



PARENTE • BOREAN<sup>LP</sup>  
BARRISTERS AND SOLICITORS

September 30, 2020  
File No. 20-0417

Lawyer Direct Dial: (905) 850-6068  
Email: [gborean@parenteborean.com](mailto:gborean@parenteborean.com)  
Associate: (905) 850-6066 ext. 247  
Email: [asimone@parenteborean.com](mailto:asimone@parenteborean.com)

**DELIVERED VIA EMAIL:** [cofa@vaughan.ca](mailto:cofa@vaughan.ca)

City of Vaughan  
Office of the City Clerk – Committee of Adjustment  
Vaughan City Hall, Level 100  
2141 Major Mackenzie Drive  
Vaughan, ON L6A 1T1

Dear Secretary Treasurer, Committee of Adjustment,

**Re: Committee of Adjustment File No. A083/20**  
**Hearing Date: Thursday, October 1, 2020; Item No. 20**  
**Address: 2 Winterlude Court, Kleinburg (the “Property”)**  
**Notice of Objection**

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Please be advised that we are the lawyers for Humberplex Developments Inc. (“Humberplex”) regarding the application by Matthew Aquino (the “Applicant”) for a minor variance for the Property.

Humberplex opposes and objects to the Applicant’s application for a minor variance for the Property as set out in File No. A083/20 (the “Application”).

### **The Parties**

Humberplex is a residential property developer of a subdivision in the City of Vaughan, Ontario, which subdivision includes the Property.

The City of Vaughan is the municipality having jurisdiction for subdivision control and property standards with respect to the Property, and the City of Vaughan has not yet assumed the subdivision within which the Property is located.

The Applicant, as purchaser, purchased the Property from Humberplex, as vendor, pursuant to an agreement of purchase and sale dated July 21, 2009 (the “APS”). In the APS, Humberplex is referred to as the “Vendor” and the Applicant is referred to as the “Purchaser”.

## The APS

The APS includes, among other things, the following provisions:

- (i) 3.7 “...The Purchaser covenants and agrees not to commence construction or building operations for the dwelling to be constructed on the lot **until it has obtained approval from the Vendor’s Architect** as provided for in Section 3.8 and covenants and agrees to construct the dwelling in accordance with said approval. ...” [emphasis added]
  - The Applicant has not obtained the approval of Humberplex’s Architect; see the attached letter of Studio tla, dated September 29, 2020.
- (ii) 3.8 “The Purchaser covenants and agrees that the dwelling and/or driveway to be erected on the lot will be planned and sited in conformity with the service lateral locations at the lot line designated by the appropriate authorities and/or Vendor’s Architect or Vendor’s Consulting Engineer. In order to ensure that any building to be erected on the lands is in conformity with the overall grading and slope stability plan(s) and service lateral locations and architectural design criteria for the Plan of Subdivision, **the Purchaser covenants and agrees not to commence construction or building operations until it has obtained for each part of the lands the approval of the Vendor’s Architect and the Vendor’s Consulting Engineer to three (3) sets of drawings and site plans which shall include locations of building(s), walkway(s), driveways(s), easement(s), fencing, walls, grading, architectural features of the site, surface drainage, landscaping proposals, ... and the Purchaser covenants and agrees to construct in accordance with these approvals, the provisions hereof and the provisions of the Subdivision Agreement, and in accordance with all other applicable requirements. ...**” [emphasis added]
  - The Applicant has not obtained the approval of Humberplex’s Architect nor Consulting Engineer for the surface drainage and landscaping proposals; see the attached letters of Studio tla and Condeland Engineering Ltd., both dated September 29, 2020.
- (iii) 3.14 “**The Purchaser covenants to apply for and obtain lot grading plan approval from the Vendor’s Consulting Engineer** before building permit application and to adhere to the same, and be responsible for completing and maintaining the grades and drainage of the lands and adjacent boulevards in accordance with the municipally approved grades, elevation, and levels required. ...” [emphasis added]
  - The Applicant has not obtained lot grading plan approval of Humberplex’s Consulting Engineer; see the attached letter of Condeland Engineering Ltd., dated September 29, 2020.

- (iv) 3.15 **“...The Purchaser covenants to topsoil and sod with No. 1 nursery sod the entire lot and the area from the front, rear and/or side of the lot line to the curb, excluding the sidewalk area. ...”** [emphasis added]
- The Applicant’s proposed variance conflicts with the Applicant’s covenants in the APS.
- (v) 5.9 **“The Purchaser covenants and agrees not to make any application for minor variance...without the written consent thereof of the Vendor, which consent may unreasonably and arbitrarily be withheld. This covenant may be pleaded by the Vendor as an estoppel to any such application by the Purchaser. ...”** [emphasis added]
- The Applicant has not obtained Humberplex’s consent to its Application.

The Applicant’s proposed variance, and the Application itself, is in direct conflict with numerous terms and provisions of the APS between the parties, which impose strict obligations and covenants on the Applicant in favour of Humberplex. The Application should therefore be denied, or in the alternative, adjourned until such time as the Applicant is in compliance with its obligations and covenants under the APS.

### **The Proposed Variance**

The variance being sought, if granted, shall reduce the soft landscaping for the area of the rear yard greater than 135 square metres from 60% (being 74.1 square metres required for the Property) to 42.9% (being 53.0 square metres proposed for the Property). Among other things, this reduction in the soft landscaping is not minor in nature and accordingly, should not be granted by the Committee of Adjustment.

Humberplex has concerns about existing landscaping in the rear yard of the Property, specifically, the excessive amount of hard landscaping which taxes the stormwater management system design for the entire subdivision. The stormwater management system for the subdivision has been designed based on a runoff coefficient factor of 0.50, or a ratio of 50% impermeable surface to permeable surface coverage. By reducing the soft landscape areas (permeable surfaces), and correspondingly increasing the hard surface areas (impermeable surfaces), the Applicant will significantly increase the volume of runoff from the Property, far exceeding the allowable runoff for the subdivision. The Application is therefore unacceptable, as it may damage the stormwater management system for the entire subdivision.

### **The Bocce Court is Not a Soft Landscape Area**

The Applicant has submitted to City of Vaughan staff that the Bocce Court at the rear of the Property is pervious and allows for drainage. Based on such submissions, the City of Vaughan’s Development Engineering Department has determined that the Bocce Court is permeable and allows for drainage, and has accordingly included same as a soft landscaping calculation. Humberplex has not been provided with any details regarding the construction and alleged permeability of the Bocce Court and requests same for its review and consideration.

Notwithstanding this, Humberplex maintains that the Bocce Court is not a soft landscape area and should not be included in the calculation of same.

Soft landscape areas are intended to retain runoff and slow the discharge of same to surrounding areas. Though Humberplex does not have any details regarding the construction of the Bocce Court, it is typical that bocce courts are constructed using sand, or such similar materials, which do not require water and therefore do not retain water like natural vegetation such as grass. The Bocce Court, if permeable as alleged by the Applicant, is likely too permeable and will not retain runoff as is typical of soft landscape areas; in this way, notwithstanding the alleged permeability of the Bocce Court, it will contribute to excessive runoff into the subdivision's stormwater management system. The Bocce Court is therefore not a soft landscape area and should not be included as such in any calculation of soft landscape areas.

In any event, if the Bocce Court is a soft landscape area, which Humberplex expressly denies, the reduction of the remainder of the soft landscape areas for the Property is nevertheless excessive and will result in a significant increase in the volume of runoff from the Property, far exceeding the allowable runoff for the subdivision.

#### **The Proposed Variance is Not Minor in Nature**

Given the significant proposed reduction in soft landscaping for the Property, and the adverse impacts of same on the stormwater management system for the entire subdivision, the variance sought by the Applicant is not minor in nature. The Application should therefore be denied by the Committee.

Additionally, the Applicant has failed to comply with its obligations and covenants in the APS, most notably, failing to obtain Humberplex's consent to the Application in question. Should the Committee intend to proceed with hearing the Application, it should, at the very least, adjourn this matter to allow the Applicant to seek Humberplex's consent and ensure that the Applicant is in compliance with his obligations and covenants under the APS.

Lastly, please find enclosed hereto letters of objection regarding the Application from Humberplex's consulting engineer, Condeland Engineering Ltd., and Humberplex's architect, Studio tla, both of which are dated September 29, 2020.

All of which is respectfully submitted on behalf of Humberplex this 30<sup>th</sup> day of September, 2020.

Yours truly,

**PARENTE, BOREAN LLP**

Per:



Anthony J. Simone

Encl.

cc: client

# CONDELAND

CONSULTING ENGINEERS & PROJECT MANAGERS

September 29<sup>th</sup>, 2020

Committee of Adjustment  
City of Vaughan  
2141 Major Mackenzie Drive  
Vaughan ON, L6A 1T1

Attention: Secretary Treasurer, Committee of Adjustment

**Re: 2 Winterlude Court, Kleinburg**  
**File A083/20**  
**Lot 27 , 65M-3895**  
**C. E. File No: 20-035**

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We are the consulting engineers with respect to the Humberplex Development lands which includes the property noted as 2 Winterlude Court.

We have reviewed the aforementioned application seeking a reduction of the required soft landscaped areas, as it relates to the Storm Water Management system in place.

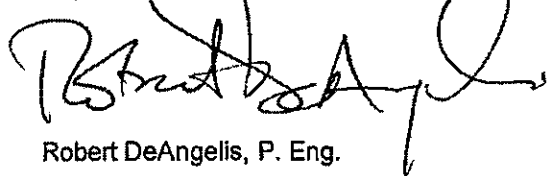
The subdivision has been designed based on a surface coverage of 50% impermeable or hard surface area of the entire lot area. By increasing the area of hard surface, the applicant is increasing the volume of rainwater runoff for the lot, exceeding the allowable volume.

Similar plans for the development have been reviewed by our firm and have been refused, we do not see an exception with this application.

Condeland Engineering is not prepared to approve a reduction of the required soft landscaped areas.

Yours very truly,

**CONDELAND ENGINEERING LIMITED**



Robert DeAngelis, P. Eng.

Cc: Parente Borean, Lawyers

(File: V:\ENGINEERING\General Correspondence\20035\2 winterlude.docx)

STUDIO



September 29, 2020

Mr. Tony DeCicco  
Humberplex Developments Inc.

Dear Tony:

Re: lot 27, 2 Winterlude Court, Kleinburg, ON

Please be advised we have not seen any prepared landscape plans, reviewed or approved any for this property.

Yours truly,

*Paul Marsala*

Paul Marsala, B.L.Arch., OALA, CSLA, ASLA, GRP, LEED Green Associate

20 CHAMPLAIN BLVD., Suite 102  
TORONTO, ONTARIO  
M3H 2Z1 CANADA

t: 416.638.4911  
f: 416.638.4261  
w: [www.terraplan.ca](http://www.terraplan.ca)