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STATE OF WISCONSIN:      IN CIRCUIT COURT:      JACKSON COUNTY:

TOWN OF ALBION,

DECISION

Plaintiff,

Case No: 07-CX-8

-vs-

SAMUEL F. STOLZFUS, et al.,

Defendant.

**COPY**

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The above-entitled matter coming on for hearing before  
the Honorable Thomas E. Lister, Judge of the above-named  
court, on the 29th day of September, 2009, at the Jackson  
County Courthouse, Black River Falls, Wisconsin,  
commencing at approximately 2:12 p.m.  
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APPEARANCES:

PAUL MILLIS, Attorney at Law, 107 Main Street,  
P.O. Box 219, Black River Falls, Wisconsin 54615, appearing  
on behalf of the Town of Albion.

KENNETH J. ARTIS, Attorney at Law, P.O. Box 93,  
Black River Falls, Wisconsin 54615, appearing on behalf of  
Samuel F. Stolfus.

ROBERT L. GREENE, JR., Attorney at Law, 110 Wall  
Street, 11th Floor, New York, New York 10005, appearing  
by telephone on behalf of National Committee for Amish  
Religious Freedom.

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MR. GREENE: This is Robert Greene.

THE COURT: Mr. Greene, this is Judge Lister in Jackson County Circuit Court. I'm calling the case of the Stolzfus matter.

MR. GREENE: Good afternoon.

THE COURT: And I'm going to call for the appearances. Mr. Millis.

MR. MILLIS: Thank you, Your Honor. May it please the court, Paul B. Millis appears on behalf of the Town of Albion; also, Leonard Olson, a supervisor for the Town of Albion.

MR. ARTIS: Appearing on behalf of Mr. Stolzfus is Ken Artis. That's me. And then on the phone we have Robert Greene who is pro hac vice.

THE COURT: Mr. Greene, can you hear us all right?

MR. GREENE: Yes.

THE COURT: Gentlemen, the court's address in this matter will be brief and I think it will become apparent as to why.

In sum, there was a citation issued in this matter -- complaint, actually, issued in this matter, and the complaint alleged a failure to apply for a building permit. The court did not find any subsequent amended pleadings and, therefore, the court

1 views the only question before me at this time to be  
2 whether or not there can be a constitutionally valid  
3 defense to a complaint alleging a failure to apply for  
4 a permit. Unless I am mistaken, the failure to sign a  
5 permit application is the only ground upon which the  
6 Town of Albion has yet sued.

7 The town can but has not yet issued a complaint  
8 for failure to construct a safe building, although it  
9 is apparent from the briefs in this matter that that  
10 is the true area of concern of the township. The  
11 township is -- is expressing a concern about whether  
12 or not the homes being constructed are -- are safe and  
13 whether they are secure, and the court is not  
14 expressing any opinion with respect to whether or not  
15 a failure to build a safe and secure structure is a  
16 sustainable complaint or violation because that is not  
17 before me today.

18 The court does not believe that the township has  
19 offered a compelling governmental interest to overcome  
20 the objection raised by Mr. Stolfus on religious  
21 grounds.

22 Mr. Stolfus was confronted with a complaint  
23 alleging only that he failed to apply for or obtain a  
24 building permit. He raised a religious objection.  
25 Basically, that objection was that if he were to sign

1 an application for a building permit that he would be  
2 lying; his religion precludes him from doing that.

3 The court was satisfied by the briefs that were  
4 filed in this matter that he did indeed establish a  
5 sincerely held religious belief that prevented him  
6 from signing a permit application. When that occurs,  
7 the burden shifts to the township to establish a  
8 compelling state from enforcing a requirement that a  
9 permit application be submitted and signed.

10 During the course of this litigation, the town in  
11 an effort to accommodate Mr. Stolzfus dropped the  
12 requirement for signing an application, but in doing  
13 so really only reinforced the inevitable conclusion  
14 that the court has reached here, that the -- that the  
15 town had no compelling reason to require this in the  
16 first instance, which would rise to the level  
17 necessary to overcome a valid religious objection.

18 This case of constitutional dimension is a case  
19 probably not only important to our community and our  
20 county and -- and the State of Wisconsin, it is  
21 probably a case that has potential for national  
22 consequences.

23 I want to compliment the parties' counsel for both  
24 sides because I think they made a very, very sincere  
25 effort to try to address the broader question here of

1           whether or not the Amish build safe homes. There was  
2           an effort to compromise, negotiate, stipulate to a  
3           procedure that would have subjected the traditional  
4           building practices of the Amish to a review by state  
5           officials in the hope that an accommodation could be  
6           reached and a recognition of the building practices of  
7           the Amish might meet standards acceptable to the state  
8           so that not only this case but other cases of similar  
9           ilk would be able to be addressed now and in the  
10          future. Unfortunately, that did not occur.

11                 Therefore, to put this case on proper grounds for  
12          future proceedings, I believe that we would be better  
13          served if it was before this or any other court for  
14          the very reasons that the town truly asserts, and that  
15          is, allegations that the buildings are not safe. That  
16          can be the subject of a future complaint filed by the  
17          township against Mr. Stolfus or others that the town  
18          deems may have engaged in a violation of building  
19          practices or codes. But as I said a number of times  
20          already, that is not yet before this court. It can be  
21          put properly before this court, and if so, the court  
22          finds that most of the necessary briefing appears to  
23          have been done, although I do recognize the position  
24          of the intervener in this case that they most likely  
25          will want to engage in some discovery to challenge any

1 complaint which alleges the lack of safe building  
2 practices.

3 Therefore, it's my hope that if the town still  
4 wishes to address its concerns, that it -- that it can  
5 and will issue a future complaint and the case will  
6 then be able to go forward through any appellate  
7 process with the proper issues having been defined for  
8 this and future courts.

9 Accordingly, the motion of the intervener on  
10 behalf of Mr. Stolfus to dismiss the current  
11 complaint of failure to sign and/or obtain a building  
12 permit, apply for or obtain a building permit, that  
13 motion to dismiss is granted.

14 Is there anything further?

15 MR. MILLIS: I don't think so, Your Honor.

16 MR. ARTIS: No.

17 THE COURT: Anything further, Mr. Greene?

18 MR. GREENE: No. Thank you very much, Your  
19 Honor. Will there be a transcript of this proceeding?

20 THE COURT: There will be if you want to  
21 order and pay for one.

22 MR. GREENE: Yes. Please.

23 THE COURT: All right. Anything further,  
24 Mr. Artis?

25 MR. ARTIS: No, Judge.

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THE COURT: All right. Thank you,  
gentlemen.  
(Ended at approximately 2:24 p.m.)

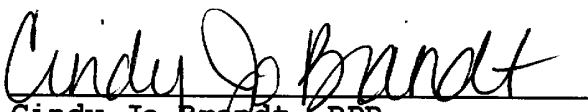
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C E R T I F I C A T E

STATE OF WISCONSIN     )  
                                  )     ss  
COUNTY OF JACKSON     )

I, Cindy Jo Brandt, Circuit Court Reporter, do hereby certify that I reported the foregoing matter and that the foregoing transcript, consisting of 7 pages, has been carefully compared by me with my stenographic notes as taken by me in shorthand and by me thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge.

Dated: October 6, 2009

  
Cindy Jo Brandt, RPR  
Jackson County, Wisconsin