

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TOWN OF ST. JOHN, INDIANA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

CASE NO:

**COMPLAINT**

The United States of America alleges:

1. This action is brought by the United States of America to enforce the provisions of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*
2. This Court has jurisdiction over this action under 28 U.S.C. §1345 and 42 U.S.C. §§ 3614(a).
3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), in that the events giving rise to this action occurred in this judicial district.
4. Defendant Town of St. John (“Town”) is a political subdivision of the State of Indiana, organized under the laws of that State, and located in Lake County, Indiana.
5. The Town of St. John exercises zoning and land use authority over land within its boundaries. Chapter 24 of the Town of St. John's Code (“Code”) contains the Town's zoning and land use regulations.
6. Section 24-92 of the Code permits in the R-2 single-family residential districts, as a matter of right, single-family detached dwelling units (median density).

7. Section 24-12 of the Code defines “family” as “one or more persons occupying a single dwelling unit, provided that all members are related by blood, marriage, or other legal arrangement.”

8. Section 24-202 of the Code provides that the Board of Zoning Appeals may grant or deny petitions for variances of use after public hearing and according to specific criteria, subject to final determination by the Town Council.

9. The Town does not restrict the number of vehicles that property owners in the R-2 zone may have. Section 24-171(b)(9) of the Code requires, for all zones, that “[a]ll open automobile parking areas containing more than four (4) parking spaces shall be effectively screened on each side adjoining or fronting on any residential property.”

10. Kenneth J. Ubriaco is a resident of the Town of St. John. His home is located at 8731 Verbena Court, in an R-2 residential district. Kenneth Ubriaco’s wife, Laura, had multiple sclerosis (MS). He cared for her in their home for ten years until her death from the disease in October 2004.

11. Over that time, Mr. Ubriaco modified the home to make it accessible to a wheelchair user and developed relationships with his wife’s health care providers and MS support groups.

12. Mr. Ubriaco’s immediate neighbors include Kenneth B. and Shari Kolodziej and Debra and Michael S. Fryzel. Michael S. Fryzel is President of the Town Council. Shari Kolodziej works for the Town’s parks system.

13. In the wake of his wife’s death, Mr. Ubriaco sought to open their home to MS patients who do not have advanced or end stage MS but who would otherwise have to consider living in an institutional setting. He planned to live with no more than one individual at a time,

who would be referred by a medical provider and charged a modest rent.

14. Mr. Ubriaco filed a request for a special-use, 30-year variance in March 2005 to permit him to have one unrelated person reside in his home.

15. Mr. Ubriaco's petition for a 30-year variance stated that he sought "to further the interests of a multiple sclerosis patient to remain at home instead of an institution," that a maximum of one resident would reside in his home at any given time, that the home would be staffed with home care aides and nurses as necessary to meet the needs of the patient (none of whom would live in the house), and that he would reside in the home.

16. Because of their disability, the proposed residents of Mr. Ubriaco's home will need to live in a handicapped-accessible home such as Mr. Ubriaco's in order to live in a residential setting and maintain a reasonable quality of life. Much of the residential housing in the Town of St. John is not legally required to have, and does not have, the level of physical accessibility provided in Mr. Ubriaco's home. Without the variance requested by Mr. Ubriaco, the proposed residents of Mr. Ubriaco's home will not have an opportunity equal to similarly situated persons without disabilities to live in the residential dwelling of their choice in the town of St. John.

17. The variance requested by Mr. Ubriaco was reasonable and was necessary to afford prospective residents with disabilities an equal opportunity to use and enjoy a dwelling in a residential neighborhood in the Town of St. John, Indiana.

18. As required by law, Mr. Ubriaco notified property owners within 300 feet of his home of the filing of his petition. Neighbors participated in the public hearing in person and/or in writing. They voiced concern that Mr. Ubriaco would sell his home to a service provider, that his plan would worsen traffic and parking because of the addition of medical providers' vehicles

(which would also pose safety hazards for playing children), and/or that the arrangement would drive down property values.

19. In response to Mr. Ubriaco's petition, Mr. Ubriaco's neighbors, including Kenneth and Shari Kolodziej and Debra Fryzel, made statements orally or in writing to the Town Board of Zoning Appeals that revealed their discomfort over having persons with disabilities as neighbors.

20. Mr. Ubriaco stated at the hearing that no more than one MS patient would live in his home at a time, that he would live in the home for the duration of the variance, that he would work with the neighbors on parking, and noted the value of his home doubled during the period that his wife lived there with MS.

21. The Board of Zoning Appeals recommended by a vote of 4-0, with one abstention, that Mr. Ubriaco's petition be denied. On April 21, 2005, the Town Council adopted the Board's recommendation by a vote of 4-1.

22. By denying Mr. Ubriaco's petition, the Defendant failed or refused to make a reasonable accommodation in the application of its Code in violation of 42 U.S.C. § 3604(f)(3)(B).

23. The proposed residents of Mr. Ubriaco's home will be handicapped within the meaning of 42 U.S.C. § 3602(h).

24. The proposed residents of Mr. Ubriaco's home will be renters within the meaning of 42 U.S.C. § 3604(f).

25. Mr. Ubriaco's home is a dwelling within the meaning of 42 U.S.C. § 3602(b).

26. Defendant, through the actions described above, has discriminated in the rental, or

otherwise made unavailable or denied a dwelling to renters and potential renters, because of a handicap of such renters or prospective renters, §3604(f)(1)(A);

27. Defendant, through the actions described above, has discriminated against persons in the terms, conditions, or privileges of rental of a dwelling because of the handicaps of persons who are likely to reside in that dwelling after it is rented, §3604(f)(2)(B);

28. Defendant, through the actions described above, has refused to make reasonable accommodations in rules, policies, practices, or services, which are necessary to afford persons with handicaps an equal opportunity to use and enjoy a dwelling, §3604(f)(3)(B).

29. Defendant's conduct, described above, constitutes a denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, which denial raises an issue of general public importance.

30. There are persons who have been injured by, and may have suffered damages as a result of, Defendant's conduct. These persons are aggrieved persons as defined in 42 U.S.C. § 3602(i). These persons have suffered, or may have suffered, damages as a result of the Town of St. John's conduct.

31. Defendant's conduct, described above, was intentional, willful, and taken in reckless disregard for the rights of others.

### **Prayer for Relief**

WHEREFORE, the United States prays that the Court enter an ORDER that:

1. Declares that the actions of the Town of St. John described herein constitute a violation of the Fair Housing Act;

2. Enjoins the Town of St. John, its agents, employees, assigns, successors and all other

persons in active concert or participation with them, from discriminating against persons on the basis of handicap in violation of the Fair Housing Act;

3. Enjoins the Town of St. John, its agents, employees, assigns, successors and all other persons in active concert or participation with them, to permit Kenneth J. Ubriaco to share his home at 8731 Verbena Court with an individual with multiple sclerosis for up to 30 years;

4. Requires such action by the Town of St. John as may be necessary to restore all persons aggrieved by the Town of St. John's discriminatory housing practices to the position they would have occupied but for such discriminatory conduct.

5. Awards monetary damages to all persons harmed by the Town of St. John for injuries caused by its discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B); and,

6. Assesses a civil penalty against the Town of St. John in an amount of money authorized by 42 U.S.C. §3614(d)(1)(C), in order to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

Dated: \_\_\_\_\_

Respectfully submitted,

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