected on gamenights, and thus fails to make findings at all as to whether these impacts may be found unacceptable or at least mitigated.

Under the DC Administrative Procedures Act, agency action must be set aside if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, done so with limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights, conducted without observance of procedure required by law, and unsupported by substantial evidence in the record of the proceedings. DC Code § 2510(a)(3).

Pursuant to *Oliver T. Carr Mgmt. Inc., v. Nat'l Delicatessen, Inc.* 397 A.2d 914, 915 (D.C. 1979), the facts and the law are so clear cut, and the lack of required action by the

Commission so obvious, that the Court must summarily reverse
this PUD approval without further deliberations.

This Motion for Summary Reversal has been submitted on July
21, 2017, to the Court, and to all parties.

A handwritten signature in black ink that reads "William Shickler". The signature is written in a cursive style with a large, prominent "W" and "S".

William Shickler
1301 Delaware Avenue, SW
Apartment N-305
Washington, DC 20024
202 484 4148

ATTACHMENT 1

Zoning Commission Transcript
Case No. 16-02 [DC Stadium, LLC. - Consolidated
Wednesday, December 14, 2016

William Shickler Testimony (verbal)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Public Hearing

Case No. 16-02 [DC Stadium, LLC. - Consolidated
Review and Approved of a Planned Unit Development at
Squares 603S, 605, 607, 661, and 665.]

6:34 p.m. to 10:38 p.m.

Wednesday, December 14, 2016

Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220 South
Washington, D.C. 20001

OLENDER REPORTING, INC.
1100 Connecticut Avenue NW, #810, Washington, DC 20036
Washington: 202-898-1108 • Baltimore: 410-752-3376
Toll Free: 888-445-3376

1 I think we also need tents, like Rhonda was
2 suggesting to enclose the site so that when they're
3 stirring up dust we're not relying on the spraying of
4 water to keep it all down. But, if we can't get
5 tents and air filters to keep that from happening, we
6 at least need to make sure that's adequately sprayed
7 down with water and that there are filters on all
8 storm drains that there are actual storm water runoff
9 permits required and installed with filters so that
10 we don't have contaminated water, watering down on
11 the site, as well as air monitors for the community,
12 as others have requested.

13 My final point, I looked at the traffic
14 issues which have been talked to death already so I
15 won't belabor them. But, this past year there were
16 eight home games when the soccer team was playing
17 here in D.C. at the same day that the baseball team
18 was playing. So, I think we really do need to look
19 at that carefully and make sure that can never happen
20 here and have that in writing. Thank you.

21 MR. SHICKLER: Hello. My name is Bill
22 Shickler. I live at River Park. I'm about, almost
23 within site of the stadium, and I would like to
24 associate myself with the comments of everyone here.
25 I think Andy Litsky showed all the problems with this

1 situation.

2 But I would like to go -- I don't know if you
3 guys can see. Just nod your head if you've seen this
4 flyer that shows Allen -- or city council
5 representing our board, put out. Just nod your head
6 if you've seen it.

7 CHAIRMAN HOOD: I'm not going to nod to it.
8 Do you want to submit that to the record? Is that
9 what you want to do?

10 MR. SHICKLER: Okay. Well, I can do that.

11 CHAIRMAN HOOD: Yeah.

12 MR. SHICKLER: It's hashtag, we live here
13 they don't. And it shows the original plan that was
14 submitted by D.C. United for this stadium, and the
15 actual plan that they've come up with now. And the
16 Washington Post pointed out, this is typical bait and
17 switch. You say, oh, we're going to get this
18 wonderful facility and then all of a sudden you get a
19 trashy piece of nothing.

20 How is it that D.C. council hearing on --
21 they approved taking \$40 million out of the education
22 budget to go to this mess. And then they pull a bait
23 and switch on us. They got \$100 million in D.C.
24 funds for infrastructure and operating. This is just
25 straight out corruption.

OLENDER REPORTING, INC.

1100 Connecticut Avenue NW, #810, Washington, DC 20036

Washington: 202-898-1108 • Baltimore: 410-752-3376

Toll Free: 888-445-3376

1 Hugh Youngblood from D.C. Sierra Club points
2 out, it's D.C. law that if \$1 million is used of D.C.
3 funds on any project, it has to have an environment
4 impact study. Not an environmental impact walkaround
5 or an environmental impact -- we have a feeling about
6 it. As in law.

7 And you guys, if you approve this, you are
8 going to be guilty of breaking D.C. law. Okay? We
9 know right now that three people resigned from Mayor
10 Bowser's economic development branch because there is
11 some scandal about cleaning this site, and some
12 favoritism as in who is going to get this.

13 So there's already scandal that's involved in
14 this. And you know, what? With the tons and tons of
15 evidence of environmental -- and they didn't even
16 talk about the fact that it being built in a 100-year
17 floodplain, for lack that the air quality, haven't
18 done a real air quality study on this. I know
19 because I contacted EPA and brought it to their
20 attention (garbled speech) in Philadelphia.

21 So, they're in violation of D.C. law as far
22 as not having environmental impact study. So, I
23 would just suggest, you know, beware. We're dealing
24 with corruption. You know? We got rid of the head
25 of D.C. City Council, three of them, because of

1 corruption, because of ignoring and breaking D.C.
2 law. These laws are in place to protect us. And
3 regardless of how you got here, I think you better
4 take seriously, there's already people trying to get
5 a cease and desist order on it.

6 So, you know that they're breaking
7 environmental law. So, we don't need this stadium
8 period. Okay? And many studies have shown that
9 stadiums in aggregate are a net loss. So, don't talk
10 about economic development (garbled speech) this out.

11 CHAIRMAN HOOD: Let us get your closing
12 thought.

13 MR. SHICKLER: My closing thoughts are,
14 lawyer up. That's what I say. Lawyer up because
15 you're breaking D.C. law.

16 CHAIRMAN HOOD: Okay. Thank you. Next.

17 MS. FRAZIER: Hi there. I'm Debra Frazier,
18 community activist and organizer, and I am not happy
19 to have to be here to talk about why development
20 project is more important than humans' lives. I
21 would think that breathing and health as some of our
22 people have mentioned, is a human right. So why is
23 there even a development project on the program
24 without transportation, without this remediation.

25 Note also that everybody in D.C. and six,

ATTACHMENT 2

National Flood Insurance Program Maps

CERTIFICATE OF SERVICE

I, William Shickler, attest that copies of the included Motion for Summary Reversal were put in the regular post mail to the following parties on July 21, 2017.

Charles Thomas, Esquire,
District of Columbia,
441 4th Street NW, Suite 1100S
Washington, DC 20001

Aristotle Theresa, Esq.
c/o CSRL-CRO, 1530 P Street NW
Washington, DC 20005

DC Stadium, LLC
Phil Feola and Cary Kadlecek,
Goulston & Storrs
1999 K Street, NW , Suite 500
Washington, DC 20006

Signed,

William Shickler

William Shickler
1301 Delaware Avenew, SW
Apartment N-305
Washintgon, DC 20024
202 484 4148