



VT Human Rights Commission
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INVESTIGATIVE REPORT

Complainant: David Minor - Vermont HRC Case PA17-0003
Respondents: AIR Development LLC, d/b/a Apple Island Resort
Charge: Discrimination based on disability

BACKGROUND AND SUMMARY OF COMPLAINT

In 2005, David Minor and his wife Janet Minor, purchased a 99-year easement on a home in Apple Island Resort in South Hero, VT. They consider it their summer home. Apple Island is open to the public and has many other amenities, such as a marina, a golf-course and a community center. In 2013, Mr. Minor had a stroke and has used an electric wheelchair since that time. He cannot move his right arm and is partially disabled in his right leg. Mrs. Minor is his round-the-clock caregiver. Mr. Minor requires assistance when he loads or unloads from a vehicle, be it a van or golf-cart. Golf carts are commonly used around the resort and the Minors have a golf cart they use when there.

In their complaint, the Minors alleged that Apple Island had no clearly designated van-accessible or “handicapped” spaces or signage for persons with disabilities at the front office, general store, golf club area or community center. This makes access to these facilities difficult for Mr. Minor without significant assistance from his wife and it is very tiring and difficult for her to provide the assistance he needs to get access.

SUMMARY OF RESPONSE

The respondent did not challenge Mr. Minor’s assertion that he is a person with a disability or that the Resort is a place of public accommodation. In its September 16, 2016 response, the Respondent stated that “There is handicapped accessible parking in all of the Resort’s parking lots and there is handicapped accessible signage in appropriate

locations throughout the Resort. However, to the extent this statement implies that not all accessible parking spaces are not appropriately marked, Apple Island is reviewing the issue and will ensure that it complies with ADA standards.”

On November 29, 2016, Apple Island retained a different law firm and the response was supplemented. Counsel for that firm wrote that with respect to parking and striping at the affected areas, that it was “analyzing its parking spaces” at the main lot and agreed to install “stripes or some other visual indicator to set off parking spaces and loading zones at the Clubhouse for accessibility.”

PRELIMINARY RECOMMENDATION

This investigation makes a preliminary recommendation to the Human Rights Commission to find there are **reasonable grounds** to believe that AIR Development LLC, d/b/a Apple Island Resort, discriminated against David Minor based on disability in violation of 9 V.S.A. §4502 et seq.

DOCUMENTS/INTERVIEWS/SITE VISITS

- Complaint of Discrimination
- Respondent’s Responses – September 19, 2016 and November 29, 2016.
- 2010 ADA Standards for Accessible Design
- Department of Justice Guidance on the 2010 Standards
- Photos& Correspondence from Janet Minor to Ellen Maxon – 10/7/16
- Email from Ellen Maxon to Jonathan Rose, Counsel for Respondent
- Email between Ellen Maxon and Kathy Gips of the New England ADA Center – 12/5/16
- Janet Minor – T/C- 12/1/17, Correspondence 1/23/17; 1/24/17
- Site visit: 10/12/16 – Ellen Maxon; 9/22/17 – Nelson Campbell

1). Elements of the Prima Facie Case

Mr. Minor must prove all of the following in order to establish a *prima facie* case of discrimination in violation of the VFHPAA:

- 1) That he is a person with a disability; (**the respondent has not contested this element**);
- 2) that Apple Island Resort is a place of public accommodation subject to the Vermont Fair Housing and Public Accommodations Act (VFHPAA); (**this element is proven**).¹
- 3) that the respondent discriminated against the him within the meaning of the the VFHPAA and the ADA.

4). Analysis

In Apple Island Resort's case, it needs only one van-accessible parking space² in each of the four areas with appropriate, ADA compliant signage - that is, the general store, the main office, the golf club and the community center. Due to the lot size (1-25), the lots need not be striped and there needs to be only one accessible space per lot.³

In the case of the general store, there was a faded, painted decal on the pavement in front of a ramp to the left of the store. During the time this investigator sat at the store, two persons without apparent disabilities parked in the spot and walked up the ramp into and out of the store. The on-pavement painted decal needs to be replaced with the required van-accessible signage so that other cars do not block access to the ramp. Respondent agreed to put appropriate signage in place and put temporary signs up in the meantime, (**see attached**), however these temporary signs are not compliant. Compliant signage must be 60 inches in height. Vermont's statute is clear:

Any parking facility on the premises of a public building shall contain at least the number of parking spaces required by ADAAG standards, and in any event at least one parking space, as designated parking for individuals with ambulatory disabilities or individuals who are blind patronizing the building. The space or spaces shall be accessibly and proximately located to the building, and, subject to 23 V.S.A. § 304a(d), shall be provided free of charge. Consideration shall be given to the distribution of spaces in accordance with

¹ Respondent is also covered by 20 V.S.A. § 2900.

² The fully compliant van accessible space is 96" wide for the actual parking space and an additional 96" for the aisle.

³ <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#pgfld-1010282>

the frequency and persistence of parking needs. *Such spaces shall be designated by a clearly visible sign that cannot be obscured by a vehicle parked in the space, by the international symbol of access and, where appropriate, by the words "van accessible"; shall otherwise conform to ADAAG standards; and shall be in accordance with the standards established under section 2902 of this title.*⁴

The standard for making a business accessible is whether it is "readily achievable," which means "easily accomplished and able to be carried out without much difficulty or expense."⁵ The ADAAG standards, to which the above statutory provision refers, are similarly clear:⁶

4.6.4* Signage. Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility (see 4.30.7). Spaces complying with 4.1.2(5)(b) shall have an additional sign "Van-Accessible" mounted below the symbol of accessibility. *Such signs shall be located so they cannot be obscured by a vehicle parked in the space.*⁷

The signs in use do not say "Van-Accessible" and it is not clear that they comply with the site (visual) requirements, especially the one at the general store which is placed low on the front porch. The Respondent has not offered any reason it cannot install the appropriate signage in the correct spot, i.e. that it would be difficult or expensive. A search for signage on the internet suggests that these signs are inexpensive and quickly available.⁸ In light of its failure to place signs in these four areas and accommodate Mr. Minor (and others) who need accessible parking, the Respondent is in violation of the VFHPAA.

⁴ 20 V.S.A. § 2904.

⁵ 28 C.F.R. § 36.304(a).

⁶ See 28 C.F.R. § 36.104: The "2010 Standards means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in subpart D of this part."

⁷ Further note that in A4.6.4. states "Signage. Signs designating parking places for disabled people can be seen from a driver's seat if the signs are mounted high enough above the ground and located at the front of a parking space."

⁸ <https://www.myparkingsign.com/ACS/Requirements-Van-Accessible-Parking-Signs.aspx> The most expensive one on this website was less than \$30 dollars. Respondent needs 4 signs. Post averaged between \$17-\$50 each, plus shipping.

RECOMMENDATION

This investigation makes a preliminary recommendation to the Human Rights Commission to find there are **reasonable grounds** to believe that AIR Development LLC, d/b/a Apple Island Resort discriminated against David Minor based on his disability in violation of 9 V.S.A. § 4502 et seq.

 12/22/17

Nelson M. Campbell
Administrative Law Examiner

 12/22/17

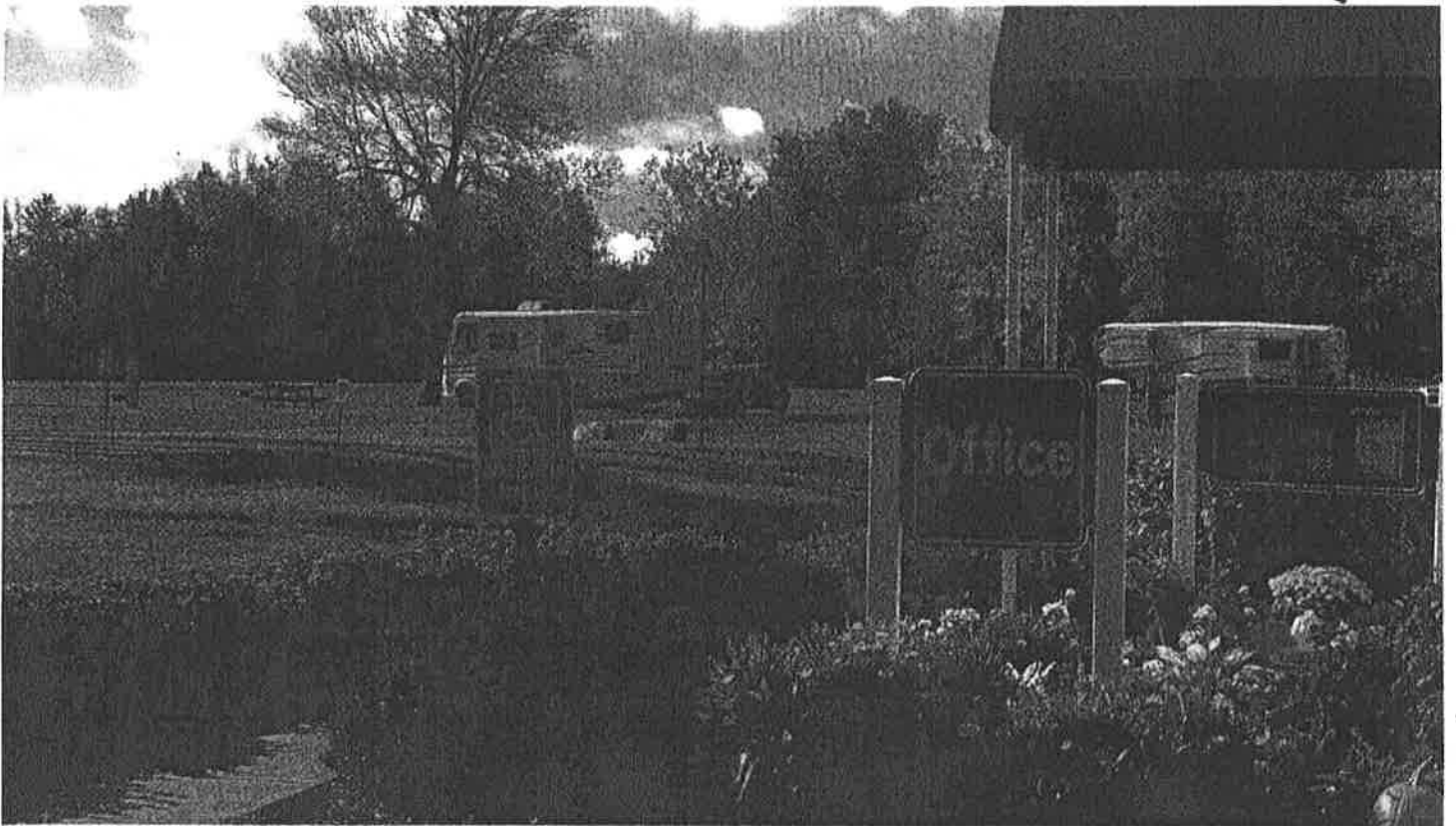
APPROVED:
Karen L. Richards
Executive Director & Legal Counsel

10/20/17



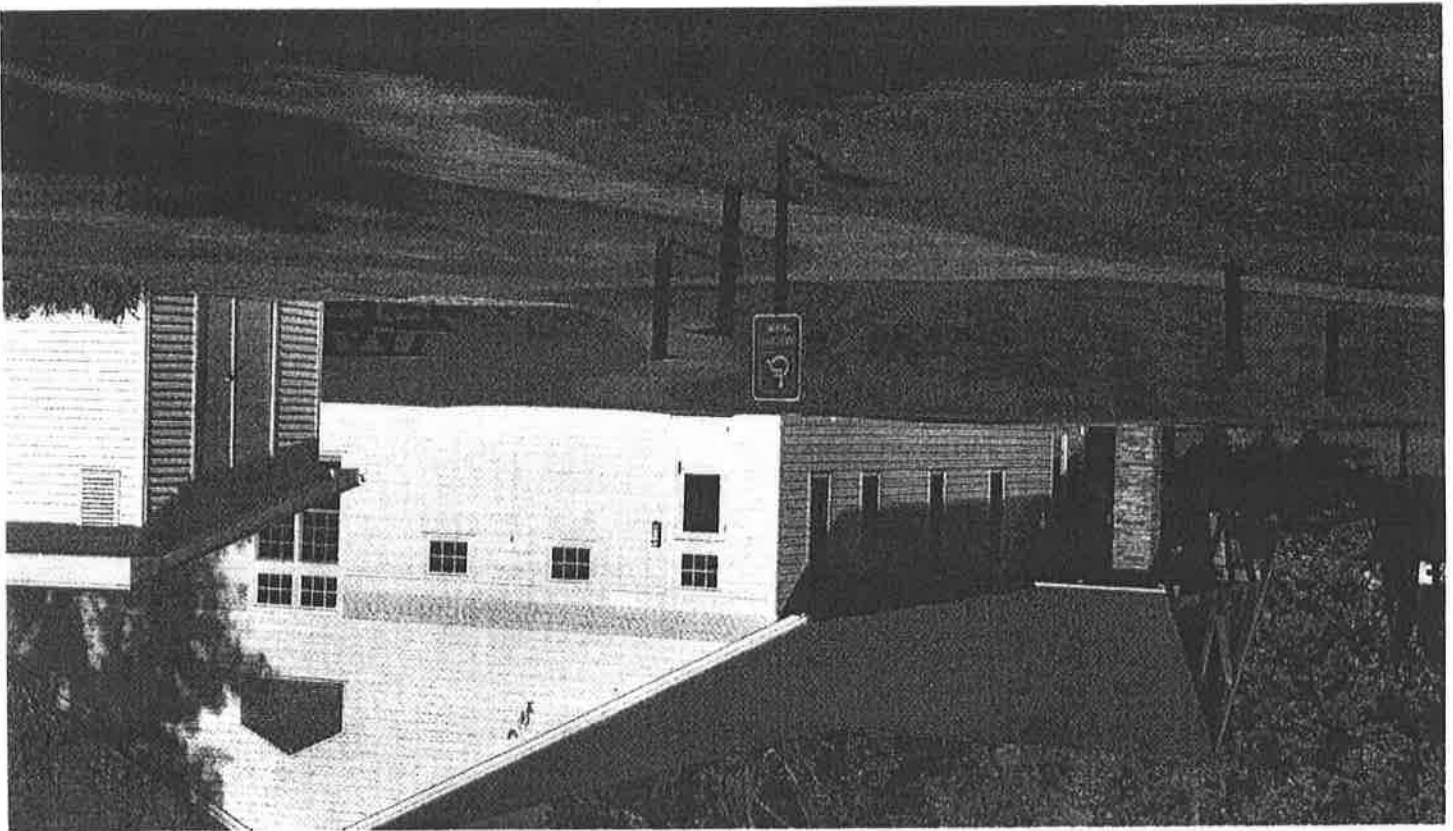
Apple Island General Store Parking lot

10/20/17



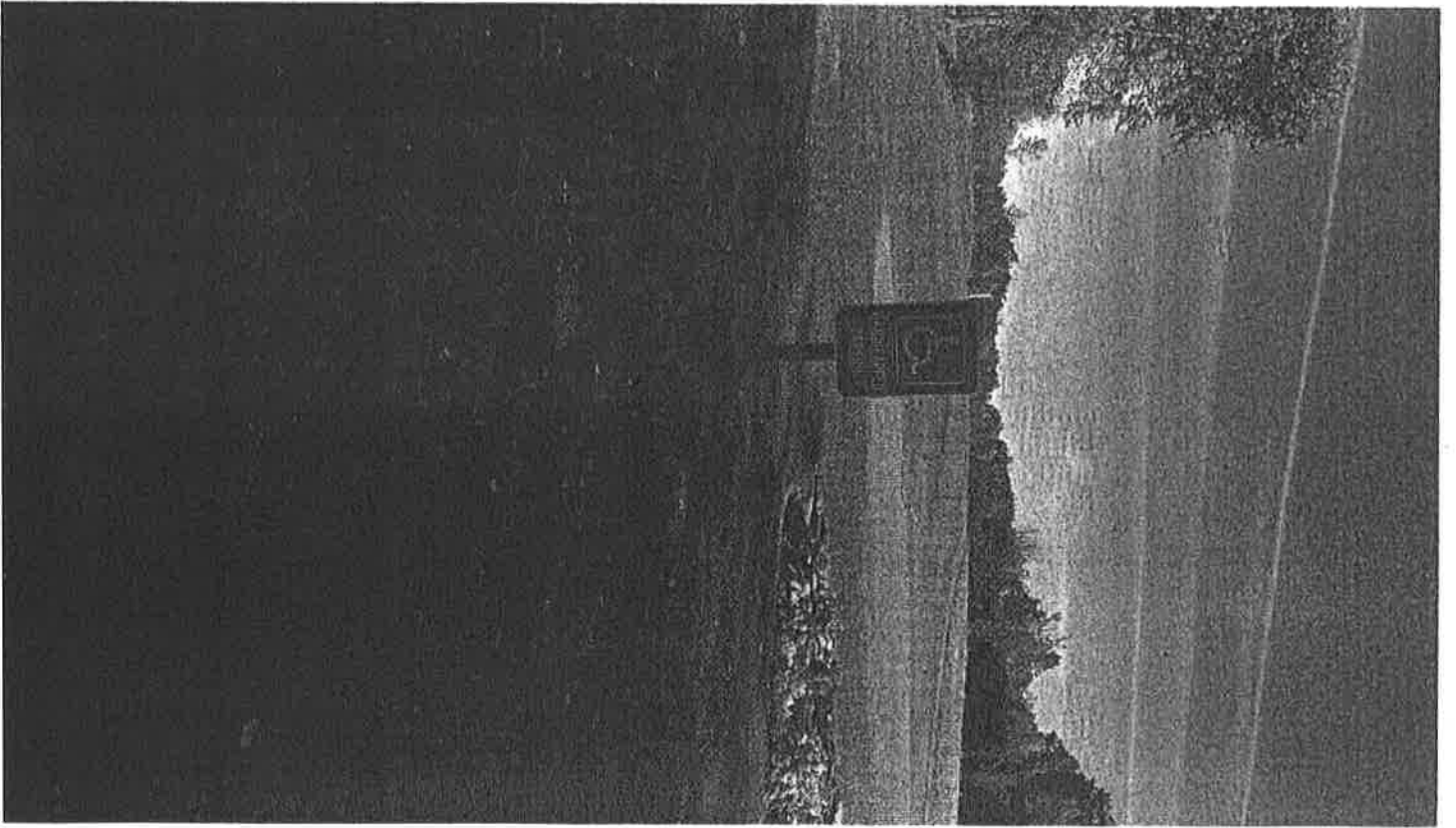
Apple Island Resort Office Parking lot

Apple Island Resort Community Center Parking lot



10/2017

Apple Island Golf Course Parking lot



16/2017

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

David Minor,
Complainant

v.

AIR Development, LLC
d/b/a Apple Island Resort,
Respondent

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) VHRC Complaint No. PA17-0003
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FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

1. The following vote was taken on a motion to find that there are reasonable grounds to believe that AIR Development, LLC, d/b/a Apple Island Resort the Respondents, illegally discriminated against David Minor, the Complainant, in violation of Vermont's Fair Housing and Public Accommodations Act based on disability.

Nathan Besio	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>
Mary Brodsky	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>
Dawn Ellis	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>
Chuck Kletecka	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>

Entry: Reasonable Grounds Motion failed

Dated at Barre, Vermont, this 25th, day of January 2018.

BY: VERMONT HUMAN RIGHTS COMMISSION



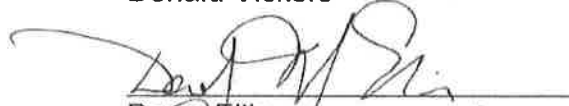
Nathan Besio



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