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SSP Civic Administration File
2010.09.14

To Mayor and Council,
City of Vancouver
Attn: City Manager for Immediate Administration Review Items

Your Worship and Members of Council

Re: City Approvals Administration: Permits and Processes.
Ultra Vires process under the Vancouver Charter and Local Government Act

Executive Summary

This is an ad hoc report from Architects who practice and serve the people of this City, about Administration systems in general about improper, differential treatment of the citizen land owners of this city..
This is not about project or deficiencies in any one project but about systems; even though anecdotal evidence provided in the Appendix I are there for the record so Council has a snapshot of the conditions of public service after a generation of this experiment in zoning.
-This is about treatment of public as both resident taxpayer and as applicant to achieve rights as set out in zoning bylaws which are supposed to, under common law to treat all persons of a zone as equal. In particular:
- special and irregular treatment of architects vis a vis 'public' or 'green door' applications.
-illogical and over blown demands for simple projects , affecting time, money and rights.
-timelines that are out of synch with real life business field reality,
-work to rule by union workers who then demand overtime payment equals moral blackmail
-multiple guidelines of differing length and demand, as in differential treatment
-discrimination against architects and breach of the act qualifying only engineers in part 9 or any building where the architect is also a designer in the code. This is an infringement of and counter to the Architects Act. Correction of this point requires rewriting and simplifying guidelines as well as making public aware of the full role of the Architect without engineering input conditions.

This Submission as a Position of Principle.

This report comes on behalf of an assembly of citizens, but in this case, subitteed mainly from Architects in Practice, who for obvious reasons consider the environment and design of the utmost importance. However, we cannot divorce

ourselves from the society that over thousands of years has fought for basic rights and freedoms. Since when can the consideration of design override the rights of the people.

> "We have crossed a line, and in Vancouver, we have created a culture that most of the citizens are not even aware of, that their basic rights have been subverted to a generation of design control, a perversion of administration of planning law that is counter to the very basic tenets of our society. This is just the latest in a series of alarms about this sacrifice of polite society on the altar of an artificial sense of design. If society persists in this direction, it is not one that most of our ancestors would have fought to create, but rather to destroy. The issue of malfeasance within planning law and tradition is backed up by legal authority, and from academics. Those from other jurisdictions do not understand how we have let this current situation to have developed".
>
> Paraphrased From work in Progress 'The Rogue Bureaucracy"

Contemporary History:
While this presentation is as a result of discussions with intake management staff the subjects and concerns range over parallel permit review processes in two other departments, some touching upon preview of the Chief Building Inspector.

Given the nature of the public concern in this paper, after an initial discussion with senior staff, this letter or as amended will be sent to City Council as some of the issues and directions needed will have to come from the elected body. Much of the problems over the last 30 years stem from delegation of authority from council to staff that is considered by learned members and their own counsel, to be improper and so more serious review will be needed by those that should be held accountable; the elected body. (Non delegati: Non delegatum).

The Metro Vancouver Planning Coalition has since the early 1990s involved itself with both administrative process at the one scale and review and input to macro planning at city and regional levels. This paper is about current conditions in permits review after some lapse in time since we had more intensive discussions via AIBC liaison (Discretionary Zoning Task Force in early 1990s) with the city planning Discretionary Zoning Review Committee. Periodic attempts to clean up or fast track processes have been hampered with gradual drifts backward or sideways as concerns of citizens as applicants are not given the priority they deserve as customers and taxpayers in this City.

Where this report originated:
This listing of current concerns also attempts to make suggestions on how the system can be improved. While these issues are being addressed from an applicants viewpoint they are based on years of experience not only as applicants but as past employees and consultants in the regulatory process. Given now a 30 year attempt to make this work and it is getting worse, not better, it is a duty of the professions to correct these mistakes before they get any worse.

Acknowledgments of limiting conditions of the city:
1 There is a staffing problem at City Hall, and if they are going to continue to review projects so completely they are going to need to add staff. Perhaps farming out of DP review...? dangerous but in the end maybe cost effective and quicker..... or just issue DP's that are submitted by professionals.

The staffing levels at a number of departments is not adequate to meet the level of scrutiny being imposed on applications. Either the scrutiny must be reduced, the staffing levels increased, or the actual review must be out-sourced . It is our opinion that for smaller projects with registered professionals involved there is no need for in depth review.
Work that is not needed can be struck from the list, increasing the project per planner by a factor of three. Conversely we can reduce staff and costs by half to two thirds.

At all levels of City government a thorough review of bylaws, guidelines and bulletins need to be undertaken. All such items should be assessed to determine if outcomes are worth the complexity, if the item is necessary , or just red tape. Bylaws need to be written in a clear manner, so administrative bulletins become unnecessary.

“Explanations hidden in bulletins on the web site or in someone's head just does not work..”
Right now we have so many rules they often contradict each other and are used in a whimsical way by staff to get their own way against the best interest of the land owner and their own needs.

The process needs to be time defined and they are to live by it.... If you don't receive a decision within x number of weeks you can assume it is refused or approved... depending on the half full or half empty viewpoint. Recent RS-5 took 16 weeks to reach design review meeting and then it was cancelled cause landscape review didn't like a clause in the arborist report dealing with trees on neighbour site.

A few illustrations of illogical definition or lack of definition which need to be corrected in the name of the public good, there are many others but this short list gives a snapshot of the present problems. There are more detailed and illustrative examples in the appendix I.

1 A uniform way of defining floor area.... why is a square foot in RS-1 not a square foot if it is RS-5... why can a covered porch in the rear yard be excluded in RS-1 but not RS-5? (We understand that of this writing, staff have started to review this bit.)

2 Why is a rain protection canopy required in some zones but counted as floor area in others... is it okay to get wet in RS-1 but not DD

3 Most conflicts could be reduced if we had a definition of floor area.and a uniform list of inclusions and exclusions city wide.. There is really no logical reason for this condition to exist.

4 And at the end when all else fails, there is no real court of appeal when one experiences abuse or delay, it is time for the province to bring into being a Municipal Appeal Board as in Alberta and Ontario. This will once again be taken up with the Minister in Victoria.

Illustrations of Abuse Section of Report. These examples appear in an Appendix I at the rear of this report.

Short Form Proposals for Renewal

Key Recommendations: Salient and recurring Issues that must be dealt with:

- Time lines for rational decisions. Early access to the discussions with design professionals is overdue. In Alberta for instance if no answers are not given by municipal staff in short order, the project proceeds without it. This is a business like and logical approach.
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- Honest and thought out responses from staff. At present the system is so ad hoc that any one staff person can essentially veto a project and delay it by weeks over minor and in fact very personal interpretation of design factors that are constitutionally, only the right of the landowner.
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- Review of Zoning Bylaw and myriad of guidelines is long overdue. Overlaying new requirements on existing redundant requirements, without any respect for the original intent can only lead to more unhappy results. The system has grown out of control and needs to be streamlined to save the public as user and applicant and as local observer/third party user.
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- Definitions: If there are to be definitions used in the bylaws that regulate our actions, these should be provided as clear and concise statements.
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- In particular to "Laneway" housing. This was thought to be a 'god send to incremental density and common good" are overburdened with a bylaw interpretation so complex that it makes an RS-5 Conditional application seem simple.
- RS-5 as a zone is not workable, discriminatory to an extreme and beyond the powers of the city. In these areas the Vancouver Charter has been taken to extremes never imagined and this has been verified by legal opinion that the city itself uses to otherwise keep out of trouble. (Verification on request.)
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- If the intent is not met with an adequate supporting document and enough knowledgeable support staff, the results will be mired due to "lack of interest" and excessive costs of obtaining a permit. At present extraordinary checklists for the simplist of projects are illogical. Common sense

approaches need to be applied to the approvals system, not every application needs to be unnecessarily detailed as it has now grown in practice.

This brief summary of MVPC member's concerns makes sense, common sense, as in we cannot afford the cost of what is in place, in time or money. . It is meant to illustrate the focus of frustration upon any firm/ a client of the city. It is repeated hundreds of times by each practitioner. What is often forgotten in this need to police design mentality is that the property owner has historic rights that are abused in the Vancouver system in ways not tolerated in other common law countries, the challenges in those places have made corrections long overdue in Vancouver. Past legal opinion given to the MVPC by former city lawyers and consultants have only confirmed the ultra vires nature or the system of approvals in this city, and unfortunately as a cultural phenomena it infects other municipalities over time as process is copied without checking full legal and constitutional justification.

Basic Administration Proposal:
At a very basic practical level, besides removing unnecessary and overly detailed work from staff, the city needs a clear chain of command, new internal appeal mechanisms and a real backup to staff who take extended holidays and training breaks.

Illustrations to show how the administration of planning has become improper, illegal and counterproductive: More common daily examples are given in the Appendix I.

Items specific to the Administration of Permits under the Certified Professional Program. An on-going and deteriorating circumstance involving now interdepartmental responsibility.

Subcommittee/CP Issues*. Mostly a Building Department Management Issue.*
Much of this problem area is exacerbated by new rounds of retirement where expert and mature judgement is lost and looking for code intent is lost to dependence on written word alone. Where the CP is supposed to overcome this by their own expertise, it is denied by the city creating delay and confusion.

1. Lack of information on what the actual procedure is. Basic outlines are/have been available, but in every case, even after years of doing this, additional things come up and bite the applicant.

Some things are required on every application, and one soon learns about them, such as walking documentation over to the Environmental branch at 456 W. Broadway, having discussions with the Fire Department regarding any doubtful issues or concerns, getting the drawings approved and stamped as required,getting drawings to the Engineering Department just as soon as possible as they sometimes

take months, and contacting BC One Call. Engineering in particular has many intricacies that are not evident until one runs into them, and that often causes unexplained delays.

The main point is that this all has to be started a long time before actual permit application, and due to lack of staff/lethargy the nominal 2 week application process in actual practice takes months. Faster than the normal process, but not the 10 working days process advertised.

A checklist of all possible authorities that have to be provided with drawings or contacted for approvals would be extremely helpful so that the applicant does not have to scramble at the last minute to get approvals from an authority that he/she had not heard of heretofore. It would also be helpful, but obviously more difficult, to have an estimate of the length of time such approvals might take.

2. A more consistent approach to resolving code issues is needed. Often a project has a number of specific issues which are brought up by a member of the design team or the CP which need clarification by a City official on what interpretation will be applied. This clarification should then not be changed at the time of permit application. At times a senior City Building By-Law specialist has made a determination of Building Code requirements which was then not later honoured by another Building By-Law specialist when the first was not available. A documentation process for these discussions/interpretation processes should be established, and then, as long as the Building By-Law has not changed, the interpretation should not vary at the time of permit application as the latter can cause serious delays due to re-design, possible Development Permit amendments or other reasons.

Reconciliatory Approach:
With respect to this point, a generally more transparent approach is needed. All design professionals know that the City staff regularly discusses a large number of building code issues. When new interpretations are decided, the design community generally isn't made aware of them until they run into them head first. This is with respect to Building By-Law issues, but it's much worse in the Development By-Law sphere, as that section by its very nature is much more arbitrary and political, and is only logical on a very basic, in fact internally personal level.

All Committee members have seen positive team work and cooperation:
"I should also mention that many people at City Hall are very helpful and understand the problems, but are not in a position or necessarily inclined to undertake initiating changes themselves".
"

A Central Malfunction in Discretionary Zoning: A Breakdown of our legal rights due to a growth of a Culture of Bureaucracy:

- who is is charge and who is accountable:

In short form, here is one committee chair question. The historic allusion is intentional in its implications:

> *"Having read this correspondence, my thoughts, from one critical of discretionary zoning on small and medium sized projects for many years, the concern has always been that development planners continue to speculate on style, RS-5+, to increase land value. This is done the world over;* ***Heimatstil****: Information from Answers.com .*
>
> *Controlling access to permits through interpretation of zoning bylaws and guidelines, to make aesthetic decisions is, in my opinion not managing the civil service effectively. On small and medium sized residential the private sector is the best line of defense, the design professionals response to clients interests in a pluralistic society. Robert's list at the end of this email left me wondering; what if the planning department is bent on a 'modern' template, LWH? A sort of forgiveness for the heimatstil, kitch, zoning. Seems to me that even incremental density,, such as LWH-ousing, is somehow being justified internally, and development planners bent on it's modern design, to 'make amends' for past errors.*
>
> *But the real issue, that of access to development, if one has met the conditions of the zoning, and not the style remains to be resolved. Do we continue to encourage planners to make aesthetic decisions? Is zoning criteria unclear, and administration of such regulation, inherently, dysfunctional?" End quote.*

Summary:

While individuals purport to improve this system, it shows increasingly that it does not work well at all. It is time for the city to overhaul how it does business in the area of design approval. The Public is not well served by this increasingly unaccountable process and we, the public as the users do have the public interest first in mind in brining forward both illustrations of abuse and in recommendations to improve both service and accountability. With all respect we ask Council and the City Management to completely review the administrative process. If necessary, we ask also that the province review this issue in the city and across all jurisdictions of BC.

Yours Sincerely and Respectfully Submitted

Richard Balfour maibc
Signed on behalf of the Legislative Committee Steering Members on Charter.
Reviewed for issue by:

Richard Balfour maibc Patricia Bourque maibc Allan Diamond maibc
Stuart Howard maibc Paul Rust maibc

There are other members and subcommittee chairs and members of the public who have worked on this paper but who for personal and business reasons cannot sign at this time our of concern of how their future work will be reviewed.

Metro Vancouver Planning Coalition: Committee on Municipal Legislation & Rights of Practice.
Civic Administration Vancouver and Project Admin/Metro Planning.

Attachment: in Appendix II, the Executive Summary of 1994 to City Council on these same issues from the Architectural Institute of BC under Discretionary Zoning Task Force/Planning Process Review Committee AIBC. Most of the issues are still the same, and some irregularity in practice and treatment of the public have become worse.

Copy: Minister of Municipal Affairs

Appendix I

Illustrative Examples of malpractice in planning administration:

A. Some examples of excessive zeal rather than fairness and not respecting the legal rights of the public as applicant before the by-law.

1. Messages to stop projects at all costs: Lane house planners puts on project file: stop this applicant by any means, make sure he gets no approval. (File name upon request).
2. Locked in RM zoned. Project on West 8th; Owner was denied FSR of RM4 zone by DoP clause which is illegal and improper as all owners within a zone must be treated equally. Investigation of the file showed staff were calling the applicant crazy, must be stopped at any cost, all applications were to be denied this applicant as an individual.
3. While sitting in a meeting with the planner, architect and the land owners, the planner told the owners that a certain drafting service could provide better service and they would approve the plans faster than dealing with the architect. (EC file 2010. Name provided to City Manager upon request.).
4. Personal prejudice examples have shown up in our interviews where staff abuse the public as applicant because they are a woman, or handicapped, or speak with an accent, or if certain people ask embarrassing questions or seek to improve what is supposed to be a public or civil service. (Specifics to City Manager upon request, all witheld at this time for privacy reasons but subjects are ready to testify.)

B. Examples of Improper Administrative Procedures; by law or tradition.

5. Planners attempt to demand extra services of so called envelope specialists even though this field is just one part of architecture and the architect can choose to seal Schedule D for envelope design at his choosing.
6. Planners attempt to demand intrusion of engineers into small projects or Part 9 buildings when in fact it is totally up to the Architect to determine if and when sub-consultants are required. **Various versions of 'guidelines' tell the public who to hire and make no reference to the Architect who is the prime resource in this area and is defined as such in the Building Code.** The city has no responsibility or liability insurance in these areas and this is another infringement into the Architects Act. The impact of all actions by this city in these aspects is in fact an attempt to set itself up as a de facto licensing body of architecture, to say who can practice what, and in contravention of the Architects Act. The Architects Act is older and supercedes the city and the responsibility of the architect exceeds that of the Authority Having Jurisdiction. The city has no coverage in this regard and authority without responsibility is ultraveris and raises the question as to what role there really is for plan check and review. In Spain for instance, the architect issues the permit with periodic spot checks by the city and peers.

C. Examples of Extraordinary Inference:

7. Garage example: east Vancouver. Planner meddling in architects contract; a firewall on a property line was designed to be built for fire and safety. The plan checker who purports to be trained in architecture told the owner to ignore the architect and do what the planner suggested; a substandard shaft wall construction. He repeatedly interfered so the land owner was confused and felt they had to do anything to get a permit. As city staff do not carry liability insurance nor seal letters of assurance which the architect does; the staff overstepped their job boundary and put projects at risk against the greater wisdom and responsibility of the architect.
8.

D. Guidelines as a growing out of control maladministrative practice:

Guidelines have grown out of control: a) the suggestion that guidelines supercede or overrule a bylaw of council is ultraveris. B) various versions of guidelines exist for single family for instance, depending on how difficult any one planner wants to make the application process harder for certain people compared to others. Variation in submissions by this measure alone shows severely inequitable treatment of the public.

9. **Example of Uncoordinated and Illegal Administrative Procedures**. SF Guidelines are handed out which completely ignore the role or even existence of the architectural profession. The wording is lengthy, calls up redundant and unnecessary items w*hich are covered by building code tables and specifications.* Demands are made for the services of an engineer when it is really unnecessary, or in the case of ignoring architects, does in fact supplant the architect with engineers services which is in contravention of the Architects Act, the Building Code definition of Designer and is contrary to the AE joint agreement in division of labour in services to the public.

E. Abuse of Authority Issues Illustrated.

10. **Personal Bias imposed on Private Property:** Personal taste and aesthetics have to place in city planning; all Discretionary Zoning at this level is illegal and is an affront to home owners rights and the responsibility of the Architect. This has reached an extreme now in the attempts to push ersatz tudor in RS5 zones. The city now has a cookie cutter approach to design, and stifles the design process as planners force questionable but personal taste on the public at large. Where this has been challenged in parallel common law jurisdictions, (US and UK), the courts have told the planners to step out of this area of conflict and keep their musings to prescriptive bylaws with clear intent. One of the excuses used by planners for abuse of authority is 'protection of neighbours but in reality they have no mandate for this, there is no evidence of real empathy with neighbours concerns and in addition, applicant owners and-architects are not an unsympathetic party; it is part of design and good neighborliness and there is no basis for the purported 'empathy for the neighbours'. This falsehood needs to be exposed and the corrections made to remove discretion from all low density zones just for a start. The practice is illegal and an infringement on both rights and common sense.

11. **Cost of Delay Impacts:** Attempts by plan checkers to inflict personal whims onto the public reach the stage where the authority becomes abusive by denying applications, obstructing dialogue, delaying applications, losing files, having no backup so processes get extended from weeks to months and years. In response, architects stop practicing in this city which might make power hungry planners happy but it does NOT serve the public.

12.**Historical Antecedents** In 1994 in a meeting of the Discretionary Zoning Committee, a planner said "they knew they were breaking the law but it was 'okay' because they did it to protect the public", which is clearly not the case that the public is protected by breaking laws. The ignorance of the law, human and property rights and the limitations of planning authority has caused a creeping corruption of the planning process over the last 30 years. The original intent to act *in a collegial manner* by the Director of Planning on major projects has been diluted and spread over the city. The asymmetries use and abuse of planning power has created unworkable conditions. The applicants are intimidated and do no often complain for fear of blacklisting and future worst abuse at the hands of staff. This is even acknowledged by middle management but they have no way to manage or counter this trend by private admissions. This must call for a judicial review of the administration or the intervention of the minister to call back the Charter

13.**Cost to the Public:** The cost of these discretionary systems layered with are increasingly referred to as "silly rules", unnecessary busy work etc costs the public too much, both as general taxpayer and as the applicant. Small projects should have a one day to one week delivery time. The excuse of more complexity in buildings is just that. We have just too many rules, an for our own sanity we must start getting rid of them We also face an economic meltdown from the end of cheap energy, we must pare non-value added jobs as fast as we can, cutting by 90% is now a reasonable target. This means just doing less in these areas and get back to first principles. We are not designing space shuttles but shelter but with this system we are wasting time and money and making city shelter more unaffordable by a factor suggested by industry as 25 to 30% more than is ever necessary..

Excess Interference on Historical Buildings - illustrative example.
This is where life safety is at risk and common sense solutions go ignored. An illustration. Heritage planners hold up design and construction of a near total destruction by fire. The owner is willing to rebuild to character but the owners architect and engineers have certified the building is too dangerous to build upon and new foundations and beams are absolutely essential. Heritage ignores this advice and holds up discussion and pemits against the right of owner. IN this case the Chief Building Officer needs to intervene on safety grounds (example:Fraser/ West 7th 2008 Case where city delay in the end cost the owner his home.) /Safety trumps heritage and heritage can be established although this heavy handed treatment is also to be questioned on purely legal grounds. (gp file ref.)

Heritage is another area where planners feel free to demand their own choice of consultant or architect, which is completely inappropriate, unethical and is a meddling in the rights and affairs of many parties. It is not a specialty either but part of architecture and it is again up to the Architect to determine who and what is added to the team, it is not a prerogative of a civic government unless they want to pay the bills.

Symbolism: example involving the loss of a heritage building.
One of the last stone houses in Vancouver was owned by the wife of an Architect, she applied to save the house and allow for a sensitive infill dwelling. While the planning department purported to support the application, the process became extended, detailed and convoluted to the point where the planner involved asked the architect as applicant if he knew of the affect of any infill house on the next door neighbour. It turns out the owners of the house next door were good friends and daycare sitters for the city planner. When confronted, the senior planner said they thought they could get away with such a conflict of interest. As a result the heritage stone house was demolished as the owner in the meantime gave up our of frustration. This level of personal intervention is a systemic problem which is an affront to all citizens. (bcd file ref hist)

Further detailed examples for illustration, Part B:

Subcommittee Admin and Process Section: Management of time, process and lack of public relations and staff training in the limits and application of planning authority:

- Some months ago (2010) one Architect was asked to be a participant in a working meeting of staff and management and was spoke to the Enquiry Centre staff and Development Permit staff about "working relationships" and "client satisfaction".
- The strength of the presentation related to "timeliness of response" and "truthfulness of response". To quote from a panel member: "For the most part I have over the years been happy with the initial response time for verbal responses (albeit I can't fathom why most DE applications take 16 weeks). In recent months I have received e-mail or initial telephone comments that staff cannot respond for three weeks due to their work load. On one occasion after three 3 week postponements I took my issues to senior staff. and after several more weeks another staff member took up my cause and did find time to meet. Time is of the essence with a number of our projects, and I cannot believe that any property owner (or myself as the agent for that property owner) can be hampered and hamstrung because the work load of staff is too great. This is even more irritating in that the Development Permit required by the City of Vancouver for this property is required to allow a "reduction" in the size of the existing building."

- Further to the "truthfulness of response".
- On a recent occasion one architect has been advised that his project must conform to requirements of the Vancouver Building Bylaw that he could not find in the Bylaw, and by definitions that exist in neither the Building Bylaw or the Development Bylaw.
- This type of response (given only after the above noted 12 week wait) is not based upon any substance that he could find.

- Example: an existing MCD, probably licensed some time in the mid 1980's. The residence is also noted on the Heritage Registry to be a "Heritage B" structure.
- Application was made for two "housekeeping units" into two self contained dwelling units. The scope of the work is to add a new three piece bathroom and re-finish the existing bathroom so as the two units would not have to share the facilities. The dwelling units will meet the minimum standard for floor area as regulated by the City of Vancouver.
- In order to provide a higher degree of life safety we proposed that the existing open stair (serving three units on the 2nd and 3rd floors) become a rated shaft with proper fire ratings.
- The Planning Department advised that the minimum standard to achieve the construction of the new bathrooms (completely within the existing footprint of the building) would be to upgrade a window in another unit altered some 35 years ago, and to convert an old sleeping porch (now interior space for some 35 years) back to the original use. Normally one would absolve the applicants from any notice that they are going to 'take advantage of FSR" such as a trellis or an arbour abutting the improvements.

Case Studies of process irregularity as now common place.
So we have a record that Council, the public and the City Manager can understand in a snapshot, the character of this process from the point of view of the public as user of its own system of design review:

When Discriminating or Discretionary zoning first started out, none of these forms of abuse were evident, because at that time the one director of planning treated the applicant and architect as an equal and used collegial approach to design trade offs. Since then the lack of responsible control and lack of education on the limits of planning authority in law has allowed the following examples to become commonplace:

1. Excessive Interference at a small scale, but bothersome: A house in the west side of the city required some simple basement work to deal with a sump pump. Normally this is a maintenance item with little interference from design policing but the owner made the mistake of applying for a permit. The planning department said this was a significant bit of work and the modest plain looking bungalow would now require a development permit, and the planner demanded that improvements include new window trim, and costly architectural detailing

of the facade to match the neighbours. A hidden internal job of a few hundred dollars became thousands of dollars of gingerbread treatment. (AG file.)

2.Full size mock up of porches and columns have been called for when building the real thing costs the same and what does one do with a mock up? (b22 file).

3. Planners have called in owners to suggest they do not listen to their architects but use substandard details of the planners preference, suggesting they do so if they really want a permit issued. (bcd file)

4. The RS5 Fiasco: The perpetuation of bad design: in general this now applies in all RS5 areas as a result of the copy and paste approach to house design. New houses must copy details and massing elements from their adjoining neighbours. But it is up to the whim of the project planner to suggest other houses a half mile away if the neighboring house is not up to expectations of accepted Tudor, ersatz craftsman or todays version of accepted design. In the next year, when the house that was copied is taken down, now the new house must copy from the house that was a copy, thereby fossilizing the neighbourhood, assuring the house looks like a turn of the century dwelling, but not this century, the last one. From this retrograde philosophy we also manage to design out innovation including such energy saving factors as preferred roof orientation, needed extra south glazing, real useable front porches, forcing buildings to have stairs while other parts of the bylaw ask for grade access for the elderly.

5 A Comprehensive Interference Case Study: One might ask both Council and the City Manager the following question: how is it that the HRC (home renovation center) has become the HRC (heritage retention center) by default. The example:

When asked to assist with permits on an old house in RT, the owners were asked to designate the house as heritage, but unwilling to do so, rather intent to re-build to a higher standard, they were asked by the planning department, for a full scale mock-up of the porch, and 1/2" interior finishing details. As the planners magic marker had circled everything in this neigbourhood, heritage regardless of the owners wishes not to do so. This is yet another example of exceeding the authority granted by council.

Because is was an “under-the-radar small lot, with an over-built, non-conforming, previously renovated without permits, 1912 salt-box, in poor condition”, it required such extensive relaxations that it was sent to the Board of Variance just to investigate the existing conditions. While the owners wanted to restore, to it's former glory, they did not want to apply for a change of use? Part 10 should have helped solve the conflicts between codes and bylaws. The city wanted a change of use, as a means to extract density. In this instance the owner wanted to upgrade, but retain the single-family use. The pressure to downgrade rather than upgrade,

seemed based on a fuzzy notion of 'heritage' retention. A tug-of-war, who's house is it anyway, ensued.

6. Misuse of the Board of Variance

In this case study, the owners were penalized, the city process set on default, the owners told they must remove underground alterations made by previous owners who had failed to fulfill their obligation to obtain permits for work not visible from the street, but became visible during re-building. The Board of Variance provided a reprieve, by default permit process. The planning department would not reconcile inherent conflicts between development and building codes because the owner did not want to create more density on their lot.

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A question remains: When should a renovation become a restoration, by default? The Board of Variance purpose, naively, to fix what regulations do not address...from an era when surrounded by conflicting rules, the staff mantra was ' do not extend the life of non-conformity'. In this regard, Vancouver operates not a Variance Board but a reinforcement of planning regulation. In other jurisdictions, the BoV acts as a true appeal body and hardship is more open ended and compassionate. In Vancouver, planning presentations are delivered with theatrical flair and paint some applicants in an unfair and prejudicial fashion. It is time this system was also reviewed and overhauled.

Notwithstanding heritage designation is, a legal covenant, labor intensive and expensive route to incremental increased density. Using aesthetic speculation and carrot/stick incentives. A renovation becomes a restoration by virtue of the rise of multiple RS zones which has rendered all single-family houses non-conforming... and resulted in excessive regulation and commensurate excess process, has resulted in excessively dysfunctional, asymmetry of power, essentially unfairness built into the system... thus process now trumps results.

Hostage to Institutional Authority (operating without proper supervision:- where we went wrong in this generation.)

In the Courier this September 2010, , it was reported that some mid-management, staff 'lifers' reported the City Manager did not understand that staff were not being treated fairly. With little professional qualification other than having been there the longest, the unqualified make planning decisions because they can throw up a smokescreen of regulation, when considered professional judgement is actually required. We now have the situation where the professional as applicant, having spent a decade or more in university and training, is subject to the daily changing whims of staff with no equivalent training . This of course is the opposite of how this experiment in zoning started out, what was collegial in approach is now confrontational and exceedingly costly to both the applicant and to the general taxpayer subsidizing a non-value added activity.

A Question of Conduct and of Relative Value.
Further, staff are making aesthetic decisions based on determining what criteria, and who gets to decide. The what is codified in zoning regulation so unclear and contradictory it's frustrating to know where to start... and the who? Determined by default, and a culture of asymmetry of power, reinforced by the 'petulant and the powerless'. Understandable when staff are asked by to improve processes... they push back as the role they have assigned themselves leaves no room for common sense or negotiation..

Ramifications to the Public as the Consumer:
To understand this is to understand that the single most efficient way to advance at the City is, to create conflict, rather than resolve problems inherent in the design and permit processes, create conflict. It's a work place incentive to compound regulations, and the guilty pleasure, to prescribe form, the asymmetry of power is to dictate aesthetic expression, well beyond the authority of legitimate land-use legislation. Thus regulation, new heaped upon old, is unclear about the rules, and 'that consensual good taste', discretion (airy zoning), determines who gets to decide. And it's not the owner, and it's rarely the design professional on small and medium sized construction projects.

A Systems Perspective from the Managerial Side:
From personal experience inside hierarchical administrations, it is commonly understood that advancement in a dysfunctional group is, predicated on, who is more punitive to the external applicant. This becomes an incentive for promotion? Another is to create more rules, create an increasingly impenetrable process, one that trumps results. For the design professional a good outcome is opposite to the personal goals and needs of 'approvals staff". Thirty years after discretionary zoning we witnessed exponential growth of RS zoning schedules, new design guidelines, and moving target interpretations, driving the cost of re-building (a front porch for example) prohibitive unless you are prepared to venture into the 'unknown'. At the same time the boom of the large development, downtown condo/townhouse/infrastructure improvement took the focus off the needs and concerns of the single family home owner who was seen as privileged and therefore an acceptable target of costly and unnecessary, even punative design policing. One former city politician said if you cannot afford a house in the city, you should be able to afford the cost of dealing with the city, not knowing-the real extent of the injustice growing in this system.

The unfettered Explosion of Needless Regulation:
This, under the radar, small scale, outright, non-conforming, fee-simple, single land-use, house began to drown in a sea of conflicting regulation. There are now multiple versions of guidelines for single family development applications, depending on who you are and how difficult someone wants to make things for you. One guideline is written to exclude the Architect, to demand levels of

documentation completely out of line with the scale and need for scrutiny required of what is still a simple building in building code terms.

Why management has never thought it important to solve 'access' to regulation by providing clarity to the regulations has created a crises, not in access to permits, as those with deep pockets will endure, but rather to the middle class that is being priced out of the housing market. This is a classic case of 'the good being the enemy of the best'. Like compounding interest, 'money in the bank', regulations are the future employment for many who would not be employable in the private sector. There is sadly, little incentive to harmonize zoning schedules, clarify regulations, remove conflicts, reduce quantum criteria, excessive guidelines, the computer has enable the generation of so much mundane, meaningless regulation. But the important question, the aesthetic question is, 'who gets to decide'? Thus far it is the bureaucrat that gets to decide. This is not in the public interest... others would have more to say about that.

Design concerns over-riding common sense:
Contextual issues could be dealt with by something akin to a 'committee of adjustment'; a neighbour, an applicant, an authority having jurisdiction meeting, unencumbered with issues of interpretation, guidelines, prescription, and calculations, to decide what a good outcome might be for those who have to design, construct, and live with it.
Clarity is required to answer the question, exactly, how do you measure that? Because there is no answer to this basic common sense question, the self appointed take it upon themselves to create confusion in administration when we should be aiming for simplicity. It is a house, it generally conforms, build it. A one day permit is a sensible standard whether you live in Dunbar, Whistler or Hope.

Time for a Common Sense Approach.
One can have any number of small projects within the City of Vancouver at any given time. Some architects have maintained a practice like this for many years. With this in mind we cannot bring myself to tar all of the staff with the same brush, but do very much feel that the system is at an all time low. As Architects, we am not always sure who gets better treatment than others, but as professionals we generally live by the credo that we will make every effort to be forthright but always polite.

The new mandate from senior management seems to be that they can rely on low level of staffing and that we the public will put up with it. Some of this is due to staffing logistics which includes a new predominance of technical trained by the book staff who relish making lists and details even when logically they are not always required. As the same people control the work flow, can slow it down and then demand extra fees and overtime to make up for the slowdown of work, we have here a blatant case of conflict of interest and working against the public interest at so many levels.

A review and slimming down of review and details is required to both serve and protect the public. Too much busy work is now done that achieves no useful purpose and in only adds to costs and delays. A major concerns is that this is the department that some believe actually makes money for the City of Vancouver, however for those that know the cost effectiveness of such systems, it is only costing the city a great deal more for no public benefit. It is a make work scheme that as a society we increasingly cannot afford. . As it stands little or no expeditious service for is offered for the ever increasing fees. If anything the fees should be reduced to match the service provided.

After many hours of one Architects time during the ill-fated "DBR" Study, we realize that any good intent of what was discussed and initiated has now got entangled in bureaucracy. This is always the case it seems, there have been reviews, attempts to work with the staff and the system but all we achieve is further erosion of both front line service and confidence in the public trust

Delegatus Non Potest Delegare:
Latin: a delegate cannot delegate.
One of the pivotal principles of administrative law: that a delegate cannot delegate.

A person to whom an authority or decision-making power has been delegated to from a higher source, cannot, in turn, delegate again to another, unless the original delegation explicitly authorized it.

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End of Appendix I

Appendix II

AIBC Report to Vancouver City Council on Discretionary Zoning 1994.

The full report exists on-file at both City Hall and at the AIBC.

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The Discretionary Zoning Process

Presentation to the Council of the City of Vancouver

Presented by: The Architectural Institute of British Columbia

March 8, 1994

aibc

AIBC Position Paper on Discretionary Zoning

Attached is the Executive Summary of the AIBC Position Paper on Discretionary Zoning as presented to the City of Vancouver Forum, March 8th, 1994. The complete position paper with appendices and summaries of previous reports to Council on the same topic, was 55 pages. Copies are available from the AIBC at the cost of printing.

This presentation followed upon the work of the task force over the last year with the City of Vancouver Development Permit Liaison Committee and in keeping with the motion from the floor on this issue, passed at last year's annual meeting in Kelowna. Parallel papers were put forward from other industry representatives (BOMA, UDI) at the forum. What started with the AIBC as an issue of planning administration affecting how one practices Architecture has matured quickly into a public discussion about community interest: how it is defined, how it can be best protected, and how a balance must be achieved between the public as "the client of the planning system" and "the public as the guardian of the community environment." As Architects we fit into both categories.

The AIBC position is based on both criticism of the more unworkable parts of the planning administration, and some recommendations on how to improve it either by "starting over" or by introducing more workable approaches. From the AIBC proposal, in some cases this means introducing "area design panels" for design review, with both citizen and design profession representation. Design review by a committee rather than by individuals is considered both more fair and equitable. But this too would only be workable with very restricted and clear terms of reference for both design and for process administration to assure another set of problems is not created. Separation of design and administration is also considered an important safeguard needed to maintain a balance.

The Task Force has also been working with other committees of the AIBC and looking at similar issues of how planning controls are working in other areas of the province. The membership is requested to forward any comments to the Task Force.

Rick Balfour, MAIBC
Chairperson, Discretionary Zoning Task Force

Executive Summary

The City of Vancouver (the City) has a system of Discretionary Zoning to control urban growth and change. Over the past decade, this system has been extended outside the high density areas of the downtown core to low and medium density neighbourhoods in many other areas of the City.

It is the considered view of the Architectural Institute of British Columbia (the AIBC) that a watershed has been passed in the administration of the Discretionary Zoning system and that it is no longer operating effectively as a tool for achieving excellence in urban planning and design. Indeed, the administration of the current system has had exactly the opposite effect. It has impaired rather than improved the quality of urban planning and design, particularly for low and medium density projects.

As professionals, Architects have a public responsibility to speak out, in the public interest, on zoning and planning issues that impact their clients, members of the public and the communities they serve. At the 1993 Annual Meeting of the AIBC, an overwhelming majority of the members present (93%) voted to take specific action to address the hardships and injustices associated with the current system of Discretionary Zoning. To this end, the AIBC established a Discretionary Zoning Task Force and committed significant resources from among its membership to:

- review the current Discretionary Zoning system;
- identify its central problems; and
- develop recommendations for City Council to make the system:
    - consistent in its application;
    - accountable;
    - time and cost effective; and
    - equitable for all parties involved.

The Task Force identified six major problems with the current system that interfere with or impair its consistency in application, its accountability, its effectiveness and its fairness. These are:

- a lack of clarity in the definition of Discretionary Zoning and in its scope and application;

- a devolution of authority from the Director of Planning to more individuals at lower ranks in the City's bureaucracy without criteria and controls to maintain accountability to the Director, to the City Council and to the public at large;

- an absence of consistent and finite rules that reflect the intent and planning authority delegated originally to staff by elected officials;
- a set of planning guidelines that are ambiguous, often contradictory and an increasing infringement on the role of the design professional;
- an approach to interpretation that is inconsistent and often unwritten; and
- a misunderstanding and misuse of administrative discretion that interferes with fair adjudication and erodes an applicant's rights and interests.

As a result of the work of the Task Force, the AIBC believes that the time has come to rethink the purpose, extent, application and scope of the Discretionary Zoning system. It is no longer sufficient to tinker with the current system. The Background Paper prepared by City staff attempts to focus on many detailed and specific issues. However, it is the underlying problems within the overall system that the AIBC urges the City to address.

It is the position of the AIBC that, while zoning regulations should be used to control urban growth and change, they should not be used as instruments to:

- interfere with the property and development rights of an applicant;
- interfere with the role of the design professional;
- dictate the detailed design of a specific project; or
- impose conditions outside their intended scope on matters unrelated to the development permit process.

These views of the AIBC are not novel. As early as 1984, in a report entitled "Review of the Development Permit Process" (the Chilton Report), City Council's attention was directed to:

- the degree of uncertainty in the development permit process;
- the amount of discretion exercised by City officials;
- the lack of clarity in guidelines and the variation in their interpretation;
- the proliferation of policy statements and interpretations not generally available to all applicants; and

- the absence of clear decisions or advice early on in the approval process to validate an applicant's expectations.

The findings in the Chilton Report were reconfirmed in subsequent submissions to Council by the Urban Development Institute (1988), the Hardwick Report (1988), the AIBC Survey (1988) and the UDI Subcommittee (1990).

The AIBC's recommendations flow from this earlier work and the work of its Task Force. The recommendations address five critical areas for improvement to make the zoning and development permit systems consistent in application, accountable, time and cost effective and equitable for all parties involved. The objectives of the AIBC's recommendations are:

- to codify and clarify zoning bylaws and guidelines;
- to reduce the amount of discretion that Planning staff may exercise; and
- to invite broader public participation in the planning and development permit process.

To this end, the AIBC recommends that the City take steps to:

- provide a clear definition of the concept of Discretionary Zoning and implement strict criteria for its exercise, application and scope;
- develop a code of administrative conduct, begin the process of reestablishing accountability within the zoning system, set clear time limits for small and medium density projects and leave the power of project specific design with the applicant, the Architect and the neighbourhood;
- ensure administrative fairness and justice in the adjudication of an applicant's rights through more openness in decision-making and through the establishment of an independent review process;
- shift the focus of Planning staff from specific Architecture to planning by using their considerable talents to revitalize Planning, develop a clear vision of the City's future on a large scale and foster effective community participation in the planning process; and
- restructure development approval processes, restrict the present Discretionary Zoning system to higher density, comprehensive zoning districts and major projects and establish community-based Area Design Panels in all other areas of the City.