



March 3, 2017

MEMO TO : Park Board Commissioners

FROM : Malcolm Bromley
General Manager, Vancouver Board of Parks and Recreation

SUBJECT : CCA JOA Special Park Board Meeting - Speaker Concerns

Dear Commissioners,

At the Special Park Board Meeting for the Community Centre Association (CCA) Joint Operating Agreement (JOA), you heard from 63 speakers on their outstanding areas of concern with the JOA. As promised by staff, we would like to offer clarity on some items that were brought forward and address a few topics of concern.

Compared to the JOAs that are currently in place, the proposed JOA is a longer, more robust document. The JOA introduces new concepts, some of which are technical, legal, and complex. To ensure that the CCAs and the public had as fulsome an understanding of the JOA as possible, Park Board staff took the following steps during the consultation process:

- hosted a technical briefing for media;
- posted all JOA materials on the public consultation website and sent all materials to CCA Presidents and Directors;
- held additional information meetings with the CCAs at their request and demonstrated flexibility in scheduling consultation meetings;
- developed a number of plain-language supporting documents, including FAQs and summaries; and
- maintained open and transparent correspondence with all CCA Presidents and Directors throughout the consultation process.

A significant amount of feedback shared at the Special Meeting related to the JOA process, the history of the Park Board/CCA relationship, and power dynamics between the parties. Few speakers, aside from those representing Strathcona Community Centre, focused on the impact of the proposed JOA on public service delivery or programming.

Below is an overview of statements made by speakers during the Special Meeting and clarification from staff where evidence is available. Statements are organized by topic. Please note that this memo does not address concerns specific to any one CCA or community centre.

JOA CONSULTATION PROCESS

1. **Statement:** The JOA process was unbalanced as CCAs have never had the opportunity to present to the Park Board Commissioners holistically and as a group.

Response: The JOA process was open and transparent and all CCA Presidents and Directors were recognized as representing unique and individual entities. This was



reflected in the consultation model. All CCA Presidents and Directors had access to the same information and the same opportunity to provide feedback. Park Board Commissioners were present to listen to the CCAs' concerns at consultation meetings, hear from specific CCAs in their role as liaisons and witness presentations by a number of CCAs during the Special Public Meeting.

Throughout the consultation process, CCAs had a number of opportunities to share their feedback with staff and Commissioners, including through correspondence, in person and in an open online survey.

2. **Statement:** Most of the feedback that was provided by CCAs on the draft JOA was ignored.

Response: Over 100 language changes to the JOA were made based on CCA feedback with further amendments passed by the Board on January 23, 2017. Staff seriously considered feedback from the CCAs and, wherever possible, CCA feedback was incorporated into the JOA, including language proposed by the CCAs in the 275 pages of written feedback that staff received.

3. **Statement:** At this stage, the CCAs and the Park Board need lawyers to work together to determine language that works for both parties.

Response: Due to the scope and length of the JOA, it would not be practical to engage in negotiations with each of the CCAs on each and every term of the JOA with the view to reaching an agreement on language. In previous negotiation processes, some of the CCAs and the Park Board have sought to reach agreement on specific language and the process proved to be unwieldy in circumstances in which there were even fewer CCAs at the table. To change course at this point in time would require significant time, additional expense and resources from both the Park Board and the CCAs and such a process has previously proven to not be fruitful. The Park Board committed to one open, equitable and transparent process for all CCAs to achieve a new JOA.

In addition, since the CCAs often have conflicting interests, it is likely not possible for one legal counsel to represent the CCAs as a group. Each CCA would need their own legal counsel, resulting in inequities at the negotiation table since not all CCAs can afford legal counsel. Accordingly, the interests of only a few CCAs would be represented in that process.

We also note that the majority of outstanding concerns being raised by the CCAs are not legal concerns. There are a few discreet legal issues that some CCAs have raised (and which are addressed in other sections in this memo and by a legal opinion); however, the majority of remaining concerns reflect a difference of opinion on business points. Lawyers cannot resolve business points, and decisions on these points ultimately need to be made by the parties to the contract.

4. **Statement:** The Park Board has an obligation to negotiate in good faith with the CCAs to reach a new deal.

Response: The Park Board has negotiated in good faith with the CCAs for many years as various attempts have been made to reach agreement on a new JOA, including the most recent consultation process. After many years of failed negotiations, the Park



Board gave direction to staff to undertake a consultation process to obtain a new JOA. Park Board staff embarked on this consultation process voluntarily and at the direction of the Board because the Park Board values the CCAs and their contributions, not because of any legal obligation. To achieve a new JOA, Park Board staff used a fair, open and transparent consultation model.

LEGAL ISSUES

5. **Statement:** Pushing the JOA forward will lead to more litigation, not less. The six CCAs sitting on an injunction will turn to 10, 12 or more CCAs in litigation with the Park Board.

Response: In August 2013, six CCAs (Hastings, Kensington, Kerrisdale, Killarney, Riley Park Hillcrest and Sunset) commenced litigation against the Park Board alleging numerous breaches of the Joint Operating Agreement. They also sought an injunction preventing the Park Board from implementing the OneCard and preventing construction of a new child development centre at Kensington. In addition, the CCAs claimed they are entitled to a half interest in all assets that were created or acquired by the Park Board since the beginning of the relationship.

The other CCAs and the Park Board entered into an interim agreement to provide for the implementation of the One Card. The six CCAs did not agree to implementation of the OneCard and pursued litigation. In response to the litigation and the injunction application, the Park Board agreed not to implement the One Card for programs and activities operated by the 6 CCAs at their respective community centres during the term of the JOA.

At the hearing of their injunction application, the six CCAs sought to prevent the Park Board from implementing the OneCard and restrain the Park Board from selling, promoting or advertising the OneCard at the community centres they jointly operated. The Court dismissed the injunction application on the basis that there was no evidence that the Park Board was now going to implement the OneCard for programs and activities of the Plaintiffs and, further, that the terms of the JOA permit the Park Board to make use of space in centres to advertise or promote its policies or initiatives, such as the OneCard.

The Park Board gave notice of termination of the six CCAs effective December 31, 2013. In response, the Plaintiff CCAs brought another injunction application to prevent the Park Board from acting on the Notices of Termination and amended their claim to assert an implied contractual licence to use and occupy community centre lands and premises. On January 17, 2014, the BC Supreme Court granted the injunction restraining the Park Board from acting on the Notices of Termination issued to the six CCAs and declaring that the JOAs remain in effect until trial or further order of the Court.

In granting the injunction, the Court first held that there was a serious question to be tried, in that the trial judge will have to consider whether, if an implied licence exists to occupy community centre premises, it survives the termination of the JOAs. Second, the Court found that the balance of convenience favoured granting the injunction because terminating the JOAs would effectively result in the CCAs ceasing to exist before a trial is held to consider the issues. The Court held that granting an



injunction would maintain the status quo between the parties until trial and it would not cause any irreparable harm to the Park Board. The existing injunction only applies to the six CCAs. The Park Board has not, to date, terminated the JOAs of any other CCAs.

6. **Statement:** The current draft JOA and consultation process is a response to legal action and still-unresolved fallout.

Response: Although the outstanding legal issues between some CCAs and the Park Board highlight the inadequacies of the outdated JOAs, the JOA was not drafted in response to the legal issues. Before the litigation between some CCAs and the Park Board, the Park Board was working to renew its relationship with the CCAs in the 1990s. There are sections in the new JOA that attempt to address some of the issues raised in the legal action, but the majority of content in the JOA is intended to update the agreement to reflect current operations, processes and inadequacies in the current system and agreement. There is also no legal requirement that the Park Board engage in the current process.

7. **Statement:** The CCAs cannot sign the JOA as they have received legal opinion stating that, generally, the JOA is in contravention of the *Societies Act* and the *Income Tax Act*.

Response: Park Board has sought its own legal advice on this matter, including an examination of the one legal opinion provided by the CCAs, and the legal advice we have received states that the new JOA does not create contraventions of the *Societies Act* and *Income Tax Act*. Park Board remains committed to achieving a fair JOA that addresses any real issues for the parties and has received advice that the proposed JOA is not in conflict of any legislation that governs the CCAs. The Park Board's legal opinion on this matter is also being made publicly available for review.

JOA APPENDICES

8. **Statement:** The JOA Appendices need to persuade the CCAs to sign the JOA (i.e., include future funding commitments).

Response: The Appendices are meant to reflect operational changes once those changes are agreed upon and implemented, not the other way around. Although we are starting to see some CCAs use the Appendices as a positional tool, the purpose of the JOA Appendices is to reflect current practice and to document the unique operational arrangements at each centre. The Appendices do not capture future negotiables or commitments; they reflect practices that are already implemented at each centre. The Appendices can be adjusted at any time with mutual agreement by the parties as practices or operations may change over time.

9. **Statement:** The Board cannot approve the JOA without also approving the JOA Appendices.

Response: The Appendices detail operational matters already in practice that are managed by staff under the authority of the General Manager. Park Board staff will be recommending that the Board approve the form of the JOA and authorize the General



Manager to offer each of the CCAs the opportunity to sign a JOA with their individual Appendices.

As the General Manager is the signatory to the JOA, staff will complete the JOA for each CCA with their unique Appendices. If the Board chooses to approve the Appendices along with the form of the JOA, the Board would be signaling their intent that all future changes to the Appendices, which are operational in nature, need to be approved by the Board before being implemented.

10. Statement: Surrounding parks within the catchment area of the CCA need to be included in Appendix A.

Response: The Park Board no longer uses catchment areas to define service delivery areas. Some of the existing (1979) JOAs included surrounding parks as part of the “jointly operated facilities.” The new JOA does not include parks as part of the Jointly Operated Facilities because the JOA provides the CCA with control of the Jointly Operated Facilities. Under the new JOA, the community centres are seen as part of a city-wide community centre network and parks are to be accessible and for the benefit of all members of the public. This is in alignment with the Board’s foundational principles of an accessible, equitable recreation system.

For planning related to areas surrounding the jointly operated facilities (e.g., surrounding parks), the Park Board will use reasonable efforts to engage with the CCA as a stakeholder and, where appropriate, seek their input. This commitment is included in the JOA based on CCA feedback.

GOVERNANCE

11. Statement: Legal opinion states that the JOA goes too far in eroding the unilateral governance of the CCAs.

Response: The JOA clarifies the working relationship between the CCAs and the Park Board, who are independent contracting bodies entering into an agreement which allows the CCAs to use public assets to provide services to the public. The *Societies Act* speaks to the internal governance of a society, whereas the JOA speaks to how the Park Board expects the CCAs to conduct themselves when offering services to the public from these public assets.

The JOA is a contract and sets expectations of the CCA that at times exceeds the basic requirements of the *Societies Act*; however, these are contractual requirements between the parties that help ensure the best use and operation of public assets and the provision of services to the public. This change from the current, outdated JOAs does not erode the autonomy or governance of the CCAs. Some contractual requirements in the JOA do exceed those set out in the *Societies Act*, but they do not conflict with the requirements of the *Act*. These requirements are intended to ensure that services being provided to the public from public facilities meet the requirements of the Park Board and that the CCAs ensure they are transparent with the public. Contracts often set expectations of behaviour that go beyond the minimum required by law, even when parties to those contracts are societies or corporations.



All expectations set out in the JOA only apply to the CCA when they are carrying out the operations contemplated by the JOA. The Park Board does not set any requirements on how the CCA may act when carrying on activities outside of the Community Centre Network.

12. **Statement:** The JOA has unnecessary oversight of CCAs and could be simplified by only referring to Canada Revenue Agency (CRA) requirements and other Agencies' requirements for CCAs.

Response: The JOA asks that CCAs adhere to good governance standards in addition to complying with relevant legislation (including the *Societies Act*). Examples include policies that address conflict of interest, audit, responsible use of funds and succession planning. The difficulties experienced with Riley Park Hillcrest Community Association evidences the need for a new, effective JOA that ensures good governance and provides tools to deal with CCAs that fail to maintain good governance. Experience demonstrates that failing to address CCA governance issues can erode public confidence in a CCA, but the current JOA does not provide any tools to deal with these serious issues. The *Societies Act* has also not proven an effective mechanism to deal with these issues which demonstrate the need for good governance requirements and tools to deal with these "worst case scenarios."

13. **Statement:** CCAs will not be able to amend their by-laws to make the changes that are required in the JOA. Additionally, the CCAs cannot guarantee that their members would agree to by-law changes and it would not be feasible to hold special board meetings to address these changes within the specified timeframe.

Response: It is standard for non-profit societies and charities to adjust their by-laws over time as the needs of the organization change or to reflect standards set by governing bodies (e.g., requirements set by the United Way or Imagine Canada) during Annual General Meetings or Special General Meetings. In addition, a new *Societies Act* came into force recently. Compliance with that *Act* requires that a society transition under the new *Societies Act*. As part of that transition a society must review and adjust their bylaws or constitution by November 2018 to reflect the new requirements. The CCAs could easily include in that process any amendments necessary to align their bylaws or constitution with the JOA.

Currently, we are not aware of specific changes the CCAs would need to make to their by-laws to come into alignment with the JOA. The only CCA opinion we have received (from the West End CCA) indicates no changes are necessary. Some CCAs may need to update their purpose if their current purpose is incompatible with providing services to their local and *City-wide community*.

14. **Statement:** The CCAs cannot offer system-wide programs as their ability to provide services outside of neighbourhood might be outside of their bylaws and their constitution and bylaws dictate that they provide services within their neighbourhood.

Response: As stated above, if the purpose of the CCAs is incompatible with providing services outside of their neighbourhoods, they may need to update their purpose.



TERM AND TERMINATION

15. **Statement:** The JOA does not reflect the Park Board's intent to stay in business with the CCAs. There is nothing stopping the Park Board from immediately terminating a CCA once they sign the JOA.

Response: The initial term and renewal terms in the new JOA are longer than in the current JOA; however, the requirement to meet and renew the Agreement at the end of 15 years is new. This reflects the importance of keeping operational arrangements and contracts up to date, not the Park Board's unwillingness to work with the CCAs. The Park Board does not agree that perpetual renewal periods are appropriate as agreements must be reviewed regularly to ensure they are up to date and respect the jurisdiction of future elected Boards. Termination provisions in the new JOA are also more limited and should provide the CCAs with more certainty. The termination provision in the new JOA acknowledges that a CCA can only be terminated if it is breach of specific items which are listed in the JOA, and that the CCA has opportunities to remedy that breach before a termination notice can be given. This significantly restricts the Park Board's ability to terminate a CCA from what is included in the current JOA, and is a direct recognition of the value of the CCAs and their need for more certainty.

16. **Statement:** The concept of Breach in the JOA is vague and one-sided and CCAs will not know if they are in breach of the JOA.

Response: The actions of the CCA that would constitute a breach are clearly listed in the JOA. This is to reduce the Park Board's ability to terminate the JOA. There is also a dispute resolution mechanism so that the parties can discuss and try to resolve breaches before they progress to a situation where termination may arise.

Based on CCA feedback, the JOA also includes the right of the CCA to terminate the JOA if the Park Board is in breach. The CCAs right to terminate the JOA is broader than the Park Boards right to terminate the JOA. The JOA includes clear steps for the CCA to take if they believe the Park Board is in breach of the JOA, and the Park Board must try to remedy that breach. The steps the Park Board must take are the same steps as if a CCA is found in breach of the JOA.

17. **Statement:** The Park Board is giving the CCAs an unfair ultimatum: sign the JOA or face eviction/termination. The Park Board wants to terminate all CCAs at the end of Term.

Response: The Park Board is not issuing a threat to the CCAs. The intent of offering a JOA is to clarify the working relationship of the parties and continue forward together. If a CCA were to be in breach of the JOA and be terminated, the Park Board would pursue a relationship with another CCA. The Park Board has engaged in extensive discussions with the CCAs to update the working relationship and resolve existing disputes, including engaging in a lengthy consultation processes that is not legally required to develop a new JOA.



FINANCE

18. Statement: To tell the CCAs how and when to spend their financial surplus is unreasonable and careless. The CCAs have had 50-60 years of competent financial stewardship.

Response: Not all CCAs have a history of competent financial stewardship; however, most do. The Park Board's proposal for Surplus Revenue changed as a result of CCA feedback. The CCAs are not required to spend their Surplus Revenue within a specific period of time, but have been asked to provide a plan and disclose that plan to the public. It is also important to recall that under the JOA Surplus Revenue only includes revenue generated by the CCAs with the assistance of the Park Board or through the Association's use of the Jointly Operated Facilities. Currently, a CCA may spend its surplus revenue for any purpose that its constitution allows, which can include purposes outside of the community centre network. Under the JOA, the Park Board is requesting that the CCAs reinvest their surplus revenue that was generated using the community centres back into the community centre network. If a CCA generates money outside of the community centre network, it can spend that money any way it wishes.

19. Statement: Requiring the CCAs to produce two sets of financial statements (i.e., in the case of an audit) would violate Generally Accepted Accounting Principles (GAAP).

Response: The Park Board is not asking the CCAs to produce two sets of financial statements, but rather to have the ability to review CCA financial records if necessary and provide detailed accounts to the Park Board so we can ensure the community centre assets are being leveraged to provide public benefit in a fiscally responsible manner. The Park Board may need to look deeper into the financial practices of the CCA in the case of an audit, depending on nature of the concern being raised.

20. Statement: Costs would increase for programming and CCA operations as result of signing the JOA.

Response: There are three items in the JOA that may result in changes to the CCAs operating costs: 1) ActiveNet Fees, 2) Payments to the CCIF, and 3) Staffing Cost Recovery Payments.

The ActiveNet system has been implemented at community centres to replace the outdated Safari system. The fees payable under the ActiveNet system are a different model than those payable under Safari (flat rate vs. percentage of revenue). The Park Board has been covering the cost of those fees since the ActiveNet implementation; a commitment that was made to ensure it was addressed during the JOA process.

The Community Centre Investment Fund (CCIF), when fully implemented, would result in a 2% increase for the CCAs that do not meet the financial hardship provisions.

Lastly, most CCAs have been paying Staffing Cost Recovery Payments (also known as Group 1 payments) for many years, but some CCAs elected to stop paying those fees in the last few years. Park Board understands that CCAs who have not been paying the Staffing Cost Recovery fees have been paying these amounts into a reserve account and keeping those amounts separate, accordingly, they are already being factored into

the operating budget of most CCAs. For those CCAs who have outstanding staffing cost recovery payments to the Park Board, these would be due upon signing the new JOA.

21. **Statement:** Most operating costs are paid for by the CCAs as a result of their fundraising efforts.

Response: Fundraising, grants and donations comprise on average 3% of the CCAs total revenue - with the exception of Strathcona and Thunderbird Community Associations. The CCAs pay direct programming costs and expenses (e.g., equipment costs, program instructors), but not operational costs (e.g., building maintenance). Most CCA costs are covered by programming and registration fees paid to the CCAs and Park Board in-kind contributions (e.g., staffing costs, supplies).

COMMUNITY CENTRE INVESTMENT FUND

Please note that during the Special Board Meeting, we heard that a number of CCAs are in support of the concept of a Community Centre Investment Fund (CCIF).

22. **Statement:** The Community Centre Investment Fund (CCIF) would put the charitable status of the CCAs in jeopardy and they would be in breach of the *Income Tax Act* if they were to contribute to the fund the way it is currently structured.

Response: Park Board staff obtained independent preliminary legal advice from a tax lawyer who reviewed the CCAs concerns with respect to the *Income Tax Act* and found no conflicts. We have asked the CCAs to provide more details about their concerns. Our preliminary legal advice indicates that the basis of objection for most CCAs arises from confusion around the rules that apply to charitable foundations instead of charitable organizations, and a belief that a payment to the CCIF would be a “gift” to the Park Board. All CCAs registered with the CRA are *charitable organizations* and restrictions around “qualified donees” are primarily for *foundations*. The Park Board does not agree that the payment to the CCIF would be considered a gift to the Park Board.

23. **Statement:** Imposing a 2% tax on CCA revenue could fall under the City of Vancouver’s jurisdiction and be done on a city-wide basis. CCAs are being unnecessarily singled out.

Response: This comment addresses the Community Centre Investment Fund. The CCIF is a fund, not a tax. It is envisioned that at a 2% contribution level, the amount of the fund would enable support of system-wide programming implementation at community centres that would otherwise not have the financial resources to fund this key public policy programming. The CCAs are unique in that they are part of a city-wide network and they receive the revenue from public assets, allowing some centres who operate in more affluent areas to generate greater revenue, while other centres run at a deficit because they subsidize programming for lower income populations. Community Centres are paid for and operated using city-wide taxation revenue, it is appropriate that centres that have more share with those that have less.



24. Statement: Rather than a percentage of gross total revenue, the CCAs should take the proposal for a stepped contribution as it would be difficult for the CCAs to budget based on percentage of gross total revenue.

Response: It would make little difference for a CCA to budget based on a percentage of gross total revenue as opposed to a fixed amount. This would require the CCA to have an approximate estimate of their total revenue, which remains relatively stable.

After carefully considering a stepped contribution, the Park Board settled on a single percentage-based model. The concern is that a stepped model may be less equitable than a single percentage-based model. For example, community centres that generate \$750,000 per year in revenue would contribute the same amount as community centres that generate \$1,000,000 per year in revenue. A percentage model allows for a more equitable contribution based on prior-year revenue. In addition, the stepped-model proposed by the West End Community Centre Association (WECCA) was based on a narrower stream of income. For example, under the WECCA proposal, revenue from childcare operations or childcare leases in the Jointly Operated Facilities was exempt.

If you have any questions or concerns with what has been presented, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read 'Malcolm Bromley'.

Malcolm Bromley
General Manager - Vancouver Board of Parks and Recreation

/kg/rj/sw

Copy to: Shauna Wilton, Deputy General Manager
Raymond Penner, Facilitator
PB Communications