

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EASTERN DISTRICT OF WISCONSIN
FILED

MAR 5 2001

UNITED STATES OF AMERICA,
Plaintiff,

v.

Case No. 00-C-0572

ROBERT P. FRANSWAY; PETER E.
FRANSWAY; ROBERT'S CONSTRUCTION
COMPANY; JOHN B. SHEPHERD; and
THE SHEPHERD PARTNERSHIP,

Defendants.

CONSENT DECREE

This Consent Decree resolves the above-captioned case brought by the United States of America against defendants Robert P. Fransway, Peter E. Fransway, Robert's Construction Company, John B. Shepherd, and the Shepherd Partnership ("the Defendants").¹ The Complaint alleges that the Defendants discriminated against persons with disabilities by failing to design and construct the covered multifamily dwellings at Springbrook Cercle Apartments ("Springbrook") in Oak Creek, Wisconsin, in accordance with subsection 804(f)(3)(C) of the Fair Housing Act ("the Act"), 42 U.S.C. § 3604(f)(3)(C).

¹ Robert P. Fransway, Peter E. Fransway and Robert's Construction Company are collectively referred to herein as "the Builders". John Shepherd and the Shepherd Partnership are collectively referred to as "the Architects".

The Builders are the developers and owners of Springbrook. The Architects designed Springbrook's buildings 14-34 and the clubhouse.² Springbrook has 480 apartments, of which 168 ground-floor apartments, i.e., those in buildings 9-34, are "covered multifamily dwellings" within the meaning of 42 U.S.C.

§ 3604(f)(7)(B). These units and the common areas, including the clubhouse, are subject to the requirements of 42 U.S.C.

§ 3604(f)(3)(C). The Defendants admit that they failed to design and construct Springbrook in compliance with those requirements.

The United States and the Defendants agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 3614(a). The parties also agree that the claims against the Defendants should be resolved without further proceedings and an evidentiary hearing. Therefore, as indicated by the signatures appearing below, the parties agree to the entry of this Consent Decree.

It is hereby ORDERED, ADJUDGED AND DECREED:

I. GENERAL INJUNCTION

1. The Defendants, their officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them are permanently enjoined from discriminating on the basis of disability, as prohibited by the

² Buildings 1-13 were designed by other architects. Buildings 1-8 are not covered multifamily units.

Act, 42 U.S.C. § 3604(f)(1), (2) and (3)(C), and as set forth in the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472-9515 (1991). This includes:

a. Discriminating in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of a handicap of that buyer or renter, any person residing in or intending to reside in that dwelling after it is sold or made available, or any person associated with that buyer or renter;

b. Discriminating against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of facilities in connection with such a dwelling, because of a handicap of that person, a person residing in or intending to reside in the dwelling after it is sold, or any person associated with that person; and

c. Designing and constructing covered multifamily dwellings for first occupancy after March 13, 1991, including any new covered multifamily dwellings at Springbrook, in such a manner that:

i. The public use and common use portions of the dwellings are not readily accessible to and usable by persons with disabilities;

ii. All the doors designed to allow passage into and within all premises within such dwellings are not sufficiently wide to

allow passage by handicapped persons in wheelchairs;

iii. All premises within such dwellings do not contain the following features of adaptive design: i) an accessible route into and through the dwelling; ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; iii) reinforcements in bathroom walls to allow later installation of grab bars; and iv) useable kitchens and bathrooms, such that an individual using a wheelchair can maneuver about the space.

II. CORRECTIVE ACTIONS

2. The Defendants agree to take the following corrective actions with respect to the clubhouse, the covered ground-floor units, and the public and common use areas affiliated with those buildings. This does not apply to the sixteen covered ground-floor units in buildings 17-19 and 22; instead, 16 ground-floor units in buildings 1-8 shall be made to comply with the Act's design and construction requirements. Retrofitting in addition to that detailed below and in Appendices A-C may be necessary to bring these units into compliance with the Act. In the event that the Builders sell any portion of Springbrook, including a common area or an individual unit, they shall take all corrective actions described in this part and Appendices A-C before that portion is offered for sale.

3. Common Areas:

A. Within 90 days from the date of entry of this Decree, the Builders shall modify the public and common use areas of Springbrook as specified in Appendix A paragraphs 2, 3, 5(b), 6, and 8-12. The Builders shall pay all expenses associated with those modifications.

B. Within 120 days from the date of entry of this Decree, an architectural firm approved by the United States shall conduct on-site surveys at Springbrook and provide written certification to the parties as to whether or not the Builders have correctly made all modifications set forth in Appendix A paragraphs 2, 3, 5(b), 6, and 8-12.³ The Builders shall pay all costs associated with those surveys.

C. No later than July 1, 2001, the Builders shall modify the public and common use areas of Springbrook as specified in Appendix A paragraphs 1, 4-5(a), and 7 and Appendix C paragraph 8.

D. No later than August 1, 2001, a licensed civil engineer or architect approved by the United States shall conduct on-site surveys at Springbrook and provide written certification to the parties as to whether or not the Builders have correctly made the

³ All submissions to the United States or its counsel shall be made to: U.S. Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, P.O. Box 65998, Washington, D.C. 20035-5998. Attn: DJ No. 175-85-156.

modifications set forth in the preceding paragraph and Appendices A and C. The Builders shall pay all costs associated with those surveys.

4. Unit Interiors:

A. Within 30 days from the date on which a unit becomes vacant, or while a unit is occupied if requested by a tenant, or before a unit is offered for sale, but in no case later than three years after entry of this Consent Decree, the Builders shall modify the interiors of the apartments as specified at Appendix B. The Builders shall pay all expenses associated with those modifications.

B. Within 10 days of the entry of this Decree, the Builders shall provide written notice that the modifications specified at Appendix B are available to all Springbrook residents of covered ground-floor dwellings. The notice shall be approved by the United States prior to its delivery. It shall be sent with a self-addressed postage prepaid envelope and a form specifying what alterations may be made in the specific unit so that the resident may mark which alterations he/she would like made to the unit and then return the form to Springbrook's rental office. The notice shall provide that the alterations may be requested at any time during the tenancy.

C. On a yearly basis for three years beginning one year from the entry of this Order (and until such time as final

certification is made if that occurs prior to the three-year deadline), an architectural firm approved by the United States shall conduct on-site surveys at Springbrook and provide written certification to the parties as to whether or not the Builders have correctly made the modifications set forth in Appendix B. The Builders shall pay all costs associated with those surveys.

5. Additional Alterations at Tenant's Option:

A. The Builders shall provide the modifications specified at Appendix C upon a resident's request.

B. The Builders shall provide written notice of the availability of the modifications at Appendix C to each Springbrook tenant, prospective tenant and prospective purchaser. Notice shall be made to each Springbrook tenant within 10 days of the entry of this Order and to prospective tenants and purchasers at the time they inquire about renting a unit. The notice shall be approved by the United States prior to delivery. It shall be sent with a self-addressed envelope and a form specifying what alterations may be made in the specific unit so that the resident may mark which alterations he/she would like made to the unit and then return the form to Springbrook's rental office. The notice shall provide that the alterations may be requested at any time during the tenancy.

C. If the Builders sell Springbrook Cercle either as an apartment complex or as condominiums, they shall make as a

condition of sale and shall include in all sales agreements language requiring the subsequent owner/manager (i.e., if apartments, the owner/manager of the complex, and if condominiums, the condominium/homeowners association) to make available the alterations specified at Appendix C 1-6 and 8. Prior to such sale, the Builders shall notify the Department of Justice of its plans to sell and shall submit a copy of the proposed contract containing this required language for the Department's approval. Moreover, the Builders shall provide the subsequent owner with the following resources so that the subsequent owner may make those alterations: 240 "wing-its"; 30 narrow kitchen cabinets; 30 kitchen cabinet aprons; and sufficient wrapping to cover 30 kitchen sink pipes. In addition, prior to the sale, the Builders shall alter all patio decks so that permeable surfaces are level with the patio door and impermeable surfaces are no more than 4" below the patio door.

III. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

6. On a quarterly basis for a period of 3 years from the date of entry of this Consent Decree, beginning 90 days after entry of this Decree, the Defendants shall submit to the United States information regarding any covered multifamily dwellings that they design and/or intend to build, including any additional dwellings at Springbrook. The information shall be submitted before any applications are made for initial building permits.

The following information shall be submitted: a) the name and address of the project; b) the names and addresses of all architects and site engineers; c) a description of the project and the individual units, including number and type of dwellings and amenities in the project; d) copies of any correspondence reviewing the plans for the project from the State of Wisconsin, Department of Industry Labor and Human Relations, Safety and Building Division, or the equivalent state office; and e) a statement by the Architects, or an architect knowledgeable in the Act's design and construction requirements and the Guidelines describing his/her knowledge and training in accessible design, which certifies that he/she has reviewed the plans and that the plans include design specifications that fully comply with the requirements of 42 U.S.C. § 3604(f)(3)(C) of the Act and the Guidelines.

IV. FUNDS TO FURTHER FAIR HOUSING

7. Within 15 days of the entry of this Decree, the Builders and the Architects each shall make a payment of \$4,000 (for a total of \$8,000) to a fair housing or disability rights organization approved by the United States. This sum shall be to further fair housing for people with disabilities in the Milwaukee area. A copy of each check shall be provided to counsel for the United States.

V. EDUCATIONAL PROGRAM

8. Within 30 days of the entry of this Decree, the Defendants shall provide a copy of this Decree to all their agents and employees involved in the design, construction, rental, or sale of covered multifamily dwellings and secure the signed statement, attached hereto as Attachment D, from each agent or employee acknowledging that he/she has received, read and understands the Decree.

9. Within 30 days after the date on which a new employee or agent commences employment or an agency relationship with the Defendants, each new employee or agent involved in the design, construction, rental, or sale of covered multifamily dwellings shall be given a copy of this Decree and be required to sign the statement, attached hereto as Appendix D, acknowledging that he/she has received, read and understands the Decree.

10. Within 60 days of the entry of this Decree, the Builders shall provide fair housing training, with a focus on disability issues, to all their agents and employees involved in the design, construction, rental, or sale of covered multifamily dwellings. The training shall be conducted by a qualified person or organization approved by the United States. The Builders shall pay all costs of the training. The Builders shall secure a written certification from the trainer of each agent's and employee's attendance at the fair housing training.

11. During the term of this Decree, the Builders shall ensure that each new agent or employee involved in the design, construction, rental, or sale of covered multifamily dwellings shall attend fair housing training, with a focus on disability issues. The training shall be provided by a fair housing organization approved by the United States within 30 days after the date the agent/employee commences an agency or employment relationship with the Builders, or as soon thereafter as such training may be available. The Builders shall pay all costs of such training for new agents and employees and shall secure a written certification from the trainer of each agent's and employee's attendance at the fair housing training.

12. Within 60 days of the entry of this Decree and annually during the term of this Decree, the Architects shall ensure that each agent or employee involved in the design and/or construction of covered multifamily dwellings shall attend training on accessible design under the Act. The training shall be provided by an architect or other professional with expertise in accessible design or a fair housing organization, approved by the United States. Such training may be provided at the Architects' office. The Architects shall pay all costs of such training for agents and employees and shall secure a written certification from the trainer of each agent's and employee's attendance at the training.

VI. PUBLIC NOTICE OF NON-DISCRIMINATION POLICY

13. Within 10 days of the date of entry of this Decree, the Builders shall post and prominently display in the sales or rental offices of all covered multifamily dwellings owned or operated by them, including Springbrook, a sign no smaller than 10 by 14 inches indicating that all dwellings are available for sale or rental on a nondiscriminatory basis. The Builders shall also post such a sign in the sales or rental office of any other covered multifamily housing developed or acquired by them within 10 days of when they commence construction or purchase the property. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

14. Once Springbrook has been brought into compliance with the Act, as described in section II, above, and for the term of this Decree, the Builders shall: a) display in Springbrook's rental office a sign no smaller than 10 by 14 inches that states that the ground-floor apartments at Springbrook contain the accessibility features for persons with disabilities that the Act requires; and b) place in a conspicuous location in all future advertisements, brochures and promotional literature regarding Springbrook's covered multifamily dwellings a statement that the dwelling units meet the Act's accessibility requirements at 42 U.S.C. § 3604(f)(3).

VII. ADDITIONAL REPORTING AND DOCUMENT RETENTION REQUIREMENTS

15. For the duration of this Decree, the Defendants shall advise counsel for the United States in writing within 15 days of receipt of any written administrative or legal complaint against them, their employees or agents, regarding equal opportunity in housing, including formal and informal complaints of discrimination under the Act or Wisconsin's fair housing law. The Defendants also shall promptly provide the United States all information it may request concerning any such complaint.

16. For the duration of this Decree, the Defendants are required to preserve all records related to this Decree regarding Springbrook and all future covered dwellings designed, constructed, owned, operated or acquired by them. Upon reasonable notice to the Defendants, representatives of the United States shall be permitted to inspect and copy any of Defendants' records or inspect any covered dwelling under the Defendants' control at any and all reasonable times so as to determine compliance with the Consent Decree; provided however that the United States shall endeavor to minimize any inconvenience to the Defendants from such inspections.

17. Within 180 days after the entry of this Decree, and thereafter on the anniversary of entry of this Decree throughout the term of the Decree, the Defendants shall submit a report that includes the following:

A. all documents respecting the modifications required in

section II of this Decree;

B. the signed statement of each agent and employee acknowledging that he/she received, read and understands the Decree;

C. written certification of each agent's and employee's attendance at fair housing training; and

D. all advertising or promotional literature regarding the Builders' covered multifamily dwellings.

18. If during the term of this Decree, the Builders decide to sell any portion of Springbrook Cercle, they shall notify the United States of such at least 60 days prior to the sale.

VIII. DURATION OF DECREE AND TERMINATION OF LEGAL ACTION

19. This Consent Decree shall remain in effect for five years after the date of its entry.

20. By consenting to entry of this Decree, the United States and the Defendants agree that in the event it is determined in any future action or proceeding brought by the United States or any agency thereof that any of the Defendants engaged in any violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

21. The Court shall retain jurisdiction for the term of this Consent Decree to enforce the terms of the Decree. Prior to the expiration of the Decree's term, the United States may move the Court to extend the duration of the Decree only if it

determines that a Defendant has materially violated one or more terms of the Decree. The burden shall be on the United States to prove that an extension is necessary.

22. The United States and the Defendants 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 Defendants to perform in a timely manner any act required by this Decree or otherwise to act in violation of 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.

XII. TIME FOR PERFORMANCE

23. Any time limits for performance imposed by this Consent Decree may be extended by the mutual agreement of the United States and the relevant Defendants.

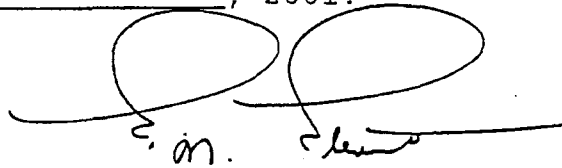
XIII. COSTS OF LITIGATION

24. Each party to this Consent Decree shall bear its own

costs and attorney's fees associated with this litigation.

IT IS SO ORDERED:

This 5th day of March, 2001.

A handwritten signature in black ink, consisting of two large, overlapping loops followed by a horizontal line and the initials "C.N. Clevert".

CHARLES N. CLEVERT, JR.
UNITED STATES DISTRICT JUDGE

Agreed to by the parties as indicated by the signatures of
counsel below:

FOR PLAINTIFF UNITED STATES:

3-02-01
DATE

Timothy J. Moran
Kathleen M. Pennington / TSM
JOAN MAGAGNA
Chief
TIMOTHY J. MORAN
Deputy Chief
KATHLEEN M. PENNINGTON
Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
P.O. Box 65998
Washington, D.C. 20035-5998
202-353-9759

FOR DEFENDANTS ROBERT P. FRANSWAY;
PETER E. FRANSWAY; AND ROBERT'S
CONSTRUCTION COMPANY:

2-16-01
DATE

Robert P. Fransway
ROBERT P. FRANSWAY
Springbrook Cercle at Oak Creek
8601 Springbrook Blvd.
Oak Creek, WI 53154
414-764-6123

FOR DEFENDANTS JOHN B. SHEPHERD
AND THE SHEPHERD PARTNERSHIP:

16 FEBRUARY 2001
DATE

John Barron Shepherd
JOHN BARRON SHEPHERD
The Shepherd Partnership
600 North 108th Pl.

Wauwatosa, WI 53226
414-774-2277

Appendix A

Public & common use areas

1. All front entrances to the ground-floor units and the common-use sidewalks shall be accessible. This shall be accomplished by regrading, replacing steps with ramps, or adding ramps that comply with ANSI A117.1. All sidewalks must be at least 36" wide. All sidewalks servicing public use areas, common use areas, parking, and/or multiple covered dwelling units must be sloped to permit wheelchair use, in accordance with ANSI A117.1, including handrails for all sidewalks sloped between 5.0% and 8.33%. For a sidewalk that services only one covered dwelling unit, i.e., a walkway that runs only between a unit's driveway and its front entrance, the following shall apply:

(a) The Builders shall purchase and store handrails for all sidewalks having a slope between 5.0% and 6.9%. Residents shall have the option of having the Builders install the handrails, as described at Appendix C paragraph 8.

(b) The Builders shall place handrails along all sidewalks having slopes at or greater than 7.0%, except that sidewalks having slopes at or above 10.0% shall not be permitted. If a sidewalk cannot be regraded so that its slope is below 10.0%, the Builders shall replace that dwelling unit with an accessible unit in buildings 1-8.

2. The following doors shall have lever-type hardware: (a) all exterior sides of the front doors of the ground-floor units, and (b) all doors throughout the clubhouse, including those at bathroom stalls.

3. Sufficient maneuvering space shall be provided at entries into ground-floor units in accordance with ANSI A117.1, and protruding light fixtures shall be moved or altered so that they do not obstruct the entries into any ground-floor units.

4. Accessible parking spaces, in sufficient number and size and with appropriate signage, shall be provided consistent with HUD's Fair Housing Act Design Manual at pp. 2.23-2.24 and ANSI A117.1. This includes garage parking.

5. Accessible routes in accordance with ANSI A117.1 shall be created (a) from the units and parking to the clubhouse, pool, tennis and volleyball courts, rent drop box, and rental office, (b) throughout the clubhouse, including sufficient space to maneuver about and enter/use all portions of the clubhouse.

6. The thresholds at all clubhouse doors shall be modified

in accordance with ANSI A117.1.

7. Curb cuts shall be marked so that they are not blocked by cars.

8. Handrails that comply with ANSI A117.1 shall be provided at the clubhouse stairs.

9. The unisex clubhouse bathroom shall be altered so that the grab bars and locking device comply with ANSI A117.1. The showers in the men's and women's bathrooms shall be altered so that, short of replacing the shower, they will be as accessible as possible. If an exterior structure is built containing a shower, that shower shall meet all requirements of ANSI A117.1.

10. The clubhouse kitchen shall be made to comply with ANSI A117.1. This includes the height of the sink and the placement of the light switches and all cooking facilities.

11. The doors at the clubhouse exercise room and hot tub shall be made to close in accordance with ANSI A117.1.

12. The controls for the clubhouse hot tub shall be altered so that they do not require tight grasping, pinching or twisting of the wrist.

Appendix B

Unit Interiors

1. All interior doorways shall be widened to provide a nominal clear floor space of 32" in width. This includes bedroom and bathroom doors, the doorways at walk-in coat and bedroom closets, and sliding glass patio doors.

2. The thresholds at all unit entry doors, i.e., front doors and patio doors shall be made to comply with ANSI A117.1.

3. A wooden deck shall be built on ten patios so that the patio is flush with the patio door, thereby allowing persons who use wheelchairs to use the patios.

4. All electrical outlets that are less than 13" from the floor, all thermostats, and all air conditioner controls for air conditioners that are provided by Springbrook Cercle (rather than by a tenant), shall be moved to accessible locations consistent with ANSI A117.1. In those units with baseboard heater controls, thermostats shall replace the controls and shall be no higher than 54" from the ground.

5. Clear floor space as specified by HUD's Fair Housing Act Design Manual at pp. 7.39 - 7.59 shall be provided in front of all bathroom facilities, including sinks, toilets, bathtubs and showers.

6. Sufficient space shall be provided in all bathrooms so that a person using a wheelchair can enter and close the door. This may require rehanging doors so that they swing out.

Appendix C

Additional Alterations at Tenant's Request

1. Upon a resident's request, the pantry shelves in buildings 9-13 (and buildings 1-8 where appropriate) shall be moved so that the pantry is not walk-in style and the shelves can be reached by a person using a wheelchair.

2. Upon a resident's request, where washers and dryers are contained in closets having doorways that provide less than a nominal 32" of clear floor space, washers and dryers shall be moved and centered so that they may be accessed from outside the closet.

3. Upon a resident's request, an accessible route that complies with ANSI A117.1 shall be created at the door between the apartments and the garages. This includes door thresholds and a ramp inside the garage.

4. Upon a resident's request, Springbrook Cercle management will pick up a resident's trash at his/her apartment, so that the resident does not have to take it to the trash dumpster.

5. Upon a resident's request, Springbrook Cercle management shall furnish and install "wing-its" to residents for use in hanging grab bars on their bathroom walls. The Builders shall purchase 40 "wing-its" within 90 days of entry of this Decree and have them available for residents. After that initial supply runs out, the Builders shall purchase and provide "wing-its" upon a resident's request.

6. Upon a resident's request, the cabinets underneath and adjacent to the corner kitchen sinks shall be removed to provide for centered clear floor space of 30" x 48" at the sink and dishwasher. After removal of the cabinets, a smaller cabinet shall be inserted to the far side of the sink, an apron shall be added to cover the upper portion of the open area under the sink and counter, and the piping shall be wrapped to prevent a person using a wheelchair from being injured by the pipes.

7. Upon a resident's request, a wooden deck shall be built on the patio so that the patio is flush with the patio door, thereby allowing a person using a wheelchair to use the patio.

8. Upon a resident's request, handrails shall be placed at any sidewalks having slopes between 5.0% and 6.9%.

This 6th day of March, 2001, pursuant to Rule 77(d) Federal Rules of Civil Procedure, copies of this document were mailed by Wilson to the following parties:

Attorney Kathleen M. Pennington
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
P.O. Box 65998
Washington, D.C. 20035-5998

Robert Fransway
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