
MINUTES**DEVELOPMENT PERMIT BOARD
AND ADVISORY PANEL
CITY OF VANCOUVER
MARCH 31, 2003 AND APRIL 1, 2003**

Date: Monday, March 31, 2003
Time: 3.00 p.m.
Place: Plaza 500, 500 West 12th Avenue, Vancouver, BC

Date: Tuesday, April 1, 2003
Time: 5.00 p.m.
Place: Council Chamber, City Hall

PRESENT:**Board**

F. Scobie Director of Development Services (Chair)
L. Beasley Co-Director of Planning
B. MacGregor Deputy City Manager
T. Timm Deputy City Engineer

Advisory Panel

W. Francl Representative of the Design Professions (Urban Design Panel)
J. Hancock Representative of the Design Professions
E. Mah Representative of Development Industry
D. Chung Representative of General Public (present for 1305 Arbutus only)
C. Henschel Representative of General Public
J. Leduc Representative of General Public

Regrets

P. Kavanagh Representative of Development Industry

ALSO PRESENT:

B. Adair Development Planner
S. Hein Development Planner
V. Potter Project Facilitator
D. Robinson Project Facilitator
R. Michaels Manager, Enquiry Centre (Chair, Development Permit Staff Committee)
M. Thomson City Surveyor
R. Whitlock Senior Housing Officer

475 East Hastings Street

L. Adams Neale Staniszki Doll Adams Architects
D. Jansen Katherine Sandford Housing Society

1305 Arbutus Street

S. Mundick General Manager, Vancouver Park Board
A. Robins A.A. Robins Architect
J. Hemsworth A.A. Robins Architect
P. Barnett The Restaurant at Kits Beach
S. Barnett The Restaurant at Kits Beach

Clerk to the Board: C. Hubbard

1. MINUTES

Mr. Beasley noted some minor typographical errors and correction to the spelling of Jim Weimer's name (misspelled Weaver) which appears on p.8 and 9.

It was moved by Mr. Beasley, seconded by Mr. MacGregor, and was the decision of the Board:

THAT the Minutes of the Development Permit Board and Advisory Panel Meeting of March 17, 2003 be approved as amended.

2. BUSINESS ARISING FROM THE MINUTES

None.

**3. 475 EAST HASTINGS STREET - DE406835 - ZONE DEOD
(COMPLETE APPLICATION)**

Applicant: Neale Staniszki Doll Adams Architects

Request: To construct a low income seniors multiple dwelling consisting of 51 units and amenity space, with six above-grade parking spaces accessed off the lane.

Development Planner's Opening Comments

The Development Planner, Bob Adair, presented this application in the DEOD zone. This City-owned site, formerly occupied by a gas station, is currently vacant. Mr. Adair briefly described the proposal and the immediate site context, referring a model and posted drawings. Exterior materials include a brick facade on Jackson Street which wraps around the corners at the lane and onto Hastings Street at the front of the building. The remainder of the Hastings Street facade and the rear of the building are clad in a horizontal metal siding. Staff support the proposed use and the massing of the building. The maximum permissible residential floor area of 3.0 FSR is also supported. The technical check indicates a slight overage in FSR as a result of the proposed parking area and some of the mechanical space being above base surface. Compliance with the By-law with respect to FSR is sought in condition 1.5. The remaining major issues relate to urban design, as outlined in the recommended prior-to conditions which Mr. Adair briefly reviewed.

The principal concern of staff is the lack of active uses on the main floor level facing Jackson Street. Placing the mechanical spaces, parking and loading in this location results in a solid wall expression at grade along Jackson Street. Staff consider this is contrary to the basic urban design principles that the City has been encouraging for many years. Staff believe this treatment will negate much of the positive effect that this development could and should have on the neighbourhood, and actually encourage the undesirable activities that currently occur on this block. Condition 1.1 recommends that active uses be provided at the ground floor level along Jackson Street, thereby improving the streetscape and providing the "eyes on the street" that can contribute to reducing undesirable activities. Active uses could include any combination of dwelling uses, amenity spaces, or the use of the space by another tenant that might be compatible with this facility. Staff have discussed the issue at length with the applicant and a number of schematic alternatives have been explored. It is noted, however, that all these alternatives result in additional cost for the project. To date, no potential tenants for the additional ground floor space have been found. The least expensive other alternative is to put the parking completely underground along Jackson Street and transferring three dwelling units from the upper to the ground floor at the northern end of the Jackson Street elevation. While Planning staff believe this approach could have some merit, the applicant has indicated that, as well as the additional cost, it is unacceptable from a safety and security point of view. The City's Housing Centre concurs with this assessment. The Staff Committee was strongly supportive of the proposed use and the maximum permitted density, and was also sympathetic to the challenges faced by the applicant. However, the Committee did recommend condition 1.1 which calls for active uses to be located at the ground floor along Jackson Street. Subject to satisfactory resolution of the conditions contained in the Staff Committee Report dated March 19, 2003, the recommendation is for approval of the application.

Applicant's Comments

Larry Adams, Architect, briefly reviewed the history of the project. He explained that an earlier proposal which included a public library on the ground floor did not proceed due to lack of funding and they were subsequently requested to design a solely residential project. In response to the desire for active spaces on the ground floor, the amenity/multi purpose spaces have been located at grade along Hastings Street. Parking and loading is in the remainder of the ground floor because it was concluded that residential use in this location is unacceptable and would put potential residents at risk. Mr. Adams noted that the amount of amenity space has been increased since the initial proposal but they are left with an area that has to be filled. He agreed that, ideally, there would be another use proposed along Jackson Street. He added, it is important to be aware of the current environment along this street: it is one of the major prostitution areas in the Downtown Eastside with prostitution and drug-related activities occurring 24 hours a day. He pointed out that many of the buildings in the vicinity have their ground floor windows barred and permanently covered from the inside. Mr. Adams said the issue has been discussed at length but they have reached an impasse. The alternative of putting the parking underground and locating three units above has been costed at about \$160,000. With respect to other alternatives, Mr. Adams explained that funding for more amenity space is not available from BC Housing. Increasing the size of the amenity space by an additional 2,500 sq.ft. would cost about \$400,000. Attempts to sublease the space to another tenant have been unsuccessful. Methods of architecturally reducing the impact of the blank facade along Jackson Street have also been explored, one of which involves re-arranging the internal spaces and creating a clear glazed corridor from the parking area to the lobby and fully glazing two parking stalls. This arrangement would give the appearance of greater activity and "eyes on the street".

Mr. Adams advised they also have concerns with conditions 1.2, 1.3 and 1.4 and their cost implications. He noted that condition 1.5 regarding FSR calculation is resolvable and is not a major issue. In summary, Mr. Adams said the Board must determine whether the urban design objectives are so critical that the viability of the project is jeopardized.

Dane Jansen spoke on behalf of the Katherine Sanford Housing Society who will operate the facility. He emphasized their major concerns with respect to condition 1.1 and urged the Board to take into account that they are a nonprofit organization. He noted they have tried to indicate their desire to resolve the matter as best as they can and noted their concerns relate to both the short term and long term financial implications.

Questions/Discussion

Mr. Beasley said he agreed with the applicant and the Housing Centre that residential housing at grade would be inappropriate in this location. In response to Mr. Beasley's question as to whether the landowner (the City) had considered commercial uses at grade, Mr. Jansen advised Real Estate Services expressed no interest.

In response to a question from Ms. Leduc as to why this location was chosen for a seniors' residence, Mr. Adams explained the facility is intended to provide improved housing for seniors who are already living in the neighbourhood.

Mr. Timm questioned whether there had been any exploration to step down the parking and have the residential begin 4 ft. above grade, as a way of creating "eyes on the street" without direct contact. Mr. Adams explained that a level change on the second floor would necessitate adding a ramp or a lift. As well, it is necessary to maintain the viability of the amenity along Hastings Street so the floor to floor height is set from along Hastings Street.

Mr. Francl questioned how the parking requirement would be accommodated in the event some of the ground floor is subleased. Mr. Adams noted that Katherine Sanford operates twenty other projects in the city and none of the residents has a car. A parking relaxation has been negotiated for this project to accommodate staff or social service workers' vehicles.

Mr. Beasley questioned whether the applicant had considered undergrounding the parking by positioning it at the rear of the site with a slightly elevated open space above. Mr. Adams said this was explored but it resulted in the need for a basement to accommodate the mechanical/electrical equipment. He added, that raising the courtyard presents difficulties for seniors and requires an access ramp. It would also create security concerns because the lane would be fronted with garage doors and potential points of entry along the back of the building. The cost of this arrangement was estimated at about \$390,000.

In response to a question from Mr. Beasley as to what would be the best solution to provide amenity to the edge and greater security along Jackson Street, Mr. Adams said there are measures that can be taken, including the glazed corridor solution described earlier and lighting, giving the appearance of activity.

Mr. Henschel questioned whether retail use had been considered along Hastings Street. Mr. Adams noted the Katherine Sanford Housing Society is not a retail landlord. As well, the L-shaped building which defines the street edge on both sides creates an adjacency between the amenity space and the outdoor space. Retail space would therefore not work well programmatically.

Mr. Scobie drew the applicant's attention to Appendix C of the Staff Committee Report. Mr. Adams confirmed they have reviewed the comments of Processing Centre - Building and Fire & Rescue Services and believe all the issues can be resolved.

Comments from Other Speakers

None.

Panel Opinion

Mr. Francl recommended approval. With respect to condition 1.3, Mr. Francl concurred with the applicant that metal can be a satisfactory cladding material provided it is not corrugated metal. He also thought it was necessary to provide additional glazing to the Hastings Street elevation as called for in 1.4. With respect to the parking at grade, Mr. Francl noted the Urban Design Panel had a fairly strong concern about the long term sterilization of the Jackson Street elevation. He thought there might be design solutions that, while perhaps not achieving the currently proposed six parking stalls and a loading bay, provide parking under the building and use the space more efficiently than currently shown. This would leave a more substantial portion of the Jackson Street facade for glazing, possibly leaving the space vacant until a suitable tenant can be found. Mr. Francl recommended amending condition 1.1 to suggest a more compact parking layout and/or one which reduces the parking requirement by one or two spaces if this is what it takes to make it work.

Mr. Hancock said he thought the applicant had made a sincere effort and done an excellent job at trying to solve some difficult dilemmas. It is a well designed building and the materials are appropriate. Mr. Hancock also said he had no problem with the level of detailing and was confident it would be well done. He agreed the Jackson Street elevation is sterile and acknowledged the applicant's challenge of how to enliven it with an active use. He noted there is a willingness to look for a way to use the space in the future. Given the situation, Mr. Hancock said he thought the applicant had offered a solution that is reasonable. On this basis, he recommended that the project proceed as proposed, deleting conditions 1.1 to 1.4.

Mr. Mah agreed the amount of recess on the ground floor should be limited, as called for in condition 1.2. He also agreed the weather protection should be extended. He recommended deletion of condition 1.1 and accepted that the various options discussed for the Jackson Street ground floor elevation are either not viable or cost prohibitive. He also recommended deletion of 1.4 because the unit floor plan does not lend itself to glazing in this location. He recommended approval of the application and suggested it would help to improve the neighbourhood.

Ms. Leduc commended the applicant for exploring many different solutions in a very difficult situation. She said she did not believe this building would have much impact in changing the activities currently occurring on Jackson Street, noting also that windows with bars is not a good alternative to a blank facade. She liked the suggestion of providing a false facade that gives the illusion of activity and recommended this be pursued if it does not create significant hardship. She recommended approval of the application, with deletion of the major conditions.

Mr. Henschel also supported the project, with the conditions. He noted that 1.4 is a consideration item. He agreed that metal cladding is an acceptable material if it is not corrugated metal. With respect to 1.1, Mr. Henschel said he thinks it is a mistake to perpetuate undesirable social conditions, given the hope the neighbourhood will improve in the future. He appreciated the applicant's exploration of the various solutions and agreed the glazed corridor option may be the best option.

Board Discussion

Mr. Beasley said this is an important project and it will help to stabilize the immediate area which needs this kind of new development. It is clear that the availability of better quality housing is beneficial. The design of the building has been thoughtfully articulated and the efforts of the design team on the various challenges it has faced are appreciated. With respect to the treatment along Jackson Street, Mr. Beasley noted the advice of Advisory Panel and the Urban Design Panel is split, and the applicant also acknowledges that leaving the whole facade blank is not necessarily the best solution for the community, nor for this building as part of that community. Some changes at the

ground level therefore need to be made, although perhaps not to the extent suggested in the conditions recommended by the Staff Committee. He concurred with the Housing Centre and others that residential use at grade is not appropriate. With respect to some of the architectural aspects of the project. Mr. Beasley said he believes the integrity of the architect's solution should be protected and did not support the prescriptive nature of some of the conditions. He moved approval with a number of changes to the conditions.

Mr. MacGregor said he believes the revised conditions go a long way to reaching a satisfactory compromise without incurring any appreciable cost penalty to the applicant. It will be a good project for the area.

Motion

It was moved by Mr. Beasley and seconded by Mr. MacGregor, and was the decision of the Board:

THAT the Board APPROVE Development Application No. 406835, in accordance with the Development Permit Staff Committee Report dated March 19, 2003, with the following amendments:

Amend 1.1 to read:

design development to improve the Jackson Street streetscape so that approximately two-thirds of its length is lined with active uses, even if this means a one space adjustment of the parking provision;

Amend the **Note to Applicant** in 1.2 to delete item iv);

Delete 1.3;

Delete 1.4;

Amend A.1.8 to add "cross section" after (1:50 or 1/4"=1');

Amend A.2.4 to delete "to".

4. 1305 ARBUTUS STREET - DE407191 - ZONE RS-1 (COMPLETE APPLICATION)

Applicant: A.A. Robins Architect

Request: To construct a multi use facility containing food concession stand, a second floor restaurant for 120 indoor and 60 outdoor seats, lifeguard station and change facilities. Parking is proposed to be provided at the existing parking lot to the south.

The Board briefly discussed whether to impose a time limit for public delegations given the long list of names of those registered to speak to this application. It was noted that this has been the Board's practice when there have been a large numbers of delegation requests. This is also the practice of Council Committees.

It was moved by Mr. MacGregor and seconded by Mr. Timm, and was the decision of the Board:

THAT each speaker be limited to a maximum of five minutes to address the Board;

FURTHER THAT the speakers list will be closed at the end of today's meeting. If it is necessary to resume the meeting tomorrow, the Board will hear only from those speakers registered by the end of today.

Development Planner's Opening Comments

The Development Planner, Scot Hein, advised the Staff Committee recommendation is to refuse this application, as outlined in its report dated March 19, 2003. He briefly reviewed the composition and role of the Staff Committee, noting that the Park Board representative excused himself from all discussion pertaining to this application for obvious reasons of perceived conflict of interest. The Staff Committee considers advice from various discipline review groups,

focussing on four areas of compliance, namely: technical compliance, design quality, specific impacts generated by the proposed uses and form of development, as well as responses received to the City's formal notification process. Neither the departmental staff review groups who advise Staff Committee, nor Staff Committee itself, concerns themselves with the financial viability of any proposal, the operational experience and reputation of the proponents noting that tenancy can change over time, and finally, in this case, the appropriateness of strategies, such as Public Private Partnership (PPP) opportunities, to achieve the upgrading of existing facilities and services normally funded under the capital plan. These are not matters that should influence a decision, and advice to the Board, on what is essentially a zoning matter. Staff rely strictly on the zoning, its regulations and related policies of the day, when considering conditional applications for development.

Review of compliance is summarized as follows:

RS-1 Zoning (which is generally intended for single-family house development):

- FSR/site coverage: the proposal complies;
- height: the proposal complies;
- yards: a rear yard relaxation is required, and is anticipated for sites of this size (as with schools and churches in single-family zoning);
- use is conditional, with the historical interpretation for restaurants as an accessory use to parks (Queen Elizabeth and Stanley Park) normally considered.

The Kits Beach Park is quite different in its setting, and intensity of use, than other parks with previously approved restaurants. In this case, notification response was considered a key determinate in applying discretion given the absence of any specific policy on uses in parks that would normally inform such a consideration.

Design Quality:

There are no applicable design guidelines for RS-1 zoning;

Initially some design related concerns were raised by staff and the Urban Design Panel, in response to which the applicant has undertaken a significant re-design, greatly improving the project and which, if well executed, is potentially exemplary;

Mr. Hein briefly described the changes to the design and noted that further design refinements are recommended in Appendix A of the Staff Committee report, should the Board choose to approve this application.

Use:

At this time, there is an absence of specific zoning policy to inform any consideration of restaurant as an accessory use to parks noting the use is conditional, which means discretion needs to be informed by prevailing policies and the responses to notification. There is also an absence of specific zoning policy to inform how we distinguish between local and regional parks, as well as between regional parks themselves, noting such regional park characteristics as size/location within the city, residential or commercial adjacencies, dimensional shape and related constraints, and intensity of use given proximity to local users that could more clearly distinguish park situations, and thereby inform zoning policy on how park uses might be considered under prevailing RS-1 zoning. Policies such as these would be very helpful to staff, applicants and residents when entertaining highly conditional activities in parks, such as for restaurants.

Notwithstanding the lack of these zoning policies for restaurants in parks, staff entertain restaurant applications on non-park sites quite often. Staff, through that processing experience, can anticipate the typical impacts that should be mitigated, or managed. Condition 1.4 in Appendix A describes, for this application, what staff believe should be considered if the Board were to support this application. Of those impacts referenced in this condition, staff would highlight noise, alcohol related activities, traffic and parking, signage and lighting as primary concerns given the beach setting for the proposal.

Response to Notification:

While compliance with zoning regulations, form of development quality, and an assessment of anticipated general impacts of any proposed use can be generally evaluated at the pre-application stage, it is most difficult to predict with certainty how citizens will respond once an application has been submitted - especially one where the proposed use is not directly listed in the zoning schedule and involves a high degree of discretion.

Given the anticipated public interest in this project prior to the submission of the application, staff believe the applicant team made sincere efforts to respond to concerns raised by neighbours. Many of these concerns are expressed as new design responses reflected in the revisions provided in Appendix F.

Notwithstanding these genuine efforts, there remains much uncertainty about this application when many responses to notification are reviewed, as summarized in the report. Most of the concerns directly relate to the consideration of the restaurant component as an accessory use in parks.

In conclusion, Staff Committee is uncomfortable at this time, given these concerns raised by responses to notification, noting that some concerns were of a broad policy nature and directly relate to the owner's intentions, distinct from the application of zoning. These concerns are obviously difficult to respond to in the consideration of this, or any single development application. Nonetheless, there remains a high degree of uncertainty.

Further, staff are uncomfortable given the lack of directly applicable zoning policy on uses for parks with characteristics different than those of Stanley or Queen Elizabeth Parks, such as Kits Beach.

Staff, in assessing the notification response, acknowledge the absence of any master plan, which could set a more definitive context for the Kits Beach Park's future. Staff Committee would be concerned, at this time, that approving this proposal could potentially prejudice any efforts to reduce this uncertainty, for both the park's future, and more importantly how zoning should apply when considering accessory uses.

Staff acknowledge the efforts of the applicant team and the owner in genuinely attempting to respond to concerns raised. Staff emphasise that this application raises new questions about uses in parks, and is therefore unique and distinguished from previous restaurant approvals in parks. The application clearly questions how uses should be considered in park settings. The Kits Beach location, given its special position on the waterfront, its location near residential settings, and special pastoral qualities while being actively used in the summer months, deserves careful consideration at this time.

Questions/Discussion

In response to a question from Ms. Leduc as to whether Brock House in Jericho Park is similar to this situation, Rick Michaels, Manager, Enquiry Centre (Chair, Development Permit Staff Committee), explained that Brock House precedes the zoning. However, if it were to be redeveloped it would need to be considered very carefully. Mr. Michaels said he did not believe Brock House to be similar to the context under discussion because it is an long-standing existing use whereas this application is for a new entity in a park which has residential use in close proximity.

In response to a request for clarification from Mr. Beasley regarding the Development Permit Board's authority when considering conditional use, Mr. Hein cited Section 3.2.1 of the RS-1 By-law. In order to consider the listed conditional uses the Board must consider the intent of the RS-1 District Schedule and all applicable policies and guidelines adopted by Council (of which there are none for RS-1) and the submission of any advisory group, property owner or tenant.

In response to a further question from Mr. Beasley regarding the conclusions reached by Engineering Services with regard to the adequacy of the parking, Mike Thomson, City Surveyor, advised it was found that the impacts of the restaurant use would be minor in comparison to the other uses in the park. The restaurant itself would generate a need for about 28 parking stalls. Studies, particularly in the peak July period, generally find there are approximately 100 vacant stalls available after 6 p.m., which would be the heaviest period of restaurant use. Mr. Thomson said he did not believe there was excess parking because, on occasion, the parking lots are full. There is a significant area of Resident Parking Only around the park site to ensure there is parking available for the residents in the area and to encourage the use of the pay-parking lots in the park.

Mr. Henschel sought clarification with respect to the zoning. Mr. Michaels explained that RS-1 zoning was applied to much of the park lands many years ago and has not been an area of concern. RS-1 is one of the lowest density zones and contemplation of a new use on the site, similar to any other large site, would likely involve a rezoning. Park exists as a conditional use in many residential district schedules, not only RS-1. Mr. Henschel noted the technical analysis of the accessory building is based on single-family residential constraints rather than accessory building constraints. Mr. Hein explained that other restaurants in parks have been approved as a use accessory to a park and typically the form of development regulations do not apply because the parks are of sufficient size and they are generally isolated. In this instance, it is the conditionality of use that is of concern, not the regulations. Mr. Hein agreed that a restaurant challenges the intent of what is considered accessory use in parks. Mr. Michaels added, the RS-1 regulations, by

default, become applicable to any park in the zone. However, the regulations address accessory buildings relative to the principal building being single-family dwellings and were not intended to accommodate parks. There are provisions in the Zoning & Development By-law for the Development Permit Board or the Director of Planning to deal with this situation.

Mr. Timm noted that a major reason for the Staff Committee's recommendation to refuse the application is a lack of policy direction in terms of a park master plan. He questioned whether the concern related to lack of Council policy or Park Board policy. Mr. Hein confirmed that the concern relates to lack of Council policy, noting that staff must restrict evaluation to matters of zoning and related policies. A Park Board master plan would be helpful in informing a discussion of the zoning as it relates to all parks. Mr. Timm commented it seems unlikely that Council would involve itself in establishing such policies, rather it would be a Park Board initiative.

Mr. Beasley sought further clarification regarding conditional uses in the RS-1 zone. Mr. Michaels said conditional uses also include churches and schools. These uses are conditional because they may or may not be appropriate in each circumstance. In discussion, Mr. Beasley noted that Council could choose to endorse the Park Board's planning as its policy.

In response to a question from Mr. MacGregor concerning the history of the site, Mr. Michaels advised the Zoning & Development By-law was established in June 1956 and there were developments in the park that pre-date the current by-law.

Questioned by Mr. Beasley about the inclusion of conditions of approval in the Staff Committee report, Mr. Michaels advised it is not unusual for these to be provided, in the event the Development Permit Board conclusions differ from those of the Staff Committee. Mr. Hein confirmed that if this application is refused, any future application would be dealt with on its own merits.

Applicant's Comments

Susan Mundick, General Manager, Vancouver Park Board, described the context of the proposal, stating she hoped to demonstrate that it is a good fit with Park Board policies, its history and the proposed site. The activities of the Park Board are based on the powers provided in the Vancouver Charter. The Charter establishes what uses the Park Board may provide for in parks, largely consisting of, or related to, recreational activities. In this case, it specifically sets out that the Park Board can establish, maintain and operate stands and places for the preparation and sale of foods, confections, beverages and other refreshments. There are many food establishments in parks and the Park Board believes the subject proposal is equally consistent with the Vancouver Charter. Restaurants are clearly an allowable use in parks, typically as an accessory park use in RS-1 zoning, and the Park Board has the authority to provide for them. Kits Beach Park is a permanent park under the jurisdiction of the Park Board. The proposal is grounded in approved policies, including long-term plans that apply to the entire Park Board organization. In January 2001, the Park Board approved the Strategic Plan, a five year plan laying out objectives and providing the direction for more specific plans. The Strategic Plan is the result of many people working together, including the Board's partners, stakeholders, staff and the general public who collaborated on the drafting of the plan. It was made available to the general public through community centres and the Park Board website and was also on the agenda of two regular public Board meetings. The Strategic Plan thus represents a broad consensus for the direction of Park Board activities. It specifically identifies Private/Public Partnerships as opportunities to leverage public funds and addresses the need to renew the Park Board's aging infrastructure. Ms. Mundick stressed the Park Board believes the proposal is consistent with the Strategic Plan. Ms. Mundick noted the Park Board has a 30-year tradition of partnering with private operators to provide food services in parks and many of these restaurants have become favourite places with Vancouverites. There are currently seven restaurants in four parks as well as two private operators with subleases from not-for-profit societies for other park locations. She noted that some of these restaurants are close to residential areas, such as Brock House in Jericho Beach Park which is 60 m to the nearest residence, the Shaughnessy Restaurant in VanDusen Gardens which is 110 m to the nearest residence, and the new bistro in Harbour Green Park which is 50 m to the nearest residence. The proposed restaurant in Kits Beach Park is approximately 100 m from the nearest residence. Each of the existing restaurants is an important part of the amenity offered in parks, complementing other activities and features and providing desired service to park visitors. In addition, there are sixteen concessions located in eight different parks, all but one being waterfront parks.

Ms. Mundick briefly reviewed the process that took place prior to the development permit application. On January 14, 2002, the Park Board approved issuing a Request for Proposals for new food service operations at Kits Beach and Sunset

Beach, to replace existing take-out concessions. On July 22, 2002, the Board accepted the proposal of the proponent to construct and operate a restaurant and take-out at Kits Beach, and there was a series of on-site public information days to solicit feedback from park and seawall users. Nine public delegations made presentations to the Park Board on that occasion, some in favour and some against the proposal. The draft design plans were then displayed for public review and comment on four weekend days at Kits Beach, with staff and architects present to answer questions. 355 questionnaires in favour of the project were returned and 45 questionnaires indicated opposition. Staff and the architects also met with the Kits Point Residents Association on two occasions, and informally several times with residents living on Arbutus Street adjacent to the site. 12 specific design and management issues were raised, recorded and responded to. On November 4, 2002, the Park Board approved the design concept and the granting of a license to use the site for the construction of a restaurant, subject to the issuance of the appropriate permits.

Ms. Mundick stated that, in her view, there is no issue that restaurants and concession stands are a well established and allowable use in Vancouver parks. This position is supported both by the Vancouver Charter and the relevant zoning by-laws, and also by precedent and tradition. The proposed facility is expected to deliver a number of benefits at one of the busiest parks: improved food service, longer hours, year-round, higher quality meals and more variety. It will replace an aging infrastructure including public amenities: washrooms, changerooms, concession stand and a lifeguard station. It also presents a beautiful piece of contemporary architecture, sensitive to its location and at the forefront of incorporating "green" features.

Tony Robins, Architect, noted the media coverage of this proposal indicates majority support, and response from beach and seawall users showed 89 percent approval. The architecture has been described in the Staff Committee report as being potentially exemplary, and the Urban Design Panel thought the design "raised the bar" very high. The Staff Committee report indicates there is no parking problem. The technical issues are all resolvable. The proponent is a reputable and experienced restaurateur. The proposal will not take away park space, its footprint being less than that of the existing building. Tree loss is not an issue. Community Police have indicated that crime in the area will be reduced as a result of the project. The lack of a master plan for Vanier, Haden and Kits Parks is also not an issue. The issue is entirely to do with the impact of the proposal on the immediate neighbours. This impact was taken very seriously and over nine months was spent in addressing any negative impact identified by the neighbours.

Mr. Robins briefly reviewed the potential impacts the building might have on the neighbourhood, namely view blockage, noise and food odours. Before the development application was made the building was redesigned many times to address view blockage concerns. With respect to noise, all the public areas are located on the water side, using the washrooms and kitchens to shield the general area. The deck is located southwest and west, away from the neighbours, and several changes were made to improve the potential for noise. There are no windows on the east side, except one sealed clerestory. An acoustic engineer's report shows that at 334 ft. away from the restaurant, even if all the windows are open, the sound of restaurant diners could not be heard above the ambient sound. With respect to food odours, Mr. Robins said they will use ultra violet rays to mitigate the odours and the fumes are expelled by high velocity up a 15 ft. flue.

Mr. Robins said they accept all the conditions contained in Appendix A and B. With respect to condition 1.5 which calls for an HVAC system to allow the windows to be permanently closed, Mr. Robins said they can comply; however, they believe they have made every effort to provide an environmentally friendly building that is a flagship for the Park Board and the City in terms of a green and friendly design. Condition 1.5 would thwart this goal to a certain extent and is not in keeping with current technology. Mr. Robins said they believe it is a fantastic project and he urged the Board to approve the application.

John Hemsworth, intern and codesigner of the project, focussed on the public realm aspects of the proposal and described how such spaces make cities more livable. He noted that while the Park Board must play advocate to the pastoral nature of some of Vancouver's public spaces, it is also its clear mandate to offer other opportunities for cultural and social play. Kits Beach Park has played an essential part of the public nature of the city since the early 20th century, the first bath house being erected in 1909. This was a 2-storey structure almost 200 ft. long, subsequently replaced with another building. This project was chosen by the Park Board because of its sensitivity to the site, specifically the building is oriented exclusively to the seawall and the restaurant and concession are designed to be clear and separate entities. It uses "green building" technologies with its use of geothermal heating and natural ventilation systems. It also replaces the existing rundown facilities. He stressed they were very conscious in the design of the building that it maintains itself as a public structure first. The concession will be greatly improved being

open year round, and the restaurant, which is respectful of the neighbours, will be a real improvement to the neighbourhood.

Shirley Barnett, Co-proponent, provided some background information about their organization. She stressed they are a local family business, a private company with a wide variety of business interests in the food service and hospitality industry, real estate development and manufacturing. She noted her involvement in Food Runners, a project of the Vancouver Food Bank that picks up surplus food from restaurants for distribution and in which this restaurant will participate. Mrs. Barnett briefly described her husband's many years experience in the food service industry. With respect to their selection by the Park Board as the successful proponent for this project, Mrs. Barnett said they understood the need to be cognizant of and to be responsive to the concerns that the development would undoubtedly generate. They attempted in all of their planning to be aware of the sensitivities of a proud and often protective neighbourhood, and they share the residents' affection for the mountain views, the waterfront beaches, the vibrant lifestyle and the tranquillity that these elements bring to the city. Mrs. Barnett distributed some historical photographs of Kits Beach. She stressed that the proposal is very appropriate for Kits Beach and will also be an exciting new facility for Vancouver.

Peter Barnett, Co-proponent and President of The Restaurant at Kits Beach, noted they have been working diligently on this project for the last fifteen months. They feel prepared and confident to address all aspects of the project, from the lifeguard tower and public facilities to the ground floor concessions and the second floor dining room. He stressed that food service partnerships are not new for the Park Board. In this proposal, their group is capital funding the building. Once constructed, the building will be donated to the City and leased back to them, and the lease will address a number of conditions that reflect many of the concerns that have arisen. He stressed that the land will not be given away or sold. They will be paying both market rent and an amount in lieu of property taxes, the rate reflecting the amount the City assesses similar business operations. Mr. Barnett stressed the facility will be a restaurant and not a pub or pub-style facility. The proposed lease with the Park Board will clearly state that they, or subsequent tenants, will not be permitted to apply for a liquor primary lounge or pub license, or become a disco or night club. Under the new liquor laws they will be operating under a food primary license. There will be no off-sales, which will also be reflected in the lease. Mr. Barnett said their choice of general manager and other staff will reflect a style that will be of the highest standards in both food service and decorum. There will be a table reservation policy and a dress code at the restaurant, noting the Park Board requested that the nature of the facility be casual as well as high quality. The beach level concessions will operate between the hours of 9 a.m. and 9 p.m., seven days a week. The second level restaurant will be open at 11.30 a.m. The patio will close at 11.00 p.m. and indoor dining will be completed by midnight. Reservations will not be taken for arrivals after 10.00 p.m. All patrons will be encouraged to respect the tranquillity of the neighbourhood. The parking lot to the south is also used by many others, including restaurants and bars in the Yew Street area. Space will be made available in the building for community policing. Staff will also escort guests to their cars, if requested. There will be delivery and maintenance protocols, as outlined in their Operations and Management Plan. Mr. Barnett described how they have addressed the concerns about noise. He stressed there will be no live bands. There will be ambient music, the volume of which will be pre-set by management with controls in a locked box in the office. There will be no outside speakers. With respect to traffic, Mr. Barnett noted their traffic consultant concurs with the findings of staff. The restaurant will also provide parking validation and facilities for disabled parking, loading and bicycles.

Mr. Barnett stated that the 12 issues raised by the Kits Point Residents Association have now been addressed and are incorporated in the draft Operations and Management Plan, as called for in condition 1.4. He stressed that many of the points in the Plan will be incorporated into the lease agreement.

With respect to the issue of the appropriateness of the restaurant to park use, Mr. Barnett noted the Park Board has already determined the appropriateness of the use, the jurisdiction of which is exclusive to the Park Board. The Park Board has already exercised that jurisdiction by initiating the RFP and approving the proposal. Therefore, the use of the park is up to the Park Board and the restaurant, being a conditional use, is not relevant. He noted the amount of public interest and media coverage has been significant and overwhelmingly supportive. Mr. Barnett said they believe that the reasons stated in the Staff Report for the recommendation for refusal are overreactive, based on sensitivities of residents in this area about many previous issues. Their concerns are not representative of the public at large and do not reflect the view of many Kitsilano residents. Mr. Barnett said a petition of support containing 1,400 signatures is not reflected in the Staff Committee Report. He noted the petition against the proposal referred to a pub-style restaurant, which is inaccurate and misleading. Mr. Barnett described the significant media support for the proposal and provided a summary of the coverage.

Mr. Barnett said he believes this is a great project that will benefit not only the Vancouver Park Board and the City of Vancouver but also the many visitors who come to the beach from far and wide. Mr. Barnett submitted copies of the draft Operations and Management Plan and the petition containing 1,400 signatures of support.

Questions/Discussion

In response to a question from Mr. Beasley concerning Park Board policy relating to this proposal, Ms. Mundick confirmed that the November 4, 2002 Park Board approved the design concept for submission of a development application, following a series of discussions at the Board table. The public involvement process took many different steps and the first major discussion with the community occurred in the summer of 2002. She added, they were always aware that the development permit process includes notification so this was not duplicated by the Park Board.

Questioned by Mr. Beasley about amplified music, Mrs. Barnett advised there will be no speakers outside. Mr. Barnett said this issue is included in the draft Operations and Management Plan and they have no objections to it being entrenched in the license (lease).

Mr. Beasley sought clarification with respect to the liquor licensing and the potential for its expansion. Mr. Barnett said this is also addressed in the license (lease). He also confirmed he was prepared to see all the matters outlined in Appendix A enshrined in the license (lease), and noted the draft Operations and Management Plan responds to all these issues. Ms. Mundick added, the Park Board has also included a clause with respect to assignment of the lease arrangement so that it cannot occur without the agreement of the Park Board. In response to a further question from Mr. Beasley, Mr. Barnett confirmed he would be prepared for condition 1.4 to be to the satisfaction of the responsible authorities listed. Mr. Hein said he believes all the issues will be dealt with in the Operations and Management Plan. Enforcement would occur through the license (lease) with the Park Board, with further enforcement tied to the development permit.

Mr. Beasley sought clarification regarding the Park Board's normal practice with respect to a master plan. Ms. Mundick said that, of the City's 200 parks, two (Queen Elizabeth Park and the adjacent Hillcrest Park) have recently undergone a master planning process as a result of a number of potential changes. This was a unique master planning process and the first time it has been done. The Park Board does not have approved master plans for the remainder of the parks. There are plans in place for different aspects of service delivery; for example, the Board has adopted Council's direction with respect to sustainability. It has not been a practice to develop master plans on a park by park basis.

Ms. Leduc sought clarification with respect to jurisdiction. Ms. Mundick confirmed the Park Board believes it is within its jurisdiction and authority, under the Vancouver Charter, to approve a restaurant in this park. She added, the Park Board cannot proceed to operate a restaurant in a park without consideration of required permits. Ms. Mundick confirmed the Park Board is not considering any other proposals for Kits Beach Park. Questioned by Ms. Leduc about the soon to be opened bistro in Harbour Green Park, Ms. Mundick noted it is zoned CD-1 and the bistro was part of the official plan for the area. With respect to Brock House in Jericho Beach Park, Ms. Mundick said there are no ongoing complaints about this or any other of the restaurants in parks.

In response to a question from Mr. MacGregor regarding the Strategic Plan, Ms. Mundick advised this was approved by the Park Board in January 2001. She noted the infrastructure in the parks, including concessions, is aging and a long range plan identifies improvement to most of the facilities over a ten year period. The large structure that previously existed at Kits Beach included a combination beach house, change area and food service. The subject proposal is much smaller and it replaces the structure and facilities now on the site, with the addition of the second floor restaurant. In response to a further question from Mr. MacGregor, Mr. Robins confirmed the distance to the nearest residence is about 300 ft. Mr. Michaels confirmed there are many instances in the city where residences are much closer to restaurants, the difference being that in many of the commercial zones restaurant is an outright or conditional use whereas the RS-1 zone permits park use, with the other uses ancillary to that use. Impact of restaurant use on residents is anticipated in commercial zones. Mr. Michaels noted there is a history of Kits Point residents' sensitivities with respect to impacts of the park and the Staff Committee concluded that another intense use on the site would add to these concerns. Mr. Michaels noted there are many restaurants in the city that have outdoor spaces for which conditions have been imposed.

Mr. Timm sought clarification regarding the Operations Management Plan as a mechanism for imposing conditions compared to establishing them directly as conditions of approval. Mr. Hein said it is akin to a Good Neighbour

Agreement and there will be the ability to make amendments over time. He agreed that conditions also could be added as conditions of the development permit. Mr. Michaels noted that conditions such as requiring parking validation would be difficult to enforce. With respect to liquor licensing, Mr. Michaels noted the City is unable to obstruct provincial regulations but after clarification by Mr. Scobie, agreed the City could choose to impose restrictions and the Park Board could also implement restrictions through its license.

In response to a question from Mr. Beasley regarding the number of outdoor restaurant seats, Mr. Robins advised there will be 60. As to whether a limit of 60 seats could be included in the Operations Management Plan, Mr. Barnett said his preference would be to open the restaurant first to establish the best arrangement. He confirmed he would be prepared to see the number of exterior seats as a variable in the license (lease) that would from time to time be adjusted by the Park Board, based on performance.

Ms. Leduc sought clarification as to why this restaurant is considered precedent setting. Mr. Michaels explained the restaurant at Jericho has existed for many years and precedes the zoning whereas Kits Beach Park does not currently contain a full facility restaurant.

In response to a question from Mr. Francl regarding the acoustical impacts, Bob Strachan, Acoustical Engineer, reviewed his analysis which concludes that noise will not be an issue. Responding to Mr. Francl's question about parking, Paul Bunt, Traffic and Parking Consultant, reviewed his analysis and his conclusion that he believes the staff assessment that the restaurant will require 30 parking spaces, is high. Mr. Perez of Keen Engineering described the proposed odour dissipation system.

Mr. Scobie noted that, if the Board is inclined to approve the application, the issue of signage requires clarification given the Sign By-law is not within the Board's jurisdiction. Mr. Hein advised staff were seeking confirmation that the applicant intended a constrained approach. Mr. Robins briefly described the intentions for signage and Ms. Mundick confirmed it will be covered in the license agreement. As well, directional signage will be minimal and low key.

In response to questions from Mr. Scobie, staff provided clarification with respect to a number of the standard conditions outlined in Appendix A.

The meeting adjourned for a brief recess at 7.25 p.m. and reconvened at 8.00 p.m.

Comments from Other Speakers

The following delegations spoke against the proposed development:

Digby Peers
Barbara Shumiatcher
Stuart Mackinon (S.P.E.C.)
Elise Leyland
Elizabeth Gram
Adam Smith
Chris White
Lois Millington
Lynne Kent
Janie Cruise
Russet McKay
Marg Zibin (Ms. Zibin also read statements of opposition from Patsy Jackson and Carolyn Neighbour)
Gloria Sully
Anker Gram
Annalee Yassi
Jerry Spiegel
Andrew Jakoy

Hans Schmid and Ilse Schnirch left briefs (on file) indicating opposition.

The following delegations spoke in favour of the application:

Rob Grant
Leonard Schein
Veronica Vinje
Bing Thom
Len Chaston

Mr. MacGregor proposed that, when the meeting reconvenes, the Board revisit those speakers who were unable to remain to be heard. Mr. Beasley and Mr. Timm concurred.

The meeting adjourned at 10.00 pm and reconvened at 5.00 pm on April 1, 2003

The following delegations spoke in opposition:

Lyle Benzley
Jan Pierce
Kerry Sully
Mary Davison
Leslie Olsen on behalf of Michael Hart
Peter Sewell
Isabel Minty
Beverly Hauff
Bill Demopoulos
Paul Kent
Representative for May Brown

A representative read a statement of opposition from June Binkert, Save our Parkland

The following delegations spoke in favour:

James Goodman
Dennis Hahn
Rachel Greenfield
George Papp
Richard Floody
Ian Waddell
Shirley Barnett read a letter of support from Lucille Johnston

Panel Opinion

Walter Francl noted the Urban Design Panel reviewed this project twice. It was not supported in the first review and a number of the Panel's suggestions were addressed in the revised submission that was subsequently supported. The restaurant use in this location was unanimously supported by the Panel and the issues related only to aspects of the design. Mr. Francl said he believes the project should be supported. The proposed restaurant adds a very desirable dimension to the enjoyment of the park. The design achieves a very high standard of architecture. It has a calm and serene character that will fit well in this setting. The Urban Design Panel felt that a building of this calibre is a positive enhancement of the park. Mr. Francl said he believes the impacts of potential noise, odours and parking have been well addressed by the proposed design and are well considered in the conditions contained in Appendix A. He said there are adequate checks and balances and opportunities for correction if problems occur. He recommended approval of the application.

Mr. Hancock commented that this is a difficult project on which to make a decision. Vancouver is a wonderful city and its wonderful setting is one of its major assets. However, what also makes Vancouver interesting is that it offers an active lifestyle combined with opportunities to live in a sophisticated urban environment. Mr. Hancock noted the procedural issues that have arisen relating to the lack of master planning and policy about this type of use in a public park. However, even if there were policies and master plans, this kind of opportunity will present itself more and more in the future. The real question is whether or not it is change for the better. Mr. Hancock said he believes it is change for the better. The existing facility obviously needs replacing and the additional use of a restaurant is consistent with the history of the park. In addition, the architecture is exemplary and will be something that people will be proud of. It will contribute to the diversity of the city. Mr. Hancock said he also believes the proponents have

done a very good job in addressing all the concerns including parking, noise, odours, liquor service issues, and there are safeguard to ensure those commitments are kept. He recommended approval of the application with the conditions outlined in the Staff Committee Report.

Mr. Mah thanked the public delegations for their input. He said it is very clear that the local residents strongly oppose this development. Mr. Mah said he was also convinced that the facilities on this beach need to be improved, for the benefit of all the users of the beach. He did not believe the proposed restaurant is the type of establishment that will cause the impacts described by the neighbours. The size and scope of the development and the controls proposed should eliminate or minimize any potentially negative impacts. Mr. Mah said he was also concerned that the staff recommendation is to refuse this application. He said he considers Kits Beach as Vancouver's beach and park and efforts to improve it will benefit all Vancouver residents. If it also beneficial if a public/private structure can help finance the project. Mr. Mah recommended, if the Development Permit Board chooses to approve the application, that they ensure there are appropriate controls, including entrenching items in the lease as discussed, to make sure the local residents' concerns about noise, odours, parking and drunkenness are addressed.

Mr. Chung recommended approval of the application noting the building is minimal in height and it will improve the existing facilities for the benefit of all the public. Mr. Chung said he was pleased to see that parking is not being expanded. He noted there are many other restaurants nearby on Cornwall and Yew Street that do not have the controls under discussion for this restaurant. They are also closer to residential areas than this restaurant. Mr. Chung urged the Board to disregard the Staff Committee recommendation to refuse the application based on objections received from property owners because a decision should consider all citizens. This project is progress for a growing city.

Mr. Henschel thanked the delegations for their comments. He said he has no problem with restaurants in parks, with public/private partnerships, or with the Park Board using its assets to generate revenue. The building itself is quite pleasing and the proponents are capable and sincere in their expressed desire to provide a low-key and dignified facility. Nevertheless, Mr. Henschel said he believes there is a fundamental difference between putting a restaurant in a park and putting a restaurant on a beach. A restaurant in a park is located in an area that can be avoided, but a restaurant on a beach dominates the edge. It will significantly degrade the character and quality of the beach, particularly at quiet times. It is not compatible and will change the essence of the beach during most of the year. Mr. Henschel said he also did not believe restaurant to be a legitimate RS-1 use. Furthermore, this restaurant is not intended to improve the beach but to generate revenue for the Park Board. In order for the Board to accept a conditional approval use, especially in the RS-1 District, it needs to seriously listen to the neighbours who know the park best and who will be affected the most. He recommended that the Board refuse the application.

Ms. Leduc also thanked the delegations. She said she had concerns about the reasons cited by the Staff Committee for recommending refusal. The fundamental question seems to be whether the Park Board has the right to build a restaurant in this location. Ms. Leduc said she concludes the Park Board does have the right to build this restaurant: there is food service in the park currently and in the past it has also contained a restaurant and a bigger building. The new building is taking no new portion of parkland away from what is already there. As well, the Park Board does envision this type of development in its long range plan. The current facilities badly need upgrading and the proposed new building is very discreet. It will replace something that has become an eyesore with something to be proud of. With respect to the concerns expressed about how this restaurant will be managed, Ms. Leduc noted the Park Board are exemplary stewards of the land and she had no concern that this restaurant would set a precedent for commercialisation of all the beaches. She noted that in recent years the Park Board has brought back natural aspects to many of the parks. The Park Board also has a very good track record of managing its restaurants. She suggested that if people can consume alcohol in the restaurant they are less likely to be drinking on the beach. Ms. Leduc said Vancouver is evolving to become a world class city and noted it is sometimes difficult for neighbours to see things change. In summary, Ms. Leduc said she saw no reason to refuse the application and recommended its approval.

Board Discussion

Mr. MacGregor thanked the members of the public who addressed the Board and said the discussions have helped him reach a conclusion on the application. The Board must consider what are the real issues and what are its responsibilities in terms of approving applications under the Zoning and Development By-law. He stressed that the Development Permit Board does not do the work of the Park Board. The Park Board is elected to make decisions with respect to the operations of the parks and the responsibility for this is assigned to the Park Board under the Vancouver Charter. Mr. MacGregor noted there are many uses permitted in the RS-1 zone, and ancillary uses to those uses. This

proposal is an approvable ancillary use to the park. The Board must also consider the submissions of property owners and other members of the public. This may be a unique application but it is certainly one that has been reviewed by the Park Board which is a proven advocate for the parks throughout the city. There are other restaurants in parks. Mr. MacGregor said the Board must also consider how relevant a master plan would be in its deliberations and whether there is sufficient information to make a decision. There are over 200 parks in the city as well as 22 community centres, eight pools and rinks and many other activities in the parks. Between 1930 and 1964 this park contained a 2-storey building of about 15,000 sq.ft. as well as a pavilion and the Kitsilano tea house of about another 4,000 sq.ft. These structures were removed in the mid 1960s and replaced with the current, aging facilities. Mr. MacGregor noted the Staff Committee, in its recommendation of refusal, considered it inappropriate at this location, at this time. The Staff Committee also suggested that the Board have particular regard to adverse impacts. Mr. MacGregor noted there are probably hundreds of restaurants in the city that are closer to residential use than this proposal. With respect to design, the Urban Design Panel supported approval. With respect to lack of policy, Mr. MacGregor reiterated there are already restaurants in parks., indicating restaurant is a use customarily ancillary to park use. There are also restaurants on the water, on public land and adjacent to residential development in other areas of the city, approved by City Council. He said he did not believe this proposal would set a precedent for more commercialisation along the beaches, especially given the record of the Park Board. As well, this restaurant is modest in size. Mr. MacGregor said he could not reach the same conclusion as the Staff Committee, and noted the Committee did provide conditions of approval for the Board to consider after hearing from the public.

Mr. MacGregor noted the Park Board has made the decision to proceed with this development. The benefits of the proposal include a new concession, lifeguard station, washrooms and change facilities. In considering the restaurant with respect to the zoning, it meets the height requirements and has been adjusted to minimize view impacts. The rear yards, floor space and site coverage requirements are all met. Mr. MacGregor said he therefore believes the use can be approved in his interpretation of the by-law. He said it is important to deal with some of the operational issues to mitigate potential impacts on the residents.

Referring to Appendix A of the Staff Committee Report, Mr. MacGregor suggested a number of changes to the conditions. He said it is important to have the Operations and Management Plan identified in the approval so that any concerns can be raised with City as well as the Park Board. In discussion with respect to condition 1.4, Mr. MacGregor said it is his intent that the plan will allow for minor modifications by the Park Board but the major issues are to be to the satisfaction of Planning, Engineering and the *General Manager of the* Park Board. With respect to the designation of a contact person, Mr. MacGregor added he expects that contact will be available on a 24-hour basis.

Mr. Timm acknowledged the input of the public delegations as well as the Advisory Panel. He commented that the Board frequently hears a lot of self-interest expressed by delegations but, in this case, the opponents were more concerned with the future of the city and its parks. Mr. Timm said he agreed with the majority view expressed by the Advisory Panel and by Mr. MacGregor that it is within the purview of the Park Board to determine the uses in parks. There is also a role for the Development Permit Board as outlined in the by-law with respect to conditional uses. Mr. Timm said he has considered the response to notification in the report and listened to the delegations. The vast majority of the written objections (90 percent) state that restaurant is an inappropriate use in a park. However, that decision rests with the elected Park Board which has made its decision known. The Development Permit Board has to consider the compatibility of the design and whether impacts on the neighbourhood have been properly addressed. Mr. Timm said he was convinced that this is a good design that will be of benefit to the neighbourhood and that the negative impacts have been properly addressed. He did not support the Staff Committee's conclusion that the application should be refused. He concurred with Mr. MacGregor's suggested amendments to the conditions and also recommended deletion of 1.5. He said he was satisfied that noise is not an issue and was concerned that this condition is contrary to Council policy with respect to environmentally sensitive buildings.

Mr. Beasley commented that this has been one of the more difficult decisions he has had to make as a member of the Board. He began by stating that he believes the Park Board and its staff have done a fine job in dealing with the proposal as best as possible under the circumstances - clearly trying to address something very different and to juggle a number of interests. Mr. Beasley said he has no concerns about the proposed restaurateur and the applicant team, noting they have shown an unusual sensitivity to issues raised throughout the process. Mr. Beasley said he agreed with Bing Thom that the proposal is an elegant piece of architecture and he commended the architect for a suave and elegant design. With respect to suggestions made about "NIMBYism", Mr. Beasley commended the community for its concern about what occurs in its back yard and noted the residents have been very articulate in describing those concerns. With respect to the zoning, Mr. Beasley said it is clear that this is a conditional use in RS-1 and is well within

the purview of the Development Permit Board. With respect to concerns expressed about the public process, Mr. Beasley commented that when approximately 4,000 people respond, both for and against, it must be concluded that there has been good public process and staff have performed well in this respect. Regarding the Staff Committee's recommendation, Mr. Beasley said he believes the Committee acted in very good faith in its analysis and he could understand why they reached the conclusion to recommend refusal, particularly in regard to the lack of policy. He said he believes it is clear that a restaurant can be a customarily ancillary use to a park. They already exist, they function very well and augment the basic intent for recreational use of the parks where they exist. The question is whether they are customarily ancillary to this particular park given its nature. He noted that a number of delegations described the special nature of this park. In the absence of policy, it is important for the Development Permit Board to be very cautious. Therefore, in the absence of some very pro-active arrangements to address potential impacts, Mr. Beasley said he would feel the Staff Committee conclusion is correct. He said he was also impressed and concerned by the number of well reasoned submissions against this proposal, noting that they were not just from this neighbourhood but from throughout the city.

Mr. Beasley sought clarification about the intent of Mr. MacGregor's motion and what safeguards exist to allow the project to be halted if major issues arise, noting that many of the residents might feel differently about the proposal if there was clarity and surety about the parameters for success and their enforcement. In particular, he questioned whether the intention is to approve a Class 1 restaurant given the concerns about the potential for live entertainment. Mr. MacGregor responded that he did not specifically reference Class 1 restaurant in his motion because he feels the provisions in the Operations and Management Plan may be more prescribing than the definition of Class 1 restaurant suggests. He noted the restaurant requires a license (lease) from the Park Board and it is important to address within it some of the operational issues that may be permitted under the provincial liquor laws, e.g., permitting liquor to be removed from the restaurant and the number of liquor-only seats. In effect, what is proposed goes much further than the definition of Class 1 restaurant. Mr. Timm confirmed that it was his understanding that, by adding specifics with regard to the liquor licensing and by referencing the provisions in the proponent's draft Operations and Management Plan, more safeguards would be in place than provided by the definition of Class 1 restaurant.

Mr. Beasley sought confirmation that the items listed in the proposed new condition 1.4 are meant to be an integral part of the license (lease), even if it goes beyond the parameters that were part of the tentative license agreement prior to this Board's consideration. As well, that it ultimately would be enforceable by the elected Park Board by virtue of it being the licensor. Mr. MacGregor said he believes the Operations and Management Plan will be a "living document". Many of the conditions would be established at the outset but some, such as monitoring and communication protocols, can be amended if it is found necessary in practice in the community. Enforcement can be by the Park Board as licensor and by the City as a party to the Operations and Management Plan. As an integral part of the license (lease), the power of enforcement rests finally through the licensing power of the Park Board so that citizens can seek redress from their elected Park Board if the parameters of the Operations and Management Plan are not being adhered to. Failing that, enforcement can also be achieved through the City.

Mr. Beasley sought confirmation that the Operations and Management Plan will deal with: (1) not permitting live performances, dancing and amplified music, (2) eliminating amplified recorded music from speakers or a P.A. system to ensure the pastoral quality of the beach setting, (3) include protocols regarding alcohol sales and consumption on the premises, (4) signage in the interests of achieving an understated signage system, (5) interior and exterior lighting to avoid glare and to take into account seasonal variations, and (6) the clear designation of a contact person on a 24-hour, 7-day-a-week basis. In deleting the original Note to Applicant, Mr. Beasley said he wanted to be assured that these matters would be addressed in the Operations and Management Plan. Mr. MacGregor confirmed this but also said he did not believe he had sufficient information at this time to be very specific as to the exact specifications on each issue. Rather, the draft Operations and Management Plan that has been submitted by the applicant would be a start and the details would be worked out with the operator as this is finalized. Mr. Timm suggested including some wording to indicate that all of the issues in the Note to Applicant are to be reviewed and addressed in the Operations and Management Plan, without prescribing solutions. In discussion, Mr. Beasley stressed that the purpose of seeking clarification was to ensure that the Board intended for the items in the Note to Applicant, if deleted, are still to be on the agenda so that the Planning, Park Board and Engineering officials can include them in discussions with the applicant in finalizing the Operations and Management Plan.

Mr. Beasley stressed that he was seeking a level of security in the documentation and the approval that the real issues that could affect the ultimate compatibility of this restaurant in this park are dealt with. He said he now feels comfortable that this was the mover and seconder's intent. He recommended some friendly amendments to address exterior seating and to retain the condition dealing with outdoor speakers as a condition of the development permit.

Mr. MacGregor agreed to add reference to exterior seating but did not support a condition that there be no outdoor speakers. He stressed that the intent of the Operations and Management Plan is to work with the operator with respect to his operational needs and to meet the "good neighbour" component in terms of relating to the community. It is not intended to put conditions into place which frustrate the whole project. He said he was confident the issues can be worked out with the community.

Mr. Beasley said it is clear that, with the security that is to be provided, the Park Board has the ability to deal with concerns raised by the community. On that basis, he was convinced the restaurant is an acceptable ancillary use for this particular park under those conditions. It will be an adjunct to this waterfront site. It is not a pub but a quality restaurant that intends to be a contributor to the park. With the amendments, Mr. Beasley said he supported the resolution.

Mr. Timm concurred with Mr. Beasley to delete A.3.2, amend it and make it a condition of the development permit as B.2.5. Mr. MacGregor's suggested further amendment to the condition, to allow for occasional on-site special events, was not supported by Mr. Beasley or Mr. Timm.

Motion

It was moved by Mr. Beasley and seconded by Mr. Timm, and was the decision of the Board:

THAT the following be added to the Conditions of Development Permit:

B.2.5 there are to be no outdoor speakers, music or entertainment on the patio;

CARRIED (Mr. MacGregor opposed)

It was moved by Mr. MacGregor and seconded by Mr. Timm, and was the decision of the Board:

THAT the Board APPROVE Development Application No. 407191, in accordance Appendix A of the Development Permit Staff Committee Report dated March 19, 2003, with the following amendments:

Amend 1.2 to change "for" to "from" in line 2;

Amend 1.4 to read:

provision of an Operations and Management Plan as part of the license agreement between the Park Board and the operator to ensure enforcement of conditions, all to the satisfaction of the Director of Planning, the General Manager of Engineering Services and the General Manager of the Park Board. The Operations and Management Plan should address, but not be limited to the following:

- a) Hours of operation and ultimate closing time
- b) Delivery and delivery maintenance protocols
- c) Expectations regarding the sale of alcohol
- d) Traffic and parking management and monitoring of impacts
- e) Noise and odour management
- f) Restaurant self-promotion, including site and building signage intent
- g) Lighting systems management given seasonal variances
- h) Maintenance of building and grounds (as it relates to the impacts of the restaurant)
- i) number of liquor only seats
- j) Safety and security provisions for patrons
- k) Monitoring and communication protocols with local neighbours as required
- l) The number, nature and orientation of exterior second floor seating

Delete the **Note to Applicant** in 1.4, on the understanding that the Director of Planning, General Manager of Engineering Services and the General Manager of the Park Board will *communicate the details of the Operations and Management Plan* ~~talk~~ to the *local* stakeholders in the area ~~with respect to the Operations and Management Plan;~~

Add a new **Note to Applicant** in 1.4:

The draft Operations and Management Plan, dated March 2003 provided by The Restaurant at Kits Beach, will provide a good basis for development of a final plan.

Delete 1.5;

Amend A.1.2 to add "proposed" before "buildings";

Amend A.1.6 to change "two (2)" to "one class B loading space";

Amend A.1.7 to delete "a minimum of 150" and delete the **Note to Applicant**;

Delete A.1.8;

Amend A.1.10 to add "in the vicinity of the proposed development";

Amend A.1.12 to clarify that it applies only to the trees affected by this development;

Delete A.3.2.

CARRIED UNANIMOUSLY

Commenting further on the application, Mr. Beasley said it behooves the Park Board and, if necessary, City Council to offer more explicit policy to the Development Permit Board for this kind of park ancillary use in the future. It would certainly provide more clarity to the Development Permit Board and create a better framework in which an applicant might proceed. It would also give the public an opportunity to deal with the principle of whether this kind of approach is supported by the majority as being in the public interest.

5. OTHER BUSINESS

None.

There being no further business, the meeting adjourned at 8.40 p.m.

C. Hubbard
Clerk to the Board

F. Scobie
Chair

/ch

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