

Watcha Gonna Do?

The Situation

A landscape architect, Rain King, is hired by a client, Fast and Loose, Inc., to design a master plan and stormwater drainage for the first phase of a residential development. The design includes a comprehensive plan for the 40 units covered in the first phase of the project.

Rain King finishes the project and delivers the plans to the developer. Having fulfilled his contractual relations, Rain King waits for payment for his services, but it never arrives.

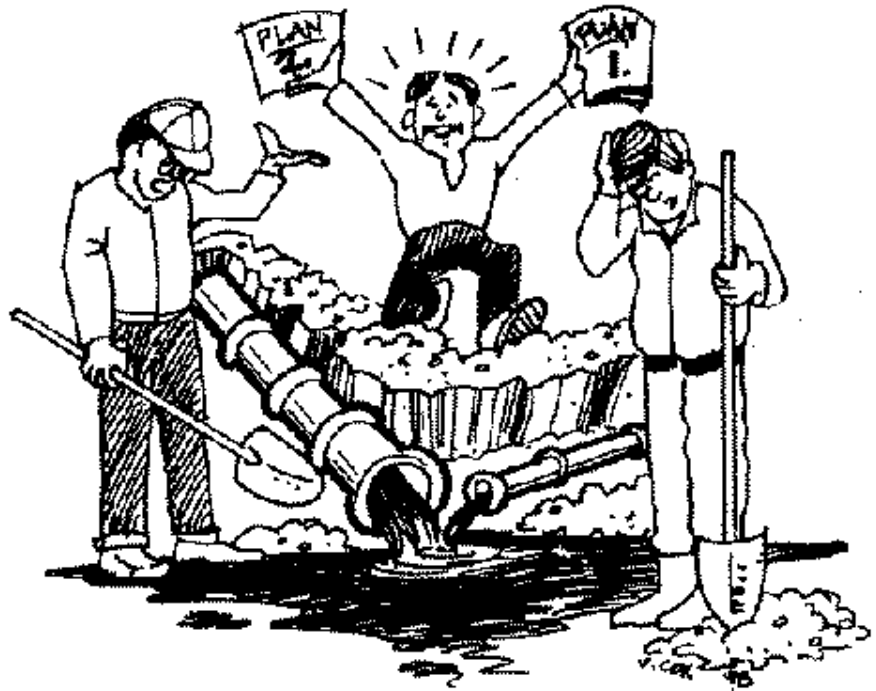
Through his professional contacts in the design community, Rain King subsequently learns that a competing landscape architecture firm, Steelem N. Copium Associates, was in the process of developing plans for phase two (the last 40 units) at the request of Fast and Loose.

While designing phase two, Steelem N. Copium changes the configuration of the housing units and road pattern, nullifying Rain King's original stormwater management plan. When Fast and Loose finds out the original stormwater plan is now inadequate, he promptly sues Rain King.

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Was it ethical for Steelem N. Copium to use Rain King's original site plans and stormwater management design when it was hired to execute phase two of the project without consulting Rain King? Did Steelem N. Copium inquire of his client, Fast and Loose, whether its initial contract with Rain King had been terminated and that Rain King's services as a landscape architect were no longer needed on the project?

When Steelem N. Copium revised components of the original plan such as the housing and road pattern, did the that firm have an obligation to its client to explain how this would effect the constructed stormwater plan?



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Alternately, did Rain King have an obligation in his master plan to ensure that any phases subsequent to phase one had adequate stormwater capacity?

Recommendation of the Ethics Committee

The ASLA Ethics Committee believes it was not Rain King's responsibility to make any provisions or provide for alternatives should his design undergo modifications without his consultation.

The essence of the case is whether Rain King has an action against Steelem N. Copium, Rain King, or both.

The committee observed Fast and Loose did not act in good faith by failing to pay Rain King in a timely manner and failing to notify him promptly that his future services were no longer required for the phase two design of the project.

As for Steelem N. Copium, the Ethics Committee found the firm negligent for not communicating the full implications of the design changes of the housing and road pattern on the original stormwater management plan. Specifically, the committee found Steelem N. Copium in violation of R1.110 of the ASLA

Code and Guidelines for Professional Conduct which states: "Members shall neither copy nor reproduce the copyrighted works of other landscape architects or design professionals without prior written approval of the author."

As for Fast and Loose, the committee observed Rain King's recovery is tied to the quality of the contract written by the two parties. With this said, Rain King may want to also consider filing a civil action against Fast and Loose.

Editor's Note: One of the objectives of the ASLA Ethics Committee is to educate members about the ASLA Code and Guidelines for Professional Conduct. The code contains important principles relating to duties to clients and to members of the Society. Readers are invited to send their comments on cases appearing in LAND to Managing Editor, 636 Eye Street, N.W., Washington, D.C. 20001-3736 or e-mail to bwelsh@asla.org. Members are invited to submit questions regarding ethical matters along with supporting data to Allen Hixon, FASLA, Ethics Committee Chair, c/o ASLA 636 Eye Street, N.W., Washington, D.C. 20001-3736.