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Bill Pr38

An Act respecting Big Bay Resort Association

Mrs. Munro

Private Bill

1st Reading September 15, 2010
2nd Reading
3rd Reading
Royal Assent

Printed by the Legislative Assembly of Ontario



EXPLANATORY NOTE

The purpose of the Bill is set out in the Preamble.

An Act respecting Big Bay Resort Association

Preamble

Big Bay Resort Association has applied for special legislation to require all persons having a real property interest in the area to be developed as a resort to be members of the Association and to be bound by its by-laws and to give the Association a right to enforce members' financial obligations to the Association by registering a lien against their real property that is resort land. The applicant represents that the resort is to be a four-season resort in the Town of Innisfil. The applicant further represents that it is a corporation.

It is appropriate to grant the application.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

“Association” means Big Bay Resort Association;

“lot” means a parcel of land,

(a) described in a deed or other document legally capable of conveying land, or

(b) shown as a lot or block on a registered plan of subdivision,

and includes a condominium unit under the *Condominium Act, 1998*;

“owner” means the owner of an estate in fee simple registered under the *Land Titles Act* or the *Registry Act*;

“resort” means the four-season resort located on the resort land;

“resort land” means,

(a) the land described in Schedule 1, and

(b) land not described in Schedule 1 that is deemed to be resort land under subsection 7 (3),

and includes each lot into which land described in clause (a) or (b) is subdivided, but does not include land that is deemed not to be resort land under subsection 8 (3).

Association continued

2. (1) The Association is continued as a corporation without share capital under the name Big Bay Resort Association.

Members continued

(2) The persons registered as members of the Association immediately before this Act comes into force are continued as members of the Association.

Board of directors, officers continued

(3) The members of the board of directors and officers of the Association in office immediately before this Act comes into force are continued in office until their successors are elected or appointed under this Act.

Letters patent revoked

(4) The letters patent of the Association are revoked, but their revocation does not affect the rights or obligations of the Association or any by-law or resolution of the Association except to the extent that it is inconsistent with this Act.

Special Act corporation

(5) The Association is deemed to be a corporation incorporated by a special Act.

Objects

3. (1) The objects of the Association are,

(a) to acquire, own, maintain, manage and operate the resort land and resort assets for which it has responsibility pursuant to the by-laws of the Association;

(b) to facilitate the development of and promote the resort;

(c) to provide its members with services related to the operation of the resort, including an integrated program of resort activities, attractions and events, marketing services, maintenance services, security services and information services;

(d) to liaise with all levels of government on matters pertaining to the resort or to the members of the Association, including acting as liaison between the Town of Innisfil and the members of the Association on municipal matters that relate to resort land that is open to the public or to the operation of the resort;

(e) to monitor and enforce certain restrictions and obligations imposed by the Town of Innisfil and as set out in the by-laws of the Association; and

(f) to participate in financial arrangements that fund infrastructure that relates to the resort.

Not to be carried on for gain

(2) The Association shall be carried on without the purpose of gain for its members and any profits or other accretions to the Association shall be used in promoting its objects.

Membership

4. (1) Every owner of resort land is a member of the Association.

Same

(2) The Association may also grant membership, in accordance with the by-laws of the Association, to a person who applies for it if the person,

- (a) owns or carries on a business on resort land;
- (b) leases resort land;
- (c) is an agent of an owner of resort land; or
- (d) belongs to a class of persons identified in the by-laws of the Association as being entitled to be granted membership in the Association.

Resort land subject to Act, by-laws

5. Resort land is subject to this Act and to the by-laws of the Association without registration on the title, except as required by section 6.

Notices registered on title**Notice of designation**

6. (1) The Association shall register on every title of resort land in the proper land registry office a notice that such land is designated as resort land.

Notice of termination of designation

(2) Where the designation as resort land has been terminated in accordance with subsection 8 (2), the Association shall register a notice of termination of designation on title to that land in the proper land registry office.

Forms

(3) A notice of designation of resort land and a notice of termination of designation of resort land shall be in Form 1 and Form 2, respectively, or in such other form as may be required under the *Land Titles Act* or the *Registry Act*.

Application to include non-scheduled land as resort land

7. (1) An owner of a lot in the Town of Innisfil that is not included in the land described in Schedule 1 may apply to the Association to designate the lot as resort land.

Approval

(2) The Association may approve an application under subsection (1), subject to any terms or conditions it considers appropriate and, upon approving an application, shall register the notice described in subsection 6 (1) designating the lot to be resort land.

Lot deemed to be resort land

(3) Upon registering the notice under subsection (2), the lot is deemed to be resort land for the purposes of this

Act and the requirement that the Association register a notice under subsection 6 (1) designating the land as resort land is satisfied.

Application to terminate designation

8. (1) An owner of a lot that is included in the land described in Schedule 1 or that is designated as resort land pursuant to section 7 may apply to the Association to terminate the designation of the lot as resort land.

Approval

(2) The Association may approve an application under subsection (1), subject to any terms or conditions it considers appropriate and, upon approving the application, shall register the notice described in subsection 6 (2) terminating the designation of the lot as resort land.

Lot deemed not to be resort land

(3) Upon registering the notice under subsection (2), the lot is deemed not to be resort land for the purposes of this Act.

Board of directors

9. (1) The composition and election or appointment of the Association's board of directors shall be as set out in the by-laws of the Association.

Director need not be a member

(2) Despite subsection 286 (1) of the *Corporations Act*, a director of the Association is not required to be a member of the Association.

By-laws

10. (1) The board of directors of the Association may pass by-laws necessary to manage the Association's business and affairs and to carry out its objects.

Same

- (2) Without limiting the generality of subsection (1), the board of directors of the Association may pass by-laws,
- (a) establishing classes of membership in the Association and governing the interests, rights and obligations of the members and of each class of members;
 - (b) governing the admission of persons to membership in the Association and the termination of such membership;
 - (c) governing the composition and election or appointment of the board of directors, including the election of directors by classes of members;
 - (d) controlling the use of resort land;
 - (e) prescribing fees payable by the members and, in doing so, may differentiate between different classes of members and members within a class;
 - (f) requiring that interest and related costs be paid on any late fees, and prescribing the rate of interest and related costs;

- (g) governing applications under sections 7 and 8, including prescribing criteria for approving or refusing an application;
- (h) specifying the restrictions and obligations imposed by the Town of Innisfil that are to be monitored and enforced by the Association.

Classes affected by by-laws, special resolutions

(3) If a class of members is affected differently than any other class of members by a by-law or special resolution of the Association, the by-law or special resolution may only be passed, amended or revoked with the approval of that class of members voting separately as a class.

By-laws binding on Association and members

(4) The by-laws of the Association bind the Association and its members to the same extent as if the by-laws had been signed and sealed by the Association and each member and as if the by-laws contained covenants on the part of the Association with each member and on the part of each member with every other member and with the Association to comply with all the by-laws.

Municipal by-laws, agreements prevail

(5) In the event of a conflict between a municipal by-law or a subdivision or other agreement with a municipality that is registered on title that is applicable to the resort land and a by-law of the Association, the municipal by-law or subdivision or other agreement prevails.

Reserve funds

11. (1) The Association shall establish and maintain one or more reserve funds to be used solely for the purpose of major repair and replacement of the resort land and resort assets for which it has responsibility pursuant to the by-laws of the Association.

Contributions to reserve funds

(2) The Association shall collect contributions to a reserve fund from the members of the Association as part of their fees. The total amount of contributions to a reserve fund shall be the amount that is reasonably expected to provide sufficient money for the major repair and replacement of the resort land and resort assets referred to in subsection (1), calculated on the basis of their expected repair and replacement costs and their life expectancy.

Income earned

(3) Interest and other income earned from the investment of money in a reserve fund shall form part of the fund.

Reserve fund study

(4) The Association shall conduct periodic studies to determine whether the amount of money in its reserve funds and the amount of contributions collected by the Association are adequate to provide for the expected costs of major repair and replacement of the resort land and resort assets referred to in subsection (1).

Future funding

(5) Upon receipt of a reserve fund study, the board of directors of the Association shall determine the funding requirements that will ensure that, within the periods of time and in accordance with the recommendations set out in the study, the fund will be adequate for the purpose for which it was established and the board of directors shall cause to be collected the necessary contributions to the reserve fund.

Use of reserve fund

(6) No part of a reserve fund shall be used except for the purpose mentioned in subsection (1).

Board's use

(7) The board of directors of the Association does not require the consent of the owners of resort land to make an expenditure out of a reserve fund.

No distribution

(8) The amount of a reserve fund shall constitute an asset of the Association and shall not be distributed to the mortgagees of resort land or, except on termination of the Association, to the members of the Association.

Application for relief from oppression

12. (1) A member, director or officer of the Association or any other person who, in the discretion of the court, is a proper person to make an application, may apply to the Superior Court of Justice for an order under this section.

Same

(2) Upon an application under subsection (1), the court may make any order it considers appropriate to rectify the matter complained of if the court is satisfied that,

- (a) an act or omission of the Association effects, or threatens to effect, a result that is oppressive or unfairly prejudicial to, or unfairly disregards the interests of, any person referred to in subsection (1);
- (b) the business or affairs of the Association are, have been or are threatened to be carried on or conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly disregards the interests of, any person referred to in subsection (1); or
- (c) the powers of the directors or members of the Association are, have been or are threatened to be exercised in a manner that is oppressive or unfairly prejudicial to, or unfairly disregards the interests of, any person referred to in subsection (1).

Debt to Association

13. (1) A fee levied under the by-laws of the Association, together with any related interest and costs, constitutes a debt to the Association.

Lien for unpaid fee

(2) If a member of the Association who is an owner of resort land defaults in the payment of any fee owed by the

member to the Association, the Association has a lien against the member's resort land for the unpaid amount, the interest on the unpaid amount and all reasonable costs incurred by the Association in connection with the collection or attempted collection of the fee.

Registration of lien

(3) The Association may register a notice of lien in the proper land registry office showing the amount of money owed under the lien as described in subsection (2) at the time of registration of the notice.

Notice to member

(4) At least 10 days before the day a notice of lien is registered, the Association shall give written notice of the lien to the member whose resort land is affected by it by personal service or by sending the notice by prepaid mail addressed to the member at the member's address as shown on the books of the Association.

Enforcement of lien

(5) A notice of lien registered under subsection (3) is a charge for the amount owing in favour of the Association on the resort land against which it is registered and may be enforced in the same manner as a mortgage and, for such purposes, Part III of the *Mortgages Act* applies with necessary modifications.

Subsequent debts

(6) If a notice of lien is registered under subsection (3), no further registration is required in respect of a default in the payment of a fee occurring or continuing after the lien is registered.

Discharge of lien

(7) Upon the payment of the debt and other amounts secured by the lien, the Association shall give the member a discharge of the lien by personal service or by sending it by prepaid mail addressed to the member at the member's address as shown on the books of the Association.

Application to court for removal of lien

(8) A member of the Association or other person claiming an estate or interest in or charge on resort land may apply to the Superior Court of Justice to require the Association to discharge a notice of lien registered under subsection (3) and the court may make any order it considers appropriate.

Forms

(9) A notice of lien and discharge of lien shall be in Form 3 and Form 4, respectively, or in such other form as may be required under the *Land Titles Act* or the *Registry Act*.

Owner and occupier jointly and severally liable for fees

14. (1) A member of the Association who is an owner of resort land and a member of the Association who leases, owns or carries on a business on such resort land are jointly and severally liable to the Association for the payment of any fees and related interest and costs owed to the Association by the member who leases, owns or carries on a business on the resort land.

Same

(2) The Association may serve on a member of the Association who is an owner of resort land a notice of default of another member who leases, owns or carries on a business on the member's resort land and, if the amount owed is not paid within 10 days after the member who owns the resort land receives the notice of default, the owner of the resort land is in default for the purpose of section 13.

Status certificate

15. (1) The Association shall, upon receipt of a written request and subject to subsection (2), give a status certificate with respect to a lot that is resort land to any person who states in writing that the person is a member or potential member of the Association or a mortgagee or potential mortgagee of resort land.

Restriction

(2) A person shall only be entitled to receive a status certificate in respect of the lot on which the person's membership or potential membership is based or in respect of which the person is a mortgagee or potential mortgagee.

Fee

(3) The Association may charge a reasonable fee for the provision of a status certificate, but the fee shall not exceed the fee that may be charged for a status certificate under the *Condominium Act, 1998*.

Contents

- (4) The status certificate shall contain,
- (a) the date on which it was made;
 - (b) a statement of the basic annual fee payable in the current fiscal year of the Association with respect to, and the related voting rights attributable to, the specified lot and the arrears of such fee, if any, with respect to the lot;
 - (c) a statement of the number of subsequent fiscal years of the Association, if any, for which the fee payable in its current fiscal year, as required to be stated by clause (b), will continue to apply without change;
 - (d) if the statement required by clause (c) shows that the fee payable in the current fiscal year will not change for one or more subsequent fiscal years, an undertaking that the Association will conduct its operations during its current fiscal year and the subsequent fiscal years, as shown in the statement required by clause (c), in such a manner that at the end of such fiscal years the Association will not have a deficit;
 - (e) the basis for calculating any entry fee payable on the first purchase and sale of the lot from the developer of the resort land and any entry fee payable on the resale of the lot;
 - (f) any other fees attributable to the lot or the basis for calculating such fees;

- (g) the class of membership associated with the lot;
- (h) a statement describing the voting structure of the Association, including the number of voting rights and members in each class of membership as at the date of the most current budget of the Association;
- (i) a general description of the resort land and of the recreational and other amenities and services provided by the Association or for which it is responsible;
- (j) the address for service of the Association;
- (k) the names and addresses for service of the directors and officers of the Association, together with the class of membership that elected each director;
- (l) the names of the members of the executive committee of the board of directors of the Association or, in the event no executive committee has been created, a statement to that effect;
- (m) a statement of all outstanding judgments against the Association and the status of all legal actions to which the Association is party;
- (n) a description of the current insurance policies covering the Association;
- (o) copies of the most recent annual audited financial statements of the Association and of the auditor's report on the financial statements;
- (p) copies of this Act and of the by-laws of the Association unless previously delivered to the person requesting the status certificate; and
- (q) copies of any notices required to be given under this Act or the by-laws of the Association delivered during the current fiscal year of the Association to all the members of the Association or to all members of any class of members of the Association.

Time limit

(5) The Association shall give the status certificate to the person who requested it within 10 days after receiving the request and the required fee and if it does not give the status certificate within that time, the Association is deemed to have given a status certificate on the 11th day after receiving the request stating that there are no arrears of fees with respect to the lot.

Omission

(6) If a status certificate that the Association has given under this section omits material information that it is required to contain, it is deemed to include a statement that there is no such information.

Association bound by status certificate

(7) The status certificate binds the Association as of the date it is given, or deemed to have been given, with

respect to the information that it contains, or is deemed to contain, as against the person who requested the status certificate and as against any mortgagee of the lot to which the status certificate relates.

Status certificate to be given to first purchasers of resort land

16. (1) The Association shall, upon receipt of a written request from the developer of the resort land in respect of a lot that is resort land, deliver to the developer a status certificate for the lot.

Same

(2) The developer of the resort land shall, before entering into the first arm's length agreement for the purchase and sale of each lot that is resort land, deliver to the purchaser the status certificate for that lot which the developer obtained from the Association.

Purchase not binding until status certificate is delivered

(3) An agreement of purchase and sale described in subsection (2) is not binding on the purchaser until the status certificate is delivered to the purchaser as required by this section.

False, misleading statements, omissions

17. (1) The Association shall not, in a status certificate,

- (a) make a material statement or provide material information that is false, deceptive or misleading; or
- (b) omit a material statement or material information that the Association is required to provide.

Right to damages

(2) A person described in subsection 15 (7) and a purchaser described in subsection 16 (2) may make an application to the Superior Court of Justice to recover damages from the Association for any loss sustained as a result of relying on a status certificate that the Association is required to provide under this Act if the status certificate,

- (a) contains a material statement or material information that is false, deceptive or misleading; or
- (b) does not contain a material statement or material information that the Association is required to provide.

Commencement

18. This Act comes into force on the day it receives Royal Assent.

Short title

19. The short title of this Act is the *Big Bay Resort Association Act, 2010*.

SCHEDULE 1
RESORT LAND

- FIRSTLY: Lots 1 and 2, Plan 1021, Part of Lot 29, Concession 13, Part of Lot 30, Concession 13, being Parts 1 and 2, on Plan 51R18899, EXCEPT Lots 72 to 77, on Plan 1139; SUBJECT TO IN20365, RO1196201, and RO1218422, of the Town of Innisfil.
Land Titles Division of Simcoe being PIN 58085-0096 (LT)
- SECONDLY: Part of Lot 29, Concession 13, being Part 1 on Plan 51R35978, of the Town of Innisfil.
Land Titles Division of Simcoe being PIN 58085-0362 (LT)
- THIRDLY: Part of Lots 26 and 27, Concession 13, being Part 1 on Plan 51R36664 of the Town of Innisfil.
Land Titles Division of Simcoe being PIN 58085-0369 (LT)
- FOURTHLY: Part of Lot 28, Concession 13, being Parts 1 and 3 on Plan 51R36243, subject to an Easement over Part 3, Plan 51R36243 as in IN19026 of the Town of Innisfil.
Land Titles Division of Simcoe being PIN 58085-0367 (LT)
- FIFTHLY: Part of Lot 28, Concession 13, being Part 2 on Plan 51R36243, of the Town of Innisfil.
Land Titles Division of Simcoe being PIN 58085-0368 (LT)
- SIXTHLY: Part of Lot 27, Concession 13, being Part 1 on Plan 51R35975, of the Town of Innisfil.
Land Titles Division of Simcoe being PIN 58085-0361 (LT)
- SEVENTHLY: Part South Half of Lot 27, Concession 13, being Part 1 on Plan 51R35980, of the Town of Innisfil.
Land Titles Division of Simcoe being PIN 58085-0363 (LT)
- EIGHTHLY: Part of Lot 28, Concession 13, being Part 2 on Plan 51R35980, of the Town of Innisfil.
Land Titles Division of Simcoe being PIN 58085-0364 (LT)
- NINTHLY: Part of Lot 28, Concession 13, being Part 3 on Plan 51R35980, of the Town of Innisfil.
Land Titles Division of Simcoe being PIN 58085-0365 (LT)

FORM 1
NOTICE OF DESIGNATION OF RESORT LAND UNDER SUBSECTION 6 (1) OF THE ACT
Big Bay Resort Association Act, 2010

TO: The Land Registrar for the Land Titles Division of Simcoe (No. 51)

Big Bay Resort Association (the "Association") hereby applies for the entry of a notice that the land described in the attached Schedule, of which is the registered owner, is designated as resort land subject to the *Big Bay Resort Association Act, 2010* and to the by-laws of the Association enacted in accordance with the Act. Copies of the Act and the Association's by-laws may be obtained from the Association, subject to payment of a fee as determined by the Association.

Dated

BIG BAY RESORT ASSOCIATION

Per:

Name:

Office:

Name:

Office:

The undersigned, being the registered owner of the land described in the attached Schedule, hereby consents to the registration of this notice.

Dated

Name:

Office:

Name:

Office:

FORM 2
NOTICE OF TERMINATION OF DESIGNATION OF RESORT LAND UNDER SUBSECTION 6 (2) OF THE ACT
Big Bay Resort Association Act, 2010

TO: The Land Registrar for the Land Titles Division of Simcoe (No. 51)

Big Bay Resort Association hereby applies for the entry of a notice that the designation as resort land of the land described in the attached Schedule, of which is the registered owner, has been terminated and such land is no longer designated as resort land subject to the *Big Bay Resort Association Act, 2010*.

Dated

BIG BAY RESORT ASSOCIATION

Per:

Name:

Office:

Name:

Office:

The undersigned, being the registered owner of the land described in the attached Schedule, hereby consents to the registration of this notice.

Dated

Name:

Office:

Name:

Office:

FORM 3
NOTICE OF LIEN UNDER SUBSECTION 13 (3) OF THE ACT

Big Bay Resort Association Act, 2010

Big Bay Resort Association (the "Association") hereby gives notice that it has a lien under the *Big Bay Resort Association Act, 2010* against (*Identification of resort land against which the lien is registered*) registered in the Land Registry Office for the Land Titles Division of Simcoe (No. 51) for unpaid fees and any interest and costs in the amount of \$..... at the date hereof and for such further amounts as are hereafter due and owing by to the Association and not paid. Upon payment of all amounts owing to the Association, and upon demand, the Association will give the owner a discharge of the lien.

Dated

BIG BAY RESORT ASSOCIATION

Name:

Office:

Name:

Office:

FORM 4
DISCHARGE OF LIEN UNDER SUBSECTION 13 (7) OF THE ACT
Big Bay Resort Association Act, 2010

Big Bay Resort Association having received payment of all amounts owing to it secured by the lien referred to in the Notice of Lien registered as No. against (*Identification of resort land against which the lien is registered*) registered in the Land Registry Office for the Land Titles Division of Simcoe (No. 51) pursuant to subsection 13 (3) of the *Big Bay Resort Association Act, 2010*, hereby discharges the lien.

Dated

BIG BAY RESORT ASSOCIATION

Name:

Office:

Name:

Office: