



FRIENDS OF BEACON HILL PARK SOCIETY

September 2021

The Friends of Beacon Hill Park is a registered charitable 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 and is due on Jan. 1.

The BHP Trust case regarding camping is scheduled to begin hearing on September 20th. More details are on page 4.

Tree Plantings In The SouthEast Woods Over The Last Twenty Years (by Roy Fletcher)

There have been many supervised plantings of trees in the SEWoods in the 23 + years



I've been doing volunteer natural areas restoration in BHP and other CofV parks. There is talk now of having a natural areas restoration plan with large capital inflow and consultants. This is a very short essay on previous restoration.

Natural regeneration is the preferred method for natural areas restoration. In the wooded area, Grand fir and to a lesser extent hemlock regenerate naturally with ease. Both species will regenerate in areas where they are currently growing.

But the other two prevalent species, Douglas fir and big-leaf maple, don't seem to be able to self-propagate.

I've selected five images that reflect a very broad representation of the trees that have been planted and why they went where they did.

In 2004, the recently deceased Fred Hook, the Natural Areas Technician for CofV, supervised the transplant of the first tree pictured, a Douglas fir from a Saanich native plant salvage site. It was already 10+ years old.

The crown of the tree is too high to fit in the picture. The tree exhibits the characteristics of a young tree growing in heavy undergrowth ; the lower branches don't get enough light so they die off. This fir and a maple were transplanted at the same time in close proximity. The area was wet and open at the time of planting. The canopy closed in and the soil lost moisture. It became too shady and too dry for a maple so it didn't survive.

The second tree is also a Douglas Fir ; it was grown from seed in the park nursery. Fred Hook and I planted it in 2006. The

Inside this issue:

<i>Tree Plantings in the SouthEast Woods.....</i>	<i>1</i>
<i>The Pending FBHP Court Date Is Nigh.....</i>	<i>3</i>
<i>Proposed Restoration Plan for BHP.....</i>	<i>5</i>
<i>Fires in Beacon Hill Park.....</i>	<i>6</i>
<i>Society Page.....</i>	<i>8</i>

Tree Plantings In The SouthEast Woods Over The Last Twenty Years (cont.)

road is visible in the background and the area is very open and moist. The lower branches have a dense



growth of needles. This tree was watered only sparingly for the first years after it was planted. A red cedar planted at the same time in close proximity did not survive.

A third picture contains a more recent planting : fall of 2019. A youth

group who purchased all the seedlings with their own resources planted a large number of trees in the woods. This photo shows two : a Douglas fir and a big-leaf maple. The fir thrives ; the maple has died. Most seedlings will need hand watering for three summers until they are established. The maple requires a very moist soil. Unfortunately, the first



summer was 2020 when parks workers were not active in the park during the pandemic. The fir survived the reduced watering ; the maple didn't.

The fourth photo shows natural regeneration ; a red

cedar seed has somehow been captured in the bark of a fallen Douglas fir here serving as a nurse log with an assist from the moss that coats the fallen tree. The cedar has been growing like this for many years and

the rate of growth is very slow. But the seedling is very healthy and is thriving.



Red cedar requires a large amount of moisture and the seedling is somehow getting that moisture from the dead tree.

A final photo has two planted seedlings. Note where they are planted : right in the

middle of a path.

The parks workers could have erected a fence to close off an unnecessary path but instead have chosen to use trees for the same purpose.



We are hoping to get back into the park soon and resume the Saturday restoration program. If only the pandemic would disappear.



The Pending BHP Court Date Is Almost Here **(by Roy Fletcher)**

On September 20th, FBHP are scheduled to appear in court to determine if camping in Beacon Hill Park is in contravention of the Trust.

At a BC Supreme Court pre-trial hearing, the Court determined that five responders would be permitted to do oral presentations. The five are : City of Victoria (CofV) with City Solicitor Tom Zworski as counsel ; Attorney-General of BC (AG-BC) with Micah Weintraub counsel ; the campers represented by counsel from Arvay-Finlay ; Together Against Poverty Society (TAPS) with their staff lawyer as counsel; and Friends of Beacon Hill Park represented by John Alexander and Lindsay LeBlanc.

A brief outline of the legal arguments of each follows.

The CofV is the trustee of the Trust asset. It is they who have submitted an Application for Direction under sec. 86 of the Trustee Act.

They argue that the CofV has been given broad powers under the Parks Act 1876 to act as trustee and enact bylaws that govern the park. They also assert that the Local Government Act and Community Charter enacted more recently give them sole authority to determine permitted uses of the park. They assert that the Emergency Measures Act, and Dr. Bonnie Henry, although not giving specific authority to permit camping, encouraged municipal governments to suspend enforcement of 7PM-to-7AM rules on shelter sites.

The CofV is also placing great emphasis on the injunction they sought in July 2020. The CofV went to the BC Supreme Court to seek an injunction to remove campers from the ecologically-sensitive natural areas in BHP. For those not familiar with BHP, it does contain some red-listed and blue-listed species that are identified by the Species At Risk Act (SARA 2002) passed by the Federal Parliament. The CofV is claiming great success in limiting the damage to natural areas. This claim is not borne out

by photo evidence.

The CofV is also placing great emphasis in instituting a ban on all sheltering, including overnight erection of protection in BHP. The fact that this is not absolutely enforced does weaken that argument.

The CofV is asking the court to make a ruling under existing statutes.

The AG-BC has a similar position, so I will quote from their submission.

“The Attorney-General, the only person with standing to enforce the Trust in the public interest, has not taken any legal action to do so.”

“Interpreting the Trust in its entire context according to the ‘modern rule’ demonstrates that the Legislature intended municipalities to have broad discretion in maintaining and preserving public parks conveyed to them in trust...”

“...expert evidence...should be excluded...and (is) a usurpation of the Court’s role...”

“Evidence about historic use of BHP for camping, or other uses...is irrelevant to the narrow question before the Court.”

The AG says that Judge Matthew Begbie’s 1884 injunction on partitioning of and building in BHP expired when the Agricultural Society ceased their activity in the park and that the Begbie ruling is irrelevant to modern-day camping.

The AG further asserts that the 1998 Justice Wilson ruling is irrelevant to camping in the park. The AG asserts that the Wilson decision, by defining the current state of the park, was making a ‘modern rule’ decision on allowable park uses.

The AG asserts that the Prov. Of B.C. was in agreement with the CofV in allowing temporary use

The Pending BHP Court Date Is Almost Here (cont.)

of the park during the COVID pandemic.

A paralegal for the AG has submitted an affidavit detailing her research on parks in BC granted to municipalities under the Public Parks Act 1876. She lists two parks : Hastings Park in Vancouver and Kamloops Park in Kamloops. Notably absent is Mount Douglas Park in Saanich. It was granted in trust to the CofV at about the same time as Hastings Park. The CofV was named trustee of Mt. Doug because Saanich had not been incorporated in 1889. Saanich became joint trustee with the CofV after a court challenge. In 1992, the CofV was removed as a trustee.

In summary, the AG seems to be in favour of temporary use of BHP for non-park uses during emergencies at the discretion of the City Council.

Catherine Boies Parker, lawyer from Arvay-Finlay, will probably be counsel for the two-named campers : Shea Smith and Dennis Davies. Both campers do have evidence of having lived in BHP at some point, so they can show a personal interest in this court case. It is doubtful if they can be representatives of all campers who have been removed from the park.

It was Boies Parker who defended the campers in the earlier *Victoria v. Adams* 2009 court action. In that case, the Supreme Court of BC asserted that the campers had a right to erect shelter in parks under Sec. 7 of the Canadian Charter of Rights and Freedoms. She is making a similar claim in the current court hearing.

It should be pointed out that the *Victoria v. Adams* case was very adversarial, which is Boies Parker's skill. This case is not adversarial.

Also, they are submitting Janis Ringuette's History of BHP to assert that there is historical precedent for camping in BHP.

Janis Ringuette used to be a member of FBHP and

was a regular contributor to this newsletter. Janis asserts that there is nothing in her history that would, in any way, condone camping, either temporarily or permanently, in BHP. It's unfortunate that we cannot submit a statement from Janis that nowhere in her history is there any information that can be used to defend camping in the park.

TAPS lawyer is taking a legal position very similar to Boies Parker on Charter rights. They are the local organization that argues for the right of all citizens to have access to affordable housing. They perform a function similar to, but much less active than, Pivot Society in Vancouver. Their lawyer is Daniel Jackson but rumors persist that CofV Councillor Ben Isitt, who recently graduated from the law department of UVic, will be articling with TAPS. It is hard to predict which direction TAPS would go if Ben was doing the oral presentation. Even stranger, Ben Isitt as a Councillor is a BHP trustee : a trustee serving as counsel for that trustee. This COVID year+ has presented many non-standard occurrences.

And finally, we have the FBHP position.

Our lawyers assert that the use of BHP for camping is effectively rezoning the park for residential use. That is changing the zoning of the park. They argue that to modify the zoning of any property within a municipality, the local Council must have a public hearing. That is in the Local Government Act that the AG is using to justify the CofV's allowance of camping in the park.

Further, our lawyers argue that both the Begbie and Wilson judgments are very relevant to the Trust today.

Our lawyers filed an expert opinion by Ron Williams, a lecturer in architecture and parks at Concordia University. It details the establishment of urban parks in the English common law countries.

**The Pending BHP Court Date Is Almost Here
(cont.)**

He makes it clear that the BHP Trust was established by the BC Legislature as a result of that urban park movement, and camping or taking up temporary residence in urban parks was never an intended use. Ron Williams asserts that he has visited BHP on three occasions and the design of the park was very similar to other urban parks established in that era. Our lawyers assert that Ron Williams' affidavit is probably the only evidence to be presented that addresses the "settlor's (the trust grantor's) intent."

The AG can assert that the case be decided by statute law but statute law is sadly lacking. The AG did state in their submission "Evidence showing that the Province granted other parks to municipalities on similar terms as the Trust is relevant to show that the court's answer to the question posed in this case will likely have implications beyond this case."



**The Proposed Restoration Plan for BHP and Other CofV Parks
(editor's comment)**

A news item being circulated has the CofV allocating 0.5 million dollars for restoration of CofV parks. That is the good news. There is also mention of hiring a consultant. That's not such good news. As someone who has volunteered in parks for 23+ years, I can state that there is no lack of knowledge or ability among CofV parks employees. What has been lacking is trained field employees who can do the work.

If there is a real need for a consultant, the hope is that the consultant fees will amount to a very small part of the allocated funds. The rest of the funds can then

be allocated to full-time employees who are dedicated to the task of restoration not just for the duration of the grant but continuing into the future when the money is exhausted.

But if we must have consultants, let us hope that we don't get the usual run-around where the consultant's recommendations are exactly the specialty of their restoration company. And let us hope that the next Council supports the restoration program.



EMAIL ADDRESSES

If you are receiving this by mail, it means we do not have an email address for you. If you have an email address and would like to give it to us, please do so as this can save on postage and mailings. Contact us at info@friendsofbeaconhillpark.ca.



FIRES IN BEACON HILL PARK

(By Joan Halvorsen)

Another fire was put out by Victoria Fire Department in Beacon Hill Park August 12, 2021. The Department said “...evidence of camping activity at the fire location was present and two 1lb propane bottles exploded while advancing on the fire.”

That fire was in the bluffs on the south side of Dallas Road. No sheltering was allowed at that time, but campers had become used to sheltering in the Park and some people continued to ignore bylaws.

Camping must end and not ever be allowed in Beacon Hill Park!



Burned Tree at the Remains of a Fire at a Campsite

One of the main threats to the Park with sheltering is fire. Safety and environmental damage are major concerns. Along with outdoor sheltering comes the need to stay warm. Propane tanks and other fire sources have been observed. Numerous fires have occurred since 24/7 camping was allowed. Very sadly, one person died in a camper van. When dry weather conditions occur as happens every year, the risk of extensive damage from fires increases.

All the photos pictured in this article are from the aftermath of a severe fire in Beacon Hill Park near Douglas St. and Michigan St. which was on January 21, 2021. It was across the street from South Park School. This was from just one camper.

The tree which was badly burned on the trunk had branches burned high up in the tree. It was reported that the flames from the fire were shooting 25 to 30 feet in the air.

Fortunately, no one was in the campsite at the time. Someone walking in the Park noticed the flames and ran to the nearby Fire Hall No. 2 on Michigan St. Firefighters with a ladder truck were on the scene within minutes. Police attended.



Part of the Remains from a Fire at a Campsite of One Camper

One large container and three trucks could not hold all the items from the cleanup from just one camper! Many workers, several in hazmat suits, worked for hours at the initial cleanup. A City employee at the site indicated burned items included pallets, dressers, and a filing cabinet.

FIRES IN BEACON HILL PARK (cont.)

Please help in the legal case to put a permanent end to camping! Donations can be made through GoFundMe at Help Preserve Beacon Hill Park or directly to Friends of Beacon Hill Park.



One of Three Trucks



The Second of Three Trucks



A Third Truck



And a Large Container Could Not Even Complete the Job

~

The Friends of Beacon Hill Park

The Friends of Beacon Hill Park is a registered charitable 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 executive meetings. Please call for date and location.

Annual membership is \$10.00 per household and is due on Jan. 1. Any amount over \$10.00 will receive a tax receipt.

FBHP Directors

Friends of Beacon Hill Park
#101-1041 Richardson St., Victoria, B.C. V8V 3C6
www.friendsofbeaconhillpark.ca
info@friendsofbeaconhillpark.ca

Chairperson and Newsletter Editor :

Roy Fletcher (250) 380-5023
uy205@victoria.tc.ca

Membership Director :

Maureen Applewhaite

Vice-President and Secretary :

Joan Halvorsen

Treasurer :

Tom Epplett

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