

AIRD BERLIS

Matthew Helfand
Direct: 416.865.4624
E-mail: mhelfand@airdberlis.com

February 7, 2020

DELIVERED

Kristine Loft
Loft Planning Inc.
25 Maple St,
Collingwood, ON L9Y 2P7

Dear Ms. Loft:

**Re: Formal Response to Comments Regarding a Restrictive Covenant on 31
Marlwood Avenue, Town of Wasaga Beach**

Aird and Berlis LLP is counsel for T.P.C. at Marlwood Inc. ("**Marlwood**"), the owner of the lands municipally known as 31 Marlwood Avenue in the Town of Wasaga Beach (the "**Golf Course**").

In February 2017, Marlwood filed applications with The Town of Wasaga Beach ("**Town**") for an Official Plan Amendment, Rezoning and a Draft Plan of Subdivision in support of a residential subdivision on portions of the Golf Course ("**Proposed Development**"). The Golf Course comprises multiple distinct parcels of land.

On February 26, 2018, the Marlwood Estates Homeowners Association ("**Association**") wrote a letter addressed to Wasaga Town Council asserting that Instrument SC110488 is a restrictive covenant which prohibits any development on two parcels of land which comprise part of the Golf Course: PIN 58334-0249 and PIN 58334-0250.

In or around August 2018, the Association wrote an additional letter to the Town asserting that Instrument R01109351 is also a restrictive covenant prohibiting development on three parcels of land which comprise part of the Golf Course: PIN 58334-0327; PIN 58334-0249; and PIN 58334-0250.

On February 7, 2019 the Town's Committee of the Whole received a report from Town planning staff which outlined a series of concerns that have been raised with respect of the Proposed Development. One of those concerns was "the existence and effect of encumbrance(s) on title (e.g., "restrictive covenant")".

On December 17, 2019, Marlwood brought an Application before the Ontario Superior Court of Justice to seek a declaration that no restrictive covenant affects the Golf Course Lands such that the Proposed Development cannot proceed.

On January 14, 2020, a court order from Justice Leibovich of the Ontario Superior Court of Justice was issued. That order provides as follows:

THIS COURT DECLARES that Instrument SC110488, being a subdivision agreement registered to lots 1-63 comprising Subdivision Plan 51M743 (the "Subdivision

January 30, 2020

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Agreement”), is not registered against title and does not affect the lands municipally known as 31 Marlwood Avenue in the Town of Wasaga Beach, identified as Property Identification Numbers 58334-0327, 58334-0249 and 58334-0250 (collectively, the “Marlwood Golf Course”).

THIS COURT DECLARES that the Subdivision Agreement is not a restrictive covenant running with the Marlwood Golf Course lands and does not prevent development on these lands.

THIS COURT DECLARES that Instrument R01109351, being a Condominium Development Agreement registered against the Marlwood Golf Course lands, is not a restrictive covenant and does not prevent development on these lands.

The January 14, 2020 court order from Justice Leibovich is enclosed for your reference. It is our opinion that this Order provides a complete and definitive response to any concerns with respect to a restrictive covenant operating to prohibit the Proposed Development on the Marlwood Golf Course.

Yours truly,

AIRD & BERLIS LLP



Matthew Helfand

MLH

Enclosed:

Court Order, dated January 14, 2020

38727574.1

AIRD BERLIS

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE LEIBOVICH

) TUESDAY, THE 17th
)
) DAY OF DECEMBER, 2019.

BETWEEN:



T.P.C. AT MARLWOOD INC.

Applicant

and

**THE CORPORATION OF THE TOWN OF WASAGA BEACH
and MARLWOOD ESTATES HOMEOWNERS ASSOCIATION**

Respondents

APPLICATION UNDER Rules 14.05(3)(d),(g) & (h) and 57.01(1) and (4) of the *Rules of Civil Procedure*, and Section 97 of the *Courts of Justice Act*, R.S.O 1990, c. 43

ORDER


THIS MOTION, made by the Applicant was heard this day at the court house, 75 Mulcaster Street, Barrie ON L4M 3P2.

ON READING the Notice of Application, the Affidavit of John George Pappas, sworn December 4, 2019, Factum and Book of Authorities, filed, and on hearing the submissions of counsel for the Applicant, and counsel for the Respondent, The Corporation of the Town of Wasaga Beach, and no one appearing for the Respondent, Marlwood Estates Homeowners Association,

1. THIS COURT DECLARES that Instrument SC110488, being a subdivision agreement registered to lots 1-63 comprising Subdivision Plan 51M743 (the "Subdivision Agreement"), is not registered against title and does not affect the lands municipally known as 31 Marlwood Avenue

in the Town of Wasaga Beach, identified as Property Identification Numbers 58334-0327, 58334-0249 and 58334-0250 (collectively, the "Marlwood Golf Course").

2. THIS COURT DECLARES that the Subdivision Agreement is not a restrictive covenant running with the Marlwood Golf Course lands and does not prevent development on these lands.
3. THIS COURT DECLARES that Instrument R01109351, being a Condominium Development Agreement registered against the Marlwood Golf Course lands, is not a restrictive covenant and does not prevent development on these lands.
4. THIS COURT FURTHER ORDERS that no costs shall be awarded.


The Honourable Justice Leibovich
R. Liberman
Clerk/Registrar
Superior Court of Justice

Entered at Inscrit à	BARRIE
JAN 14 2020	
In Book No. au registre no.	219
By	PC
	Per

T.P.C. AT MARLWOOD INC.
Applicant

-and- THE CORPORATION OF THE TOWN OF WASAGA BEACH et al.
Respondents

Court File No. CV 19-2131

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT BARRIE

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street
Suite 1800
Toronto, ON M5J 2T9

Leo F. Longo – LSO #18504G
Eileen P. Costello – LSO #47107V
Matthew Helfand – LSO #77329C
Tel: 416-863-1500
Fax: 416-863-1515

Lawyers for the Applicant