

Questions About the Ending of the Anmore Renewable Energy Foundation

- i) Did the contractor Elworthy get paid the \$34,000 owed to him?
- ii) Did the AREF declare bankruptcy? Has the Foundation been properly wound down?
- iii) As three of the six Trustees of a Charitable Foundation are the Trustees McEwen, Palmer-Isaak, and Weinberg personally liable for outstanding debts?
- iv) Is the Village liable for any outstanding debts?
- v) What will happen to the Solar Panels? What is the value of the power currently being generated by the solar panels?

December 1, 2009 Letter from Mayor Weinberg to the Council of the Village of Anmore

"My advice is as follows:

1. Have the municipality dissolve the Trust and transfer all assets to the Municipality. The solar array is the only asset and has a replacement cost of \$150,000.
2. Make an agreement with the Company that installed the solar cells to pay them \$10,000 per year for two years and request that they make a donation to the municipality for the rest of what is owing for which the Village would issue a tax receipt. Initial discussions with Elworthy Electric suggest this may be viable.
3. Use payment to the company that installed the solar cells as the 3rd party funding that is required by WD, for compliance with the WD grant, as indicated in the letter from the Hon. James Moore. This will allow the amount owing WD (\$18,000) to be effectively written off according to the Hon James Moore. This would allow the power from the solar array to be injected into the grid and payment from BC for that power."

Background Documents on the Ending of the Anmore Renewable Energy Foundation

- Partial release of In-Camera Council Meeting Held September 10, 2009 by Anmore Council where Mayor Weinberg, and Councillors Palmer-Isaak and McEwen resign as Trustees of the six member AREF.
- Mayor Anderson, and Councillors McEwen and Palmer-Isaak vote against having an Select Committee Independent Inquiry into AREF. July 13, 2010.
- Mayor Weinberg reports on the ending of AREF stating that \$34,000 is still owed to Elworthy Electric who installed the Solar Array at the Village Hall in April, 2008. Dec. 1, 2009.
- Michael Fisher of Western Economic Diversification requests a meeting with the Village to discuss an overpayment of \$20,855 on June 24, 2010. February 28th letter about actions of the Village and WD re: solar panels.
- Charitable Status Revoked by Canada Revenue Agency, 2008-07-12.
- Grant Information: i) BC Ministry of the Environment \$75,000, ii) \$120,000 Western Economic Diversification \$120,000.

Dr. Lynn Elen Burton, Anmore Alternative News, Founding Editor, March 8, 2011.

**PARTIAL RELEASE OF IN-CAMERA COUNCIL MEETING
HELD ON SEPTEMBER 10TH, 2009**

At the In-Camera Council Meeting held on September 10th, 2009, the Council of the Village of Anmore adopted a resolution dissolving the "Anmore Renewable Energy Foundation".

At that Meeting, Mayor Hal Weinberg resigned his position as Chair of the Foundation and Councillors McEwen and Palmer-Isaak resigned as Trustees.

During this In-Camera Meeting, Council received a presentation from Mr. Guy Heywood, Renaissance Power Corporation. Mr. Heywood advised that the Anmore Renewable Energy Foundation effort is now concluded and the Foundation will have an outstanding payable balance of \$20,000.00 once all business transactions have been completed.

Council adopted a resolution requesting the assistance of James Moore, MP Port Moody – Westwood - Port Coquitlam to contact the Western Diversification on behalf of the Village of Anmore to request Western Diversification to assume any outstanding balances of the Anmore Renewable Energy Foundation.

13. UNFINISHED BUSINESS (CONTINUED)

(b) Anmore Renewable Energy Foundation

Councillor McEwen put forth the following Motion.

It was MOVED and SECONDED:

“WHEREAS WESTERN ECONOMIC DIVERSIFICATION CANADA HAS ADVISED THE VILLAGE THAT IT IS SEEKING A LEGAL OPINION ON THE VILLAGE’S POSSIBLE LIABILITY FOR THE DEBTS OF THE FOUNDATION AND INDICATED THAT IT WILL FORWARD THAT OPINION TO THE VILLAGE ONCE IT IS RECEIVED;

AND WHEREAS IT WOULD NOT BE IN THE BEST INTERESTS OF THE VILLAGE TO INVESTIGATE OR INQUIRE INTO THE ANMORE RENEWABLE ENERGY FOUNDATION UNTIL AFTER THE POTENTIAL DISPUTE WITH WESTERN DIVERSIFICATION IS RESOLVED OR CONCLUDED;

NOW THEREFORE BE IT RESOLVED, THAT THE MOTION TO CREATE A SELECT COMMITTEE BE DEFERRED UNTIL AFTER A RESPONSE IS OBTAINED FROM WESTERN DIVERSIFICATION AND THAT UPON RECEIPT, STAFF REVIEW THE RESPONSE RECEIVED AND REPORT BACK TO COUNCIL AT A FUTURE CLOSED MEETING.”

CARRIED

Councillor Piamonte opposed

Councillor Sedergreen opposed

14. NEW BUSINESS

(a) 2010 Eligible School Site Proposal – School District 43

Michael Rosen presented his report dated July 5th, 2010.

It was MOVED and SECONDED:

“THAT THE REPORT FROM MICHAEL ROSEN DATED JUNE 28TH, 2010 TITLED 2010 ELIGIBLE SCHOOL SITE PROPOSAL – SCHOOL DISTRICT 43 BE RECEIVED FOR INFORMATION.”

CARRIED UNANIMOUSLY

Jane Burke-Robertson
Barrister and Solicitor

Industry Canada
Laws Governing Not-for-Profits
in Canada
- Liability of Directors

Liability for Breach of Trustee Duties

Directors of charitable corporations have potentially higher exposure to personal liability than do directors of other not-for-profit corporations.

The recent decision in Ontario (*Public Guardian and Trustee*) v. *Aids Society for Children (Ontario)* emphasizes the fiduciary responsibility of directors of charitable corporations as quasi-trustees. The court held that these fiduciary duties go beyond the mere furtherance of the charitable objects of the corporation. The case stipulates that although directors of a charity may not technically be trustees of charitable property, they "are, to all intents and purposes, bound by the rules which affect trustees."

Although a lower court decision, this case strongly argues that directors of a charitable corporation have an obligation to apply charitable property towards the charitable objects of the charity. This, in turn, requires that directors take pro-active steps to protect charitable property. Any loss of charitable assets due to the inactivity or failure to act of the directors could make the directors liable for breach of their fiduciary duties, or possibly even breach of trust.

Liability risks from remuneration of directors

At common law, in Ontario at least, directors of charitable corporations must not receive any direct or indirect remuneration or benefit from the charity on which they serve as directors unless court approval is first obtained. It is not settled law whether such a requirement applies in other jurisdictions. This means that a director of a charitable corporation cannot be a paid employee, contractor, consultant or professional service provider of the charity, even if they are paid below fair market value for the services rendered or goods supplied. In such cases, both the director who received the remuneration and directors who authorized it would be at risk of personal liability.

Readers may note a potential conflict between this rule and section 98 of the *Canada Corporations Act* referred to earlier, which otherwise permits directors of not-for-profit corporations to declare a conflict of interest in a contract or pro-posed contract with the corporation and enables them to enter into a contract in which they have a personal interest. The prudent approach is to consider that the rule against paying remuneration to director of charitable corporations takes precedence over section 98.

The rule against remuneration does not apply to out-of-pocket expenses incurred by directors, such as mileage or other reasonable and related travel expenses. Directors may legitimately be reimbursed for these items.

In Ontario, the *Charities Accounting Act (Ontario)* allows charities to follow a procedure to obtain consent from the Public Guardian and Trustee to permit directors of charitable corporations to receive remuneration. However, charities do not often use this option, and it is not clear which cases will receive the approval of the Office of the Public Guardian and Trustee.

In jurisdictions other than Ontario (except Québec), an application to court under trust law may be possible to permit remuneration. However, the availability of this remedy appears never to have been tested in a Canadian jurisdiction.

Liability for breach of trust when dealing with charitable property

Because their duties are akin to those of trustees, directors of charitable corporations may be held personally liable for breach of trust if they mismanage charitable assets. This means they can be personally responsible for the full amount of any loss to the charitable assets.

Breach of trust involving investment decisions

Directors of charitable corporations face considerable liability risks from the improper investment of charitable funds. Liability of directors in this regard may arise as a result of their failure:



Anmore Village Hall
2697 Sunnyside Road
ANMORE, BC V3H 3C8
604-469-9877 Voice
604-469-5037 Fax

1 December 2009

To: Council of Village of Anmore

The Anmore Renewable Energy Foundation was developed to demonstrate and to disseminate knowledge about the practical and viable use of clean energy technologies, and to promote innovative partnerships between public and private interests to advance the use of clean, renewable, sustainable and efficient energy technologies.

Re: Status of Anmore Renewable Energy Foundation

This is an explanation of the history of the Foundation, its current status, and recommendations as to what could be the next steps. The relevant details referred to can be seen as a link to the Anmore web site (www.anmore.com).

In January of 2004 an application for funding was made to Western Economic Diversification (WD) for the amount of \$120,000.00. Due to a Federal reorganisation of WD the application for funding was delayed until 2006. This application was made with the support of MP James Moore, who recognized that "the key objective of the project is to demonstrate how existing technologies can be utilised at the municipal level."

In November of 2004 an application for funding was also made to the Provincial Ministry of Environment for the amount of \$75,000.00, it was approved in March of 2006.

The funds approved by WD required "matching funds" to match money provided by under terms of the WD grant. In 2006, in accordance with the rules of WD, a portion of the Provincial funding was used as matching funds with the agreement of WD. The terms included the requirement by WD that the Foundation must raise 10% of funds from sources other than a provincial or federal government source. Since the Foundation had raised more than \$24,000 dollars from non-provincial or federal sources (and the total budget was \$240,000) there was no risk of not meeting this requirement. Each draw was supported with invoices and was in accordance with our understanding of the matching formula in the WD grant agreement.

In 2009 WD decided that they had overpaid the Foundation by the amount of \$18,000.00 because the solar cells were moved to the Village Hall and their interpretation was that the matching funds were for an installation at Buntzen Lake.

Technical considerations that came to light during the project made it necessary to re-locate the solar array nearer to a source of demand for the power and a place where the

power could be utilized. The decision made to move the array to the Village Hall were clearly disclosed in the Progress Reports made to WD.

However, WD alleges that by moving the solar array from Buntzen Lake to the Village Hall, the terms of the agreement were broken. The Foundation's interpretation of their mandate did not restrict the demonstration of solar energy at a municipal level to a solar array at Buntzen Lake.

As a result of this, WD has not approved the withdrawal of \$34,000.00 to pay Elworthy Electric who had installed the Solar Array at the Village Hall in April of 2008. Because of the outstanding debt, Elworthy has not signed off on the technical installation of the cells and therefore electricity from the cells cannot be introduced into the grid with compensation from B.C. Hydro.

At this time, \$47,330.00 still remains in the Foundation's WD account to be disbursed by WD with the appropriate matching funds. The letter from WD asking for a return of \$18,000 is enclosed and until this matter is resolved no further draws on WD can be made.

This matter has been reviewed by Lawyers David J. Selley, Farris, Vaughan, Wills & Murphy LLP and are of the opinion that WD is wrong, and that The Foundation should be able to use the remaining funds.

The letter from WD to James Moore, and other details relating to this matter can be seen as a link on the Anmore web site.

My efforts to resolve this have not produced an agreement, as of this date.

The appointment of all the Foundation's Board members has now expired.

The previous Board consisted of:
Hal Weinberg, Anmore Council
Ken Juvik, Anmore Council
Lee Vischloff, Anmore Council
Mel Steemson, Resident of Anmore
Kevin Pickell, Resident of Anmore
Ken McEwan, Lawyer

My advice is as follows:

1. Have the municipality dissolve the Trust and transfer all assets to the Municipality. The solar array is the only asset and has a replacement cost of \$150,000.

2. Make an agreement with Company that installed the solar cells to pay them \$10,000.00 per year for two years and request that they make a donation to the municipality for the rest of what is owing, for which the Village would issue a tax receipt. Initial discussions with Elworthy Electric suggest this may be viable.

3. Use payment to the Company that installed the solar cells as the 3rd party funding that is required by WD, for compliance with the WD grant, as indicated in the letter from Hon. James Moore. This will allow the amount owing WD (\$18,000.00) to be effectively written off according to Hon. James Moore (see letter below).

This recommendation would allow for power from the solar array to be injected into the grid and payment from B.C. for that power.

Consequently, I intend to put before the Council the following resolution at the Council meeting of December 1st.

“Council recognises the importance of initiatives to establish alternative energy programmes in small municipalities and wishes to enter into discussions with Western Economic Diversification to determine if there are solutions to the matter raised by them in order to maintain the Anmore Renewable Energy Foundation.”

Hal Weinberg

Sharleen Karamanian

From: Michael Fisher [Michael.Fisher@wd-deo.gc.ca]
Sent: June 24, 2010 11:38 AM
To: S.Karamanian@anmore.com
Cc: Michael Fisher
Subject: Anmore Renewable Energy Foundation
Attachments: 2010_06_24_11_36_07.pdf

Hello Sharleen:

Thank you for speaking to me earlier today. I contacted the Village office yesterday and asked for an emailed copy of the Village financial statements that were released at the Council Meeting earlier this week. They indicated that the request would be reviewed by you.

As mentioned, WD provided certain funding to the Foundation under a Contribution Agreement dated March 8, 2007. There was an overpayment of \$20,855 that is repayable and we would like to discuss this situation with the Village. Our basis for discussing this with the Village is that the Foundation was created by the Village by Council in January 2005 under the BC Municipal Charter. For your records we enclose a copy of the Trust Deed between the Municipality of the Village of Anmore and the Trustees for the establishment of the Anmore Renewable Energy Foundation. Given your questions, I have asked for a Justice opinion to confirm the Village's possible liability for the debts of the Foundation. When received we shall certainly share that with you.

As mentioned, we would like to discuss the situation with representatives of the Village to agree on what the facts are and the best way to resolve the situation.

Could we please have a copy of the following documents to help us understand the situation:

1. Council Minutes from January 2005 where Council voted to establish the Foundation
2. The Financial Statements noted above?

Thank you in advance. If you have any questions or wish to discuss, please do contact me as noted below.

Michael Fisher
Senior Business Officer / Agent principal des services aux entreprises
Western Economic Diversification Canada / Diversification de l'économie de l'Ouest Canada
Victoria Office
G7 - 1001 Douglas Street,
Victoria, BC V8W 2C5
Michael.Fisher@wd.gc.ca
Telephone / Téléphone : (250) 363-8123
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Government of Canada | Gouvernement du Canada



Western Economic
Diversification Canada

Diversification de l'économie
de l'Ouest Canada

Mailing/Street Address
G7 Sussex Place
1001 Douglas Street
Victoria, B.C., V8W 2C5

Adresse postale/civique
G7 Sussex Place
1001 rue Douglas
Victoria, C.-B., V8W 2C5

February 28, 2011

File No. 4232

Ms. Heather Anderson, Mayor
The Village of Anmore
2697 Sunnyside Road
Anmore BC,
V3H 5G9

Dear Mayor Anderson:

Re: Anmore Renewable Energy Foundation

Thank you for meeting with me on August 9, 2010 to discuss a proposed resolution of the issues related to Anmore Renewable Energy Foundation (AREF).

I wish to confirm that the Village is in no way responsible for the debts of AREF and I believe we are all disappointed that the various initiatives of AREF did not result in commercial projects.

The solar panels erected by AREF were placed on village property adjacent to the main office and as the Village owns the land under the panels, it is our understanding that the Village's claim to the solar panels ranks ahead of WD. In order to avoid any confusion over the issue, could you kindly confirm in writing whether the Village is willing to release its claim over the solar panels to WD?

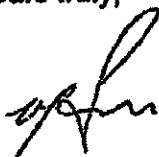
For your convenience, we attach a simple statement form and ask that you or the Village legal counsel confirm your intentions by ticking the relevant box and returning the document to us. Alternatively, a letter may be drafted dealing with the same issue.

Canada

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Upon receipt of the signed document, we shall confirm the actions of this department as quickly as possible. If you have any questions, please do feel free to call me (250 363 8123) as enough time has been used already in trying to resolve this.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. Fisher', written over a horizontal line.

Michael Fisher
Senior Business Officer
Victoria, BC

G7 – 1001 Douglas St.
Victoria, BC
V8W 2C5

Encl:



Canada Revenue Agency / Agence du revenu du Canada

Canada

Charities and Giving > Search

Canadian Revoked Charities - Detail Page

The Charities Directorate has not necessarily verified the information provided by the Charity.

ANMORE RENEWABLE ENERGY FOUNDATION

BN/Registration Number: 839897147RR0001
Charity Status: Revoked
Effective Date of Status: 2008-07-12
Charity State: N/A
Language of Correspondence: English
Designation Description: Charitable Organization
Charity Type: Education
Category: Support of Schools and Education
Address: 218-179 DAVIE STREET
City: VANCOUVER
Province/State: BRITISH COLUMBIA
Country: CA
Postal Code/Zip Code: V6Z2Y1
Charity Email Address: N/A
Charity Web site Address: N/A

Revocation:

Type of Revocation: Revocation for Failure to File
Income Tax Act Reference: **ITA 168.(1) - 168.(2)**
Reason for Revocation: **Notice of Revocation of Charity's Registration**

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[New search](#)

Date Modified: 2008-11-10

Transfer Payment Request

INITIALS

①

Ministry: Environment		Transfer Payment # WAC-06-179		
Branch: Water, Air and Climate Change				
Project Title: Anmore Renewable Energy Project				
Type of Transfer Payment requested:		<input checked="" type="checkbox"/> Grant <input type="checkbox"/> Transfer Under Agreement <input type="checkbox"/> Transfer Under Cost Sharing Agreement		
Coding:	Responsibility	Service Line	STOB	Project
	2941D	30525	7703	2900000
<p>Rationale for Funding:</p> <p>The Village of Anmore in British Columbia is undertaking the development of a state-of-the-art renewable energy and educational project to showcase how small communities and the public can utilize green and renewable energy to satisfy local generation needs in the future and to reduce greenhouse gas emissions. The Anmore Renewable Energy Project (AREP) will be operated and managed through the Anmore Renewable Energy Foundation (AREF) under the control of the Village of Anmore.</p> <p>Three renewable energy production systems are envisioned for the project:</p> <ul style="list-style-type: none"> • Micro-Hydro – a 250kW run-of-river micro-hydroelectric power plant; • Solar – up to 50kW Photovoltaic arrays; and, • Micro-Wind – up to 100kW of micro-wind with one or more turbines. <p>Ministry of Environment support of \$75,000 has been requested to support detailed engineering studies. A contribution of this amount will leverage an additional \$125,000 from Western Economic Diversification.</p> <p>Support for this type of project is indicated in the BC climate change plan--specifically in action #15, which offers support to leading edge high performance buildings and commercial developments; in action #3, supporting alternative energy; and in outreach action #34. The Anmore project is linked to Ministry support for the CIRS and Dockside projects as one of three examples in different communities and at different scales of green development potential in BC.</p>				
Start Date: January 1, 2006		End Date: March 31, 2007		
Name of Recipient: Hal Weinberg, Chairman The Anmore Renewable Energy Foundation 2697 Sunnyside Road Anmore BC V3H 4Y6			Amount: \$75,000	
Date of Request (Attach letter of request if applicable): December 15, 2005				
Branch Contact: Lee Thiessen, Manager, Climate Change Section		Telephone Number: (250) 387-6338		



Western Economic
Diversification Canada

Diversification de l'économie
de l'Ouest Canada

Canada

News Releases

Governments make \$195,000 investment for clean renewable energy for Anmore residents

March 14, 2007

Anmore, British Columbia

The Village of Anmore is taking an important step toward generating clean electricity for their community and the Lower Mainland by harnessing hydro, solar and wind energy.

Canada's New Government, through Western Economic Diversification Canada will provide the Anmore Renewable Energy Foundation with \$120,000 to assess the feasibility of producing green hydrogen and clean electricity by integrating three sources of renewable energy: micro-hydro, solar power and micro-wind. Electricity generated from these renewable resources will be used to power facilities throughout the Village, with surplus electricity distributed to other municipalities. The Province of British Columbia, through the B.C. Ministry of Environment, also provided \$75,000 for this initiative.

"We are seeing great initiative in communities across Canada, and here in Anmore, to create innovative projects dedicated to improving our communities and protecting our environment," said Mr. Moore. "Canada's New Government is proud to contribute \$120,000 towards Anmore's feasibility study on integrating three renewable energy sources - micro-hydro, solar and micro wind power - into a viable renewable energy system."

"As was pointed out in the B.C. throne speech last month, we're looking to all forms of clean alternative energy to meet the needs of our provincial economy," said B.C. Environment Minister Barry Penner. "This proposal involves three types of renewable energy and it's exactly this type of project that Premier Gordon Campbell spoke about when he said we would look for a variety of methods to play a part in our low-carbon future."

"It is very logical for a village such as Anmore to move on this type of renewable energy project" said Anmore's Mayor, Hal Weinberg. "Anmore is the type of community where many Canadians would like to live because of our belief in sustainable development. In a practical sense it is also small enough to be able to absorb new ideas relatively easily and we have the opportunity to start to demonstrate the future way our communities could be powered."

The Anmore Renewable Energy Foundation is a registered charitable trust and was created to demonstrate that clean, renewable energy can be locally generated to help meet community needs. This project can be used as a model for small, remote, and First Nations communities, for the future development of locally generated renewable energy.

For additional information, contact:

Bernée Bolton
Communications Manager
Western Economic Diversification Canada
Vancouver, British Columbia
Tel: (604) 666-1324
C: (604) 506-6616

Dan Gilmore