

**From:** [Christian Miller](#)  
**To:** [French, Chris](#)  
**Cc:** [Nick Pregliasco](#)  
**Subject:** Sermersheim/1433 Marie Street  
**Date:** Friday, January 27, 2023 12:14:37 PM  
**Attachments:** [Marc Herbener signed affidavit with exhibit.pdf](#)

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Chris,

Nick asked me to send over some additional information our client received yesterday regarding the nonconforming rights appeal at 1433 Marie Street. Tony Sermershim, the current owner, managed to get a hold of the owner of the property who purchased the property from the Commonwealth in 1990 and sold it to Tony in 2017. That owner signed the attached affidavit. There is also a letter attached to the affidavit that the previous owner wrote in 2013 outlining the history of the property.

With this new evidence, we were wondering how you think we should proceed? Get a new staff determination about the non-conforming rights? Continue the case for two weeks for review? Proceed to the scheduled hearing?

Thanks,  
Christian K.R. Miller  
**BARDENWERPER TALBOTT & ROBERTS, PLLC**  
**Attorneys at Law**  
[www.bardlaw.net](http://www.bardlaw.net)

*(Firm Celebration of 35 Years in 2022)*

Building Industry Association of Louisville Building, Second Floor  
1000 N. Hurstbourne Parkway  
Louisville, Kentucky 40223  
502-426-6688 ext. 150 (W)  
502-523-4483 (M)

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AFFIDAVIT

Comes the Affiant and, after being duly sworn, states as follows:

1. My name is Marc Herbener.
2. I currently live at 28594 LeGrand Rd., Little Torch Key, FL 33042.
3. I am familiar with the property located at 1433 Marie Street in Louisville, KY ("Property").
4. To the best of my knowledge and recollection, the Property was a commercial building constructed by the Kentucky Transportation Cabinet around 1960 on land that the Commonwealth of Kentucky acquired around 1954 for construction of I-65.
5. I purchased the Property from the Commonwealth of Kentucky on December 13, 1990, and to the best of my knowledge and recollection have known of this property and its condition as a contractor's shop from that date until I sold the Property to Anthony R. Sermersheim and Shannon A. Sermersheim on or about September 19, 2017.
6. On or about September 22, 2013, I drafted a letter to David Garber outlining historical information regarding the Property and my efforts and intentions to continually use the Property as a contractor's shop, the contents of that letter, to the best of my knowledge and recollection, are correct and accurate and attached hereto as Exhibit A.
7. While I owned the Property, I never failed to undertake actions to continue the Property's documented Non-Conforming Use rights by continually marketing, throughout one tenant's failure to pay rent, another tenant's bankruptcy, and a prolonged Recession, the property as for-lease or for-sale.
8. Further Affiant sayeth naught.

Marc Herbener

Signature

Date: Jan 26 2023

Print Name: Marc Herbener

Florida (State)

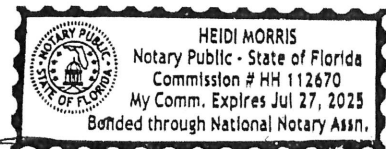
Monroe (County) ) SS.

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_ day of January, 2023, by Marc Herbener.

My Commission expires:

July 27, 2025

Notary Public, \_\_\_\_\_ (State)



# Exhibit A

Marc Herbener  
Motel Keys, LLC  
1904 Cardinal Harbour Road  
Prospect, KY 40059

September 22, 2013


David Garber  
Garber and Chilton Engineers  
205 Parker Drive  
LaGrange, KY 40031

Dave:

This is in response to your request for historical information and documentation of use for a one story concrete block building with overhead door and fenced graveled storage lot located at 1433 Marie Street, adjacent to the I-65 Floyd St. southbound ramp, near Floyd and Burnett Streets in Louisville, Kentucky.

The commercial building was constructed by the Transportation Cabinet as a sign and highway maintenance shop in 1960 (source; commercial PVA records) on land owned by the Commonwealth of Kentucky acquired in 1954 and 1955 for the construction of I-65 (source: DB 6029; p761).

The building was later leased by the Transportation Cabinet to Michael Murphy for the operation of M & K Interiors, a drywall contractor; and later to Brent George for the operation of Oxygen-Aid, Inc., a bottled oxygen contractor. (source: KY Sec. of State; 9/01/1986).

The Commonwealth of Kentucky declared the property surplus and sold it to me on 12/13/1990 (source: DB 6029; p761). 

In 1991, I leased the property to Renita L Crenshaw and Remedial Environmental Associates, Inc.; an Environmental Consulting Engineering Contractor (source: KY Sec. of State; 06/20/1991).

In 1994, I leased the property to Anytime Anywhere Emergency Locksmith (source; upspring.com).

In 1995, I leased the property to Brian Wallace and Tammy Martin for the operation of Affordable Maid Service, a cleaning contractor (source: 1995/1996 Polk Louisville City Directory).

In 1996, I leased the property to Timothy Paul and Dallas Griffin and C & J Excavation, Inc for the operation of an excavation contractor (source: lease, 11/04/1996; KY Sec. of State, 03/26/1997).

In 1997, I leased the property to Johnny and Fred Paul for the operation of J & F Trucking (source: KY Sec. of State; 12/05/1997).

1998,

\* In 1999, I leased the property to James Faleide, a plumbing contractor (source: lease, 06/01/1999).

In 2000,

Integrity ELEC.

In 2002, I leased the property to Jake Brown for the operation of L& J Properties, a real estate management and maintenance contractor (source: 2002, 2003 and 2004 Polk City Directories).

In 2005, I transferred deed to Motel Keys, LLC, a real estate holding company solely owned by myself and my wife (source: DB 0875, pg 0230, 12/27/2005).

In 2006, I leased the property to Stephen and Marcia Fackler for the operation of Fackler Commercial Roofing Company, LLC, a commercial roofing contractor (source: lease 04/15/2006 and 05/01/2007 and 01/05/2008; KY Sec. of State, 02/26/2008).

In 2009, I leased the property to Michelle Zamen for the operation of Zamen Business Services, Inc. ) (source lease 06/01/2009; KY Sec. Of State, 04/21/2009).

In 2010, I leased the property to Richard Bisig for the operation of an automobile detailing business (source: lease 09/01/2010).

In 2011, I leased the property Thomas Ross, Sr. for the operation of Ross Towing, LLC, a commercial towing contractor. (lease, 10/01/2011; KY Sec. Of State, 07/30/2012).

In 2013, I leased the property to Stephen Hayes for the operation of Greenleaf Construction, LLC, a building contractor (source: lease 07/08/2013; KY Sec. Of State, 04/30/2013).

Currently, Greenleaf Construction, LLC continues to occupy the property.

Should you have any questions regarding this information, please do not hesitate to contact me. My telephone is (502) 228-2874 and my email address is [mherbener@gmail.com](mailto:mherbener@gmail.com).

Best Regards,



Marc Herbener  
Managing Member,  
Motel Keys, LLC

enclosures