



**Franchise and Concession Review Committee
with NYC Parks & Recreation**

Testimony April 10, 2006

Good morning. My name is Harry J. Bubbins, Director of Friends of Brook Park (FoBP), the South, South Bronx based environmental, arts and sustainable development organization. FoBP is committed to ensuring that our Mott Haven, Melrose and Port Morris communities enjoy waterfront access and amenities.

Thank you for your integrity in public service and for first demanding more information and postponing the previous Public Hearing regarding the proposed development of Randall's Island.

Our Interests

Our interest in the appropriate use of Randall's Island stems from our decade of involvement in leading bike tours and Nature walks with youth and adults across the green fields of Randall's Island. More recently, we have expanded our environmental educational programming to include a paddling program on the Harlem River and the Bronx Kill directly to and from the proposed site on the North East corner of the Island.

In addition, we have been long time advocates of improved community access to Randall's Island, by extending the South Bronx Green Way under the Amtrak viaduct Bridge, by the implementation of the Saint Ann's Avenue Bridge in accordance with the NYC Greenway Plan and for the year round opening of the existing East Harlem Bridge. These much needed projects would dramatically improve the quality of life for thousands of residents of the South Bronx East Harlem and.

We have had the opportunity to review, again, the 80 plus pages of the now, as it is listed, Final Draft Waterpark Concession Agreement between the Department of Parks and Recreation and Randall's Island Aquatic Leisure, LLC and *our concerns have only been magnified*. I am confident that the FCRC members have all read thoroughly the Draft Agreement, again, as well as made a site visit recently, please inform me if this is the case.

Missing Information

Firstly, the Final Draft Agreement is, again, at this late date, incomplete and is missing the most important information that would allow for a meaningful review by our elected officials and the public. Specifically, the Draft Agreement is missing the most crucial information. Missing and blank in the Final Draft Agreement are numerous sections including: Exhibit A Land Description, Exhibit B Land Depiction, Exhibit C Indoor Facility, Exhibit D Outdoor Facility, Exhibit F Project Costs, Exhibit G Amortization Schedule, Exhibit H Project Schematics, Exhibit J Licensor Construction Work and so on.

The only Exhibit on file is Exhibit I Admission Prices which, when properly deciphered, sadly indicate that the cost of admission to this private enterprise being proposed on municipal land will be over \$60. We presume this does not include further fees, rentals, tubes, lockers, towels, hot dogs, soyburgers, beers, rums, gin, high fructose artificial iced tea, parking fees, etc, that will add to an absurd sum.

When reviewing page 12 wherein the early termination of the deal is postulated and payments made to the proposed Licensor, Exhibits F and G are referred to, and yet they are... blank! Inasmuch as Exhibit F pretends to numerate Estimated Costs, and actually does not provide this information, the only legally verifiable form in which it needs to be outlined, the FCRC Members must reject it as insufficient.

The Licensee's Use of the Premises as outlined on Page 16 and page 24 refers to Exhibit H as the Preliminary Park Schematics, yet, this too is... blank. Is this a sick joke? How can any City Agency entrusted with serious responsibilities be voting to approve a plan for which there are no publicly promulgated plans? The answer is, they can't, you can't, and any approval will be seen clearly as arbitrary or an abuse of power.

We understand that these significant omissions of needed data for proper review are not the responsibility of the DPR, but of the proposed Developer. There is no need to rush through such a significant review process if the parties involved have verified their plans. It is disrespectful, inappropriate and possibly illegal to have a vote on this matter if the Members of the Committee and the public are not provided with the basic information needed to make an informed vote. For this reason any vote cannot occur without another duly promoted Public Hearing.

Besides, the proposal to develop 26 acres of public park land by a private developer is simply inappropriate on its face and begs the question as to how such a scheme could have gained any traction. Our research indicates that there is much for the FCRC, our elected officials and the Comptroller to review, which will be addressed further on.

Park Land Alienation

It is clear from legislation and court precedent that this Draft Agreement if implemented in its current size and form would assuredly meet the definition of “alienating” park land. Hence, much more legislative involvement will be necessary, and the Home Rule Committee of the City Council will need to assert its role in this process. Otherwise, the City will be exposed to litigation.

The courts have repeatedly ruled that if land has been dedicated as a park it cannot be "alienated," or taken for a non-park use, without the approval of the State Legislature.

The following have been determined by the courts to be alienations:

- The conveyance, sale, or lease of municipal parkland or recreational facilities to another entity, such a developer which results in the facility no longer being used for public park and recreation
- Restricting to local residents the use of recreational facilities that had previously been open to all persons.

It is worth noting that municipalities that have engaged in grant contracts with State or Federal funds require the municipality to obtain alienation legislation when the site is impacted in any way by proposed development.

Land and Water Conservation Fund Federal Requirements

Inasmuch as the DPR and Randall's Island Sports Foundation has received enormous support from the Sate and federal Governments, through the Environmental Protection Fun, Clean Water Clean Air Bond Act and the Land and Water Conservation Fund , among others, it is clear that their existing obligations mandate State legislation before such a drastic reconfiguration of the Island. One item of relevance: The Environmental Protection Act of 1993 (Environmental Protection Fund) Provides for a restriction on alienation and a requirement to provide substitute lands.

As the NYC Planning Commission noted in 2004, “the proposed concession would displace 10 ballfields. In response, the applicant stated that the ballfields would be relocated to other locations throughout the island and reconfigured to provide larger venues for field sports, such as baseball, football and soccer. However, such reconfiguration would not reduce the existing number of ballfields on the island.” Reconfiguration cannot legally be confuted with alienation. The number of “ballfields” may remain the same, by constriction and shrinkage of now adequate fields, but clearly the overall park space is reduced, trees cut and wildlife severely impacted, like hawks that live on the site in question.

Even the heavily criticized Yankee Stadium proposal was compelled to go through the legally mandated “alienation” process, and is still subject to federal review because of Land and Water Conservation Fund requirement’s associated with the site. So it needs be here.

In addition, the municipal act of selling, leasing, conveying, or changing the use of the parkland is subject to a Type 1 action under State Environmental Quality Review and requires local or State permits including a more thorough review by the municipality in the form of an Environmental Impact Statement (EIS). From our review of the documents it does not appear that the EIS factually accounted for the impacts of space and construction or the paying customers for the gargantuan 26 acre monstrosity proposed on our park land with its possible 133,000 sq ft of indoor space requiring ten of the Island's already overcrowded 29 baseball and soccer fields to be bulldozed, with 1.3 million projected visitors and 1800 more parking spaces.

1,800 more asphalt fossil fuel storage docks for 1.3 million projected visitors

Furthermore, “The proposed concession site also includes a 125-car parking lot used by the Triborough Bridge and Tunnel Authority, also to be relocated,” Where? More asphalt surface for automobiles alienating even more parkland? NYC Planning Commission documents further reveal, “

It is projected that the proposed water park would attract 1.3 million annual visitors... the proposed water park would need... 2,150 parking spaces... Moreover, approximately 23-29 parking spaces would be needed for charter buses. To accommodate the projected parking demand, as part of the island’s master plan, the total number of parking spaces on the island for park-related uses would be increased from 1,000 to at least 2,800 spaces.” An increase of 1800 asphalt parking spaces!!!

And it is rumored that the proposed design would eliminate the goal of a bike and pedestrian greenway around Randall’s Island by encroaching on the shorelines and prohibiting waterfront access.

Irregular since inception

This entire project has been subject to justifiable skepticism in that there has never been a Request for Proposals or a clear and transparent Solicitation process. This has led to The City Controller to ask how the project was allowed to swell from a 12-acre, \$45 million water park in 1999 to a 26-acre, \$168 million venture today - without ever putting the contract up for re-bidding.

According to the record of the NYC Planning Commission on September 4, 2004, Calendar #33, “The proposed concession is being developed in response to a Request for Proposals (RFP) issued by the New York City Economic Development Corporation, in partnership with the applicant and the Randall’s Island Sports Foundation. The Aquatic Development Group, Inc., was competitively selected as the developer and operator of the proposed water park concession.” How is this possible, when in 2001, according to the Mayor’s Press Release May 21, 2001, “...the Mayor announced that Aquatic Development Group has been designated to develop a family-oriented water park...” just like that, under cover of the ground breaking

for the Icahn Stadium. The Committee must diligently pursue this matter and request all background materials from the NYC Economic Development Corporation.

What's more, according to The Daily Gotham, "Kate Collignon, a special projects coordinator with the EDC, said officials hoped to turn Coney Island into a year-round destination, in part by offering indoor amusement attractions like, perhaps, a water park." How many water parks is the EDC considering? Or are they just seeking a weak enough point to put it. But, wait, Coney Island as a place for an amusement park, hmmm. Wow, there already is one, it's called Coney Island! No need for another on Randall's Island.

Another important issue, if this proposal is to be seriously considered at all, is in regards to financing and corporate responsibility.

According the Draft Agreement, the financing is left open and not specified to a degree in which our municipality should feel confident in the developer's abilities to complete the proposed work. Almost all of these sorts of facilities are attached to a hotel, thereby guaranteeing a clientele and paying customership. Again, RISF website offers this, "Outreach during this period (previous administration) determined that a number of operators were unwilling to be involved in a waterpark in a major urban center. "

Never been done before, risky!

This sort of model is untried, it does not exist anywhere, and could fail to attract the numbers of visitors needed to sustain it. What have the projections, in the media at least, since there are no real estimates in the DA, offered by the proposed Licensors based on?

Shell Company

Furthermore, the Randall's Island Aquatic Leisure LLC is a currently non-existent shell company, with no track record or known office space (see Page 1 of DA), created solely for this initiative and perhaps to thwart investigation into the track records of its principals, which could scuttle the deal.

We do know that, from the 2001 Giuliani Administration press release announcing this scheme that is led by the Aquatic Development Group. Why they couldn't be named on the Title Page on a Draft Agreement as proud stakeholders in this scheme should be cause for serious concern and further scrutiny than is provided for in the timeframe currently adhered to by the current Administration. Another nome de plume assumed in the very pages of this Draft Agreement is "Recreation Management, LLC", who is this deal supposed to be with and what are their finances?

Who would've built it? Kajima

It may be that the financial ups and downs, previous bankruptcy, and their main financial backers would throw up insurmountable red flags about this deal and their mega huge international construction partners from, buried on page 61, Kajima.

Kajima is a huge megaglopic corporation with severe political and financial interests across the globe that warrants serious inquiry from our representatives here. Kajima is the subject of an edifying Japanese editorial in The Daily Yomiuri titled: End Bid Rigging Once and For All. It also features prominently in remarks by an elected government official in the Philippines who addressed his chambers in 2003 with, "It turned out, Mr. Speaker, that Kajima had been convicted by final judgment by the Japanese Supreme Court of having bribed a former Construction Minister. As Asst. Sec. Maglanque noted -- "The suspension of Kajima Corporation by the Japanese Ministry of Land, Infrastructure and Transport was anchored [on] its involvement in a bribery scandal in Japan which resulted to final judicial criminal convictions." As reported in Japan Law that year, "Executives of major contractor Kajima Corp. got suspended prison terms for bribing a former governor of Ibaraki Prefecture for public works contracts."

Here in America Kajima was the source of further review as outlined in a letter to the New York Times by MICHAEL D. ANTONOVICH Supervisor, Fifth District Los Angeles County. "Another 'red flag' which the school district ignored was, the district's law firm, O'Melveny and Myers, at one time represented developer Kajima International, who won the contract to build Belmont... A price tag of over \$210 million for a 'toxic Taj Mahal' high school with a projected student body of over 5,000, the cost of which at least one subcontractor on the project says is certain to escalate, has deprived our other city and county school districts the needed funds to build needed neighborhood schools. Those responsible for rigging soil tests, ignoring warnings about toxicity and defrauding taxpayers need to be held accountable. On February 17th, the Los Angeles County Board of Supervisors unanimously approved my motion urging the Los Angeles County Grand Jury to investigate The Belmont Learning Center."

Has any of this research been done by the Committee? This track record becomes even more relevant when we addressing a budget and proposal that has skyrocketed from \$45 million in 2001 to \$132 million plus today in the DA and \$168 million on the RISF website this morning.

And don't miss Mike Davis in The Nation, with **Kajima's Throne of Blood**. He reveals, "The chaste whiteness of the Kajima skyscraper belies a reputation for bribery and bid-rigging that has kept the corporation under repeated criminal indictment since the late 1980s. (An indiscreet 1994 poll of Kajima's own employees found that 88 percent agreed with the proposition that the company was "**prone to corruption.**") Despite its anti-union behavior, Kajima recently has captured such prize contracts as the Tampa and Long Beach aquariums;... **October 1997: Scandal involving former Construction Minister Nakajima Kishiro**, who was sentenced to 1 1/2 years in prison and fined 10 million yen for accepting a 10 million yen bribe from general

contractor **Kajima Corp.** in exchange for obstructing a criminal complaint about bid-rigging practices in relation to public construction contracts. Both the former Vice President of Kajima Corp. Kiyoyama and Nakamura argued that the money was a "political donation.. The Japanese Ministry of Information and Land Transportation, after the conviction of the Kajima group, suspended the construction firm from participating in any government and private construction projects."

Follow the Campaign Money

The financial backer that has bailed out Howard Ellis' Aquatic Development Group is Jared Abbruzzese. According to the Randall's Island Sports Foundation's website, "An 18-month assessment process preceded the February 2001 designation of Aquatic Development Group (ADG) as the developer" for a proposal then 1/3 the size it has ballooned to. Since that timeframe, Mr. Abbruzzese and numerous family members have contributed over \$100,000 to various Republican Committees, in addition to entities controlled by former Mayor Giuliani, including Friends of Giuliani and Solutions America. Besides direct contributions from Mr. Ellis and Mr. Abbruzzese to Giuliani controlled entities, before and shortly after the announced deal, the former Mayor is the recipient of tens of thousands of dollars funneled through the Republican Committees they contributed too as well.

We are fully in support of the free speech rights of everybody to participate in the political process. We are compelled to raise these issues as outlined in SECTION 16.2.5 in the DA for more extensive review by the Committee, City Council, and Comptroller because of the secretive and wholly inappropriate siting of this project and how it could possibly have come to be in the first place.

As part of the Review Process under question now, "...If the Comptroller raises certain objections such as irregularities within the agreement or concerns of corruption, the implementation deadline is void."

No Revenues for first year, what about Snapple?

To top that off, according to page 14, "No Revenue Participation Fee shall accrue until the 366th Day after opening...". How often is such a deal negotiated by City Agencies, if ever? Does this include all ancillary revenues too, as excerpt page 22, 6.5: "vending machines must sell Snapple Brand". And the revenue projections are based on anticipated PILOT credits or rebates, not at all guaranteed, and could be lowered as Section 3.6 troublingly indicates.

In conclusion, we would like to put again this proposal in perspective. Rather than concentrate energies and resources in addressing the existing inequities this deal which precedes the Bloomberg Administration has continued with an unclear momentum of it's own.

In the context of no easy access to Randall's Island from the South Bronx, a closed bridge to East Harlem and no official waterfront or shore access in the entire South, South Bronx, a

project that would privatize 26 acres of public park land and cost a daily admission of over \$60 can't really be supported by anybody currently in decision-making positions. And why is the MTA re-routing buses and services to accommodate almost 10,000 people a day in August for a private interest through communities already overburdened with asthma?

More absurd is the proposal for an indoor "river", on a site adjacent to a real river! This just makes clear that this cookie cutter project is not intended to be here.

Indicative of the politics involved in 2001 then Commissioner Stern was compelled to say "The great recreational potential of Randall's and Wards Island Park will now be fulfilled with the amphitheater, track & field center, and water park. We are pleased to see these projects get under way."

Today, free of such constraints as the project has tripled in potential impact he offers this indirect yet clear position, "I think it would be no problem if it was left alone," he said. "It's doesn't have to be a happening. It's an open space, an island in the heart of the city."

According to the latest Randalls Island Sports Foundation Website update, the City will need to address the projected 1.3 million, yes, that's right, 1.3 million people per year!!!! From police, to transportation, to pollution and traffic, these significant impacts have not been properly accounted for in any Environmental Impact Statement.

FCRC must include Bronx and Queens Members

Finally, as a matter of legal process, the actions of the FCRC have no legal or binding force inasmuch as it has not considered the legally mandated representative from The Bronx. On page 38 of the DA certain parkland related to the "Bronx" spur is indicated, and on page 66 in the tragically familiar flimsy, inadequate, and crumb-like, yet seemingly obligatory for political cover, Employment and Outreach, section, again Community Board #1 is indicated as playing a vital role, yet at no time as the proposal been brought before that body, nor has the Bronx Borough President been included in these considerations as a Member of the FCRC.

The first paragraph of the Randall's Island Sports Foundation states, "Randall's Island Sports Foundation (RISF) was founded in 1992 as a public-private partnership to work on behalf of Randall's Island Park, located in the East River between East Harlem, the South Bronx and Astoria, Queens." At numerous times in the public record mention is made of the pedestrian access from three different boroughs to the Island. Hence the Queens representative also must be part of the Committee's deliberations to this time and onward. The FCRC in this instance needs to include the representatives from Manhattan, Queens and The Bronx, which has not occurred to this moment, and is further cause for legal exposure for the City.

To ULURP or not ULURP?

Another clear irregularity is that this matter had been handled as a ULURP item, according to City Planning documents, **UNIFORM LAND USE REVIEW** This application (C 040459

MCM) was certified as complete by the Department of City Planning on May 24, 2004, and was duly referred to Community Board 11 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.” The next and concluding step ought to have been a City Council hearing and vote. Yet it hasn’t been carried through in accordance with ULURP rules. Why did the ULURP process not carry to completion? Who decided this and why? The FCRC cannot even review this item until it has gone through the complete ULURP process, which has been started.

This strikingly unacceptable Draft Agreement is a disagreeable leftover from the previous Administration that needs to be rejected in it’s entirety by the Franchise and Concessions Review Committee. Any other decision at this time will likely be shown to be arbitrary, capricious, an abuse of discretion, or unsupported by substantial evidence. Here we agree with the provisions indicated in Section 2.2.2 of the Draft Agreement and suggest immediate “Early Termination” before it is even contractual.

Thank you for your time and consideration. I look forward to working with you to promote legal, sound, ethical and stable revenue prospects while we protect, preserve and expand our open green spaces. We appreciate your support. I request from the FCRC a written response to these above concerns with any relevant information, researched or otherwise and any others raised during public testimony on April 10th.