



FRIENDS OF BEACON HILL PARK SOCIETY

November 2018

Friends of Beacon Hill Park Annual General Meeting

December 16, 2018 1:00PM

Cook Street Village Activity Centre, 380 Cook St.

The meeting will be in the Games Room.

The Friends of Beacon Hill Park Constitution and Bylaws

In 2015, the Province of BC passed the Societies Act 2015, This act replaced the existing Society Act 1986. The Act is an updating of the rules by which non-profit societies in BC conducted their affairs and report to their membership and the Corporate Registry.

One of the main stipulations of the new Act was that all societies must be in compliance with the Act before November 28, 2018. Compliance required rewriting the society's constitution and having it ratified at a general meeting of the membership. The new Constitution and bylaws then had to be submitted to the Societies Registrar.

FBHP had a constitution that did not conform to the new Act. As with most societies, changes to the bylaws had been entered as changes to the constitution. The new Act makes it specific that the constitution is only to include the purposes of the society. All other specifications must go in the bylaws section. The governing document of the society is the constitution and the bylaws. The bylaws must be available on the societies page for all to view. All members must be provided with both documents.

The Friends of Beacon Hill Park is a registered society dedicated to preserving the natural and cultural features of Beacon Hill Park and promoting appropriate uses in keeping with its Trust (1882). We count on your support to help us protect the park.

As well as receiving the newsletter, benefits of membership include the satisfaction of helping preserve the park, input into the management of the park and participating in the Society's activities. You are welcome to attend the monthly directors' meetings. Please call for date and location.

Annual membership is \$10.00 per household

Several items in our constitution should have been in the bylaws. There were also three items in the old constitution that were marked as *non-amendable*. Under the new Act, no items can be declared non-amendable. Items can be designated as requiring a greater percentage than the 50% majority, so we chose 80% majority for the previously non-amendable items. The constitution had to be rewritten to remove the bylaw items and the non-amendable items.

FBHP held a special general meeting on July 7, 2018 to amend the constitution. With eleven members in attendance, it was passed by unanimous consent.

Special General Meeting to Modify the Constitution (cont.)

Joan Halvorsen, the retired executive director of Oak Bay Volunteer Society, completed the filing of the new constitution and bylaws with the Societies Registry before the due date. FBHP is now in compliance with the Societies Act 2015.

FBHP have been suspended as a charitable society due to non-compliance with filing deadlines. Joan Halvorsen is now finalizing the process of re-registration with Revenue Canada as a charitable society. In due time we should be able to issue tax receipts under the authority of CRA



The Sewage Pipeline and the Cycle Path Through the Moist Deciduous Grove

As discussed at the Special General Meeting on July 7, 2018, FBHP contracted a lawyer to present the Society's position on the proposed route of the sewage pipeline and cycle path through Beacon Hill Park. Below is a copy of the lawyer's letter to Mayor Helps. Several meetings with City officials and elected representatives have been held, but no resolution is forthcoming. This item is sure to dominate the upcoming discussions at the Annual General Meeting. This letter gives a very good description of the position of FBHP on development in BHP. There is a brief follow-up at the end of the letter.

Dear Mayor Helps:

RE: Administration of the Beacon Hill Park Trust

I represent the Friends of Beacon Hill Park Society (the Society), a long-standing non-profit organization concerned with the protection and preservation of Victoria's largest natural area, Beacon Hill Park.

As you are likely aware, Beacon Hill Park is governed by a trust, for which the City of Victoria is the trustee. The City has an obligation under the terms of the trust to only permit activities in the Park that are consistent with those terms. As defined by past court decisions, certain requirements of the trust are quite restrictive.

The Society has become aware of plans to install a sewer line (a portion of the CRD's Clover Forcemain project) and a new bike lane in the Park, primarily between Dallas Road and the ocean shoreline. Although we have been unable to obtain the detailed plans, we understand that as part of this major construction project, a significant amount of natural vegetation (and the complex native ecosystem it supports) will likely be removed.

The society is deeply concerned about the potential impacts of this project on the natural value of the Park. In the Society's view, this construction plan is not in accordance with the City's obligations to preserve and maintain the natural environment of the Park pursuant to the terms of the trust. We urge you to carefully consider the City's duty as trustee, and to ensure that this and other development within the Park is either avoided or planned in such a way as to comply with the terms of the trust.

The basis for the Society's legal position is set out in detail below. In summary, the City is obligated to ensure that no activities for general purposes of profit or utility are carried out within the Park, and to

The Sewage Pipeline and the Cycle Path (cont.)

administer the Park in such a way as to preserve and maintain its natural character. The proposed sewer line is a project of pure utility that is not ancillary to any recreational use of the Park, and is therefore not permitted under the terms of the trust. Additionally, both the proposed sewer line and bike lane have been planned for installation in a location inconsistent with the duty to preserve and maintain the natural character of the Park, by unnecessarily displacing a sensitive native ecosystem.

The Society calls upon the City of Victoria, in its role as trustee, to revoke any permissions granted for these construction projects, either permanently or until they can be redesigned to minimize impacts on the Park.

Additionally, we ask that the City provide detailed plans of the proposed developments to the Society and the public, to enable us to properly understand the potential impacts on the Park.

The Trust

The Park was transferred to Victoria in 1882 from the Province in trust, by Order in Council pursuant to the Public Parks Act 1876, as amended in 1881. As stated in both the statute and the Order in Council, the Park was to be held in trust for the recreation and enjoyment of the public, and Victoria was to maintain and preserve the Park for the use, recreation, and enjoyment of the public.

Since its creation, the Park has been developed in a number of ways ostensibly consistent with the stated purposes of the trust, including the establishment of sports playing fields and other recreational facilities. Twice in the Park's history, courts have clarified the limits of development that may be permitted under the trust.

In 1884 in *Anderson v. City of Victoria*,¹ just two years after the Park was transferred to Victoria, the court considered a proposed transfer of land out of the trust property for the purpose of constructing a hall to exhibit "articles of agricultural interest",² as well as a number of cattle lairs (fields where cattle are rested before being sold at market). Chief Justice Begbie held that the proposal was inconsistent with the trust, for the reason that any development in the Park must be for the purposes only of recreation and enjoyment by the public, and not for "general purposes of profit, or utility".³

The court emphasized that the degree of public benefit of a proposed development was of no consequence in determining whether it is consistent with the trust. For example, he said, a university or a cemetery would be of great public utility, and the Park would "afford an admirable site" for such developments, but they would nevertheless not be permissible under the terms of the trust as they are not "objects of pure recreation". Begbie CJ gave the following opinion of the restrictiveness of the trust:

All establishments addressing themselves to profit or utility are, I think, excluded by the terms of the trust, except the profit and utility to be derived (and it is great) from open air recreations, such as may be carried on in a public park or pleasure ground, and such buildings and erections as are ancillary to public recreations there.⁴

Anderson was a decision on an interlocutory injunction, to stop the development until a full hearing on the substance of the issues could be held. However, the matter did not proceed to a final hearing and the Chief Justice's interlocutory decision stood as the authority on the limits of the trust until it was considered again in 1998.

¹ 1 BCR (Pt 2) 107, [1884] BCJ No 17 (BCSC) [*Anderson*].

² *Anderson* at para 2.

³ *Anderson* at para 4.

⁴ *Anderson* at para 5.

The Sewage Pipeline and the Cycle Path (cont.)

In that year, the City of Victoria referred two questions of law to the court in order to determine whether a proposed development was within its legal power to authorize. 5 The first question concerned a specific proposal to permit a non-profit society to hold an annual music festival in the park, with ancillary concessions, advertisements, and enclosures. The second question asked whether other similar “short term festival type events” offered by non-profit societies could be approved within the park. 6 The court concluded that neither the proposed festival nor other similar events were consistent with the terms of the trust.

In coming to this decision, Justice Wilson held that the remarks by Begbie CJ in *Anderson* were “persuasive, and determinative of the questions asked” in the *Festival Society* case. He went on to consider the proposition that “the City has only such ability to utilize the park as may be found in the terms of the trust” – as opposed to, for example, the ability to utilize the park in any way not directly inconsistent with the object of the trust. He agreed with this proposition, and determined the applicable test to be whether the proposed development is necessarily incidental to the object of the trust.

In interpreting this test in the context of the Park, Wilson J found it necessary to more precisely define the “asset” that was subject to the trust:

The most apt descriptive adjective which comes to my mind, in this case, is the word “nature”. That was the emphasis urged by the opponents. It is also consistent with the park objectives defined by the City. From the festival society's perspective, important characteristics are - “...natural shade, grass and spectacular beauty...”.

I define the park therefore, as a nature park and ornamental pleasure ground, with playing fields. The enjoyment and recreation contemplated by the trust terms is the enjoyment and recreation of the trust asset in its physical state as a nature park and ornamental pleasure ground, with playing fields. To achieve the trust objects, the trustee is under a duty to maintain and preserve that “physical state as such”. 7

In summary, in other words, the trustee is under a duty to maintain and preserve the physical state of the Park as a nature park and ornamental pleasure ground, with playing fields.

The court also clarified that the public’s right to enjoyment of the Park must, above all else, be governed by this duty to maintain and preserve:

There is no independent duty on the trustee, nor a correlative right in the beneficiary, in connection with the notions of enjoyment and recreation. To put it another way, there is no duty on the trustee to provide recreation or enjoyment. Any rights or privileges attaching to the beneficiary, in connection with the notions of enjoyment and recreation, must be informed by the duty to maintain and preserve. 8

Wilson J also considered whether the profit-related aspects of the proposed festival (the operation of concessions and the display of commercial advertising) were “*de minimis*”; i.e. that they were too insignificant to warrant the court’s attention in the context of the festival as a whole. He referred to Begbie CJ’s statement that “all establishments addressing themselves to profit or utility are, I think, excluded by the terms of the trust” (emphasis added), and determined that the Chief Justice had indeed meant that all pecuniary profit was excluded, no matter how minimal.

⁵ *City of Victoria v. Capital Region Festival Society*, 1998 CanLII 6836 (BC SC) [*Festival Society*]

⁶ *Festival Society* at para 16.

⁷ *Festival Society* at paras 32-33 (footnote omitted).

⁸ *Festival Society* at para 26.

The Sewage Pipeline and the Cycle Path (cont.)

Application

The Natural Environment

We understand that portions of the proposed developments are planned to cross through treed areas between Dallas Road and the cliffs to the south.

These wet deciduous groves are some of the last remnants of how the early Victoria landscape was formed after the last ice age. Glacial till and marine deposits created, with year-round water retention, a unique habitat for native willows and aspens to thrive. Around the borders and along the recently-created cross-path are a rich assortment of indigenous shrubs and herbaceous plants.

The interior willows display a unique configuration - horizontal to the ground, with vertical branches reaching skywards. We are aware that this configuration is sometimes man-made by Indigenous peoples as a memorial practice at grave sites; It has not been established whether these particular examples are the result of such practices or of a natural process.

The Bike Path

Wilson J emphasized the importance of maintaining and preserving the natural character of the Park, or as he put it, its “physical state as such”. All exercises of the trustee’s discretion must be considered through this lens. The trustee does not have a duty to provide recreation and enjoyment to the public; rather, the duty is to maintain and preserve the Park to allow the public to enjoy it in its natural state.

As previously noted, the proposed bike path is proposed to displace a substantial area of a wild natural wooded ecosystem. The Society submits that it is not the City’s role to actively develop the Park.

The Sewer Line

The court in *Festival Society* held that any profit-driven activity, even if it is ancillary to an activity for the enjoyment and recreation of the public, is not permitted under the terms of the trust. In contrast, activities of public utility are permitted so long as they are in support of the public’s enjoyment and recreation. The access roads and washrooms constructed in the Park, for example, are not intended to be used for recreation directly, but they serve to enhance the public’s ability to use and enjoy the park for recreational purposes. They are, therefore, “necessarily incidental” to the recreational use of the park.

The proposed sewer line, however, has no connection to the public’s use and enjoyment of the park. Its sole purpose is one of general public utility. Regardless of the degree of utility a proposed activity would provide, Victoria has no legal authority to authorize it if it is not in support of the recreation and enjoyment of the Park by the public.

The court’s decisions in *Anderson* and *Festival Society* have established that no impermissible uses may be allowed, no matter how minimal the impact. However, it is worth noting that as with the proposed bike lane, the proposed sewer line as designed will have a significant effect on the natural environment of the Park. Instead of running the line solely beneath the existing disturbance of Dallas Road or the cleared area to the north of the road, the line is proposed to cut through the wild natural ecosystem to the south of the road. The proposal is therefore also inconsistent with the obligation to preserve and maintain the park in its natural state.

Conclusion

The Society is hopeful that the City will take action on its own initiative to resolve this apparent breach of its duties as trustee. We would be pleased to participate in discussions regarding potential alternatives.

Additionally, as noted above, we request that you provide us with detailed plans for the proposed developments.

As these projects are scheduled to commence in the near future, a response is requested at your earliest convenience.

Yours truly,

Matthew Nefstead

(signature)

Barrister & Solicitor

This letter gives a very concise description of the position of FBHP on the Trust and its interpretation. It is the best statement we can make on the item in our constitution that says we will work to preserve the BHP Trust.. It is fitting to end with a quote from Herb Warren, the 40-year superintendent of parks on his retirement in 1970 when he could finally speak openly : "Beacon Hill Park has been proposed as a site for every major public building ever constructed in Victoria, including the provincial museum. If it hadn't been for the original terms of the trust deed, there would be no park today." (Colonist, July 31, 1970, p. 21)



Natural Areas Restoration in Beacon Hill Park

FBHP has conducted natural areas restoration in BHP under the supervision of the natural areas technician of City of Victoria since 2004. Two months ago that program was suspended while CofV conducted a safety and procedures review. That review is ongoing but the Saturday morning restoration program has resumed.

BHP has a restoration program on the second Saturday of every month, usually starting at 10AM. The natural areas technician chooses the most critical site and notifies participants by email of the location and time.

FBHP are always looking for volunteers. Any people interested in a stimulating Saturday morning in a natural area of the park are more than welcome. The work is easy. There are many tasks that do not require kneeling and if the weather is bad the crew moves into an area with a good canopy to protect against wind and rain..

Tasks can include removing non-native ivy, daphne, Himalayan blackberry, and holly. A recent activity had us spreading leaf mulch over an area with a rare violet that has become over-run with non-native grasses. That leaf mulch will be removed in January. Hopefully the grasses will be slowed down or eliminated to remove competition with the native, but stressed, violets. This treatment has previously proven successful in BHP and other parks in the region.

Interested people can email me :

uy205@victoria.tc.ca. I will get their email entered into the CofV mailing list for the parks volunteers.

CofV is slowly coming to the realization, as have other municipalities and CRD, that these volunteer programs do not displace regular parks staff.



FBHP volunteers, and other volunteers in CofV parks, are saddened by the departure of Thomas Munson from the City of Victoria.

Thomas was on leave from his duties due to allergic reactions to some unidentified natural irritant. After over eight month away from the job, he returned in September to resume his desk duties but not to perform outside restoration work involving contact with natural veegetation. He was unable to return to active natural areas functions. Thomas has obtained a similar position in the Municipality of Saanich performing mostly desk duties.

We are sorry to have Thomas leave his duties at CofV. And equally sorry that Thomas will probably not be able to resume regular restoration functions. For those who find desk work tedious, which is probably most people involved in natural areas restoration, the field duties are what make this career a very agreeable way to pay the bills and perform duties of value to society.

But Thomas is not gone forever. He will be in a municipality next door and be visible to those who are involved in natural areas. Look for Thomas to be active in other natural areas activities in the area.



The Friends of Beacon Hill Park

FBHP is currently suspended as a charitable society for late filing of the annual report. Documents have been filed and we expect our charitable status to be restored in very short order. Until such time, no donations will be accepted. We are still a registered society in good standing and memberships will be accepted as usual.

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As well as receiving the newsletter, benefits of membership include the satisfaction of helping preserve the park, input into the management of the park and participating in the Society's activities. You are welcome to attend the monthly executive meetings. Please call for date and location.

Annual membership is \$10.00 per household and is due on Jan. 1.

FBHP Directors

Friends of Beacon Hill Park

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Friends of Beacon Hill Park Society

Membership Form

Name: _____

Address: _____ Postal Code: _____

Telephone: _____ Fax: _____

Email Address: _____

Mailing Address:

#101-1041 Richardson St.
Victoria BC
V8V 3C6

I wish to join the Friends of Beacon Hill Park Society for a fee of \$10.00

I wish to renew my membership for another year for \$10.00

I wish to donate to the Friends of Beacon Hill Park \$ _____

I only wish to receive the newsletter for an annual fee of \$10.00

I am interested in volunteering