

Validity of Anmore Secrecy Bylaw Argued in Court

Following is a summary report of the factual arguments made by both sides at the petition hearing in BC Supreme Court in New Westminster on February 15th and 16th, 2011.

Village of Anmore Policy 43 and Bylaw 507-2011 both apply to closed meetings of the Village council. Village resident Mary Jane Atkins seeks an order declaring them both invalid. Councillors Sedergreen and Piamonte have sworn affidavits supporting her, while Mayor Anderson along with Councillors Palmer-Isaak and McEwen swore affidavits against.

There are two parts to the policy and bylaw, the first being that the closed meetings are to be recorded by the official recorder only. Ms. Atkins did not seriously contest this. The second part requires that sensitive and confidential documents will be distributed only during a closed council meeting and retrieved by staff at the end. Under the policy all members of council including the mayor get the documents at the same time; under the bylaw the mayor and corporate officer decide which documents are sensitive and confidential, and the mayor can study the documents beforehand but councillors cannot.

Policy 43 was passed on November 9th, 2010. Ms. Atkins commenced a petition on January 4th of this year challenging it primarily on the basis such a policy properly requires an amendment to the *Anmore Procedure Bylaw*, and cannot be passed as a simple resolution. The mayor along with Councillors McEwen and Palmer-Isaak responded by passing it as a *Procedure Bylaw* amendment on February 8th. Ms. Atkins then challenged the bylaw on the basis that it is unreasonable. Despite the bylaw amendment, Policy 43 has not been rescinded.

Karen-Ann Cobb, the Village corporate officer, confirmed on January 19th in response to a *Freedom of Information Act* request that she is unaware of any similar policies implemented by previous Anmore councils. Ms. Cobb then located a 2009 report considering similar legislation for Vancouver, and the same report noted that Toronto has a similar policy, except that it contains safeguards lacking in the Anmore bylaw. These include: 1) the mayor does not decide which documents are confidential, 2) confidential materials are minimized, 3) no votes can be taken in closed meetings except on procedure or to instruct staff or agents, and 4) any member of the public who believes that a meeting has been improperly closed can request a review by an independent investigator. Mayor Anderson in an affidavit stated she was aware of a similar practice used by other local governments including the GVRD. Ms. Atkins' lawyer argued that if this is so it should have been easy to prove, but almost 1½ months after the petition was commenced the mayor has still produced no proof of this.

The mayor claimed that she supports the policy and bylaw due to two recent instances of disclosure of confidential information. The first occurred on October 8th when a copy of the agenda package for the October 12th open Council meeting was emailed to the

council members by a Village clerk without a warning that contained within its 84 pages were 10 lines of confidential information. (Those 10 lines were blacked out on copies made available to the public before the October 12th meeting.) On the same day, October 8th, Councillor Piamonte's wife published the unedited version in the Anmore Alternative website of which she is editor. Ms. Atkins lawyer argued that the disclosure problem could have easily been prevented had the councillors' copies been marked "Confidential". He also argued that neither Policy 43 or the bylaw would have prevented the disclosure since it was not an agenda package for a closed council meeting.

The second ground claimed as reason for passage of the policy and bylaw is that Karen-Ann Cobb, the Village corporate officer, told the mayor that she received a phone call from the president and vice-president of Avion Multiplex, which had submitted a bid to construct the Daycare facility in Anmore, who told her that they had received an envelope with no return address which contained copies of items relating to the bid submitted by the competing bidder. Ms. Atkins' lawyer argued that none of those documents arose from a closed meeting of the Village Council, but rather from activities and meetings of the Daycare Working Group, which consisted of the mayor, two councillors, and several Village residents. Hence neither Policy 43 nor the bylaw could or would have prevented the dissemination of those documents.

No council members identified any instance of information or documents leaked from a closed council meeting. (1)

Ms. Atkins' lawyer argued that a different issue arising from the Daycare tender process was the real reason for the mayor's push to pass Policy 43 and the bylaw. The low bidder, Avion, has taken the position that the mayor personally interfered in the tender process by phoning the other bidder to get it to lower its bid. This was alleged by Avion's lawyer in an October 21st letter addressed to the mayor and councillors which seeks money from the Village to settle the claim. Mayor Anderson withheld the letter from the councillors until November 16th. In the meantime she placed Policy 43 on the November 9th Council meeting agenda at which time it was passed. Not until a week after passage of Policy 43 did the councillors see, at a closed council meeting, the letter from Avion's lawyer received October 21st. The mayor's explanation for withholding the letter from October 21st until November 16th was that Councillor Piamonte told her he would be out of town on November 2nd, and the next date available to all Council members was November 16th.

Ms. Atkins' lawyer argued that, since no actual tender figures were in the letter, it is difficult to see what harm could be caused to the Village by the letter being released in open Council or otherwise, and that it was the mayor's own act in improperly contacting the high bidder to obtain a lower bid that created the potential liability to the Village and to her. Ms. Atkins' lawyer then repeated the allegation that it was the mayor's fear of personal and political embarrassment that motivated her instigation of the passage of the policy and bylaw. She wanted there to be no chance that the letter from Avion's lawyer, damning as it was to her personally, would be seen by the public.

In reply to the mayor's assertion in her affidavit that the minutes of the November 9th open Council meeting show only Councillor Sedergreen opposing Policy 43, Councillor Piamonte filed an affidavit stating that the minutes are in error. Ms. Atkins' lawyer argued that it was highly unlikely that Councillor Piamonte would have voted in support of the policy since there were and are significant differences between mayor and Councillors McEwen and Palmer-Isaak on the one hand, and Councillors Sedergreen and Piamonte on the other, regarding both the Daycare issue and matters arising from the Anmore Renewable Energy Foundation (AREF), which ceased to function sometime in 2009.

Regarding the Daycare, for instance, the mayor in September 2010 deliberately excluded Councillor Piamonte from a meeting with the provincial minister in charge of the daycare grant while inviting Councillors McEwen and Palmer-Isaak to attend, and in the following open council meeting stated her intention to disband the Daycare Working Group and to steer all communication with the minister through herself. Regarding AREF, the federal agency which had provided grant funds is seeking repayment from the Village of some of that money. At the July 13th, 2010 Council meeting, Mayor Anderson and Councillors Palmer-Isaak and McEwen, over the objections of Councillors Piamonte and Sedergreen, passed a resolution requiring that any response to the Village from the federal agency would be reported back to council at a future closed meeting. (2)

Ms. Atkins' lawyer argued that Policy 43 and Bylaw 507-2011 present great problems to councillors who wish to study important documents in depth and at length before taking a position on them. Under the bylaw the mayor is the only council member able to study in this way such documents, which she herself has decided are sensitive and confidential. Councillors Sedergreen and Piamonte in their affidavits stated that they do not feel that they can properly do their jobs as councillors, looking out for the best interests of the Village, if they are denied the same opportunity. Ms. Atkins' lawyer further stated that the October 21st letter from Avion's lawyer is a perfect example of such documents.

Mr. Justice James Williams reserved judgment on the case.

Editor's Comments

- (1) All Councillors swear an oath to protect the confidentiality of in-camera meetings. The only breach of this confidentiality that I am aware of is when the received Minutes of the Anmore Standing Committee on the Environment, (Councillors McEwen and Palmer-Isaak, and resident Tracy Green members) Sept. 14, 2009, "*reported that Anmore's Renewable Energy Foundation is no longer and other than discussions regarding what will happen with the solar panels, the project has concluded.*" There was later a public release of in-camera meeting information indicating that the same two Councillors and former Mayor Weinberg had resigned as Trustees of the Anmore Renewable Energy Foundation.
- (2) The Childcare Working Group appointed by Anmore Council was comprised of Mayor Anderson, Councillors Piamonte and Palmer-Isaak, and eight other Anmore residents. As the September 30th deadline from the BC Ministry of Children and Family Development (MCFD) to Council to advise on whether it "wished to move forward or whether the project

(Major Capital Funding for the Creation of New Child Care Spaces Agreement No. CO781001) will be cancelled and all funding (\$499,500) returned” loomed, individual members were asked to submit their personal recommendations to Council based on the work of the Committee. The discussion of these recommendations was Agenda Item 7 (a) ii for the September 14th Anmore Regular Council Meeting. Rather than deal with the Agenda Item, Councillor McEwen made a motion to table the issue of building the Child Care Centre until all talks with the Ministry proposed by Mayor Anderson have been exhausted. Councillor Palmer-Isaak seconded the motion.

The Chair ruled Councillor Piamonte out of order when he talked about the need to discuss the recommendations from the eight citizen members of the Day Care Working Group. There were 2 recommendations in favour of the project moving forward. There were four recommendations that the project be cancelled and all funding returned. One member abstained from advising Council and the last member did not submit a recommendation.