VT Human Rights Commission
14-16 Baldwin Street
Montpelier, VT 05633-6301
http://hrc.vermont.gov

[phone] 802-828-2480
[fax] 802-828-2481
[tdd] 877-294-9200
[toll free] 1-800-416-2010

INVESTIGATIVE REPORT

HRC Case No. HV13-0022
HUD Case No. 01-13-0240-8

CHARGING PARTY: Felicia Lambert

RESPONDING PARTY: John Larkin, Inc., d/b/a Smart Suites on the Hill (SSH)

CHARGE: Housing – disability (accessible parking)

Summary of Charge: On February 19, 2013, Felicia Lambert filed a discrimination complaint alleging that SSH failed to provide proper markings and enforcement of accessible parking spaces rules, which deprived her of accessible parking at her SSH apartment.

Summary of Response: On March 15, 2013, SSH denied, through its attorney, that it discriminated against Ms. Lambert. Specifically, it alleged that SSH enforces appropriate use of accessible parking spaces and that it has "no knowledge of any occasion when all spaces were in use, depriving Ms. Lambert or any other individual of access to an accessible space."[1]

Preliminary Recommendations: This investigation makes a preliminary recommendation that the Human Rights Commission find there are

[1] In an April24, 2013 letter to this investigation SSH's attorney stated "Any violation of applicable law has been technical, not substantive . . ."

VERMONT

reasonable grounds to believe that SSH discriminated against Ms. Lambert in violation of 9 V.S.A. §4503 (10) & (11).

INTERVIEWS

05/08/2013 – Felicia Lambert

05/14/2013 – Michelle Richards (Smart Suites & SSH manager)

05/14/2013 – Angie Grove (Smart Suites front desk attendant)

05/14/2013 – Steve Cobb (Smart Suites maintenance worker)

05/14/2013 – Don Shappy (Smart Suites houseman)

05/14/2013 – Laurie Morrill (Smart Suites Housekeeper)

05/15/2013 – Second Interview Felicia Lambert

DOCUMENTS

02/19/2013 – Discrimination Complaint

03/15/2013 – Respondent's Response to Complaint

04/01/2013 – Complainant's Response to SSH Response

05/06/2013 – Pictures of parking area

05/14/2013 – Documents received from respondent

- **1/19/13 Incident reports**
- **1/21/13 Letter from Ms. Richards to Ms. Lambert**
- **3/05/13 Letter to SSH Guests re: Accessible Parking**

Additional Evidence

05/14/2013 – Site visit

05/15/2013 – Pictures of parked cars on Complainant's cell phones

Applicable Statue - 9 V.S.A §4503

(a) It shall be unlawful for any person:

(10) To refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

(11) To fail to comply with provisions or rules pertaining to covered multifamily dwellings, as defined in 20 V.S.A. § 2900(4) and pursuant to 20 V.S.A. chapter 174.

ELEMENTS OF PROOF

9 V.S.A. §4503(a)(10)

1. **Ms. Lambert is a member of a protected class.**
2. **Ms. Lambert made a reasonable accommodation request and SSH knew or should have known about her request.**
3. **SSH failed to provide the accommodation in a timely fashion.**

9 V.S.A. §4503(a)(11)

1. **SSH is a multifamily dwellings as set forth in 20 V.S.A.§2900(4).**
2. **SSH failed to comply with the rules/provisions pursuant to 20 V.S.A. chapter 174.**

FACTS[2]

Undisputed Facts

Ms. Lambert has resided at Smart Suites on the Hill (SSH)[3] in South Burlington, VT since May 2012. SSH is a seventy-four unit apartment complex built in 2000 that rents units to individuals for time periods as short

[2] Undisputed facts and statements of each witness are based on face-to-face interviews, written responses by parties and their representatives, and documentation provided to this investigation.

[3] SSH is located directly behind Smart Suites and the staff members interviewed for this investigation all "work" for both Smart Suites and Smart Suites on the Hill; working "for" meaning they perform tasks for and at both complexes and interact with guests/residents at both complexes.

as seven days or for longer time periods. There are three accessible parking spaces for SSH with one aisle between each of the three spaces (see Appendix A - diagram).

Ms. Lambert is person with a mobility disability. She has Vermont State issued placards for each of her three vehicles. One of her vehicles appears to be constantly parked in one of the three accessible spaces, the vehicle she most frequently uses is parked in one of the accessible parking spaces when available and the third vehicle, a van, is not parked in an accessible parking space.

Because the accessible parking spaces lacked signage indicated that they were accessible spaces, sometime in December 2012 Ms. Lambert took it upon herself to place an accessible parking sign in the middle of the three accessible parking spaces. She found a sign lying on the side of the SSH building. She placed the sign in a kitty litter box to help stabilize it and leaned it against her van which was parked on the other side of the accessible parking space. (see Appendix B-photo) At some point one of the SSH staff removed the sign[4] but replaced it the next day.

At a minimum,[5] there was no signage for the accessible parking spaces for about a year. In early December 2012, Ms. Lambert spoke to Don Shappy, the night houseman, stating that she wanted signs placed to mark the accessible parking spaces.[6] Mr. Shappy transmitted Ms. Lambert's request to Michelle Richards, the general manager. Ms. Richards discussed

---

[4] The staff told this investigation it was taken down one evening because it was very windy and they were concerned that it might blow over and damage a car. It should be noted that the sign was then left in place for an additional two months.

[5] Different staff gave different answers as to how long the accessible space signs have been missing. One staff person, the maintenance man who has been at Smart Suites for over 13 years, said there had never been signs up designating the three accessible parking spaces. The General Manager, who has been there since it opened, said the signs had only been down for the past year, though she was not sure exactly how long or when the signs were removed.

[6] Ms. Lambert said that since there were no signs she was concerned that once there was snow on the ground people would not be able to see that these were accessible spaces and then she would not have an accessible space to park.

the matter with staff and decided that because the ground was frozen nothing more could be done during the winter months. SSH believed that Ms. Lambert's temporary sign would be sufficient since only Ms. Lambert had complained or commented about the lack of signage. SSH did not communicate their decision to her.

On January 19, 2013 another tenant, Mark Marchez, went to the front desk and complained to Jennifer B (no longer employed by SSH), a front desk worker, about Ms. Lambert and the parking situation. Mr. Marchez stated that Michelle Richards had told him he could park where he wanted but that Ms. Lambert was telling him that he could not park in the accessible parking space. After he left, Ms. Lambert came to the front desk very upset[7] about Mr. Marchez and the parking situation. SSH staff said, in the incident report, that they told her she should call the police about it and that if she did not leave the front desk area they would call the police about her disruptive behavior.

In a letter to Ms. Lambert dated January 21, 2013, Michelle Richards, the general manager, stated that Ms. Lambert should address all future building issues to either herself or Don (the assistant manager who is no longer employed by Smart Suites.) The letter also stated that the "Front Desk staff is not empowered to make these decisions and therefore are unable to address the problems."

In mid-February (exact date uncertain) SSH placed three accessible parking signs that were set in buckets of cement at each of the accessible parking spaces. Michelle Richards told this investigation that on March 5, 2013, she "distributed" a note to SHH guests/tenants stating that some guests without accessible parking permits had been parking in the accessible parking spaces and that these spaces are reserved for permit holders only. After the face-to-face interview, this investigation asked Ms. Richards to

[7] The incident reports given by Jen and Don Shappy indicate that Ms. Lambert and her daughter were yelling about the parking spaces and being disruptive.

clarify how the note was distributed. She stated through her attorney, "The notice was distributed to all residents by posting in the lobby, elevator and laundry room, as well as at all entrances, well in view of all current and new guests. Those postings are regularly maintained to ensure continued notification."

Sometime in May, accessible parking signs were placed in the ground.

The following statements include information and allegations that the parties are not in agreement about. This investigation has attempted to include information that is only relevant to determining whether or not SSH violated fair housing laws. It appears that there may be other unrelated issues between Ms. Lambert and SSH.

Statements of Felicia Lambert

Ms. Lambert stated that in mid-November 2012 she first spoke to a person at the front desk about the fact that the accessible parking spaces were only marked by paint on the ground and that it was likely that snow would soon cover those markings. In mid-December because no signs had been placed to designate where the accessible parking spaces were located she stated that she spoke with Don (the night person) and he told her that Ms. Richards would take care of it. Ms. Lambert said by late December when nothing had been done or communicated to her about the lack of signage, she erected an accessible sign she found on the side of the building. Ms. Lambert stated that Laurie, a cleaning person at SSH helped her clean sign.

When Ms. Lambert filed her HRC complaint on February 19, 2013 her temporary sign still remained the only signage for the accessible parking spaces.

<u>Miscellaneous statements by Ms. Lambert regarding conversations she had with SSH staff</u> (dates are unclear and not all statements are supported by direct evidence)

- Ms. Lambert stated that when she first spoke to a staff person she was told that there was no accessible parking for SSH.
- At some point, she was told that the signs had been removed because no one used the accessible spots and that the sign she placed would be removed.
- During one of her phone conversations with SSH staff Ms. Lambert attempted to discuss the matter but the staff person became very irate and hung up the phone. Ms. Lambert then called Don, the assistant manager who no longer works at Smart Suites, and left him a lengthy voice message. That evening Ms. Lambert said someone took her sign down but the following morning Steve, the maintenance person, put the sign back up in the same place and manner that Ms. Lambert had placed the sign.
- At some point during the winter, Ms. Lambert contacted the office to complain that she had fallen on ice because the accessible spots were occupied. A "new male employee" (this may have been Don Shappy who was first employed by Smart Suites in November 2012) told her "weren't you told before that we have nothing to do with handicapped parking back there. You were told to speak to Michelle."
- Ms. Lambert also stated that she spoke with Jen (no longer employed at Smart Suites) about people parking in the accessible spots. Ms. Lambert said she suggested Smart Suites call the police and was told because this was private property the police were not allowed on the property.
- Ms. Lambert said the response she got whenever she contacted the staff was an attitude of or the actual statement "what do you want us to do about it."

Ms. Lambert alleged that frequently she was unable to park the car she was driving in an accessible spot because cars that did not have proper "handicap parking" plates or placards were parked in the accessible spaces. Ms. Lambert showed this investigation two pictures, one on her daughter's cell phone and one on her cell phone of cars parked in the accessible parking spaces without proper documentation. One picture taken before winter showed a person parked in the aisle area making it very difficult for Ms. Lambert to open her car door when she was parked in one of the accessible spaces. The other picture clearly showed a Jeep (license plate number FTP718[8]) without an accessible parking placard or license, parked in one of the accessible spaces. Ms. Lambert also showed this investigation another handwritten note that she had made to her files on or about March 25, 2013 at 10:37 AM. A "burgundy Expedition license plate FMN870" (no accessible placard or plate) was parked in an accessible parking space. Ms. Lambert stated that Don [Shappy] saw this because he was walking by when a woman parked her vehicle in an accessible parking space without proper documentation - - but he did nothing about it. Ms. Lambert listed at least four other makes of vehicles that have parked in the accessible spaces without proper accessible parking permits. She said weekends are the worst.

Ms. Lambert stated that she reported cars parking in the accessible spots but to no avail. She said that after she received the January 21, 2013 letter from Michelle Richards she was concerned to mention the issue for fear of retaliation.

Ms. Lambert also stated that a very large male tenant (who did not have an accessible placard but parked in the accessible spaces) confronted her several times in a very angry and threatening manner when she approached him about not parking in the accessible spot. Ms. Lambert

[8] Ms. Lambert believes the owner of this vehicle is a resident who lives on the second floor.

stated that he said Michelle told him that he could park wherever he wanted because there was no accessible parking for SSH.

Ms. Lambert stated that she was never informed that SSH would be installing permanent signs. She stated that she never received the March 5, 2013 letter, but she has seen it posted around the building. She stated that after she made her requests in November and December regarding placing accessible parking signage she never received a response from SSH management or other staff regarding her request to have accessible parking signs placed in the parking lot. That is why she setup the accessible sign she found. When she left for a doctor's appointment on February 13, 2013, her temporary sign was the only signage marking the accessible parking spaces. When she returned on February 18, 2013, signs in the concrete buckets were in place.

Statements of Michelle Richards

Ms. Richards is the manager of Smart Suites and Smart Suites on the Hill. She has been a manager since Smart Suites opened in 1999. She moved to Vermont from Montreal where she had worked in a similar field for about ten years. She stated that she has not had any training specific to reasonable accommodations or accessible parking. This investigation asked her what her understanding was of reasonable accommodations and accessible parking. She stated treat "everyone equal and fair" and "see what we can do to accommodate." She also stated that it was important to provide accessible parking, "a must." She said that they have never assigned a specific parking space to an individual – - no one to her knowledge has asked.

Ms. Richards stated that she was aware that Ms. Lambert and Mark Marchez did not get along and that Ms. Lambert has complained to the staff about him. She said, "We told each to settle their differences." This

investigation asked her if Ms. Lambert had told the staff that Mr. Marchez parks wherever he pleases. She responded, "we told him he can't do that." This investigation asked her if he stopped and she stated, "No - - he stopped in February."

Ms. Richards stated that a staff person removed Ms. Lambert's sign one night because it was windy and they were afraid that it might blow and damage someone's car. The sign was put back the next morning.

Ms. Richards acknowledged that Ms. Lambert pointed out in December that there were no accessible signs. She stated that the signs had been down for about a year because they were damaged. This investigation asked her if there was a particular reason the signs were not replaced sooner. She said, "No." Ms. Richards stated that when Ms. Lambert complained about Mr. Marchez[9] she was told she would have to take it up with him.

Ms. Richards stated that parking situation is monitored because a number of the staff walk up to SSH several times a day and they monitor it. She stated that they have not noticed people parking in the accessible parking spaces without proper documentation.

Following this investigation's questions Ms. Richards' attorney asked Ms. Richards the following questions:

1) How often are cars parked in the accessible spaces that should not be there? She stated a couple of times this past winter.
2) How often does snow cover the parking lot markings? She stated not often.
3) Has Ms. Lambert been unable to park in an accessible parking space because others were parked others? She stated, "Not that I know of."

[9] Ms. Lambert said she did not know his name and alleged that the staff would not provide it to her.

Statement of Angie Grove

Ms. Grove has worked at Smart Suites since November 2011 at the front desk. Her duties include generating billings, checking guests in and out, and answering questions for the people who reside at Smart Suites on the Hill. She stated that a woman by the first name of Tory was her boss but that she takes problems directly to Michelle Richards. She stated that when she was hired she had a 30-day orientation period and a manual to read and refer to but that there was nothing in the manual regarding parking.

This investigation asked her what she knew about reasonable accommodation requests. She was unfamiliar with that phrase, but then said that if a guests asked for a first floor unit (because of a mobility disability) she would provide that. This investigation asked her what her understanding was of a housing provider's responsibility regarding accessible parking. Ms. Grove at first stated "nothing" but then explained that the space should be close to an entrance and others [abled-bodied people] should not park in those spaces. She further stated that sometimes if only accessible parking spaces are available a non-disabled person will park in an accessible space and give her their phone number so she can contact them if the space is needed by a person with a disability.

Ms. Grove told this investigation that she never took any complaints from Ms. Lambert regarding parking or Mark Marchez. She stated that she has never walked around the grounds to check accessible parking spaces. Ms. Grove was uncertain about how long the accessible parking signs had been down but she did recall hearing that Ms. Lambert's sign was moved one night because it was very windy. She believed the sign was removed so it would not fall and damage a car. Ms. Grove is unaware of anytime that Ms. Lambert was unable to use an accessible parking space because of unauthorized vehicles in these spaces. She did not recall transferring Ms.

Lambert to the assistant manager's phone when Ms. Lambert called to complain about the parking situation.

Statements of Steve Cobb

Mr. Cobb has worked as a maintenance person at Smart Suites and SSH for over thirteen years. His duties include fixing things and shoveling walks and entryways. He stated that his training involved learning how to fix things, but nothing about accessible parking. He did not know what a reasonable accommodation is. He said he understood that they have to have accessible parking and that a vehicle has to have a placard in order to park in the space. He said he has seen unauthorized vehicles in accessible spaces but it is usually not for a very long time – - like the driver quickly running into a building. He said he has never had to ask anyone to move his or her vehicle.

Mr. Cobb recalled helping Ms. Lambert into her apartment one winter day by salting the area between her car and another one as the parking lot was icy and the striped accessible space was slippery.

This investigation asked Mr. Cobb how long the accessible signs were down. He stated that there "never were signs only ground markings." He said signs first went up sometime in February 2013. He did recall the "kitty litter" sign that Ms. Lambert put up, being removed one night. However, he said the old general manager, Don (do not have last name) had received a voice message from Ms. Lambert about the sign being taken down and because of that he (Steve) was told to put it back up. Mr. Cobb was unaware of how long the "kitty litter" sign was up or when the cement-bucket signs were put up.[10] He believed the last time the stripes had been painted was three or four years ago.

Statement of Don Shappy

[10] There was no formal work record that could pin point the dates.

Mr. Shappy has been employed at Smart Suites and SSH for about seven months as the houseman. He makes house calls and does light maintenance and security at night. He stated that his training involved following two other employees and reviewing a handbook. He stated that there was nothing about parking in the handbook.

This investigation asked him how many times Ms. Lambert spoke with him about parking. He recalled one time. She briefly asked when/if signs were going up. Mr. Shappy said he told her to talk with management. He also recalled that she spoke to him about Mark Marchez. He thought that there had not yet been a "big snow storm" at the time Ms. Lambert spoke to him. This investigation asked Mr. Shappy if he reported these conversations to anyone. He stated he told Michelle Richards and maybe Jen.

This investigation asked Mr. Shappy if he recalled an incident when Ms. Lambert and her daughter came to the front desk to complain about Mr. Marchez and the accessible parking situation. He stated that he did. Mr. Shappy's recollections were that Ms. Lambert was calm but rude. However, he said her daughter was screaming about the parking situation. He recalled that it was a busy night and that Mr. Marchez had also come to the front desk before Ms. Lambert. He was yelling about Ms. Lambert and the parking. He said Mr. Marchez was very animated, spoke fast and was aggressive.

Mr. Shappy said that Ms. Lambert told them that Mr. Marchez was parked in an accessible parking space without a placard and that she did not have an accessible space to park her car. Ms. Lambert parked next to the curb in front of the building instead even though this was not a marked parking space. He recalled saying to Ms. Lambert, "What should we do about it?" He suggested she call the police and that if she didn't leave or step aside they would call the police to remove her from the lobby. Ms. Lambert and her daughter then left. He said that Jen, the front desk worker was

having an anxiety attack because of all the commotion. This investigation asked Mr. Shappy if he went up to check on the parking space after Ms. Lambert complained. He said that he did not. However, Mr. Shappy stated that he checks the parking situation three or four times a night and that he has never seen Mr. Marchez's car in one of the accessible parking spaces.

This investigation asked Mr. Shappy if he took the "kitty litter" sign down. He said he did because it was not anchored. He said since it was windy, it could have fallen and damaged another car. He was not sure when the concrete bucket sings were put up - - "maybe February." However, he thought they were up most of the winter.

Statement of Laurie Morrill[11]

Ms. Morrill is the housekeeper for SSH. She has worked for SSM for five years. She told this investigation that she never helped Ms. Lambert move an accessible parking sign from the side of the building, never helped her clean an accessible parking sign, and never helped Ms. Lambert put it up. She also said that Ms. Lambert never spoke to her about the accessible parking problems.

General Impressions of Witness Interviews

After interviewing, five SSH staff members this investigation concluded that the staff had minimal knowledge about accessible parking and reasonable accommodations requests. None of the staff were aware of the reasonable accommodation process or a housing provider's staff's responsibilities under fair housing laws. Specifically there was no awareness of the requirement to grant reasonable accommodations; the requirement to engage in an interactive process with the tenant who makes a reasonable

[11] It was clear to this investigator that this person did not want to be involved in this matter. Therefore, this investigation did not push her for information. A few days after the interview she allegedly denied to Ms. Lambert that she had been interviewed.

accommodation request; or the requirement to respond to a person's reasonable accommodation request in a timely fashion. Staff generally indicated that they did not believe Ms. Lambert's complaints were their responsibility or that they had the ability to do anything about the situation.

ANALYSIS

Elements of Fair Housing Legal Analysis

To prevail in her charge Ms. Lambert must prove her allegations by a preponderance of the evidence. (See In re Smith, 169 Vt. 162, 168 (1999) ("Our case law provides that a preponderance of the evidence is the usual standard of proof in state administrative adjudications.") Additionally, Vermont's Supreme Court has stated that it looks to the federal Fair Housing Act in construing Vermont's Fair Housing and Public Accommodations Act (VFHPA.) Human Rights Commission v. LaBrie, Inc., 164 Vt. 237, 243 (1995). The Supreme Court of the United States has held that the Federal Fair Housing Act's (FHA's) language should be construed broadly. Trafficante v. Metro life Ins. Co., 409 U.S. 205, 209 (1972), City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 731 (1995).

ELEMENTS OF PROOF

9 V.S.A. §4503(a)(10)

1. **Ms. Lambert is a member of a protected class.**
2. **Ms. Lambert made a reasonable accommodation request. and SSH knew or should have known about her request.**
3. **SSH failed to provide the accommodation in a timely fashion.**

Whether Ms. Lambert is a member of a protected class?

Ms. Lambert is a person with a mobility disability. She is a wheelchair user and has State of Vermont accessible parking placards for her vehicles. She is a member of a protected class.

Whether Ms. Lambert made a reasonable accommodation request and SSH knew or should have known about her request?

Ms. Lambert stated that she first approached the SSH staff about placing signs to mark the accessible spaces in November 2012. She stated she was concerned that the snow would cover the parking lot surface accessible markings. She was concerned that people who did not have mobility disabilities would park in the accessible spaces and she would not have an accessible parking space to use. Ms. Richards acknowledged in her interview with this investigation that she was aware in December 2012 that Ms. Lambert had pointed out that there were no accessible parking signs. At some point once Ms. Lambert placed the "kitty litter" accessible sign in order to mark one of the accessible parking spaces all of the SSH staff interviewed were aware that Ms. Lambert wanted accessible parking signs properly placed. Ms. Lambert stated there were a number of other times that she made this request. The request was never in writing and Ms. Lambert did not use the term "reasonable accommodation request."

Mr. Shappy acknowledged that Mr. Machez complained about Ms. Lambert telling him he could not park in the accessible spaces. Later that same night Ms. Lambert complained to the front desk person and Mr. Shappy that Mr. Marchez was parking in an accessible spot which meant she could not park in an accessible space. Mr. Shappy stated that he did not check this out and told Ms. Lambert she could call the police.

A person making a reasonable accommodation request need not use the words "reasonable accommodation". The request must be made in a manner that "a reasonable person would understand to be a request for an

exception, change, or adjustment to a rule, policy, practice or service because of the disability." Joint Statement of the Department of Housing and Urban Development and the Department of Justice – reasonable Accommodations Under the Fair Housing Act, p.10 (2004).[12] It is important that housing providers know and understand their responsibilities regarding reasonable accommodation requests. These responsibilities go far beyond simply knowing that if a person with a disability needs to park in an accessible parking space he/she is entitled to do that. The responsibilities include how a provider can recognize a reasonable accommodation request and the steps to address such a request. This investigation does not believe that any of the SSH staff possessed this knowledge.

The investigation believes there is a preponderance evidence to support the conclusion that Ms. Lambert made a reasonable accommodation request to have accessible signage placed at the accessible parking spaces so unauthorized persons would know not to park in those spaces. This investigation also believes there is a preponderance of evidence to show that SSH staff knew or should have known of Ms. Lambert's request.

Whether SSH failed to provide the accommodation in a timely fashion?

Even assuming *arguendo* dates most favorable to SSH, (that SSH staff were first aware of the Ms. Lambert's request in early December 2012 not early November 2012) and that the concrete bucket signs were up by February 18, 2013, this investigation believes that SSH "failed to act promptly" on Ms. Lambert's reasonable accommodation request. Additionally, SSH never engaged in any conversations with Ms. Lambert regarding her request except to tell her via a letter on January 21, 2013 that

[12] The introduction to the HUD/DOJ statement on reasonable accommodations under fair housing states, "This Statement provides technical assistance regarding the rights and obligations of person with disabilities and housing providers under the Act relating to reasonable accommodations." In other words, this statement is authoritative regarding the application of reasonable accommodations in the fair housing context.

future complaints about the building should be made directly to Ms. Richards.[13] The HUD/DOJ statement on reasonable accommodations states if the housing provider believes there is an alternative to the tenant's request the provider should engage in a discussion with the person who made the request to see if she/he will accept the alternative. Id at p 8. "A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation." Id. at 9. Additionally, "a provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation." Id. at p 11.

As stated above this investigation found that the SSH staff had little knowledge of its obligations as a housing provider regarding the reasonable accommodation process. This investigation found no evidence that the SSH staff discussed Ms. Lambert's reasonable accommodation request with her at any time except in the heat of a confrontation weeks after she had asked that this matter be addressed and SSH had failed to address it.

In December, Ms. Lambert attempted to resolve the matter on her own by placing an accessible sign in a kitty litter box and leaning it against her van. Even though the staff was aware of this they still did not address her request or inform her of any plan to rectify the matter. Sometime around February 18, 2013 (well into snow season and at least 2 ½ months after Ms. Lambert initially made her request) signs were placed in concrete buckets. In March, three months after Ms. Lambert made her request, the SSH staff "distributed" a notice asking guests and residents to not park in accessible spaces without proper documentation. The notice was posted but not delivered to the residents. No staff ever investigated Ms. Lambert's

[13] The note did not mention Ms. Lambert's concerns about the parking signs or what SSH was going to do about the lack of signs. Additionally, if Ms. Lambert were unable to park in an accessible during hours when Ms. Richards or Don (?) were not available she would not be able to resolve the problem of where to park.

complaint regarding Mr. Marchez parking in the accessible space, even when she informed them at the time it was allegedly happening. Finally, when Ms. Richards, the general manager, was asked by this investigation if there was a reason it took so long for the signs (which are required by law) to be placed, she said, "No."

This investigation believes there is a preponderance of evidence supporting the conclusion that SSH failed to grant Ms. Lambert's reasonable accommodation request to have accessible signs installed so people could see where the accessible spaces were during winter months when snow could obstruct the ground markings.

9 V.S.A. §4503 (a)(11)

1. **Whether SSH is a multifamily dwellings as set forth in 20 V.S.A. §2900(4)?**
2. **Whether SSH failed to comply with the rules/provisions pursuant to 20 V.S.A. chapter 174?**

Whether SSH is a multifamily dwelling as set forth in 20 V.S.A. §2900(4)?

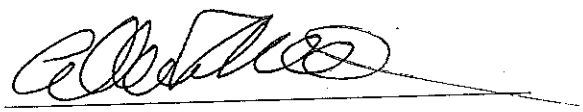
The above referenced statute states that "'covered multifamily dwelling' means a residential unit for sale or rent in a public building consisting of four or more units if the building has one or more elevators . . . For purposes of this chapter, 'public building' includes . . the definition in subdivision (8)." The subdivision (8) list of public buildings includes hotels and apartments. SSH is a 74-unit housing complex which qualifies as both an apartment building (Ms. Lambert's unit is two bedroom and she has lived there for almost a year) and/or a hotel at which some "guests" only stay seven days. SSH is a multifamily dwelling as set forth in 20 V.S.A. §2900(4).

Whether SSH failed to comply with the rules/provisions pursuant to 20 V.S.A. chapter 174?

Section 2904 of 20 V.S.A. addresses parking spaces. It states that accessible parking spaces "shall be designed 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 "van accessible. . ." There is no denial that at least for the last year (and possibly much longer depending on which SSH employee one choses to believe) SSH has not had the statutorily required accessibility signs installed in its parking lot. Failure to have the required signs is a per se violation of Vermont's fair housing laws.

PRELIMINARY RECOMMENDATION

This investigative report recommends that the HRC find that there are **reasonable grounds** to believe that Ms. Lambert was discriminated against by SSH in violation of 9 V.S.A. §4503(a)(10) & (11) of Vermont's Fair Housing and Public Accommodations Act.

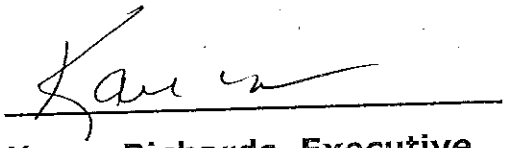


Ellen T Maxon, Investigator

5/28/13

Date

Approved by:

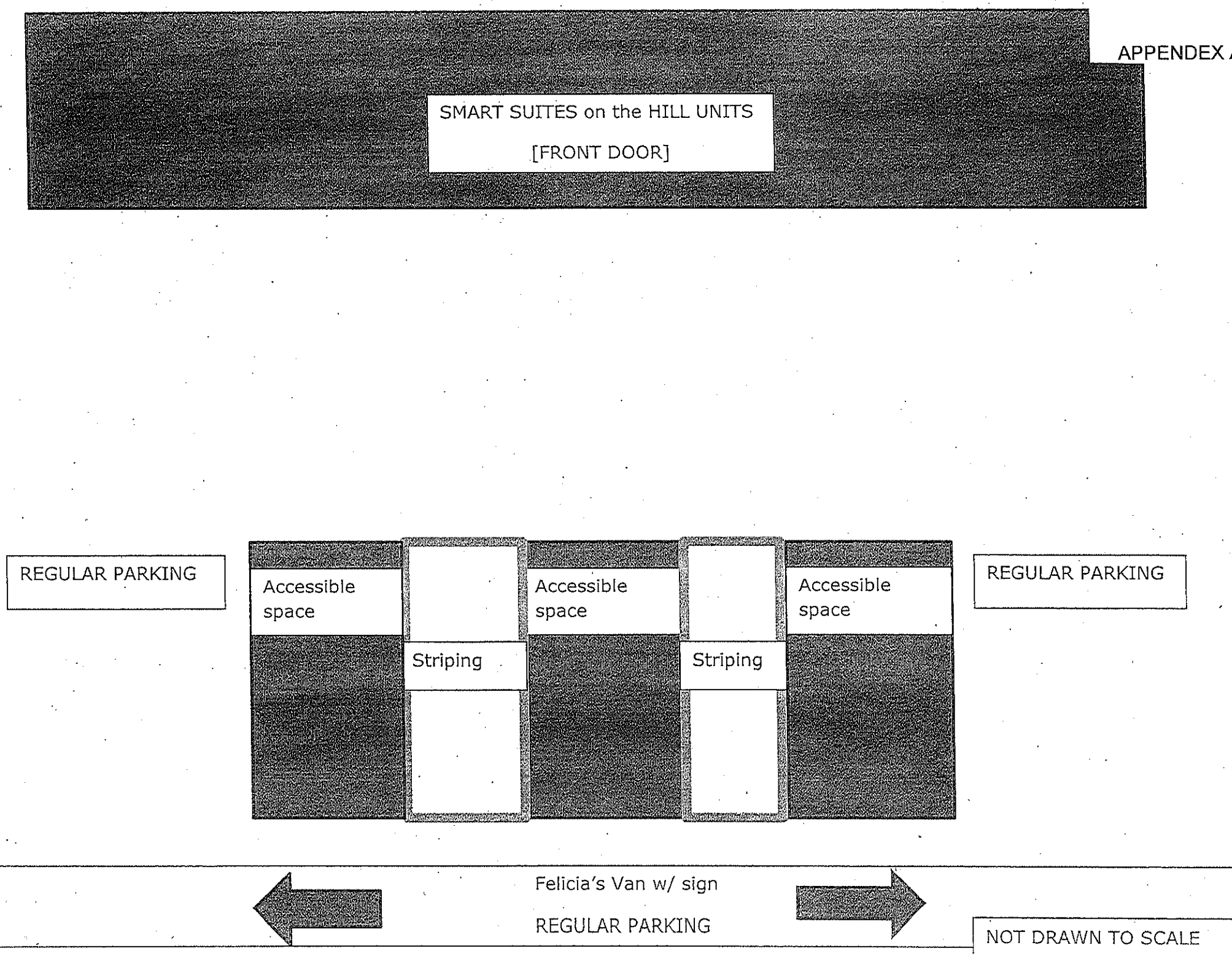


Karen Richards, Executive Director & Legal Counsel

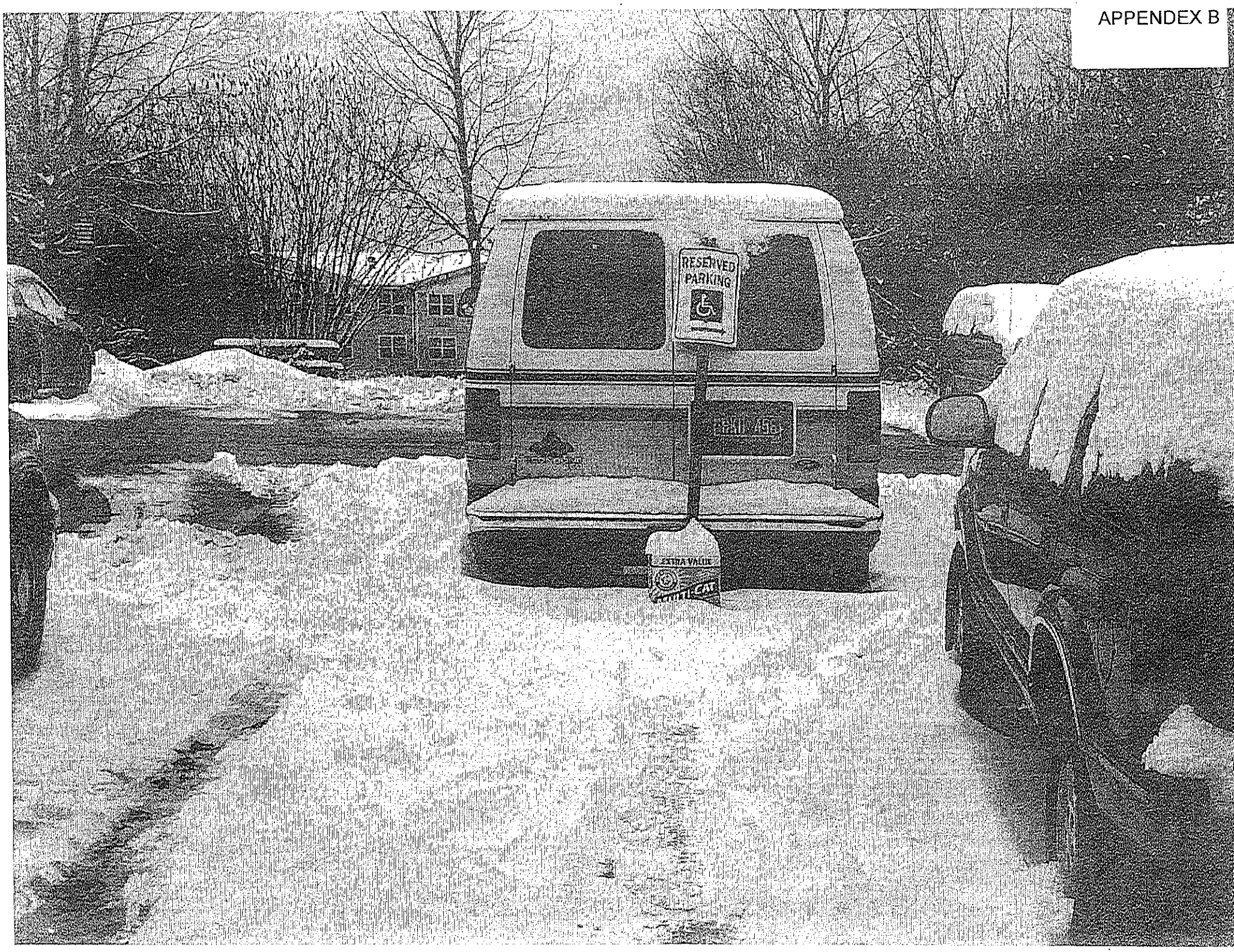
5/28/13

Date

APPENDEX A


SMART SUITES on the HILL UNITS
[FRONT DOOR]
REGULAR PARKING
Accessible space
Striping
Accessible space
Striping
Accessible space
REGULAR PARKING
Felicia's Van w/ sign
REGULAR PARKING
NOT DRAWN TO SCALE

APPENDEX B



STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Felicia Lambert Charging Party	))
v.	)HRC. Case No. HV13-0022) Hud Case No. 01-13-0240-8)
John Larkin, Inc. d/b/a Smart Suites on the Hill (SSH) Responding Party	)))

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 John Larkin, Inc. d/b/a Smart Suites on the Hill (SSH) , the Respondent, illegally discriminated against Felicia Lambert, the Charging Party, in violation of Vermont's Fair Housing and Public Accommodations Act on the grounds of her disability..

Mary Marzec-Gerrior, Chair	For ✓	Against __	Absent__	Recused __
Nathan Besio	For ✓	Against __	Absent __	Recused __
Mary Brodsky	For ✓	Against __	Absent __	Recused __
Chuck Kletecka	For ✓	Against __	Absent __	Recused __
Donald Vickers	For ✓	Against __	Absent __	Recused __

Entry: ✓ Reasonable Grounds __ Motion failed

Dated at Winooski, Vermont, this 27th day of June, 2013.

BY: HUMAN RIGHTS COMMISSION

Mary Marzec-Gerrior, Chair

Nathan Besio

Mary Brodsky

Chuck Kletecka

Donald Vickers

VT Human Rights Commission
14-16 Baldwin Street
Montpelier, VT 05633-6301
http://hrc.vermont.gov

[phone] 802-828-2480
[fax] 802-828-2481
[tdd] 877-294-9200
[toll free] 1-800-416-2010

INVESTIGATIVE REPORT

HRC Case No. HV13-0022
HUD Case No. 01-13-0240-8

CHARGING PARTY: Felicia Lambert

RESPONDING PARTY: John Larkin, Inc., d/b/a Smart Suites on the Hill (SSH)

CHARGE: Housing – disability (accessible parking)

Summary of Charge: On February 19, 2013, Felicia Lambert filed a discrimination complaint alleging that SSH failed to provide proper markings and enforcement of accessible parking spaces rules, which deprived her of accessible parking at her SSH apartment.

Summary of Response: On March 15, 2013, SSH denied, through its attorney, that it discriminated against Ms. Lambert. Specifically, it alleged that SSH enforces appropriate use of accessible parking spaces and that it has "no knowledge of any occasion when all spaces were in use, depriving Ms. Lambert or any other individual of access to an accessible space."[1]

Preliminary Recommendations: This investigation makes a preliminary recommendation that the Human Rights Commission find there are

[1] In an April24, 2013 letter to this investigation SSH's attorney stated "Any violation of applicable law has been technical, not substantive . . ."

VERMONT

reasonable grounds to believe that SSH discriminated against Ms. Lambert in violation of 9 V.S.A. §4503 (10) & (11).

INTERVIEWS

05/08/2013 – Felicia Lambert

05/14/2013 – Michelle Richards (Smart Suites & SSH manager)

05/14/2013 – Angie Grove (Smart Suites front desk attendant)

05/14/2013 – Steve Cobb (Smart Suites maintenance worker)

05/14/2013 – Don Shappy (Smart Suites houseman)

05/14/2013 – Laurie Morrill (Smart Suites Housekeeper)

05/15/2013 – Second Interview Felicia Lambert

DOCUMENTS

02/19/2013 – Discrimination Complaint

03/15/2013 – Respondent's Response to Complaint

04/01/2013 – Complainant's Response to SSH Response

05/06/2013 – Pictures of parking area

05/14/2013 – Documents received from respondent

- **1/19/13 Incident reports**
- **1/21/13 Letter from Ms. Richards to Ms. Lambert**
- **3/05/13 Letter to SSH Guests re: Accessible Parking**

Additional Evidence

05/14/2013 – Site visit

05/15/2013 – Pictures of parked cars on Complainant's cell phones

Applicable Statue - 9 V.S.A §4503

(a) It shall be unlawful for any person:

(10) To refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

(11) To fail to comply with provisions or rules pertaining to covered multifamily dwellings, as defined in 20 V.S.A. § 2900(4) and pursuant to 20 V.S.A. chapter 174.

ELEMENTS OF PROOF

9 V.S.A. §4503(a)(10)

1. **Ms. Lambert is a member of a protected class.**
2. **Ms. Lambert made a reasonable accommodation request and SSH knew or should have known about her request.**
3. **SSH failed to provide the accommodation in a timely fashion.**

9 V.S.A. §4503(a)(11)

1. **SSH is a multifamily dwellings as set forth in 20 V.S.A.§2900(4).**
2. **SSH failed to comply with the rules/provisions pursuant to 20 V.S.A. chapter 174.**

FACTS[2]

Undisputed Facts

Ms. Lambert has resided at Smart Suites on the Hill (SSH)[3] in South Burlington, VT since May 2012. SSH is a seventy-four unit apartment complex built in 2000 that rents units to individuals for time periods as short

[2] Undisputed facts and statements of each witness are based on face-to-face interviews, written responses by parties and their representatives, and documentation provided to this investigation.

[3] SSH is located directly behind Smart Suites and the staff members interviewed for this investigation all "work" for both Smart Suites and Smart Suites on the Hill; working "for" meaning they perform tasks for and at both complexes and interact with guests/residents at both complexes.

as seven days or for longer time periods. There are three accessible parking spaces for SSH with one aisle between each of the three spaces (see Appendix A - diagram).

Ms. Lambert is person with a mobility disability. She has Vermont State issued placards for each of her three vehicles. One of her vehicles appears to be constantly parked in one of the three accessible spaces, the vehicle she most frequently uses is parked in one of the accessible parking spaces when available and the third vehicle, a van, is not parked in an accessible parking space.

Because the accessible parking spaces lacked signage indicated that they were accessible spaces, sometime in December 2012 Ms. Lambert took it upon herself to place an accessible parking sign in the middle of the three accessible parking spaces. She found a sign lying on the side of the SSH building. She placed the sign in a kitty litter box to help stabilize it and leaned it against her van which was parked on the other side of the accessible parking space. (see Appendix B-photo) At some point one of the SSH staff removed the sign[4] but replaced it the next day.

At a minimum,[5] there was no signage for the accessible parking spaces for about a year. In early December 2012, Ms. Lambert spoke to Don Shappy, the night houseman, stating that she wanted signs placed to mark the accessible parking spaces.[6] Mr. Shappy transmitted Ms. Lambert's request to Michelle Richards, the general manager. Ms. Richards discussed

---

[4] The staff told this investigation it was taken down one evening because it was very windy and they were concerned that it might blow over and damage a car. It should be noted that the sign was then left in place for an additional two months.

[5] Different staff gave different answers as to how long the accessible space signs have been missing. One staff person, the maintenance man who has been at Smart Suites for over 13 years, said there had never been signs up designating the three accessible parking spaces. The General Manager, who has been there since it opened, said the signs had only been down for the past year, though she was not sure exactly how long or when the signs were removed.

[6] Ms. Lambert said that since there were no signs she was concerned that once there was snow on the ground people would not be able to see that these were accessible spaces and then she would not have an accessible space to park.

the matter with staff and decided that because the ground was frozen nothing more could be done during the winter months. SSH believed that Ms. Lambert's temporary sign would be sufficient since only Ms. Lambert had complained or commented about the lack of signage. SSH did not communicate their decision to her.

On January 19, 2013 another tenant, Mark Marchez, went to the front desk and complained to Jennifer B (no longer employed by SSH), a front desk worker, about Ms. Lambert and the parking situation. Mr. Marchez stated that Michelle Richards had told him he could park where he wanted but that Ms. Lambert was telling him that he could not park in the accessible parking space. After he left, Ms. Lambert came to the front desk very upset[7] about Mr. Marchez and the parking situation. SSH staff said, in the incident report, that they told her she should call the police about it and that if she did not leave the front desk area they would call the police about her disruptive behavior.

In a letter to Ms. Lambert dated January 21, 2013, Michelle Richards, the general manager, stated that Ms. Lambert should address all future building issues to either herself or Don (the assistant manager who is no longer employed by Smart Suites.) The letter also stated that the "Front Desk staff is not empowered to make these decisions and therefore are unable to address the problems."

In mid-February (exact date uncertain) SSH placed three accessible parking signs that were set in buckets of cement at each of the accessible parking spaces. Michelle Richards told this investigation that on March 5, 2013, she "distributed" a note to SHH guests/tenants stating that some guests without accessible parking permits had been parking in the accessible parking spaces and that these spaces are reserved for permit holders only. After the face-to-face interview, this investigation asked Ms. Richards to

[7] The incident reports given by Jen and Don Shappy indicate that Ms. Lambert and her daughter were yelling about the parking spaces and being disruptive.

clarify how the note was distributed. She stated through her attorney, "The notice was distributed to all residents by posting in the lobby, elevator and laundry room, as well as at all entrances, well in view of all current and new guests. Those postings are regularly maintained to ensure continued notification."

Sometime in May, accessible parking signs were placed in the ground.

The following statements include information and allegations that the parties are not in agreement about. This investigation has attempted to include information that is only relevant to determining whether or not SSH violated fair housing laws. It appears that there may be other unrelated issues between Ms. Lambert and SSH.

Statements of Felicia Lambert

Ms. Lambert stated that in mid-November 2012 she first spoke to a person at the front desk about the fact that the accessible parking spaces were only marked by paint on the ground and that it was likely that snow would soon cover those markings. In mid-December because no signs had been placed to designate where the accessible parking spaces were located she stated that she spoke with Don (the night person) and he told her that Ms. Richards would take care of it. Ms. Lambert said by late December when nothing had been done or communicated to her about the lack of signage, she erected an accessible sign she found on the side of the building. Ms. Lambert stated that Laurie, a cleaning person at SSH helped her clean sign.

When Ms. Lambert filed her HRC complaint on February 19, 2013 her temporary sign still remained the only signage for the accessible parking spaces.

<u>Miscellaneous statements by Ms. Lambert regarding conversations she had with SSH staff</u> (dates are unclear and not all statements are supported by direct evidence)

- Ms. Lambert stated that when she first spoke to a staff person she was told that there was no accessible parking for SSH.
- At some point, she was told that the signs had been removed because no one used the accessible spots and that the sign she placed would be removed.
- During one of her phone conversations with SSH staff Ms. Lambert attempted to discuss the matter but the staff person became very irate and hung up the phone. Ms. Lambert then called Don, the assistant manager who no longer works at Smart Suites, and left him a lengthy voice message. That evening Ms. Lambert said someone took her sign down but the following morning Steve, the maintenance person, put the sign back up in the same place and manner that Ms. Lambert had placed the sign.
- At some point during the winter, Ms. Lambert contacted the office to complain that she had fallen on ice because the accessible spots were occupied. A "new male employee" (this may have been Don Shappy who was first employed by Smart Suites in November 2012) told her "weren't you told before that we have nothing to do with handicapped parking back there. You were told to speak to Michelle."
- Ms. Lambert also stated that she spoke with Jen (no longer employed at Smart Suites) about people parking in the accessible spots. Ms. Lambert said she suggested Smart Suites call the police and was told because this was private property the police were not allowed on the property.
- Ms. Lambert said the response she got whenever she contacted the staff was an attitude of or the actual statement "what do you want us to do about it."

Ms. Lambert alleged that frequently she was unable to park the car she was driving in an accessible spot because cars that did not have proper "handicap parking" plates or placards were parked in the accessible spaces. Ms. Lambert showed this investigation two pictures, one on her daughter's cell phone and one on her cell phone of cars parked in the accessible parking spaces without proper documentation. One picture taken before winter showed a person parked in the aisle area making it very difficult for Ms. Lambert to open her car door when she was parked in one of the accessible spaces. The other picture clearly showed a Jeep (license plate number FTP718[8]) without an accessible parking placard or license, parked in one of the accessible spaces. Ms. Lambert also showed this investigation another handwritten note that she had made to her files on or about March 25, 2013 at 10:37 AM. A "burgundy Expedition license plate FMN870" (no accessible placard or plate) was parked in an accessible parking space. Ms. Lambert stated that Don [Shappy] saw this because he was walking by when a woman parked her vehicle in an accessible parking space without proper documentation - - but he did nothing about it. Ms. Lambert listed at least four other makes of vehicles that have parked in the accessible spaces without proper accessible parking permits. She said weekends are the worst.

Ms. Lambert stated that she reported cars parking in the accessible spots but to no avail. She said that after she received the January 21, 2013 letter from Michelle Richards she was concerned to mention the issue for fear of retaliation.

Ms. Lambert also stated that a very large male tenant (who did not have an accessible placard but parked in the accessible spaces) confronted her several times in a very angry and threatening manner when she approached him about not parking in the accessible spot. Ms. Lambert

[8] Ms. Lambert believes the owner of this vehicle is a resident who lives on the second floor.

stated that he said Michelle told him that he could park wherever he wanted because there was no accessible parking for SSH.

Ms. Lambert stated that she was never informed that SSH would be installing permanent signs. She stated that she never received the March 5, 2013 letter, but she has seen it posted around the building. She stated that after she made her requests in November and December regarding placing accessible parking signage she never received a response from SSH management or other staff regarding her request to have accessible parking signs placed in the parking lot. That is why she setup the accessible sign she found. When she left for a doctor's appointment on February 13, 2013, her temporary sign was the only signage marking the accessible parking spaces. When she returned on February 18, 2013, signs in the concrete buckets were in place.

Statements of Michelle Richards

Ms. Richards is the manager of Smart Suites and Smart Suites on the Hill. She has been a manager since Smart Suites opened in 1999. She moved to Vermont from Montreal where she had worked in a similar field for about ten years. She stated that she has not had any training specific to reasonable accommodations or accessible parking. This investigation asked her what her understanding was of reasonable accommodations and accessible parking. She stated treat "everyone equal and fair" and "see what we can do to accommodate." She also stated that it was important to provide accessible parking, "a must." She said that they have never assigned a specific parking space to an individual – - no one to her knowledge has asked.

Ms. Richards stated that she was aware that Ms. Lambert and Mark Marchez did not get along and that Ms. Lambert has complained to the staff about him. She said, "We told each to settle their differences." This

investigation asked her if Ms. Lambert had told the staff that Mr. Marchez parks wherever he pleases. She responded, "we told him he can't do that." This investigation asked her if he stopped and she stated, "No - - he stopped in February."

Ms. Richards stated that a staff person removed Ms. Lambert's sign one night because it was windy and they were afraid that it might blow and damage someone's car. The sign was put back the next morning.

Ms. Richards acknowledged that Ms. Lambert pointed out in December that there were no accessible signs. She stated that the signs had been down for about a year because they were damaged. This investigation asked her if there was a particular reason the signs were not replaced sooner. She said, "No." Ms. Richards stated that when Ms. Lambert complained about Mr. Marchez[9] she was told she would have to take it up with him.

Ms. Richards stated that parking situation is monitored because a number of the staff walk up to SSH several times a day and they monitor it. She stated that they have not noticed people parking in the accessible parking spaces without proper documentation.

Following this investigation's questions Ms. Richards' attorney asked Ms. Richards the following questions:

1) How often are cars parked in the accessible spaces that should not be there? She stated a couple of times this past winter.
2) How often does snow cover the parking lot markings? She stated not often.
3) Has Ms. Lambert been unable to park in an accessible parking space because others were parked others? She stated, "Not that I know of."

[9] Ms. Lambert said she did not know his name and alleged that the staff would not provide it to her.

Statement of Angie Grove

Ms. Grove has worked at Smart Suites since November 2011 at the front desk. Her duties include generating billings, checking guests in and out, and answering questions for the people who reside at Smart Suites on the Hill. She stated that a woman by the first name of Tory was her boss but that she takes problems directly to Michelle Richards. She stated that when she was hired she had a 30-day orientation period and a manual to read and refer to but that there was nothing in the manual regarding parking.

This investigation asked her what she knew about reasonable accommodation requests. She was unfamiliar with that phrase, but then said that if a guests asked for a first floor unit (because of a mobility disability) she would provide that. This investigation asked her what her understanding was of a housing provider's responsibility regarding accessible parking. Ms. Grove at first stated "nothing" but then explained that the space should be close to an entrance and others [abled-bodied people] should not park in those spaces. She further stated that sometimes if only accessible parking spaces are available a non-disabled person will park in an accessible space and give her their phone number so she can contact them if the space is needed by a person with a disability.

Ms. Grove told this investigation that she never took any complaints from Ms. Lambert regarding parking or Mark Marchez. She stated that she has never walked around the grounds to check accessible parking spaces. Ms. Grove was uncertain about how long the accessible parking signs had been down but she did recall hearing that Ms. Lambert's sign was moved one night because it was very windy. She believed the sign was removed so it would not fall and damage a car. Ms. Grove is unaware of anytime that Ms. Lambert was unable to use an accessible parking space because of unauthorized vehicles in these spaces. She did not recall transferring Ms.

Lambert to the assistant manager's phone when Ms. Lambert called to complain about the parking situation.

Statements of Steve Cobb

Mr. Cobb has worked as a maintenance person at Smart Suites and SSH for over thirteen years. His duties include fixing things and shoveling walks and entryways. He stated that his training involved learning how to fix things, but nothing about accessible parking. He did not know what a reasonable accommodation is. He said he understood that they have to have accessible parking and that a vehicle has to have a placard in order to park in the space. He said he has seen unauthorized vehicles in accessible spaces but it is usually not for a very long time – - like the driver quickly running into a building. He said he has never had to ask anyone to move his or her vehicle.

Mr. Cobb recalled helping Ms. Lambert into her apartment one winter day by salting the area between her car and another one as the parking lot was icy and the striped accessible space was slippery.

This investigation asked Mr. Cobb how long the accessible signs were down. He stated that there "never were signs only ground markings." He said signs first went up sometime in February 2013. He did recall the "kitty litter" sign that Ms. Lambert put up, being removed one night. However, he said the old general manager, Don (do not have last name) had received a voice message from Ms. Lambert about the sign being taken down and because of that he (Steve) was told to put it back up. Mr. Cobb was unaware of how long the "kitty litter" sign was up or when the cement-bucket signs were put up.[10] He believed the last time the stripes had been painted was three or four years ago.

Statement of Don Shappy

[10] There was no formal work record that could pin point the dates.

Mr. Shappy has been employed at Smart Suites and SSH for about seven months as the houseman. He makes house calls and does light maintenance and security at night. He stated that his training involved following two other employees and reviewing a handbook. He stated that there was nothing about parking in the handbook.

This investigation asked him how many times Ms. Lambert spoke with him about parking. He recalled one time. She briefly asked when/if signs were going up. Mr. Shappy said he told her to talk with management. He also recalled that she spoke to him about Mark Marchez. He thought that there had not yet been a "big snow storm" at the time Ms. Lambert spoke to him. This investigation asked Mr. Shappy if he reported these conversations to anyone. He stated he told Michelle Richards and maybe Jen.

This investigation asked Mr. Shappy if he recalled an incident when Ms. Lambert and her daughter came to the front desk to complain about Mr. Marchez and the accessible parking situation. He stated that he did. Mr. Shappy's recollections were that Ms. Lambert was calm but rude. However, he said her daughter was screaming about the parking situation. He recalled that it was a busy night and that Mr. Marchez had also come to the front desk before Ms. Lambert. He was yelling about Ms. Lambert and the parking. He said Mr. Marchez was very animated, spoke fast and was aggressive.

Mr. Shappy said that Ms. Lambert told them that Mr. Marchez was parked in an accessible parking space without a placard and that she did not have an accessible space to park her car. Ms. Lambert parked next to the curb in front of the building instead even though this was not a marked parking space. He recalled saying to Ms. Lambert, "What should we do about it?" He suggested she call the police and that if she didn't leave or step aside they would call the police to remove her from the lobby. Ms. Lambert and her daughter then left. He said that Jen, the front desk worker was

having an anxiety attack because of all the commotion. This investigation asked Mr. Shappy if he went up to check on the parking space after Ms. Lambert complained. He said that he did not. However, Mr. Shappy stated that he checks the parking situation three or four times a night and that he has never seen Mr. Marchez's car in one of the accessible parking spaces.

This investigation asked Mr. Shappy if he took the "kitty litter" sign down. He said he did because it was not anchored. He said since it was windy, it could have fallen and damaged another car. He was not sure when the concrete bucket sings were put up - - "maybe February." However, he thought they were up most of the winter.

Statement of Laurie Morrill[11]

Ms. Morrill is the housekeeper for SSH. She has worked for SSM for five years. She told this investigation that she never helped Ms. Lambert move an accessible parking sign from the side of the building, never helped her clean an accessible parking sign, and never helped Ms. Lambert put it up. She also said that Ms. Lambert never spoke to her about the accessible parking problems.

General Impressions of Witness Interviews

After interviewing, five SSH staff members this investigation concluded that the staff had minimal knowledge about accessible parking and reasonable accommodations requests. None of the staff were aware of the reasonable accommodation process or a housing provider's staff's responsibilities under fair housing laws. Specifically there was no awareness of the requirement to grant reasonable accommodations; the requirement to engage in an interactive process with the tenant who makes a reasonable

[11] It was clear to this investigator that this person did not want to be involved in this matter. Therefore, this investigation did not push her for information. A few days after the interview she allegedly denied to Ms. Lambert that she had been interviewed.

accommodation request; or the requirement to respond to a person's reasonable accommodation request in a timely fashion. Staff generally indicated that they did not believe Ms. Lambert's complaints were their responsibility or that they had the ability to do anything about the situation.

ANALYSIS

Elements of Fair Housing Legal Analysis

To prevail in her charge Ms. Lambert must prove her allegations by a preponderance of the evidence. (See In re Smith, 169 Vt. 162, 168 (1999) ("Our case law provides that a preponderance of the evidence is the usual standard of proof in state administrative adjudications.") Additionally, Vermont's Supreme Court has stated that it looks to the federal Fair Housing Act in construing Vermont's Fair Housing and Public Accommodations Act (VFHPA.) Human Rights Commission v. LaBrie, Inc., 164 Vt. 237, 243 (1995). The Supreme Court of the United States has held that the Federal Fair Housing Act's (FHA's) language should be construed broadly. Trafficante v. Metro life Ins. Co., 409 U.S. 205, 209 (1972), City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 731 (1995).

ELEMENTS OF PROOF

9 V.S.A. §4503(a)(10)

1. **Ms. Lambert is a member of a protected class.**
2. **Ms. Lambert made a reasonable accommodation request. and SSH knew or should have known about her request.**
3. **SSH failed to provide the accommodation in a timely fashion.**

Whether Ms. Lambert is a member of a protected class?

Ms. Lambert is a person with a mobility disability. She is a wheelchair user and has State of Vermont accessible parking placards for her vehicles. She is a member of a protected class.

Whether Ms. Lambert made a reasonable accommodation request and SSH knew or should have known about her request?

Ms. Lambert stated that she first approached the SSH staff about placing signs to mark the accessible spaces in November 2012. She stated she was concerned that the snow would cover the parking lot surface accessible markings. She was concerned that people who did not have mobility disabilities would park in the accessible spaces and she would not have an accessible parking space to use. Ms. Richards acknowledged in her interview with this investigation that she was aware in December 2012 that Ms. Lambert had pointed out that there were no accessible parking signs. At some point once Ms. Lambert placed the "kitty litter" accessible sign in order to mark one of the accessible parking spaces all of the SSH staff interviewed were aware that Ms. Lambert wanted accessible parking signs properly placed. Ms. Lambert stated there were a number of other times that she made this request. The request was never in writing and Ms. Lambert did not use the term "reasonable accommodation request."

Mr. Shappy acknowledged that Mr. Machez complained about Ms. Lambert telling him he could not park in the accessible spaces. Later that same night Ms. Lambert complained to the front desk person and Mr. Shappy that Mr. Marchez was parking in an accessible spot which meant she could not park in an accessible space. Mr. Shappy stated that he did not check this out and told Ms. Lambert she could call the police.

A person making a reasonable accommodation request need not use the words "reasonable accommodation". The request must be made in a manner that "a reasonable person would understand to be a request for an

exception, change, or adjustment to a rule, policy, practice or service because of the disability." Joint Statement of the Department of Housing and Urban Development and the Department of Justice – reasonable Accommodations Under the Fair Housing Act, p.10 (2004).[12] It is important that housing providers know and understand their responsibilities regarding reasonable accommodation requests. These responsibilities go far beyond simply knowing that if a person with a disability needs to park in an accessible parking space he/she is entitled to do that. The responsibilities include how a provider can recognize a reasonable accommodation request and the steps to address such a request. This investigation does not believe that any of the SSH staff possessed this knowledge.

The investigation believes there is a preponderance evidence to support the conclusion that Ms. Lambert made a reasonable accommodation request to have accessible signage placed at the accessible parking spaces so unauthorized persons would know not to park in those spaces. This investigation also believes there is a preponderance of evidence to show that SSH staff knew or should have known of Ms. Lambert's request.

Whether SSH failed to provide the accommodation in a timely fashion?

Even assuming *arguendo* dates most favorable to SSH, (that SSH staff were first aware of the Ms. Lambert's request in early December 2012 not early November 2012) and that the concrete bucket signs were up by February 18, 2013, this investigation believes that SSH "failed to act promptly" on Ms. Lambert's reasonable accommodation request. Additionally, SSH never engaged in any conversations with Ms. Lambert regarding her request except to tell her via a letter on January 21, 2013 that

[12] The introduction to the HUD/DOJ statement on reasonable accommodations under fair housing states, "This Statement provides technical assistance regarding the rights and obligations of person with disabilities and housing providers under the Act relating to reasonable accommodations." In other words, this statement is authoritative regarding the application of reasonable accommodations in the fair housing context.

future complaints about the building should be made directly to Ms. Richards.[13] The HUD/DOJ statement on reasonable accommodations states if the housing provider believes there is an alternative to the tenant's request the provider should engage in a discussion with the person who made the request to see if she/he will accept the alternative. Id at p 8. "A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation." Id. at 9. Additionally, "a provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation." Id. at p 11.

As stated above this investigation found that the SSH staff had little knowledge of its obligations as a housing provider regarding the reasonable accommodation process. This investigation found no evidence that the SSH staff discussed Ms. Lambert's reasonable accommodation request with her at any time except in the heat of a confrontation weeks after she had asked that this matter be addressed and SSH had failed to address it.

In December, Ms. Lambert attempted to resolve the matter on her own by placing an accessible sign in a kitty litter box and leaning it against her van. Even though the staff was aware of this they still did not address her request or inform her of any plan to rectify the matter. Sometime around February 18, 2013 (well into snow season and at least 2 ½ months after Ms. Lambert initially made her request) signs were placed in concrete buckets. In March, three months after Ms. Lambert made her request, the SSH staff "distributed" a notice asking guests and residents to not park in accessible spaces without proper documentation. The notice was posted but not delivered to the residents. No staff ever investigated Ms. Lambert's

[13] The note did not mention Ms. Lambert's concerns about the parking signs or what SSH was going to do about the lack of signs. Additionally, if Ms. Lambert were unable to park in an accessible during hours when Ms. Richards or Don (?) were not available she would not be able to resolve the problem of where to park.

complaint regarding Mr. Marchez parking in the accessible space, even when she informed them at the time it was allegedly happening. Finally, when Ms. Richards, the general manager, was asked by this investigation if there was a reason it took so long for the signs (which are required by law) to be placed, she said, "No."

This investigation believes there is a preponderance of evidence supporting the conclusion that SSH failed to grant Ms. Lambert's reasonable accommodation request to have accessible signs installed so people could see where the accessible spaces were during winter months when snow could obstruct the ground markings.

9 V.S.A. §4503 (a)(11)

1. **Whether SSH is a multifamily dwellings as set forth in 20 V.S.A. §2900(4)?**
2. **Whether SSH failed to comply with the rules/provisions pursuant to 20 V.S.A. chapter 174?**

Whether SSH is a multifamily dwelling as set forth in 20 V.S.A. §2900(4)?

The above referenced statute states that "'covered multifamily dwelling' means a residential unit for sale or rent in a public building consisting of four or more units if the building has one or more elevators . . . For purposes of this chapter, 'public building' includes . . the definition in subdivision (8)." The subdivision (8) list of public buildings includes hotels and apartments. SSH is a 74-unit housing complex which qualifies as both an apartment building (Ms. Lambert's unit is two bedroom and she has lived there for almost a year) and/or a hotel at which some "guests" only stay seven days. SSH is a multifamily dwelling as set forth in 20 V.S.A. §2900(4).

Whether SSH failed to comply with the rules/provisions pursuant to 20 V.S.A. chapter 174?

Section 2904 of 20 V.S.A. addresses parking spaces. It states that accessible parking spaces "shall be designed 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 "van accessible. . ." There is no denial that at least for the last year (and possibly much longer depending on which SSH employee one choses to believe) SSH has not had the statutorily required accessibility signs installed in its parking lot. Failure to have the required signs is a per se violation of Vermont's fair housing laws.

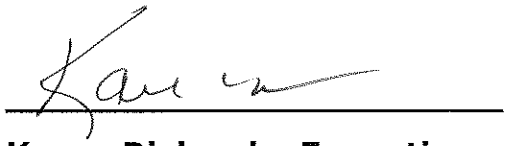
PRELIMINARY RECOMMENDATION

This investigative report recommends that the HRC find that there are **reasonable grounds** to believe that Ms. Lambert was discriminated against by SSH in violation of 9 V.S.A. §4503(a)(10) & (11) of Vermont's Fair Housing and Public Accommodations Act.

5/28/13

Ellen T Maxon, Investigator **Date**

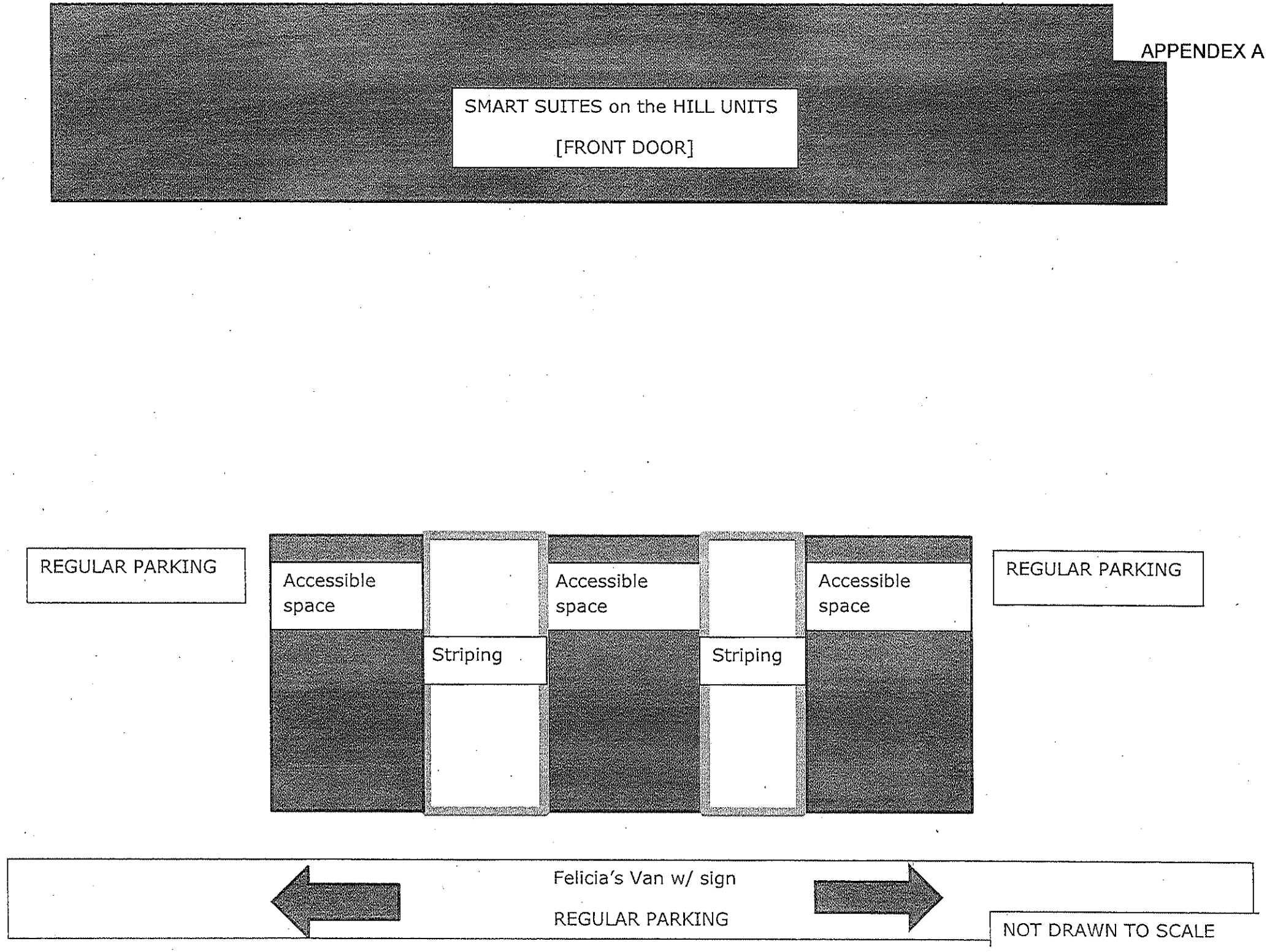
Approved by:



5/28/13

Karen Richards, Executive Director & Legal Counsel **Date**

APPENDEX A


SMART SUITES on the HILL UNITS
[FRONT DOOR]
REGULAR PARKING
Accessible space
Striping
Accessible space
Striping
Accessible space
REGULAR PARKING
Felicia's Van w/ sign
REGULAR PARKING
NOT DRAWN TO SCALE

APPENDEX B