

Court rules for Grey Highlands as group seeks to halt Talisman land sale

GREG COWAN

A Superior Court of Justice in Owen Sound ruled on March 14 in favour of Grey Highlands and dismissed a motion brought forward by the Protecting Talisman Lands Association to halt the sale of the municipally-owned Talisman lands to a GTA-based resort developer.

Grey Highlands and Westway Capital entered the closing period on a \$2.5 million deal for the municipally-owned portion of the former Talisman resort lands in early February 2021. A conditional agreement of purchase and sale was signed by both parties on July 8, 2021.

Westway Capital has until July 10, 2022, to close the sale and take ownership of the lands.

The Westway Capital group proposes to build a "world-class resort that will promote health, wellness and follow the principles of sustainable development, that will integrate the beauty of the area and the natural heritage of the Beaver Valley" at the site of the former ski hill and resort operation.

The Talisman lands are within the Niagara Escarpment and are part of a diverse ecosystem representing unique geography that is recognized by UNESCO as a World Biosphere Reserve. As such, the Protecting Talisman Lands Association says the Talisman lands are a

special focus of public interest and concern to many of the residents of Grey Highlands and beyond.

The Protecting Talisman Lands Association filed a notice of application in the Ontario Superior Court of Justice in Owen Sound on Nov. 1 seeking to quash the municipality's decisions regarding the sale of the land.

The application alleges the municipality failed to comply with certain provisions of the Municipal Act and its own municipal policy concerning the sale of surplus lands in entering into the conditional sale agreement with Westway Capital.

Those claims have not yet been tested in court.

Then, in February, just days before Grey Highlands council unanimously approved a bylaw authorizing the sale of the properties near Kimberley to Westway Capital, the Protecting Talisman group brought forward a motion seeking to halt council from voting on the bylaw and seeking an order directing "nothing be done pursuant to the agreement of purchase and sale" until the Protecting Talisman association's application is heard in court.

In his written analysis of the case, Justice G.D. Lemon said he agreed with Grey Highlands there is "no serious issue yet to be tried."

Lemon's analysis said it is impossible to find a serious issue to be tried when those issues have yet to be pleaded, as the Protecting Talisman group intends to amend its original application based on the latest bylaw.

"I acknowledge that there is a low threshold to persuade a court of a serious issue to be tried but here there are many allegations with little evidence to support them," Lemon said.

Kate Lazier, speaking on behalf of the Protecting Talisman association on March 17, said in a way the group was pleased with the judge's ruling because it confirms they have until July 10 for their application to the court to be heard.

Lemon's analysis said because the Protecting Talisman association's application can be dealt with prior to the sale's closing date there is no need for the requested order to halt the sale.

"This was not about the substantial issues related to the case in terms of due process or the Municipal Act or anything like that," Lazier said.

Lazier said the group is meeting with their legal representatives to discuss the next steps as they remain intent on challenging the sale of the municipally-owned lands to Westway Capital.

According to court documents, on Feb. 9, an Ontario Superior Court of Justice in Owen Sound heard the Protecting Talisman association allege Grey Highlands ignored its own policies in respect of the sale and disposition of the land, attempted to retroactively correct significant procedural defects in its process at the expense of public accountability and transparency, failed to obtain an appraisal of the land and had better offers on the table than the one accepted from Westway Capital.

Grey Highlands submitted the Protecting Talisman group is made up of a small number of people who own property in the Beaver Valley close to the former Talisman resort, it has at all times acted in accordance with its obligations under the Municipal Act and its bylaws in negotiating the sale of the Talisman lands, there was an appraisal of the lands properly received by the council and the lands are subject

to multiple levels of oversight and regulations related to the use of the lands regardless of ownership.

Grey Highlands CAO Karen Govan earlier stated the appraisal for the municipally-owned lands came in at \$1.27 million and was less than the \$2.5 million Westway Capital agreed to pay.

The Talisman lands are subject to the control of the Niagara Escarpment Commission pursuant to the Niagara Escarpment Planning and Development Act.

Lemon said given the layers of supervision on the property "I am confident that the public interest and concern relating to the property can be dealt with in other forums." He also took issue with the group's "weak if not inadmissible evidence" the property may have been sold too cheaply.

Govan said on March 17 the municipality remains in regular contact with Westway, but other than their original proposal laid out during a special council meeting in which it said they intend to build a world-class resort at the site, no other indications regarding timelines or pending site plan applications have been brought forward.

In a media release distributed following the confirmation of the sale in February, Westway said it had assembled a team of "best in class" award-winning consultants, technical experts, accredited financial partners and builders with decades of experience in "complex land development projects including recreation and resort projects."

The third parcel of land at the former Talisman Resort, which includes the resort buildings and is known as the Talisman Springs Inn, remains privately owned by Brian Ellis and partners of the numbered company.

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