

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

PROTECTING TALISMAN LANDS ASSOCIATION

Applicant

- and -

THE CORPORATION OF THE MUNICIPALITY OF GREY HIGHLANDS

Respondent



NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a first appearance by video conference on November 26, 2021 as directed by the Ontario Superior Court of Justice, 611-9th Avenue East, Owen Sound, ON N4K 6Z4 at 2:00 p.m.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: November 1, 2021 Issued by: _____

Local Registrar
Owen Sound Courthouse
611 – 9th Ave. East
Owen Sound ON N4K 6Z4

TO: THE CORPORATION OF THE MUNICIPALITY OF GREY HIGHLANDS

APPLICATION

The Applicant makes application for:

- 1) An order or orders of the court:
 - a) quashing such resolutions, orders or by-laws of the Corporation of the Municipality of Grey Highlands respecting the disposition of the so-called Upper and Lower Talisman lands (defined below) made during the meeting of council on June 2, 2021;
 - b) quashing such resolutions, orders or by-laws of the Corporation of the Municipality of Grey Highlands respecting the disposition of the so-called Upper and Lower Talisman lands (defined below) made during the meeting of council on June 14, 2021;
 - c) quashing such resolutions, orders or by-laws of the Corporation of the Municipality of Grey Highlands respecting the disposition of the so-called Upper and Lower Talisman lands made during the meeting of council on July 7, 2021;
 - d) quashing such resolutions, orders or by-laws of the Corporation of the Municipality of Grey Highlands respecting the disposition of the so-called Upper and Lower Talisman lands made during the meeting of council on July 21, 2021;
 - e) quashing such resolutions, orders or by-laws of the Corporation of the Municipality of Grey Highlands respecting the disposition of the so-called Upper and Lower Talisman lands made during the meeting of council on September 15, 2021;
 - f) direction of the court that nothing shall be done pursuant to any agreement for purchase and sale or conditional sale in respect of the Talisman Lands until this application is disposed of;
 - g) The costs of this Application; and
 - h) Such other relief counsel may request and the Honourable Court deems just.

The grounds to be argued are as follows:

- 2) The Applicant, Protecting Talisman Lands Association, is a not-for-profit corporation pursuant to the laws of Canada established to protect and preserve the lands of the former Talisman resort in Grey County.
- 3) The Corporation of the Municipality of Grey Highlands ("Municipality") owns two parcels of land in Beaver Valley, situated in Grey County which, with a third parcel that is privately held, form what is commonly referred to as the Talisman Lands.
- 4) The Talisman Lands together were formerly a popular ski resort in the Beaver Valley. The Resort closed some time ago and the lands have been unused since.
- 5) For ease of reference, the properties owned by the Municipality are referred to generally as Upper Talisman, consisting of 59 acres and Lower Talisman consisting of 74.8 acres, and collectively as the "Municipal Lands").
- 6) The relevant lands under Municipal ownership are legally described as follows:
 - a) EPHRASIA CON 6 PT LOT 7 RP;16R10463 PART 1; and
 - b) PLAN 168 LOTS 6, 11, 12, 13,;14, 20, 21, 22 PT LOTS 3, 4,;5, 7, 8, 9,10, 15, 16, 17,;18, 19 PT MCLEAN ST PT PURDY;ST 16R8624 PARTS 3,4, 5; PLAN 168 LOTS 6, 11, 12, 13,;14, 20, 21, 22 PT LOTS 3, 4,;5, 7,8, 9, 10, 15, 16, 17,;18, 19 PT MCLEAN ST PT PURDY;ST 16R8624PARTS 3, 4, 5; PLAN 168 LOTS 6, 11, 12, 13,;14, 20, 21, 22 PT LOTS3, 4,;5, 7, 8, 9, 10, 15, 16, 17,;18, 19 PT MCLEAN ST PT PURDY;ST16R8624 PARTS 3, 4, 5; PLAN 168 PT LOTS 1 TO 3 PT;PURDY ST CON 5PT LOT 7 RP;16R8624 PARTS 2 6 12 AND 18; PLAN 168 LOTS 6, 11, 12,13,;14, 20, 21, 22 PT LOTS 3, 4,;5, 7, 8, 9, 10, 15, 16, 17,;18, 19 PTMCLEAN ST PT PURDY;ST 16R8624 PARTS 3, 4, 5

Referred to herein as the "Upper and Lower Talisman" or the "Municipal Lands").

The Talisman Lands together are within the Niagara Escarpment and are part of a diverse ecosystem and represent a unique geography that is recognized by the United Nations Educational, Scientific and Cultural Organization (UNESCO), as a World Biosphere

Reserve. The Talisman Lands are subject to the control of the Niagara Escarpment Commission pursuant to the *Niagara Escarpment Planning and Development Act* (Ontario).

- 7) As such, the Talisman Lands, and in particular, those lands owned by the Municipality, are a special focus of public interest and concern to many of the residents of the Municipality of Grey Highlands, Ontario and beyond.
- 8) On March 2nd, 2021, the Municipality entered into a Joint Venture Agreement with 2420124 Ontario Limited, owner of the parcel that is privately held, to jointly dispose of the Talisman Lands and sell what the venture participants referred to as "...the Beaver Valley Development Project lands as a single development opportunity in order to maximize the potential value of the Beaver Valley Development Project".
- 9) The Municipality's Council then held scheduled and special meetings on May 28, 2021; June 2, 2021; June 14, 2021; July 7, 2021; September 1, 2021 and September 15, 2021. The minutes of each of those meetings indicates the council discussed the Talisman Lands in closed sessions pursuant to subsections 239(c) and/or (k) of the *Municipal Act, 2001* S.O. 2001, c. 25 ("Act" or the "Municipal Act") that provide councils may meet in closed sessions to discuss, respectively: proposed or pending land acquisition or disposition of land by the municipality; and, a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality.
- 10) On July 29, 2021 the Municipality issued a press release "...confirming the conditional sale of the Municipally-owned lands in the Beaver Valley to Westway Capital, subject to a due diligence period. The Municipality received the offer to purchase in June 2021 and has spent the last weeks reviewing and assessing the offer and the opportunities it presents".

- 11) Notwithstanding the Municipality's public announcement of accepting a conditional offer to purchase the lands, the municipality's minutes make no reference to any resolutions or by-laws of the Municipality's Council to accept such an offer in respect of the Upper and/or Lower Talisman parcels.
- 12) The Applicant seeks an order quashing the Municipality's by-law(s) and resolution(s) for illegality as pleaded below.
- 13) Subsection 273(1) of the Act provides that a court may quash a municipal by-law in whole or in part for illegality.
- 14) Subsection 273(2) of the Act provides that in respect of the court's authority to quash a by-law, the term by-law includes an order or resolution.
- 15) Subsection 273(3) of the Act provides that the court may direct that nothing shall be done under the by-law until the application is disposed of.

A Vote to Accept a Conditional Sale is taken at a Closed Meeting
- 16) The Municipality acted illegally in respect of subsection 239(5) of the Municipal Act by taking a vote to enter into an agreement of conditional sale of the Upper and Lower Talisman lands while the meeting was closed to the public.
- 17) A vote at a meeting closed to the public may only be taken in accordance with subsection 239(6) of the Municipal Act, which provides that first, the vote concerns a matter for which a closed meeting is permitted pursuant to section 239(2) or (3) and it is for a procedural matter or to give instructions to officers, employees, or agents of the municipality, etc...
- 18) In this case, the matter concerned the disposition of land is contemplated by subsection 239(2)(c), however, only the Council of the Municipality was entitled to enter into the conditional sale pursuant to its policy A09-L-02 concerning the Sale of Surplus Lands ("Land

Sale Policy”), there being no indication of a delegation of the authority to enter into contracts for the sale for land.

If Power Delegated, then Delegation By-law passed in Closed Session

- 19) In the event the Municipality delegated the authority to enter a conditional sale of the Upper and Lower Talisman lands, contrary to its policies, then the by-law making such a delegation pursuant to section 23.1 of the Municipal Act would have been made in contravention of section 239(5) of the same act, which does not permit the passing of by-laws in respect of matters not included in section 239(2) of the Municipal Act.

Failing to Report on Actions Taken in a Closed Meeting

- 20) The Municipality acted illegally in respect of the Municipal Act in contravention of its By-law 2018-009, A By-Law To Govern the Procedure Of Council Of The Corporation Of The Municipality Of Grey Highlands And All Its Committees, The Calling of Meetings and The Conduct Of Its Members, namely, Part 21.3 that requires “Any actions of the Closed Session Meeting shall be reported by the Mayor as soon as the Regular Council Meeting reconvenes into Open Session”.
- 21) As alleged above, the council failed to report on actions that may include the delegation of authority and/or executing contract(s) of sale.

Failing to Adhere to Adopted Policy Concerning the Sale of Surplus Lands

- 22) Subsection 270(1)1 of the Municipal Act requires municipalities to adopt and maintain policies with respect to their sale and disposition of land. As noted above, the Municipality

has such a policy (being the Land Sale Policy). Part 3(c) of the Land Sale Policy provides the process by which Surplus Land, including the Talisman Lands owned by the Municipality, is to be dealt with. The Municipality has acknowledged that it is disposing of the Municipal Lands in accordance with Part 3(c) of the Land Sale Policy. However, the Municipality has failed to follow the Land Sale Policy in connection with the sale of the lands to Westway Capital. These failures have resulted in a lack of transparency, accountability, and a competitive process.

23) The Land Sale Policy sets out a deliberative, detailed, open and transparent process to be followed by the Municipality in identifying surplus lands and, if determined by Council to be appropriate, their sale. The Land Sale Policy sets out the following process to be followed by the Municipality in connection with the sale of viable and or non-viable municipal Talisman Lands:

- i) The real property shall be declared surplus to current or future program or operational requirements of the Municipality;
- ii) At least one (1) appraisal of the real property shall be obtained;
- iii) Notice of the proposed real property disposal shall be provided to the public;
- iv) All municipal real property that has been declared surplus shall be disposed of by one of the following options:
 - (1) Direct sales for land exchanges or disposals to government/quasi-government agencies of non-viable land;
 - (2) Marketing by Municipality and accepting sealed offers;
 - (3) Listing Agreement with licensed real estate brokers, or
 - (4) Public Auction with minimum bid/reserve amount.

24) *Failure to Provide Notice that Land was Surplus*: There is no publicly available evidence that the CAO of the Municipality determined that the Municipal Lands are or are not “viable”. The Municipality did not pass a motion of Council declaring that the Upper and Lower Talisman lands were Surplus pursuant to section 3(c)(iii) of the Land Sale Policy.

25) *Failure to Provide Notice*: The Municipality has not given notice to the public of the intention to sell all or any of the Municipal Lands in accordance with the Land Sales Policy.

26) *Failure to Follow an approved Method of Disposal* – The Municipality has not marketed the Municipal Lands and accepted sealed offers, has not entered into a Listing Agreement with licensed real estate brokers, and has not held a Public Auction with minimum bid/reserve amount all as required by the Land Sales Policy. Rather, all negotiations with Westway have been exclusive and in secret with no public disclosure that they were occurring. Other interested purchasers were ignored, rejected, or dissuaded by the Municipality or its consultants.

27) *Failure to have a competitive process* - The disposal method and negotiation process utilized by the Municipality, to the extent that it had a process (which is unknown), did not ensure that transparent and accountable processes were followed in the disposal of real property.

The following documentary evidence will be used at the hearing of the application:

- 28) The Agenda and Minutes of the Meetings of the Municipality held in the years 2020 and 2021;
- 29) Policies of the Municipality;
- 30) Such minutes, notes, recordings or other records of closed sessions held in the years 2020 and 2021 as may be produced by the Municipality, referred to by the Ontario Ombudsman or by order of this Honourable Court;
- 31) Public notices and releases issued by the Municipality concerning the subject matter of this Application; and
- 32) Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATE: November 1, 2021

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- and -

**THE CORPORATION OF THE
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Court File No. CV 21-00000165-0000

Applicant

Respondent

**ONTARIO
COURT OF JUSTICE**
Proceeding Commenced at Owen Sound

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