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Beacon Hill Park-RW opinion letter.docx

25 June 2021

Mr. L. John Alexander, Advocate
Cox Taylor, Solicitors
26 Bastion Sq.
Victoria, B.C.
V8W 1H9

Re: BEACON HILL PARK, VICTORIA, BC
OPINION LETTER by Ron Williams, CM, FCSLA, FRAIC

Dear Mr. Alexander,

Following our recent correspondence and telephone conversation, I would like to communicate in the following letter my understanding of the creation of Beacon Hill Park in your city, of the international movement of which it is a distinguished example, of the goals that were espoused by its creators, and of the natural and man-made features with which it was originally endowed and that were subsequently integrated to it. I will conclude with my reflections and opinions on the challenges that are currently facing the Park.

BACKGROUND

I am a retired professor of Landscape Architecture at the Université de Montréal, and a fellow of the Canadian Society of Landscape Architects and of the Royal Architectural Institute of Canada. I was invested as a member of the Order of Canada in 2018.

My specialty at the landscape program of UdeM was the history of landscape architecture, with a special emphasis on the history of this discipline and its works in Canada. I also taught landscape design studios, and a course in urban open-space systems given to students in City Planning as well as those in Landscape Architecture. This course was partly based on my 1974 Master's Thesis at Berkeley, *Open Space within the City Limits: A Historical Survey and Case Study of Urban Open-Space systems*. Oakland, California, was the site of my case study.

My complete resume is attached as Appendix "A".

ASSIGNMENT

On March 7th, you asked me the following question: “Can the land known as Beacon Hill Park, held in trust by the City of Victoria, be used by persons experiencing homelessness for temporary sheltering?” You also provided me with a copy of the Petition of the City of Victoria filed March 2, 2021, and the supporting affidavit material.

Attached as Appendix “B” is your correspondence of March 7, 2021.

MATERIAL REVIEWED

I have read the Trust Deed dated February 20, 1882, signed by the B.C. Attorney General of that day, George Walkem, a graduate of McGill University who was qualified to practise law in Upper Canada, Lower Canada, and British Columbia. It is attached as Appendix “C”

I have also read two other judgements of the Supreme Court of B.C., touching on the Park Trust, copies of which you provided to me. These two cases, Anderson vs. Victoria, (delivered by Judge Begbie in 1884), and City of Victoria vs. Capital Region Festival Society (by Judge Wilson in 1998), along with a letter issued by the B.C. Archives in 1942, furnished useful background information concerning the nature of the Trust Deed and its implications for facilities and activities in the Park.

In addition to the material referred to above, I have reviewed a series of photographs and key map, showing the sheltering activities taking place in the Park as of January 23, 2021, attached to the affidavit of Kevin Light, which you provided to me.

I have carried out visits to Beacon Hill Park on four previous occasions, the first time in 1981, and taken many photographs on each visit. In preparing this letter, I have reviewed my personal photos of the Park, and have relied on my previous work on park landscapes, on research I have completed in the past, and on my professional experience in developing my opinion. My understanding of the park was also enriched by my Fall 2000 interview with the late Mr. Bill Dale, who was the leading expert on the park’s designer.

THE URBAN PARK MOVEMENT OF THE 19TH CENTURY

Victoria’s Beacon Hill Park is an outstanding example of an important social and environmental phenomenon of the 19th century: the urban park movement. Beginning in the 1840s and continuing until about 1914, large, naturalistic green spaces open to the public were established in cities throughout the world. Along with the provision of municipal water and sewage disposal systems, police forces, garbage removal, construction bylaws and public transportation, this movement was a key response to deteriorating conditions in the expanding urban and industrial centres of the time. Far-seeing city officials and social reformers led the movement to establish such parks, on sites excluded from commercial, residential or industrial development and dedicated to

the passive recreation and spiritual renewal of city dwellers. An early expression of this movement and its social importance could be seen in the 1840 report of the UK Parliament's Select Committee on the Health of Towns, which declared that such preventive measures were required "for reasons of humanity and justice to the poor."

In previous centuries, few cities had been very large; one could easily reach farmland and natural environments via a short walk or carriage ride from the centre of town. This was no longer true of the burgeoning metropolises of the industrial era. The 19th-century parks were generally located beyond their cities' built-up areas, where sufficient undeveloped land (usually from 60 to 800 hectares in area) was available, on sites endowed with some natural feature – a stream, lake, hill or forest - or, in their absence, landforms that could accommodate an extensive artificial lake. Eventually, each one was surrounded by city expansion. They provided a marked contrast to the smoky and dense urban environment in which most city dwellers (who usually had a 6-day working week) lived and passed most of their time. As specialized facilities for the general public, the parks were not places for the public to live or reside, or for commercial or industrial enterprises to establish themselves.

Such parks were first established in the Western European countries – France, Germany, Britain - that were most affected by the pollution, overcrowding, stress and ugliness that accompanied the Industrial Revolution and its resultant urban expansion. The similar vertiginous expansion of North American cities under the impact of industrialization soon led to the creation of similar parks, the most famous of which was Central Park in New York City, designed in 1858 by the celebrated landscape architect Frederick Law Olmsted (1822–1903), in collaboration with architect Calvert Vaux (1824–1895). First and foremost a social reformer, Olmsted also possessed great artistic abilities, an environmental sensibility, and an innovative technical bent. The immediate and spectacular success of Olmsted and Vaux's creation influenced cities throughout the continent to establish similar parks, and established a pattern for their design and character.

Parks in Canada

The parks movement came to Canada from both Britain and the U.S. In Eastern Canada, where industrialization and urban expansion had already begun with the construction of Montreal's Lachine Canal in 1829, the Parks Movement began with the reservation or donation of large, undeveloped urban areas for park purposes as early as 1866 in Halifax (Point Pleasant Park) and 1873 in Toronto (High Park). The most celebrated Canadian park of the time was Mount Royal Park, designed by Frederick Law Olmsted in 1874. In his design for the park, Olmsted concluded that, unlike New York's Central Park, where it had been necessary to construct a large part of the landscape, the key strategy was to fully exploit the site's natural qualities, its attractive landscapes, and its fine views of the surrounding plain.

Although cities in Western Canada were just beginning their expansion and had as yet little industrial development, the popularity of large urban parks in the industrial cities of

the East soon incited them to establish such parks, which were seen as essential components of any forward-looking municipality. The first Western settlement to reserve land for this purpose was Fort Victoria (now the city of Victoria) in British Columbia, where Governor James Douglas of the Hudson's Bay Company dedicated 71 hectares on a hill beside the sea for the purpose of a public park – Beacon Hill Park - as early as 1858, only fifteen years after the foundation of the town and in fact earlier than cities in the East. The site of the park had previously been a military reserve; this same circumstance was to be repeated at Halifax's Point Pleasant Park, Montreal's St. Helen's Island, and, in 1889, at Vancouver's Stanley Park.

Other Canadian cities soon followed suit - Rockwood Park, in the port city of Saint John, New Brunswick, was designed by Downing Vaux (1856–1926), the son of Calvert Vaux, Olmsted's associate on the design of Central Park; Assiniboine Park in Winnipeg in 1903, Victoria Park and the Plains of Abraham in Quebec City in 1897 and 1908, respectively, and Bowring Park in St. John's, Newfoundland, in 1912, three of which were designed by Frederick Todd, a landscape architect who was sent to Montreal by the Olmsted firm and who became Canada's outstanding practitioner in this discipline from 1900 to 1947.

Philosophy of the parks

The urban parks movement was infused with a high sense of idealism. Its proponents held lofty aspirations concerning the meaning and goals of the parks, and clear ideas about what sort of activities would be appropriate or inappropriate within them. It was Olmsted who essentially defined the objectives of the North American parks:

- to create places of rural beauty that would contrast with the ugly and demoralizing urban environment; segments of the countryside that would permit city dwellers to lose themselves in a different milieu, there to find repose and tranquillity;
- to provide to underprivileged members of society the same advantages *within* the city as those provided to the wealthy through their opportunities to visit natural landscapes *outside* it;
- and to promote the integration and fellowship of people of diverse cultures and socio-economic levels and, by doing so, to inculcate the values of democracy.

In his speech at the 1889 inauguration of Stanley Park in Vancouver, Canada's Governor General, Lord Stanley, clearly expressed the social objectives of the great urban parks: "To the use and enjoyment of peoples of all colours, creeds, and customs, for all time, I name thee Stanley Park." Although this dedication took place some 7 years after the trust that continued the existence of Beacon Hill Park, I believe it is reflective of the intent of those community leaders and designers who created the urban parks.

Since the primary objectives of the parks were social and spiritual, facilities and activities to be permitted were carefully circumscribed. These involved, essentially, *passive recreation*: the enjoyment of nature and natural surroundings in solitary or with friends and family, informal and casual sporting activities (generally, no team games or organized sports), boating, picnicking, hiking and "rambling" along trails and footpaths.

Visual character and esthetics of the urban parks

The parks of this era found the sources and inspirations for their physical composition and esthetic character in landscapes created for other purposes over the preceding century. Their most important inspiration was the so-called “rural cemetery”, a new kind of cemetery that had largely replaced the traditional model. For centuries, densely-packed “burial grounds” had been located in churchyards or near the centre of town. The rapid expansion of industrial cities subjected these cemeteries to serious problems of space and public health. Combined with the potential dangers of overcrowded cemeteries, a profound change in social attitudes concerning death - increasingly seen as the point of departure for reflection and contemplation on life - led to a new definition of the cemetery: a burial ground outside the city, located in a healthy and attractive natural milieu on a hill or by a body of water, in which a diversity of monuments to the departed were distributed in picturesque fashion within a pastoral landscape.

The first “rural cemetery” was the Cimetière du Père-Lachaise in Paris, established in 1804. Its precepts were soon adopted in Britain and across the Atlantic, where the new concept was first realized at Mount Auburn Cemetery near Boston in 1829. These new ideas were imported to Canada in mid-century, first appearing in Nova Scotia, Ontario and Quebec. The rural cemetery landscapes, in turn, owed much to the pastoral and picturesque country estates of the 18th century, landscapes that had pioneered naturalistic topography and planting, incorporating streams and lakes and framing composed views towards bridges, gazebos, and other structures.

These new cemeteries exerted a powerful attraction on the general public, including people who had no direct connection with a place of burial. Cemeteries were often the only extensive natural landscapes that were accessible to urban residents, and they became preferred destinations for citizens seeking to walk and stroll in natural and inspiring surroundings. This (often unwelcome) invasion of the cemeteries led directly to the creation of similar environments that were specifically oriented to the general public - the great urban parks – and became the model for their esthetic character.

BEACON HILL PARK

Victoria’s Beacon Hill Park was first park of this kind to be established in Western Canada, and one of the first in Canada as a whole. An outstanding example of the parks of this unique and creative era, it was, as mentioned above, set aside for park use in 1858 by Governor James Douglas. The site occupied a hill adjacent to the straits of Juan de Fuca that lent itself to the installation of fiery beacons to guide boats crossing the Straits of Juan de Fuca safely into harbour – thus the name of the park, Beacon Hill.

In its early years, Beacon Hill Park became the locale for a number of activities and features including a cricket pitch and a formal entrance. As the Park developed, the activities permitted within it were generally similar to those accepted and encouraged in

the other urban parks of this era; but in this particular case, a more precise definition of what would be allowed was provided in a specific legal document. In an Act adopted by the Parliament of British Columbia (44 Vict. C.18, Statutes of the Province of B.C.), ownership of the Park was transferred to the municipality of Victoria as a Trust, with clear conditions that defined the goals and purposes of the Park and what could be permitted within the site.

The Trust refers to the law allowing public parks to be set aside or granted out of crown land:

“ ... it is declared that it shall be lawful for the Lieutenant Governor in Council from time to time to grant and convey any public park or pleasure ground set apart or reserved out of any Crown Lands of the Province for the recreation and enjoyment of the public to the Municipal Council or Corporation of any City or Town within the Province upon trust to maintain and preserve the same for the use recreation and enjoyment of the public and any such Corporation to whom such grant or conveyance shall be made shall have power to hold the lands thereby conveyed upon the trusts and for the purposes aforesaid”

It references that the park had already in fact been set aside:

“premises hereinafter more particularly described being the public park or pleasure ground known as Beacon Hill Park have been set apart and reserved out the Crown Lands of the Province for the recreation and enjoyment of the public ...

The 1882 document then declared that a Trust was established, defining the purposes of the park, as follows:

“ ... the express use intent and purpose that the said hereditaments and premises hereby granted shall be maintained and preserved by the said Corporation and their successors for the use recreation and enjoyment of the public.”

These goals were defined and relied upon in 1884, two years after the Trust document, when a judgment of B.C.’s Supreme Court, rendered by Judge Matthew B. Begbie, denied that the City had the right to build within the Park an Agricultural Building and other facilities that did not conform to the stated purposes of the Park. Judge Begbie did suggest that, besides “ornamental pleasure grounds”, the City might provide facilities for “open air sports ... and all proper erections and buildings ancillary to such sports.” He enumerated football, baseball, and cricket as acceptable sports, and even postulated that an open-air or covered gymnasium and a horse-racing track would be acceptable. This list is certainly more extensive than that which applied in many other similar parks of the time, and I would consider it to be rather generous in the nature of activities permitted in that era; yet it still remains within the limits defined by the term “recreation and enjoyment of the public”.

As recently as 1998, based on the 1884 judgement, permission was denied to the Capital Region Festival Society's request to charge admission for a musical event in the Park. The series of documents noted above appear to have succeeded, for more than 130 years, in permitting the addition of many useful and attractive park features, and appropriate activities, without compromising the Park's stated purposes.

Design of the Park

Five years later, in 1889, the city sponsored a competition for the design of Beacon Hill Park. The contract was eventually awarded to local landscape architect John Blair (1820–1906). Born in Scotland, where he was trained in horticulture, Blair had moved to St. Catharines, Ontario, in 1851, and then to Chicago in 1865, where he became superintendent of parks. He designed many parks in Chicago and in Colorado Springs, in the American West, before arriving in 1881 on Vancouver Island, where he spent the rest of his life.

Blair was entrusted with the realization of the park during the 1890s. His design work was inspired by his reading of classic romantic literature including the novels of Sir Walter Scott. In my 2014 book *Landscape Architecture in Canada* (McGill-Queen's University Press), I described the design of the park as follows:

“Like the romantic literature of the time, Blair's approach to landscape design was inspired by wild nature. His orchestration of the spatial sequence by which one discovers the park is remarkable. At the entrance to Beacon Hill from the downtown area, the visitor passes through elegant green lawns and great specimen trees. This transitional zone quickly gives way to a rugged moor-like landscape, its rough landforms colonized with wild grasses, contorted Garry oaks, and broom, which flowers brilliant gold in spring. Reaching the heart of the park, the visitor comes upon an ancient marsh that Blair had transformed into a lake landscape framed by luxurious vegetation, a milieu that resembled an English *paradise garden*. A bridge of rough stone, a witness to Blair's technical virtuosity, is reflected in the waters. Then the visitor undertakes the long and strenuous walk to the top of the hill, passing through wild snowberries (a native plant here), the blue-violet flowers of camas lilies, and the yellow of daffodils, pines silhouetted against the sky; finally arriving on the crest – a sudden majestic view of the straits and the misty mountains of the Olympic Peninsula on the horizon.”

The park includes several of the the “environmental archetypes” that characterized Olmsted's Central Park and most of his subsequent large parks: broad pastoral lawns studded with trees, an irregular lake or pond, a formal promenade with elegant structures, and a wild picturesque “Ramble.” These various environments and the specific facilities provided for in Blair's design and realization of the park reflected the precepts of the urban park movement, and carefully respected the terms of the 1882 Trust document,

presumably reflecting the City Council's understanding as to what the park was intended to be. I believe that this applies to all subsequent additions to the park's facilities and activities as well.

Conclusion: The character of Beacon Hill Park and the current challenge to its original definition

Beacon Hill Park is unique in the City of Victoria, and is the oldest major urban park in Western Canada. It was first established by the City's founder, Governor James Douglas, and was constructed according to a comprehensive design that was created by a celebrated landscape architect with international credentials.

Located in the city centre, a few minutes walk from the downtown area, the Park provides services to the most densely populated urban sector – an area that has few other parks, and no other large parks - and provides a unique environment and unique services not offered by other public parks. Its unique location acts as a “bridge” between downtown and the Straits of Juan de Fuca; splendid views from the top of the hill, the reward for a demanding climb up its landward side, provide a wonderful experience of discovery. The Park also furnishes some special recreational experiences, available in few other parks, to the entire population of the City. It has more annual users than any other park in the City, and, according to a 1990 study, 99.7 % of visitors questioned declared that they were either “satisfied” or “very satisfied” with their experience in the Park.

Beacon Hill Park has retained and maintained some unique natural features : the Garry Oak savannah ecosystem, fields of Camas lilies (an important element of the First Nations heritage), and extensive growths of snowberry shrubs on the northern slope leading to the hilltop. The Park also contains magnificent examples of designed landscapes and structures, including Goodacre Lake and its stone bridge; nearby horticultural features such as the Rose Garden; the Cameron Bandshell, and the historic Bandstand, built in 1888 and recently refurbished.

Many of these features are extremely vulnerable and, once lost, would be very difficult to re-establish. Even if plants can be re-grown, the brilliant artistry of the designer's compositions would be sought for in vain. In sum, I consider Beacon Hill Park to be a very important Canadian landscape that deserves to be carefully managed and maintained in perpetuity. It is my opinion that this corresponds to the original intent of the “grantors” of the Park, and what was expected of successive City leaders, as the holders of the Trust's obligations.

The character, integrity and heritage of the Park have recently been severely challenged by the desperate shortage of housing accommodation in Victoria, particularly for citizens who temporarily have no place to live. The Park has become a site for the emergency shelter of a large number of such people, who have established a temporary camping community. Photos from January 2021 made available to me, and I understand now attached as exhibits in the evidence filed, appear to indicate that this camping activity

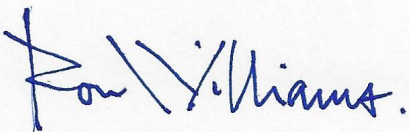
has invaded and crowded in on some of the unique and beautiful areas and elements of the Park.

The installation of campsites and shelters within the Park was clearly not envisioned when the Park was established and, in my opinion, does not correspond to the purposes defined in the Trust document of 1882 and the other relevant legal documents. Neither does the Park include the services necessary for camping or sheltering use. In my opinion, the photographs provided do not correspond to the expected esthetic character of this or other established urban parks in Canada.

While not a part of the specific opinion requested I, like many professionals in my field, am very aware of housing and homelessness issues and problems in this country. The architecture and landscape architecture professions are or should be central participants in addressing these issues. The City should, in my opinion, make great efforts to resolve the severe social problems that beset it, and, again in my opinion, it has a clear responsibility to provide temporary and emergency shelter to its citizens who are in difficulty. To this end, it should identify sites and, if necessary, create facilities for such shelter to be provided. But this should not be carried out in places that are unsuitable for these facilities, and the City should not in doing so endanger a vital part of its heritage that provides unique services to all citizens. As mentioned above, many of the Park features are extremely vulnerable; other parks are not so subject to damage, and are more easily returned to their original state following temporary use for emergency shelter. Typical sports fields, for example, are relatively robust and are often equipped with sanitary and other relevant facilities.

It should be remembered that the great urban parks, including Beacon Hill, already play an essential social role. These parks were established as a respite from the general ugliness of urban dwelling and development and to provide space for public recreation and enjoyment in a green and natural environment. These unique institutions should be permitted to play their essential role, as defined (in the case of Beacon Hill Park) by the Trust document of 1882 and subsequent court decisions.

With best regards,



Ron Williams, CM, FCSLA, FRAIC
Landscape architect and Architect