

JOHN R. VISSING, LLC

ATTORNEY AT LAW
JEFFERSON HALL
432 EAST COURT AVENUE
P. O. BOX 187
JEFFERSONVILLE, INDIANA 47131-0187

JOHN R. VISSING
JOHN L. GRANNAN

AREA CODE 812
TELEPHONE
288-5141
FAX
288-8305

November 1, 2007

[Former property manager]
Community Director
The Harbours Condominium Association, Inc.
One RiverPointe Plaza
Jeffersonville, IN 47130

Dear [former property manager]:

I have reviewed, at your request, the correspondence from Betty Cantrell, your memos to me, and a copy of the handicap parking policies. I have also seen the original parking space instrument of assignment recorded on May 7, 2004, by Alan D. Feinsilver, President of the developer. I have looked at the Americans with Disabilities Act and I have looked at the Fair Housing Amendment Act, as well. There have actually been cases filed under the policies of parking for the handicapped, but Cindy, they have all been against apartment complexes, not against condominiums. All of the cases that I have seen reported reference people who are renting rather than purchasing their rights to park.

In your case, the developer has allowed fair market value to dictate the cost of individual parking locations and those parking locations have been actually taken away from the Condominium Association. If, in fact, the structure were set up so that each unit could purchase a right to park in a certain number of slots and the Condominium Association then owned or controlled all of the parking locations, it would be far simpler to remedy this because you could simply assign and reassign people, and use the available spaces as you choose. I would seriously doubt that each of the owners of the condominiums and their respective parking spaces would reassign them back to the Condominium Association for you to do that, and you have no power of eminent domain to force them to sell them to you. As I understand the situation, the Condominium Association controls or owns only six handicap parking slots in the entire parking complex. You also control some visitor parking, which is necessary, and you control several spots you use for service vehicles. I think it would be important to keep the service vehicles entering at the freight elevator location. With this many condominiums, someone is always purchasing a new item, having construction work done and remodeling, or having a service provider coming to fix something. They need to be regulated where they park so they are not banging into people's cars or obstructing traffic. That is reasonable.

[Former property manager]

November 1, 2007

Page Two

Reasonable accommodations need to be made for individuals who are, in fact, handicapped. The most cited case in Indiana of *Bronk vs. Ineichen* addresses this and gives us some basis. It said, "the Fair Housing Amendments Act requirement of reasonable accommodation does not entail an obligation to do everything humanly possible to accommodate a disabled person. The cost to the defendant and benefit to the plaintiff merit consideration as well." It is not the duty of the Association to perfectly solve Ms. Cantrell's request. She may not have the privilege of picking and choosing her accommodation for the husband, but rather if there is an accommodation that is offered and it is reasonable, that is sufficient. The policy you have is to exchange, for the duration of the disability, a controlled parking spot for a handicapped designation, which is next to the entrance doors on various levels of the garage during the period of disability. You then use their individually owned slot for whatever purposes are necessary that you may need an additional slot. That is not a perfect solution. It is, however, the only solution that you have available to you since you do not control the rest of the garage. It might be desirable for all of the individuals who own ground level slots to give those slots to the Association to assign as handicapped slots for their neighbors and be willing to move to the neighbor's space. That might be the Christian thing to do and it might have been a wise thing to have done when the parking positions were first being distributed. However, since they are individually owned, it takes an individual's agreement to do so.

I understand Ms. Cantrell's issue, that she wants a handicapped spot for her husband's use since he is, in her words, totally disabled, which I presume means he is wheelchair bound and has no ability to walk, therefore she has a point. If you have offered her a handicapped parking space in the building for an exchange, I believe you have accommodated her. I do not think she has any further grounds. Now she may wish to be better accommodated than what you have offered, but that is not a requirement under the FHAA Act.

I believe having one short-term disability parking spot for someone who has had a surgery or an injury and is going to recover is appropriate. I think that needs to be guarded and not assigned except on a short-term basis during a person's period of recovery. I believe you have offered handicapped slot #104 or #601 as a reciprocal exchange which are the two that you have uncommitted and available. I think that should be sufficient under both of these acts to constitute a reasonable accommodation being offered. If you owned or controlled assignment of all of the parking spaces in the garage, you perhaps could give Ms. Cantrell a more desired accommodation, but you do not. You have no capacity to force owners of individual parking places to give them up, except on a voluntary basis. The fact that the developer has allowed these to be sold in a market-driven manner impairs your ability to do anything else. If Ms. Cantrell were to sue, she would have to sue the owners, which would mean the individuals who own the particular

[Former property manager]
November 1, 2007
Page Three

spots and ask that those be returned to some means of assignment. I do not think that is likely to occur.

I will be glad to share the case law and the quotes from the respective statutory regulations with you and speak on this matter further, but I think you have done what you needed to do and you have offered reasonable accommodations to the best of your ability. If your ability included control of more handicapped sites then I think that would be another matter, but you do not have that ability. I think the necessity of the service parking places on the street level is very important in order to keep vendors and delivery people out of the main parking secured areas as much as possible.

You may wish to put an item on your agenda for your annual meeting to ask whether or not the owners of individual parking places would voluntarily allow them to be reassigned to accommodate other individuals who have a handicap. These are not apartments that you are renting out and controlling. These are areas of property that are individually owned and have been paid for at market value.

Best wishes,

John R. Vissing

JRV/mam