

March 24, 2022

VIA EMAIL

Honorable Mayor Wheeler and City Council  
City Hall  
1221 SW 4th Avenue  
Portland, OR 97204

Re: Thompson Elk Fountain

Dear Mayor Wheeler and City Commissioners:

This firm has been retained by the Downtown Neighborhood Association to evaluate the City's obligations with respect to the preservation and restoration of the Thompson Elk Fountain. Having reviewed all of the relevant documentation, it is clear that the "fountain" landmark designation is not constrained to the bronze elk statue alone, that removal and/or destruction of the fountain after the 2020 protests without further review was improper (assuming, without conceding, that it was necessary), and that the City cannot rely solely on 120-day demolition delay to eliminate any state or locally required historic resource protections or obligations. The Elk Fountain has been restored many times over the years and the time has come to make it whole once more.

### **The Landmark Designation Includes a Fountain as well as the Elk**

As the enclosed and more lengthy letter by historian and preservation architect Bill Hawkins explains, as it was originally constructed, the Thompson Elk Fountain consisted of a bronze elk standing atop an architect-designed granite water fountain conceived as a singular whole to celebrate animals and the founding of the Oregon Humane Society. In 1974, through the adoption of Ordinance 138066, the City designated the "David P Thompson Fountain" or "Elk Fountain" as a local Historic Landmark. Described with an architectural style of "fountain," the inventory form describes the resource as including a central granite pedestal, surrounded by an "octagonal granite reservoir with four animal troughs" served by "water spouts at pedestal in form of animal heads." All of the evidence surrounding its creation, documentation and designation all points to the inextricable link between the fountain base and the elk atop. Restoring the elk to the public realm, although necessary, is woefully inadequate to address the

City's obligations with respect to a landmark whose historic characteristics and significance included an octagonal reservoir holding water for animals.

Both City staff and its elected officials have continually represented that the landmarked resource was not merely the elk but included a fountain. In a briefing to the Historic Landmarks Commission in the fall of 2021, City staff noted that the "fountain is a critical component of this landmark's historic significance." In an undated letter from Commissioners Mapps and Rubio to the State Historic Preservation Office (SHPO), the resource is referenced as "the historic Thompson Elk Statue and Fountain" documenting at length the monumental efforts taken to save the fountain from further damage.

Notwithstanding this repeated acknowledgment that the fountain and the elk work together to create a singular landmark that was worthy of protection, for the first time in its February 2022 demolition delay request, the City takes the position that the landmark will be adequately restored solely by "returning the Elk to the public realm." What is conspicuously absent is any discussion of the future plans for the fountain. Changing the reference from Thompson Elk Fountain to elevate the elk alone to proper name status is nothing more than a linguistic slight-of-hand that should fool no one. Simply broadcasting the return of the "Elk" far and wide to the media and through the City's website to an audience starving for any City action is morally and legally wrong.

### **The City's Obligation to Conserve the Fountain as Required by ORS 358.653 Have Not Been Satisfied**

As the City is well aware, Oregon Revised Statute (ORS) 358.653(1) requires that all political subdivisions of the state, such as the City of Portland, that are responsible for historically significant resources work, in consultation with SHPO, to "institute a program to conserve the property and assure that such property shall not be inadvertently transferred, sold, demolished, substantially altered or allowed to deteriorate." The Thompson Elk Fountain is / was historically significant because (1) it was designated by the City as a historic landmark, and (2) it is eligible for listing on the National Register of Historic Places not merely for its long-standing historic significance. The original design intent was as a gathering place between two parks in the heart of downtown where people could meet, feed their animals and share the news of the day. This same purpose was realized in the summer of 2020, where the fountain served as the backdrop where multitudes raised their voices together protesting police brutality that rang throughout the world.

The Fact Sheet published by SHPO with respect to ORS 358.653 obligations explains that conservation is achieved by "whenever possible, avoid[ing] and minimize[ing] negative impacts as a result of project actions" so as not to "negatively affect the historic characteristics of the property." In the fall of 2021, the City seemed to understand these obligations where in a letter to the Historic Landmark Commission, City staff indicated that any "alterations or relocation must go through the Historic Resource Review process" and that the Office of Management and

Finance would “secure a historic architect to develop possible plans for the treatment of the Elk Fountain.” Around this same time, Commissioners Mapps and Rubio sent a letter to SHPO purporting to comply with ORS 358.653. This letter incorrectly asserts that compliance with the City’s local regulations with respect to historic resource protection is sufficient to achieve compliance with ORS 358.653. Nothing in the statutory language suggests that compliance with the local regulations supplants or otherwise relieves a local government from SHPO consultation and impact avoidance obligations as required.

Assuming, without conceding, that these obligations would be realized by proceeding through “the public land use process for alteration or relocation,” as the Mapps / Rubio letter suggests would result in the protection of character defining features, any such outcome is certainly lost now that the City is intent on demolition rather than the required historic resource review. Before any further action may be taken with respect to the elk, the fountain or the Thompson Elk Fountain, the City must comply with ORS 358.653(1) requirements in full. This includes explaining how its current proposal – restoring the elk without the fountain – will not negatively affect the historic characteristics of the resource as a whole, what options would avoid the unmistakable negative impacts and identifying mitigation appropriate to offset any unavoidable impacts.

It is important to understand that a political subdivision of the State of Oregon, the City carries a higher obligation with respect to its historically significant properties than apply to private property. State law is unambiguous in its requirements. Failure by the City to comply could lead to an injunction or writ of review seeking a court order mandating compliance with state law or other relief that may be available through the courts or at LUBA.

### **120-Day Demolition Delay Requires a Meaningful Consideration of Alternatives to Demolition**

Portland Zoning Code 33.445.810, the demolition delay requirements in place when the subject application was filed, requires the “consideration of alternatives to demolition, such as restoration, relocation or architectural salvage.” Nothing in the delay application indicates any effort has been made in the nearly two years since the fountain was unceremoniously removed or demolished to engage meaningfully in such effort. The evidence suggests that it has only been sometime during the past six months or so that the City has decided that fountain is no longer worthy of protection. Short of restoring the elk, no further plans for the fountain are identified.

This dramatic change in position, coupled with the obligation to give meaning to demolition delay requirements, requires that the City must, at the very least:

- Identify various alternatives short of demolition and those identified to date including:

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- Rehabilitation and restoration of the elk fountain restoring the pre-damage status quo within SW Main Street;
  - Rehabilitation and restoration of the elk fountain in place and closure of SW Main Street to motorized vehicles but allowing unrestricted bicycle and pedestrian access on either a permanent or temporary basis; or
  - Reconstruction of the elk fountain at a different location, perhaps in Chapman Square or the SW Park Blocks.<sup>1</sup>
- Robust balancing of the various policy objectives that would be realized with each alternative
  - The overall physical cost, in terms of public and private dollars, of each option including efforts to seek indemnification from various City insurance policies, state or federal grants or other funding sources that might be available to offset the cost.

The public, including numerous historic architects, preservationists and stakeholders have tried tirelessly to engage with City staff and have been absolutely stonewalled in these efforts. When asked directly, staff points to the City website speaking solely to a commitment to preserving the elk alone and make no reference to the fountain. This level of avoidance and failure to acknowledge the City's conservation obligations, particularly when stakeholders have offered funding to aid the City in fountain restoration efforts, fails to comply with the letter and the spirit of ZC 33.445.810.

Individuals and organization that have reviewed and endorsed the findings set forth in this letter include Bill Hawkins, Aubrey Russell, Chet Orloff, the Architectural Heritage Center, Restore Oregon, Portland Coalition for Historic Resources, and many others. The public is desperate for a forum where the alternatives to demolition can be discussed. Please instruct your respective bureaus to not only comply with state law and local preservation program requirements but also be transparent and up front about your intentions with respect to the protection of historic resources.

As a public body considering one of the most recognized and often photographed resources within the City, this weighing and balancing of alternatives and policy objectives should be accomplished in a public forum where the public is given a formal opportunity to be heard by a politically accountable decision-maker. Multiple land use procedures are available to accomplish as much, such as historic demolition, alteration or relocation review. With or

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<sup>1</sup> One of the alternatives identified by RACC representatives is installing the elk upon a newly designed, narrower, non-fountain monument base. This should not be considered an alternative relevant for consideration because it will result in demolition.

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without a public hearing, the City's actions to date are insufficient to comply with the 120-Day Delay requirements or give meaning to its purpose and policy.

In closing, it is worth pointing out that these preservation obligations do not create a zero-sum game where a preservation gain must be accomplished to the detriment of public policy. As the SHPO Fact Sheet explains: "Relatively minor changes can often eliminate negative impacts, preserve the historic property, and avoid mitigation commitments." For example, closing SW Main Street to vehicles – a circumstance that already occurs on SW Main Street three blocks further west to accommodate performing arts – would create a public promenade open only to bikes and pedestrians. The original design intent of the fountain encourages multi-modal transportation and has done so for over 100 years. Removing the fountain prioritizes private cars and a better design solution can be found for bikes, protests, and restoration. Closure of SW Main Street to vehicles coupled with fountain restoration would connect Chapman and Lowndale Squares and provide a place in the heart of downtown for Portlanders to safely convene around a fountain to exchange ideas in spirited dialogue and debate.

Thank you for your serious consideration of this request. We look forward to the opportunity to lend our expertise and assistance in this effort.

Very truly yours,



Carrie A. Richter

CAR:kms

Attachment

cc: Client

Lauren King

March 2022

In Re: THE DAVID P. THOMPSON FOUNTAIN

To Whom It May Concern:

In a letter dated 1898, David P. Thompson, former mayor of Portland and founder of the Oregon Humane Society, gifted the City of Portland a fountain topped by a bronze sculpture of an elk, dedicated the whole to the Oregon Humane Society. The granite water troughs and fountain basin were designed by architect H. G. Wright and the elk sculpture was designed by nationally renowned sculptor Roland H. Perry. Much thought went into the message it was to transmit, and it has stood for over 120 years as an enhancement to the two Plaza blocks, Chapman to the South and Lownsdale to the North, and as an illustration that good citizens should take care of the animals of the world, domesticated and wild, including those that had existed in this area for millenia. The mighty indigenous elk and watering troughs “for the animals” were chosen to represent this intention.

In 1900 the original Ordinance #11518, accepted the “water fountain” as a gift to the City, vacating and dedicating a portion of the Plaza blocks for the David P. Thompson Fountain. Members of Portland’s first Parks Board were deeply involved, including then Portland Mayor George Williams and COL. L. L. Hawkins, executor of Thompson’s estate and my great-uncle, whose devotion to the support and enhancement of the new parks system is part of my family’s story. The Parks Board helped in the site selection, and they were confident that by positioning it in the Plaza Blocks and adjacent to City Hall and the County Courthouse, they had chosen a significant and lasting site.

The Thompson Fountain has stood since then as a welcome to the heart of downtown, to its civic core, to City Hall and the Justice Center, calming traffic and slowing drivers with a notable aesthetic and historic experience. In an act recognizing the significance of the artwork, it was listed, with Chapman and Lownsdale Squares, as a Portland Historic Landmark in 1974, Ordinance # 138066. It is listed in the 2004 Historic Resources Inventory, Properties in the City of Portland, Oregon as the David P. Thompson Fountain, “Style: Fountain,” and as a Portland Landmark subject to Title 33.445 Review. In all of these

instances, it is a singular artwork, a fountain, topped by its elk sculpture, that is to be maintained and protected.

While the artwork was commonly called the “Elk Fountain” in recent commentary, it has become convenient for some to refer to the artwork simply as the “Elk,” a shorthand, an abbreviation of its full name. It is not an indication of the significance of the whole. Using a manipulative linguistic trick, the recent naming choice made by City staff has traded on this shorthand, declaring that the “Elk” is going to be returned, when, in fact, the Elk Fountain, the David P. Thompson Fountain, topped by an elk, is NOT planned for return. The artwork is NOT the elk, it is a lovely fountain that incorporates an elk sculpture. In point of fact, in its 122 year history the City has referred to the artwork not as the “Elk” but as the David P. Thompson Fountain, listing, considering, and treating it as a single entity, an inseparable, integrated whole. It took as its inspiration the Skidmore Fountain, similarly an octagonal fountain topped by a sculpture, in the case of the Skidmore Fountain, two caryatids supporting a fountain bowl. All sorts of transportation enhancement, including its own Skidmore Fountain Max station stop, occurred around the Skidmore Fountain without anyone suggesting that the fountain was in the way and only the caryatids ought to stay.

In July of 2020, when nightly protests had inflicted vandalism and fire damage to the David P. Thompson (Elk) Fountain, the Regional Arts and Culture Commission (RACC) directed the removal of the elk sculpture to an undisclosed “safe” site. About two weeks later, the balance of the artwork, its granite troughs, fountain basins, and pedestal were, without permit or review, removed by contractor Pioneer Waterproofing, which is a local waterproofing and stonework care company but not one claiming to deal in art conservation. The granite pieces that survived the removal process were taken to a Portland Water Bureau (PWB) location. (In a perverse allocation of authority, the sculpture, because it is bronze, is managed by RACC and the fountain by the PWB, while the whole is considered an artwork and falls under the jurisdiction of Portland Parks and Recreation (PP&R).)

I had been following the story of the Fountain throughout the continuing unrest downtown, photographing by day the results of the previous night’s riots, as seen in new graffiti, scorching and breakage of some of the granite basins and

troughs, and the general trashing of its surroundings. By August, having spoken to and been encouraged by City officials and concerned citizens, I sought to engage the community in an effort to bring the Thompson (Elk) Fountain back. Conversations with Randy Gragg, Executive Director of the Portland Parks Foundation (PPF) led me to make an initial donation to start a fund at PPF, whose purpose was to see to the restoration of the Thompson (Elk) Fountain. In late August, I wrote an "In My Opinion" piece for *The Oregonian* inviting others to join me in showing their support for the restoration. In time, the fund that began with my modest contribution had grown to \$130,000.

In the spring of 2021, I was called by Randy Gragg to a May meeting with a fellow architect to discuss the Fountain. I was shocked to learn that what was being proposed was a "new base" for the elk sculpture with no mention of the restoration of the Fountain. This was to accommodate a new bike lane between Third and Fourth Avenues. Randy produced drawings by PBOT that showed the new arrangement cum bike lane that had long been hoped for and that now seemed possible with the removal of the Fountain. He also produced the deconstruction drawings produced by PWB, showing big, black X's through the four water troughs and three fountain basin sides, which I subsequently learned indicated that they were expendable. Randy indicated that he wished to hire me and my fellow architect to produce preliminary drawing proposals for the new base. I was incensed and stopped working with Randy on such a proposal, one that would undermine all the good-faith efforts I had begun to see to the Fountain's restoration. In all the time that had passed while I was promoting the restoration of the Fountain, I was never informed that seven granite pieces had been destroyed in the deconstruction process.

A May, 2021 letter from Chrissy Curran, of the State Historic Preservation Office (SHPO), to Commissioner Mingus Mapps indicated that the removal of the Thompson Fountain by the PWB was in violation of Oregon Revised Statute 358.653. I then began working on a principled plan for the restoration of the Thompson Fountain, lobbying Commissioners, RACC personnel, and concerned citizens. Having been denied access to the remaining granite pieces being held at the PWB yard, I sought other ways to determine what was in need of restoration. In September 2021 I contacted Pioneer Waterproofing and was fortunate to be able to speak with John Crawford, the head of the company and the son of the man who founded the company whom I had known in the course



of my architectural career. When I asked him about the four troughs, he indicated that they had been destroyed. But he had a request from someone from PP&R who was there to salvage one of the lion's heads, which he did. He indicated that extensive photographs of the removal process were taken.

My next step in trying to assist with the restoration of the landmark was to contact Bob Thompson, of TVA Architects, to discuss the issues involved. He offered to have his firm create a series of 3-D renderings that would show the Thompson (Elk) Fountain restored. He further offered the information that he happened to walk by on the day on which the horse troughs were actually being demolished by sledgehammer. Needless to say I only became more concerned about the fate of the parts

At their September 27, 2021 meeting, the Portland Historic Landmarks Commission (PHLC) took up a discussion of the disposition of the Thompson (Elk) Fountain. Hillary Adam, the City staffer devoted to the PHLC, reminded all those assembled that the question at hand dealt with the landmark as a whole, as an artwork comprised of troughs, fountain pedestal, and sculpture. The 10/11/21 Executive Summary states that "The Commission believed it was important to not separate the elk and the fountain but to treat them as one entity." Various solutions for its siting were discussed and Jeff Hawthorne, City Arts Manager, was designated to work with the relevant bureaus and organizations to study the issue and determine the proper citing for the restored Thompson (Elk) Fountain.

Over the course of the next weeks, I communicated repeatedly with various City staff members, Commissioners, and the Mayor, sending letters of inquiry as to how I could advance the process, the 3-D renderings of the restored landmark, and proposals for restoration and fund-raising that I was willing to undertake (I had gotten a quote for the restoration of the granite work that amounted to another \$100,000, beyond the \$130,000 already in the hands of the PPF.). My letters were either ignored or politely deflected. I continued to work on the issues, beginning architectural drawings of each of the parts of the artwork that could later be used as working drawings for the restoration.

And then on Monday February 24 2022, as I was, by happenstance, down at the former site of the Fountain to get measurements of the remaining granite steps

that had been left in the ground, I saw Jeff Hawthorne being interviewed by Ken Boddie of KOIN. I heard Jeff say that the following day a Demolition Delay Permit for the Fountain was being applied for and that the Elk would be returned to the site on a new base, one that permitted the construction of a new bike lane. Indeed, on February 25, 2022, the Demolition Delay Permit was filed, leaving 120 days for “another party” to come up with a solution for the landmark that was to be permanently dismantled.

What can be done? First and foremost, those charged with the stewardship of the artworks of the City, including the City Council, should commit to a transparent process in which the preservation of the landmark Thompson (Elk) Fountain is given genuine consideration together with all the City’s other goals.

The optimal solution that avoids demolition of the landmark is to restore it back on its original site. We have the preliminary drawings needed and the assurance from the granite supplier that appropriate stone can be found for the reconstruction of the missing pieces. I am prepared to continue to pursue the fund-raising efforts I had already begun and feel confident that the funds needed for the restoration of the pieces can be raised. I am prepared to work with the City in any way to see to this resolution.

Should this optimal solution be deemed impossible, the demolition delay permit points to the requirement that “time for consideration of alternatives to demolition” be provided. One obvious alternative to demolition is the reconstruction of the fountain in its entirety in another suitable place. One possibility is to keep it as part of the Plaza blocks, relocating it in Chapman Square, immediately to the south of the existing site. The site is entirely free of transportation issues, sits in the middle of a full park block, can be more easily protected from vandalism and would still be near its original site close to the heart of the City and its government buildings. On this site it could maintain its traditional North/ South orientation and be used as it was originally intended -- as a fountain. Visitors could access the fountain’s basin and troughs, free of all bike and bus concerns. Sitting in the center of our civic life where it could be approached by people on foot, dabbled in by children, and serve in its original purpose as a place “for the animals,” the Thompson (Elk) Fountain could serve as a symbol of the City’s revitalization and recommitment to the invitational quality of its parks for its residents. Other sites, such as in the vacated Madison Street in the South Park

Blocks, have been suggested and are also possible, but the Chapman Square site is the most promising.

The unthinkable is the acceptance of the removal of the Fountain by the City, whose efforts were far more successful at destruction than those of the protesters. I believe the will of the people of Portland is well indicated by their initial generous response to a single request in *The Oregonian* calling for the restoration of the Thompson (Elk) Fountain. I believe Portland's citizens want this iconic artwork restored and returned to prominent public display in its entirety, as the artwork as it was originally designed to be, complete with fountain and its notable elk, not divided as the City's current unimaginative plan indicates. It will only be symbolic of the City's strength and endurance if it is restored as an integral piece of art, not a fragmented one that leaves visible for future generations the divisive arguments that have characterized the City's recent history. If another site is the only alternative to the Fountain's demolition, the concept should be immediately developed and put into decisive action.

William J Hawkins, III, FAIA, Advocate for the THompson (Elk) Fountain  
(former member of Portland Parks Board, Portland Historic Landmarks  
Commission, State Advisory Committee for History Preservation, and Chair of  
the National Association of Olmsted Parks)