

Hearing on emergency motion to delay Talisman municipal land sale is brief

A decision is expected by the end of the month in an emergency motion brought by the Protect Talisman not-for-profit group.

The virtual hearing on Feb. 9 in the Ontario Superior Court of Justice, Owen Sound courthouse, took about one hour.

Justice G.D. Lemon was considering a motion in a pre-existing application challenging the municipality's procedure.

If the injunction is granted, that would mean the sale could not close until after either the application is decided or 180 days, whichever is earlier.

Justice Lemon remarked that if the motion was allowed, then the application would need to be heard in a timely fashion.

The agreement of purchase and sale for the Upper and Lower Talisman lands which Grey Highlands passed by bylaw on Feb. 2.

That agreement allows

180 days to closing; however, it also states that time period could be changed on agreement of both parties.

That uncertainty of the closing date is why the group brought the emergency motion, Protect Talisman lawyer Ian Flett said.

Each lawyer addressed a three-part test which was established in 1994 in the case of RJR-MacDonald Inc v Canada.

Michael Sirdevan, the lawyer for the municipality and Mr. Flett addressed each of the test questions:

- (1) is there a serious question to be tried;
- (2) will the moving party suffer irreparable harm if the stay is not granted; and
- (3) does the balance of convenience favour granting the injunction? (this is a matter of which party would suffer the greatest harm.)

There has been as yet no supporting affidavit filed in the Nov. 1, 2021 application, the judge said, noting that

even after that happened, the municipality then needed to respond – "180 days is going to disappear in a big hurry," he observed.

He then went through an estimate of what time might be taken in the application, ending by saying it could be heard in June if a judge was available. Mr. Flett said that the 180 days from the bylaw approving the sale would be about Aug. 1, 2022.

On the procedure for sale of land raised by Mr. Flett, Mr. Sirdevan said that the same bylaw setting the procedure for selling municipal land also gives council the power to take a different course if it chooses.

The judge inquired into the consequences on each party of a delay. He then commended the lawyers on their preparation leading to an effective and brief hearing and said he would reserve the decision. He estimated the time period to be two to three weeks.

Thanks
Red & GAT