

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)
)
 Plaintiff,) CASE NO: 2:07-CV-00330-JTM-APR
)
 v.)
)
 TOWN OF ST. JOHN, INDIANA,)
)
 Defendant.)
 _____)

CONSENT DECREE

BACKGROUND

1. The United States initiated this action to enforce the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* (“the Fair Housing Act” or “the Act”). In its Complaint, the United States alleges that the Defendant, Town of St. John, Indiana (“Town”): (1) failed or refused to make a reasonable accommodation in the application of its zoning ordinances in violation of Section 804(f)(3)(B) of the Act, 42 U.S.C. § 3604(f)(3)(B); (2) made housing unavailable because of disability¹ in violation of Section 804(f)(1)(A) of the Act, 42 U.S.C. § 3604(f)(1)(A); (3) discriminated in the terms, conditions, or privileges of housing because of a disability of a person intending to reside in that dwelling after it is rented in violation of Section 804(f)(2)(B) of the Act, 42 U.S.C. § 3604(f)(2)(B); and (4) denied a group of persons rights granted by the Act. Specifically, the United States alleges that the Town violated these provisions of the Act when it denied the petition of Kenneth Ubriaco, a resident of the Town of

¹ The Decree uses the term “disability” as the equivalent of the term “handicap” in the Act. *See* 42 U.S.C. § 3602(h).

St. John, for a special-use, 30-year variance to allow one unrelated person with a disability to live in Mr. Ubriaco's home with him.

2. The United States and the Town desire to avoid costly and protracted litigation and have voluntarily agreed to resolve the United States' claims against the Town by entering into this Consent Decree.

Therefore, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. GENERAL NONDISCRIMINATION PROVISIONS

3. The Town shall not:

- a. Discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter, or of any person residing in or intending to reside in that dwelling, or of any person associated with that buyer or renter;
- b. Discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with that dwelling, because of a disability of that person, of any person residing in or intending to reside in such dwelling, or of any person associated with that person;
- c. Refuse to make reasonable accommodations in the application of rules, policies, practices or services when such accommodations may be necessary to afford a person or persons with disabilities an equal opportunity to use and enjoy a dwelling.

- d. The preceding injunctions shall specifically, but not exclusively, cover:
 - i. administering, enforcing, or amending zoning ordinances of the Town of St. John, including, but not limited to, receiving, evaluating, or deciding upon applications for building permits, special exceptions, variances, or other uses not provided for; and
 - ii. conducting hearings, inspecting premises, issuing certificates of zoning compliance or certificates of occupancy, or in reviewing any decision made by any zoning, land-use, or building official.

II. SPECIFIC INJUNCTIVE RELIEF

4. The Town shall, within thirty (30) days of entry of this Decree, grant Mr. Ubriaco's Petition for Variance, attached to and incorporated in this Decree as "Attachment A," to allow one (1) unrelated person with a disability to live with Mr. Ubriaco in his home at 8731 Verbena Drive in the Town of St. John. This Variance shall not be revoked for any reason that violates the Act. The Town reserves the right to ensure that the property is operated in compliance with all Town codes and legal requirements applicable; provided, however, that the Town shall not enforce any restriction in a manner that retaliates, harasses or otherwise discriminates against Mr. Ubriaco, any person residing in or intending to reside in Mr. Ubriaco's home, or anyone associated with them. Nothing in this Paragraph shall prohibit Mr. Ubriaco from living with other persons, with or without disabilities, in his home at 8731 Verbena Drive as a family, as that term is defined in the Ordinances of the Town of St. John.

III. FAIR HOUSING TRAINING

5. The Town shall, within forty-five days of entry of the Decree, provide training in the requirements of the Decree and the Fair Housing Act to all members of the Town of St. John Board of Zoning Appeals, the Zoning Administrator, and all employees or agents of the Town with direct or supervisory authority in connection with building, zoning, and land use matters.

- a. The initial training shall be conducted in person by a qualified third party, subject to the approval of the United States. The trainer shall not be connected to the Town or its officials, employees, agents or counsel. Any expenses associated with this training shall be borne by the Town.
- b. As part of the training, each person trained shall be given a copy of the Decree and the Fair Housing Act.
- c. The Town shall, no later than thirty days after training, provide to the United States certifications executed by each person trained confirming his or her attendance and date of training. The certifications shall be in the form of Attachment B hereto.
- d. For each person commencing, during the term of the Decree, employment or service in any of the positions listed in this part, the Town shall, no later than thirty days after such commencement or service, give each such person a copy of the Decree and the Act and shall require each such person to sign a certification acknowledging that he or she has received and read the

Decree and the Act. This certification shall be in the form of Attachment C hereto.

IV. REPORTING AND RECORD KEEPING

6. The Town shall, within thirty (30) days of entry of the Decree, designate the Town Manager as the employee of the Town of St. John to receive complaints of alleged housing discrimination against the Town of St. John and coordinate compliance with this Decree. The Town Manager shall maintain copies of the Decree, the HUD complaint form, and the pamphlet entitled "Are You a Victim of Housing Discrimination?" (HUD official forms 903 and 903.1, respectively) and make these materials freely available to anyone upon request and without charge, including all persons making housing discrimination complaints to the Town.

7. The Town shall prepare annual compliance reports that detail the actions it has taken to fulfill its obligations under the Decree. The Town shall submit its first report to the United States within six (6) months of the effective date of the Decree, and subsequent reports every twelve (12) months thereafter for the duration of the Decree, except that the final report shall be delivered to the United States not less than sixty (60) days prior to the date upon which the Decree ceases to be effective.²

8. The Town shall include the following information in the compliance reports:

a. the name, address, and telephone number of the official serving as the

² All submissions pursuant to this Decree shall be sent by overnight delivery service to the following address: United States Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, 1800 G Street, N.W. Suite 7020, Washington, D.C. 20006..

designated person referred to in paragraph 7;

- b. copies of the training certification and acknowledgment forms signed since the last report;
- c. any written complaint received since the last report alleging discrimination by the Town with respect to any matter subject to the injunctions in part III, above. The Town shall describe any action taken in response to the complaint, and shall include all pertinent documents, including a copy of the complaint, any documents filed with the complaint, and any written response to the complaint by the Town;
- d. a summary of each zoning request or application related to housing for persons with disabilities (including those for building permits, special exceptions, variances, reasonable accommodations, or other uses not provided for in the Town Ordinances) for which the Town has made a determination, indicating: 1) the date of the application; 2) the applicant's name; 3) the applicant's current street address; 4) the street address of the proposed housing; 5) the Town's decision(s) regarding the matter, including any decision on appeal; 6) the reasons for each decision, including a summary of the facts upon which the Town relied; and 7) if a vote was taken, how each member of the Town Council voted and the date of the vote; and
- e. all documents presented in support of oral testimony offered by any

member of the public at any hearing held with respect to each such application or request that is denied by Town.

9. For the duration of the Decree, the Town shall maintain all records relating to implementation of and compliance with all provisions of this Decree including, but not limited to, all records related to zoning, land-use, or building applications or requests for reasonable accommodation related to housing for disabled persons. The United States shall have the opportunity to inspect and copy any records maintained by the Town pursuant to the Decree after providing two (2) business days notice to the Town.

V. CIVIL PENALTY

10. Within thirty (30) days of entry of this Decree, the Town shall pay to the United States a civil penalty of ten thousand dollars (\$10,000) to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C). The sum shall be paid by submitting to Counsel for the United States a check made payable to the United States Treasury.

VI. DURATION OF ORDER AND TERMINATION OF LEGAL ACTION

11. This Consent Decree shall remain in effect for a period of three (3) years from the date of entry. The Court shall retain jurisdiction over the action for the duration of the Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice.

12. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by the Town to perform in a timely manner any act required by this Decree, or otherwise to act in conformance with any provision

thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

VII. TIME FOR PERFORMANCE

13. Any time limits for performance imposed by this Consent Decree may be extended by mutual agreement of the parties in writing.

IT IS SO ORDERED:

This ____ day of _____, 2009.

United States District Judge

For the United States:


DAVID CAPP
United States Attorney
SHARON JOHNSON
Assistant United States Attorney
Northern District of Indiana
5400 Federal Plaza
Suite 1500
Hammond, IN 46320
Telephone: (219) 937-5500
Fax: (219) 937-5549
E-mail: sharon.johnson2@usdoj.gov

LORETTA KING
Acting Assistant Attorney General
Civil Rights Division



DONNA M. MURPHY
Acting Chief
TIMOTHY J. MORAN
Deputy Chief
PATRICIA L. O'BEIRNE
Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Telephone: (202) 307-6264
Fax: (202) 514-1116
E-mail: Patricia.O'Beirne@usdoj.gov

For the Town of St. John:



ANTHONY W. OVERHOLT
Frost Brown Todd, LLC 201 North Illinois St, Suite 1900
Indianapolis, IN 46244
Telephone: (317) 237-3800
Fax: (317) 237-3900

Counsel for Defendant

Attachment A



TOWN OF ST. JOHN

BOARD OF ZONING APPEALS

PETITION FOR VARIANCE

PETITION FOR RESIDENTIAL VARIANCE

Name of Applicant or Agent: Kenneth J. Urbiano
Address: 8731 Verbena Ct
St. John, IN 46773
Telephone: (317) 365-2938

Name of Owner: Kenneth J. Urbiano
Address: 8731 Verbena Ct
St. John, IN 46773
Telephone: (317) 365-2938

Name of Architect: _____
Address: _____

Name of Engineer: _____
Address: _____

Name of Contractor: _____
Address: _____

Premises Affected Street and No.: 8731 Verbena Ct.
Lot and Subdivision: 97 Sun Meadows Unit 4
Legal Description: _____

Range: _____ Section: _____ Township: _____

Nature and Size of Improvements now existing: _____

Present Zoning District: R-2 Single Family

Nature and Size of Improvements now existing: Residential Home

Present Zoning District: R-2 Single Family

Current Use of Property: Residence

Nature of uses surrounding proposed use (if Conditional or Special Exception):
To provide an handicap accessible residence for
multiple sclerosis (MS) patients.

Detailed Description of Variance request applied for: (Include Section No. of Ordinance)
Variance of use to allow for the care
of handicap individuals, ordinance # 839,
Title 18, R-2 Residential District

Duration of Use: 30 years

Attachment B

CERTIFICATION OF FAIR HOUSING ACT TRAINING

On _____, I attended training on the federal Fair Housing Act. During the training session, I was provided copies of the Consent Decree entered by the Court in United States v. Town of St. John, Indiana, Civil Action No. 2:07-CV-00330 (N.D. Ind.), and the federal Fair Housing Act. I have read the documents, and I have had all of my questions concerning the training and the documents answered to my satisfaction. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Date

Attachment C

EMPLOYEE ACKNOWLEDGMENT

On _____, I was provided copies of the Consent Decree entered by the Court in United States v. Town of St. John, Indiana, Civil Action No. 2:07-CV-00330 (N.D. Ind.), and the federal Fair Housing Act. I have read and understand these documents and have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Date