

LEE, MEL

Subject: FW: PA-98-44 and PA99-09

From: Stone Villa RV [REDACTED]
Sent: Tuesday, April 15, 2014 4:29 PM
To: PLANNING COMMISSION
Subject: PA-98-44 and PA99-09

Dear Commission Board Members,

I attended the hearing last night and appreciate your time, thoughts and consideration of the applicant. I am pleased that the committee was against approving the applicant.

The Sandpiper Motel has been for years operated as a transits resident's. The conditions that code enforcement noted in the report are unacceptable-Health and Safety issues. The landlord is responsible- due diligence was not consideration by him.

My family has rental property in Costa Mesa- we are held to a HIGH standard . We use proper rental forms, inspection of property is routine and recorded.... Thank you for taking the action against this property owner. He should be fined for your time, tax dollars lost... code enforcement had to build a case. The lack of record keeping of the property owner was appalling to me.

We have a property around the corner from the Sandpiper Motel and have know for years, the motel as "shady"...This area has a huge population of "homeless, transits, drugs..."- Police presents is necessary and hope you will look further into this area of concern. The neighboring area is mixed use zoning; single family homes, apt's, motels, businesses...

Our concerns are the homeless, transits, drugs in the neighboring area of the Sandpiper property that you are investigating. Please help us clean up the area....

Thank you,
Nancy Mackiewicz

[REDACTED]
Costa Mesa ,CA 92627

PLEASE
READ
ALoud



Ford Road
Costa Mesa
California
April, 2014

Dear City of Costa Mesa,

I write to you on behalf of the residents, both Home Owners and Renters, of the 400 block of Ford Road.

I am the Community Liaison for Our Neighborhood Watch Program.

During the past sessions I have personally given you multiple photos of Graffiti and Drug use items, found along Ford Road, the alleys, Bay Street and Newport Blvd.

We call the Costa Mesa Police Dept. on a weekly basis with concerns for our safety and well being.

We are requesting that you DO NOT allow the Hotels, in our vicinity to have the Conditional Use permits. They have been in constant violations. Police records and Newspaper accounts are readily available. Look at the Daily Pilot, The Orange County Register and such.

We notice on a routine basis, the Drug use items are from either Visitors of the "Residents" of Sandpiper Motel or their Residents. We see them out at all hours of the day and night. Just 2 days ago, my neighbor and myself walked our dogs from the 400 block to the 300 block to get to Mothers Market. We saw a used Syringe. We did call PD and they came and disposed of it. Last week another syringe was on Ford and Parsons, behind the Toyota Dealership.

Some of the Renters have voiced to me they are afraid to call. I encourage them to call; if we don't call they can't help us.

As a Home Owner I take pride in ownership and have taken my life savings to beautify my property. The property is in wonderful condition, yet our surroundings have become Unsafe.

I urge the City of Costa Mesa to DENY the Conditional Use permit and DENY the Hotels Extended stay.

We need to continue to reward the people who keep our neighborhoods in beautiful conditions, as Costa Mesa was meant to be.

A beautiful City.

Sincerely yours,

Judy Smith
Judy Smith



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Michael L. Parker, Esq.*
www.sklaw.org
**Of Counsel*

April 14, 2014

Planning Commission
City of Costa Mesa
77 Fair Dr.
Costa Mesa, CA 92626

Re: Sandpiper Motel – Conditional Use Permit PA-99-09

Dear Members:

Please be advised that this office is general counsel for Leader Venture, Inc. (Sandpiper Motel). Our office has reviewed all of the pertinent and relevant documents submitted as evidence by the City of Costa Mesa in their Evidence Packet and it is clear that the documents submitted by the city do not provide enough evidence to support the claim that Sandpiper Motel violated any of the conditions of approval under Conditional Use Permit PA-99-09 (“Conditional Use Permit”). As we will show in this letter, the city’s allegations of violations of the Conditional Use Permit are without merit or evidentiary support and the city fails to meet its burden to show by the “weight of evidence” that Sandpiper Motel has violated any of the conditions for approval.

In the Planning Commission Agenda Report dated April 3, 2014 (“Commission Report”), the city outlines four potential grounds for revoking or amending Sandpiper’s Conditional Use Permit. The four grounds are as follows:

1. The Sandpiper Motel has violated condition of operation 12 because the motel has not utilized more than 25% of its rooms for extended occupancy for over 180 days;
2. The Sandpiper Motel has violated condition of operation 12 because of significant number of health and safety violations including severe hoarding conditions and an alleged vermin infestation;
3. The Sandpiper Motel has violated condition of operation 9 because the Conditional Use Permit required monthly inspections but the inspections were allegedly not completed;
4. The Sandpiper Motel has operated as a public nuisance per Civil Code Section 3479, 3480 and Section 20-12 of the CMMC.

The City of Costa Mesa has failed to prove that Sandpiper has violated condition of operation 12 because they have failed to establish that Sandpiper Motel has not utilized more than 25% of its rooms for extended occupancy for over 180 days.

The city came to the conclusion that Sandpiper Motel has not utilized more than 25% of its rooms

for extended occupancy for over 180 days based solely on their review of the Sandpiper Motel's Transient

Occupancy Tax (TOT) forms. This conclusion at worst is completely wrong and at best based on incomplete investigation. The TOT form is only required when occupants stay at the motel for a period of thirty (30) consecutive days or longer. The TOT form is not required for people who stay longer than twenty-eight (28) days or twenty-eight (28) days in any sixty (60) consecutive day period. Extended occupants are defined not only by guests who are required to fill out the TOT forms but also the guests who stay for twenty-eight (28) consecutive days or twenty-eight (28) days in any sixty (60) consecutive day period and the city has not taken into account this group in drawing its conclusion.

In fact, the city admits in the Commission Report that a forensic audit would need to be conducted to definitely conclude the total number of rooms that are or have been occupied by extended occupancy guests because of the fact that this later group has not been accounted for in drawing their conclusion. The city further infers in the Commission Report that the TOT's themselves are inconclusive because the TOT forms are self-reported by the motel owner. Based on the above facts, the city's claim that the condition permit has expired because of its failure to utilize more than 25% of its rooms for extended occupancy for over 180 days is unsubstantiated and the city's conclusion, be rejected on the evidence.

Sandpiper Motel has not violated condition of operation 12 due to health and safety violations including severe hoarding and vermin infestation because the city's conclusion is based minor violations that were remedied in a timely manner and one

unit where hoarding was detected but where Sandpiper Motel took action and ultimately resolved the situation.

The city has alleged that Sandpiper Motel has violated condition of operation 12 because of health and safety violation including hoarding and vermin infestation. Between 1998 and 2009 there were twelve (12) Code Enforcement cases at Sandpiper Motel. The Commission Report states that the violations found on the property were generally addressed and remedied. All twelve (12) cases have been closed. In May of 2013 and November of 2013 inspections were done at the property. There were some violations found but the violations were corrected in short order. In regards to the motel's property management, the Commission Report states the following: "...the motel has had a relatively limited number of enforcement cases compared to other motel properties in the City, especially since 2009 when present ownership took control of the property. Property management has demonstrated in the past that it has sought corrective remedies for any code compliance issues that may arise. Accordingly, City staff believes property management has taken a proactive role in the maintenance of the property and in resolving code compliance problems."

The city's hoarding allegation against the Sandpiper Motel is based solely on the condition of one room. The city's Evidence Packet contains numerous pictures alleging that hoarding and vermin infestation is a problem at the motel. However these are pictures of only room # 139. The hoarding issue was isolated to room # 139 and it has been resolved. The condition was not reflective of the conditions of the motel but rather the exception. On January 28, 2013, Sandpiper Motel became aware of the hoarding conditions in room # 139. Please find attached as "Exhibit A" a copy of the photographs taken by Sandpiper Motel on January 28, 2013 of room # 139. The guest who resided in that unit was a long term guest who had occupied the room for greater than one year and therefore a tenant under California law. As an intervening maneuver, Sandpiper Motel asked the tenant to clean the room but the tenant did not comply with management's request. As a result, Sandpiper Motel issued the Sixty (60) Day Notice to Vacate on March 16, 2013. Please find attached as "Exhibit B" a copy of the Sixty Day Notice to Vacate dated March 13, 2013. Sandpiper Motel hoped that the tenant would leave and it would allow them to go in and resolve the hoarding issue. Before the notice expired and Sandpiper Motel could proceed with an eviction, the city issued the motel a violation notice. Sandpiper decided to halt the eviction until they could remedy the violations because they feared the tenant could use the violation notice as a defense against any eviction matter. When it became apparent that a form eviction would be required, Sandpiper Motel retained counsel and per their attorney's advice decided to reserve the notice. The notice was re-served on June 9, 2013. Please find attached as "Exhibit C" a copy of the Sixty (60) Day Notice to Vacate dated June 9, 2013. In the end, Sandpiper Motel was forced to proceed with the eviction because the tenant was not cooperating with Sandpiper Motel and Sandpiper Motel felt it had no choice but to get the tenant out in order clean up the room. It took a long time to serve the tenant because the process server could never find the tenant at the room. Sandpiper Motel had obtained a court order for posting

the eviction complaint on September 13, 2013 and served the eviction by posting it on the door of the room. The tenant ultimately vacated the room in the middle of the night without paying the bill and abandoned the room. Sandpiper Motel was able to go in and clean up the room to the condition that it is currently in.

Sandpiper Motel became aware of the problem in room # 139 and actively pursued a remedy. They were able to remedy the problem but it took longer because of the nature of the proceedings and the delay was not a result of inaction but proaction by Sandpiper Motel. The events surrounding room # 139 do not support the city's conclusion rather it supports the conclusion that Sandpiper Motel takes a "proactive role in the maintenance of the property and in resolving code compliance problems."

The conclusion that Sandpiper Motel has violated condition of operation 9 because the hoarding conditions in room # 139 is evidence that the monthly inspections were not completed is wrong because Sandpiper Motel was aware of the conditions in room 3 139 before the city's inspection and already actively engaged in finding a solution.

Please see above.

Sandpiper Motel has not operated as a public nuisance and even in the event that the commission finds that nuisance has been proven, public nuisance is not grounds for revoking the Conditional Use Permit.

Pursuant to the conditions for approval of the Conditional Use Permit, public nuisance is not grounds for revoking or modifying the Conditional Use Permit. However, even if the commission finds that public nuisance is grounds for revoking or modifying the Conditional Use Permit, Sandpiper Motel has not been a public nuisance to the community. Rather Sandpiper Motel has worked diligently to comply with all city regulations and even in the rare situations where there were compliance issues, Sandpiper Motel has remedied the violations in short order. As stated above, the Commission Report is clear that Sandpiper Motel has had few violations since the new management has taken over and even when the violations occurred "management has taken a proactive role in the maintenance of the property and in resolving code compliance problems." Sandpiper Motel has not acted in a manner consistent with being deemed a nuisance, rather Sandpiper Motel's actions demonstrate that it is willing to work with the city to maintain and mutually beneficial and harmonious relationship. It is clear from the evidence, that nuisance is not an issue with Sandpiper Motel.

We have clearly demonstrated that the conclusions drawn in the Commission Report supporting any type of revocation or modification of the Conditional Use Permit are unsupported

by the evidence submitted in the Evidence Packet. Furthermore, the wording contained in Planning Commission Agenda Report dated October 31, 2013, directing that the commission "Find that the Conditional Use Permit approved under PA-99-09 has expired due to the non-utilization of the extended-occupancy rooms" sounds like a clear directive rather than a request for investigation. Please find attached as "Exhibit D" a copy of the Planning Commission Agenda Report dated October 31, 2013.

It is our hope that the commission will not make a decision regarding the Conditional Use Permit based upon any non-factual assumptions but rather will look at the evidence actually uncovered by the inspectors and presented in the Evidence Packet. We are confident that a review based on the evidence will find that Sandpiper Motel has not violated any of the conditions for approval and that it should be permitted to operate its business under the current terms of the Conditional Use Permit.

Thank you for your attention to this matter.

Sincerely,
SAM KIM AND ASSOCIATES, APC

A handwritten signature in black ink, appearing to be "Donald Yang", enclosed within a large, hand-drawn oval.

Donald Yang, Esq

EXHIBIT A



EXHIBIT B

NOTICE OF TERMINATION OF TENANCY

To: David Miller Garland, and any other occupant(s) in possession of the premises located at: 1967-1977 Newport Blvd., Unit # 139, Costa Mesa, Ca. 92637 (hereinafter referred to as "Premises").

You are hereby notified that sixty (60) days after service of this notice, your tenancy, if any, in the "Premises" at 1967-1977 Newport Blvd., Unit # 139, Costa Mesa, Ca. 92637 is terminated.

Within that time you are required to vacate and surrender possession of the premises.

If you fail to give up possession by the specified date, legal proceedings will be instituted against you to recover possession of the premises and damages that could result in a judgment being awarded against you.

Landlord

Leader Venture, Inc. A California Corporation



Date

3/16/2013

By Mike Lin, President
1967-1977 Newport Blvd
Costa Mesa, Ca. 92627
(949) 645-9137



EXHIBIT C

NOTICE OF TERMINATION OF TENANCY

To: David Miller Garland, and any other occupant(s) in possession of the premises located at: 1967-1977 Newport Blvd., Unit # 139, Costa Mesa, Ca. 92637 (hereinafter referred to as "Premises").

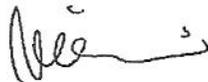
You are hereby notified that sixty (60) days after service of this notice, your tenancy, if any, in the "Premises" at 1967-1977 Newport Blvd., Unit # 139, Costa Mesa, Ca. 92637 is terminated.

Within that time you are required to vacate and surrender possession of the premises.

If you fail to give up possession by the specified date, legal proceedings will be instituted against you to recover possession of the premises and damages that could result in a judgment being awarded against you.

Landlord

Leader Venture, Inc. A California Corporation



Date:

6/9/2013

By Mike Lin, President
1967-1977 Newport Blvd
Costa Mesa, Ca. 92627
(949) 645-9137



EXHIBIT D



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: NOVEMBER 12, 2013

ITEM NUMBER: PH-6

SUBJECT: PLANNING APPLICATION PA-99-09; REVIEW OF PREVIOUSLY APPROVED
CONDITIONAL USE PERMIT ALLOWING EXTENDED OCCUPANCY ROOMS AT THE
SANDPIPER MOTEL LOCATED AT 1967 & 1977 NEWPORT BOULEVARD

DATE: OCTOBER 31, 2013

FROM: PLANNING DEPARTMENT/DEVELOPMENT SERVICES DIVISION

PRESENTATION BY: AARON HOLLISTER, ASSOCIATE PLANNER

FOR FURTHER INFORMATION CONTACT: AARON HOLLISTER (714) 754-5136
aaron.hollister@costamesaca.gov

DESCRIPTION

On direction of City Council, review Conditional Use Permit PA-99-09 to accomplish the following:

- Assess if the Sandpiper Motel has operated in a manner that is consistent with the conditions of approval in PA-99-09.
- Find that the Conditional Use Permit approved under PA-99-09 has expired due to non-utilization of the extended-occupancy rooms.

RECOMMENDATION

Recommend that the Planning Commission adopt a resolution that finds the Conditional Use Permit approved under PA-99-09 has expired.



NOTICE OF TERMINATION OF TENANCY

To: David Miller Garland, and any other occupant(s) in possession of the premises located at: 1967-1977 Newport Blvd., Unit # 139, Costa Mesa, Ca. 92637 (hereinafter referred to as "Premises").

You are hereby notified that sixty (60) days after service of this notice, your tenancy, if any, in the "Premises" at 1967-1977 Newport Blvd., Unit # 139, Costa Mesa, Ca. 92637 is terminated.

Within that time you are required to vacate and surrender possession of the premises.

If you fail to give up possession by the specified date, legal proceedings will be instituted against you to recover possession of the premises and damages that could result in a judgment being awarded against you.

Landlord

Leader Venture, Inc. A California Corporation



Date

3/16/2013

By Mike Lin, President
1967-1977 Newport Blvd
Costa Mesa, Ca. 92627
(949) 645-9137



Dear Mr. Chairman and Members of the Commission:

Thank you for providing me with an opportunity to speak here this evening.

I would like to address the issue of the monthly inspections because I believe that the commission report has incorrectly concluded that the monthly inspections were not being completed because of the hoarding conditions found in room # 139.

The report states that the hoarding conditions were not detected or ignored over a long period of time. This speculation, as it is not based on any evidence, is incorrect. I was made aware of the hoarding conditions on January 28, 2013. Please allow me to submit the following pictures as proof that I knew about the problem four months before the city came and took the pictures that are included in the evidence packet.

Contrary to report, I was fully aware of the problem. Not only was I fully aware of the problem, I was attempting to remedy the situation with the occupant in room # 139. Due to the fact that the occupant had resided in that room for such a long period of the time, he was legally considered a tenant and afforded all the rights of a tenant under the law.

After many attempts to get the tenant to resolve the hoarding problem, I served the tenant with a sixty day notice to vacate in the hope that he would voluntarily vacate and I could resolve the problem. If the tenant did not voluntarily vacate at the expiration of the notice, I intended to file an eviction against him. However, before the sixty days could expire, the city issued an inspection and violation in May of 2013.

Because of the notice, I decided that I would not proceed with the eviction immediately after the sixty day notice had expired because of the complex landlord tenant laws of the State of California. I believed that if I proceeded with the eviction at that exact point, the tenant would use the inspection violation notice against me during the eviction trial even though the hoarding was a direct result of his activities. Further compounding by anxiety regarding the tenant was the fact that he was a retired attorney who had far more knowledge of the law than I had.

After some time passed, I decided that I had no choice but to proceed with the eviction because there was no alternative. I filed the lawsuit and attempted to serve the tenant. The process server attempted to serve the tenant many times however he couldn't and I had to obtain an order from the court to post the complaint. I also posted a Notice of Belief of Abandonment. The tenant never responded to the complaint and the time to object to the notice of abandonment passed.

After the time period for the notice of abandonment had passed, I took possession of the unit. After taking possession of the unit, I had to wait additional days until the right to reclaim the abandoned property had passed. After that time period expired, I cleaned the room to the clean condition that it is currently in.

In conclusion, I would like to say that the planning commission agenda reports claim that monthly inspection were not conducted because of the conditions of room # 139 is incorrect. I was made aware of the condition four months prior to the city's inspection and I was actively engaged in resolving the situation. Due to the complex nature of the tenant and the fact that inspection and violation notice was issued while I was attempting to evict the tenant for the hoarding, the time it took to resolve the hoarding situation took substantially longer than anticipated.

Furthermore, the incident with that unit was an isolated event and not reflective of the condition of the motel as a whole. The report states that the management has shown that they take a proactive approach in the maintenance of the property and in resolving any code compliance problems. This is something I take great pride in. I always strive to resolve issues at the outset so that the city understands that it is my desire to cooperate and work with the city. I am very appreciative of the good and harmonious relationship that I have had with the city since I purchased this motel and I look forward to further developing this relationship.

I thank you for the opportunity to be heard this evening.

Thank you.