STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Linda Limoge Charging Party	)))
v.	) HRC Charge No.HV13-0026) HUD Case No. 01-13-0336-8)
John Larkin, Inc. d/b/a Smart Suites on The hill 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, the Respondent, illegally discriminated against Linda Limoge, 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 __
Mercedes Mack	For ✓	Against __	Absent __	Recused __
Donald Vickers	For ✓	Against __	Absent __	Recused __

Entry: ___No Reasonable Grounds __ Motion failed

Dated at Barre, Vermont, this 29th day of August, 2013

BY: HUMAN RIGHTS COMMISSION

Mary Marzec-Gerrior, Chair

Nathan Besio

Absent

Mary Brodsky

Mercedes Mack

Donald Vickers

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INVESTIGATIVE REPORT

HRC Case No. HV13-0026
HUD Case No. 01-13-0336-8

CHARGING PARTY: Linda Limoge

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

CHARGE: Housing – disability (accessible parking)

Summary of Charge: On May 2, 2013, Linda Limoge filed a discrimination complaint alleging that Smart Suites on the Hill (SSH) failed to provide proper markings for its accessible parking spaces and failed to enforce accessible parking spaces rules, which deprived her of accessible parking at her SSH apartment and violated Vermont's fair housing laws.

Summary of Response: On May 17, 2013, SSH denied, through its attorney, that it discriminated against Ms. Limoge. Specifically, it alleged that SSH had no knowledge that Ms. Limoge was a person with a mobility disability; that at all times the painted striping on the accessible parking spaces was visible; and, that since March 5, 2013 the accessible spaces were adequately designated by signage.

Preliminary Recommendations: This investigation makes a preliminary recommendation that the Human Rights Commission find there are **reasonable grounds** to believe that SSH discriminated against Ms. Limoge in violation of 9 V.S.A. §4503 (10) & (11).

VERMONT

INTERVIEWS[1]

05/06/2013, - Linda Limoge

05/06/2013,

05/21/2013

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)

05/15/2013 – Felicia Lambert (second interview)

DOCUMENTS

05/02/2013 – Discrimination Complaint

05/17/2013 – Respondent's Response to Complaint

06/21/2013 – Complainant's Response to SSH Response

05/06/2013 – Pictures of parking area

05/14/2013 – Documents received from respondent[2]

03/05/13 Letter to SSH Guests re: Accessible Parking

Additional Evidence

05/14/2013 – Site visit

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

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[1] Some of the information used in this Investigative Report was obtained during interviews in another VHRC investigation involving the same basic issue alleged in Ms. Limoge's complaint. The respondent's attorney has refused to respond to requests for information and additional interviews.

[2] Document from Lambert case.

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. Limoge is a member of a protected class**
2. **Ms. Limoge made a reasonable accommodation request and SSH staff 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

Undisputed Facts

Ms. Limoge resided at Smart Suites on the Hill (SSH) in South Burlington, VT from May 2012 through February 2013. SSH is a seventy-four unit apartment complex built in 2000 that rents units to individuals for time periods as short 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). [3] Ms. Limoge is person with a mobility disability. She has a Vermont State issued placard for her vehicle.

At a minimum, there was no signage for the accessible parking spaces for about a year which encompassed most of Ms. Limoge's tenancy at SSH. In early December 2012, Ms. Lambert, another SSH resident spoke to Don Shappy, the night houseman, stating that she wanted signs placed to mark the accessible parking spaces.[4] Mr. Shappy transmitted Ms. Lambert's request to Michelle Richards, the general manager. Ms. Richard discussed the matter with staff and decided that because the ground was frozen nothing more could be done during the winter months. Because the accessible parking spaces lacked signage indicating 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[5] but replaced it the next day.

SSH alleged that only Ms. Lambert complained about the lack of accessible parking and therefore they thought her temporary sign would be sufficient. 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.

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[3] In Ms. Limoge's complaint, she mistakenly stated that there are five accessible parking spaces.

[4] 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.

[5] 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.

Michelle Richards told this investigation that on March 5, 2013,[6] she "distributed" a note to SHH guests/tenants stating that some guests without accessible parking permits had been parking in the accessible parking space and that these spaces are reserved for permit holders only. After the face-to-face interview, this investigation asked Ms. Richards to 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.

Statements of Linda Limoge

Ms. Limoge stated that when it snowed the markings on the accessible parking spaces were not visible. She provided a picture that illustrated this reality. (See Appendix B.) She stated that on "numerous occasions" when she sought to park in an accessible space she was unable to because there were cars parked in the accessible parking spaces that did not have accessible plates or placards.

Ms. Limoge stated that she made oral requests to the Smart Suites' staff for help to secure a space when it was occupied by vehicles without proper authorization to park in accessible spaces. Each time the staff stated there was nothing they could do. Ms. Limoge stated that she spoke to Jennifer, Tori, Angie and Don about this problem.

Ms. Limoge stated that one time when she parked next to the front curb (sliding glass door), Steve, the maintenance man, told a man who

[6] Some of the following incidents happened after Ms. Limoge left SSH but the events demonstrates SSH's approach to the accessible parking space issue.

plowed for SSH to tow her car.[7] Ms. Limoge also stated that there were no "no parking" signs where she parked. She also alleged that the staff told her "to park wherever."

Ms. Limoge said that eventually the staff stopped taking calls from her room number (rental unit) and she then resorted to using a cell phone in order to reach them.

The following interviews are from the Lambert VHRC investigation. This investigation sought to interview these staff members again in regards to the Limoge investigation but the respondent's attorney did not respond to this investigation's requests.

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 snow would cover those markings. In mid-December because no signs had been placed to designate where the accessible parking spaces were 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. On February 19, 2013 her temporary sign still remained the only signage for the accessible parking spaces.

Statements of Michelle Richards

Ms. Richards is the manager of Smart Suites and Smart Suites on the Hill. She has been the manager since Smart Suites opened in 1999. She

[7] This investigation has made several requests for contact information from the respondent's attorney regarding the plow person. However, this information has not been furnished.

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 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.

Ms. Richards stated that the parking situation is monitored because a number of the staff walks up to SSH several times a day and they monitor it then. 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."

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, 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 guest 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.

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.

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.[8] He believed the last time the stripes had been painted was three or four years ago.

Statement of Don Shappy

Mr. Shappy has been employed at Smart Suites and SSH for about seven months as the houseman. He makes house calls and does light

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

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 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 went 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.

General Impressions of Witness Interviews

After interviewing, four 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 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 they had a responsibility to respond to this type of complaint or that they could do anything about the situation. These observations from the Lambert investigation are relevant because the

staff's actions or non-actions toward Ms. Lambert were the same or very similar to as those alleged by Ms. Limoge.

ANALYSIS

Elements of Fair Housing Legal Analysis

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

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

Ms. Limoge is a person with a mobility disability. She has a State of Vermont accessible parking placard for her vehicle. She is a member of a protected class.

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

Ms. Limoge stated that she approached the SSH staff on "numerous occasions" because the accessible parking spaces were full and had cars parked in the accessible spots that did not have accessible placards or plates. She reported that the staff said there was nothing they could do about the matter.

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).[9] 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 training staff so they can recognize a reasonable accommodation request and the proper steps required to address such a request. Based on Ms. Limoge's statements and the Lambert interviews, this investigation does not believe that any of the SSH staff acted in accordance with fair housing law regarding reasonable accommodation requests or possessed knowledge to do so.

The investigation believes that given the staff's response in the Lambert VHRC case regarding the same accessible parking issues and given

[9] 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.

the respondents non-response to this investigation's requests for additional interviews, specific to Ms. Limoge's allegations, there is a preponderance evidence (more likely than not) to support the conclusion that Ms. Limoge made a reasonable accommodation request to have accessible parking rules enforced. This investigation also believes there is a preponderance of evidence to show that SSH staff knew or should have known of Ms. Limoge's request.

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

According to SSH staffs' response in the Lambert complaint, February 18, 2013, is the first possible date that SSH provided any sort of accessible parking signs. Additionally, there is no evidence SSH ever engaged in any conversations with Ms. Limoge regarding her request except to tell her there was nothing they could do.

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. Limoge's reasonable accommodation request with her at any time except to say that there was nothing they could do.

This investigation believes there is a preponderance of evidence supporting the conclusion that SSH failed to grant Ms. Limoge's reasonable accommodation request to enforce the accessible parking requirements.

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**

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)." Subdivision (8) list of public buildings includes hotels and apartments. SSH is a 74-unit housing complex that qualifies as both an apartment building and/or a hotel as some "guests" only stay seven days. Ms. Limoge rented a unit for about ten (10) months. 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

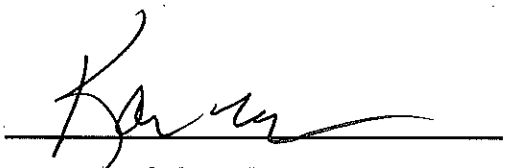
This investigative report recommends that the HRC find that there are **reasonable grounds** to believe that Ms. Limoge was discriminated against by SSH in violation of 9 V.S.A. §4503(a)(10) & (11) of Vermont's Fair Housing and Public Accommodations Act.

Ellen T Maxon, Investigator

7/29/13

Date

Approved by:

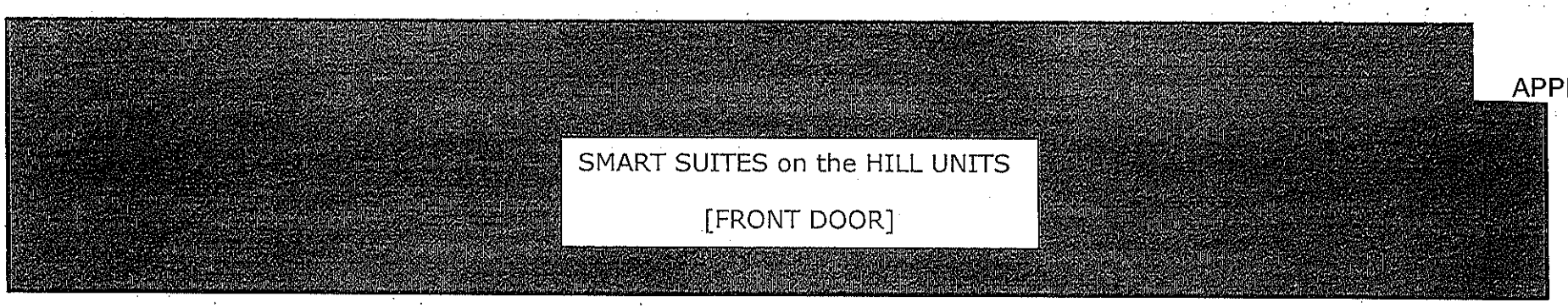


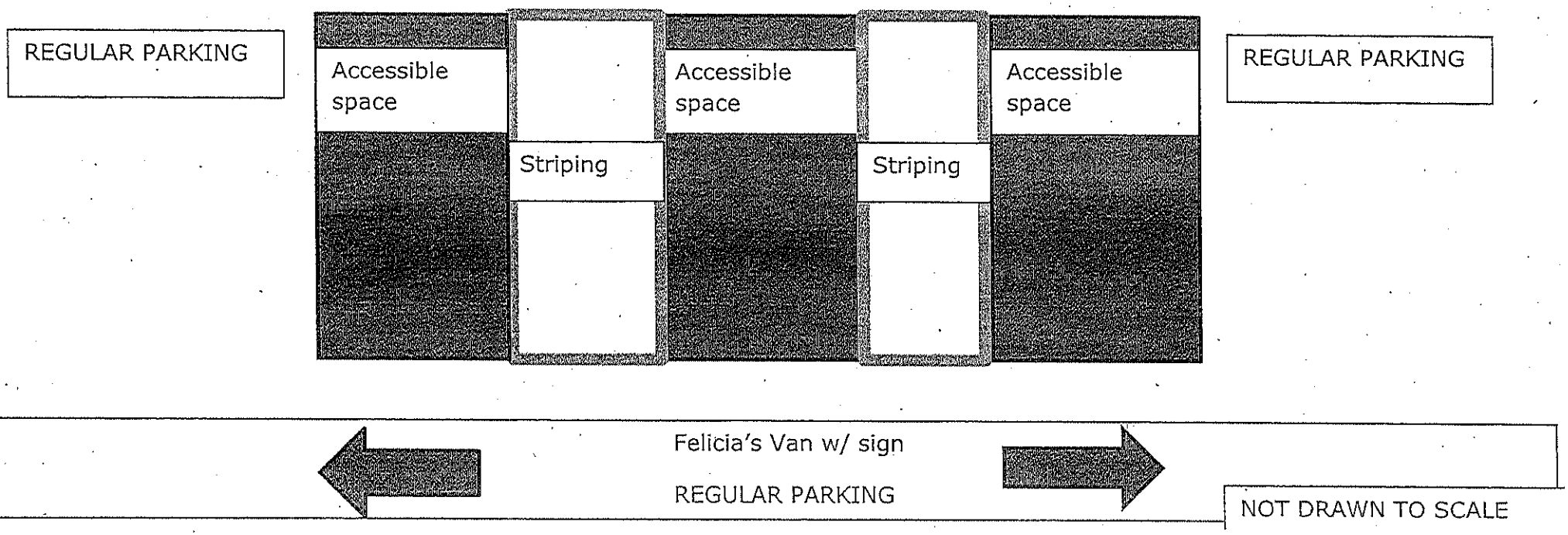
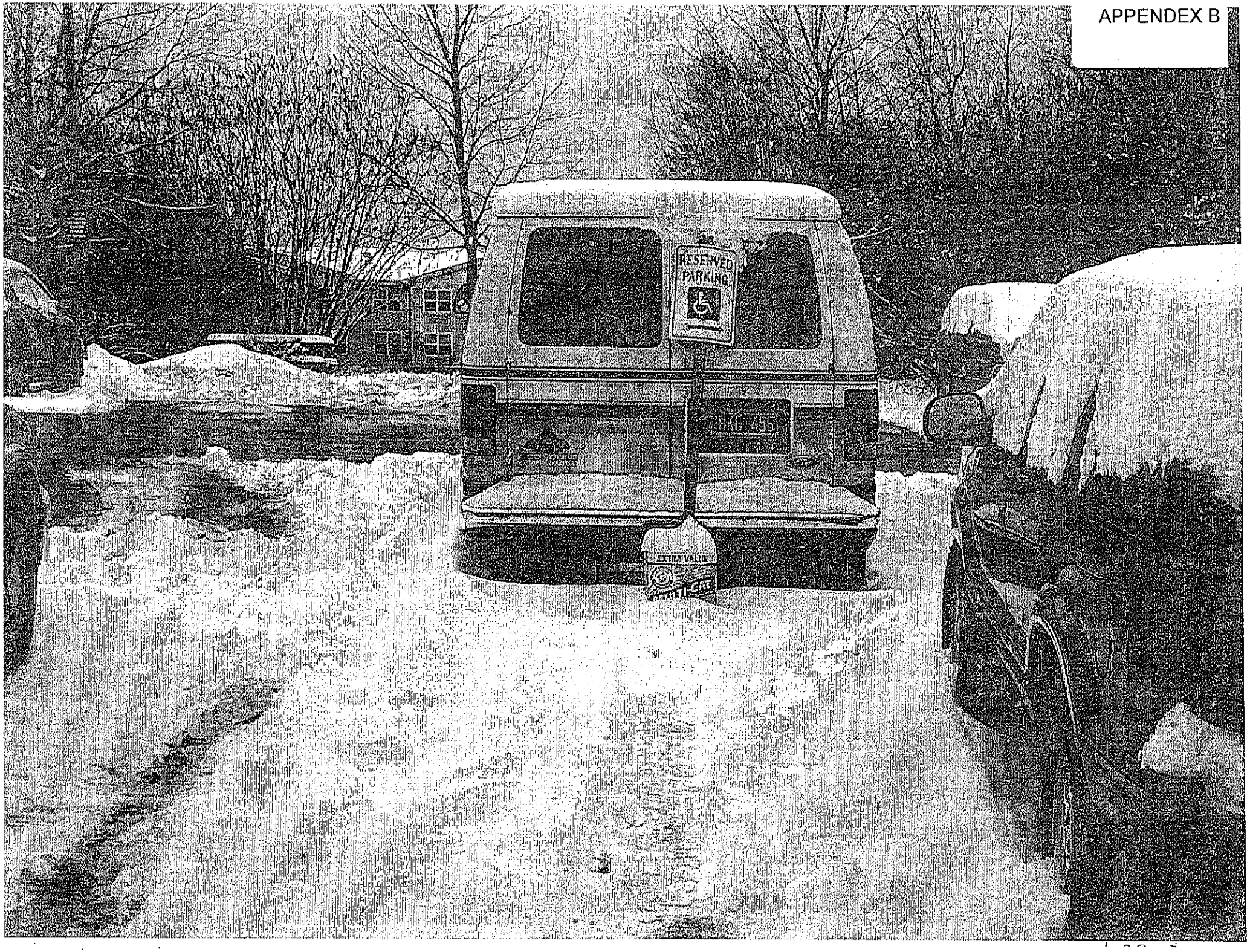
Karen Richards, Executive Director & Legal Counsel

7/29/13

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