

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

NOAH B. and MARTHA M.)
SCHWARTZ, and MYRON SCHWARTZ))
and ERBIN HILTY, Trustee, and ELI)
HILTY, Trustee, and ELDON HILTY,)
Trustee, and AMOS A. SCHWARTZ,)
Trustee, and JAKE GRABER, Trustee,)
and the ADAMS COUNTY LAND)
TRUST and ROMAN D. SCHWARTZ)

Case No.

Judge

Plaintiffs,)

vs.)

ADAMS COUNTY REGIONAL)
SEWER DISTRICT)

Defendant)

COMPLAINT FOR
DECLARATORY JUDGMENT,
PRELIMINARY INJUNCTION,
ATTORNEYS' FEES, AND
PETITION FOR JUDICIAL
REVIEW UNDER STATE LAW

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
DAMAGES

Comes now the above stated Plaintiffs, by and through legal counsel James Buchholz of the law firm of Tourkow, Crell, Rosenblatt & Johnson, LLP and files their Complaint and states as follows:

INTRODUCTION

1. Plaintiffs are members of the Old Order Amish religion and owners of property in Decatur, Adams County, Indiana. Defendants seek to force the Plaintiffs to violate their deeply, long held religious beliefs against use of electricity and connecting to the outside world by requiring Plaintiffs to connect to a municipal sewer system.

PARTIES AND JURISDICTION

2. Plaintiffs Noah B. Schwartz and Martha M. Schwartz, husband and wife, own the property, and reside, at the real property commonly known as 2811 N. U.S. Hwy 33, Decatur, Adams County, Indiana (the “2811 Address”) (“Noah and Martha Schwartz”).

3. Plaintiff Adams County Land Trust with an address of 1821 E. 200 S., Monroe, IN 46772, is a trust duly executed in Decatur, Adams County, Indiana and is the titled owner of real property located at and commonly known as 2891 N. US. Hwy 33, Decatur, Adams County, Indiana (“2891 Address”) whose Trustees are Plaintiffs, Erbin Hilty, Eli Hilty, Eldon Hilty, Amos A. Schwartz, and Jake Graber. Plaintiff Myron Schwartz resides at the 2891 Address and asserts and/or has an ownership interest in the 2891 Address. Plaintiff Adams County Land Trust, Plaintiff Trustees Erbin Hilty, Eli Hilty, Eldon Hilty, Amos A. Schwartz and Jake Graber, and Plaintiff Myron Schwartz shall be referred to collectively as the “2891 Plaintiffs.”

4. Plaintiff Roman D. Schwartz owns, and resides at, the real property located at and commonly known as 4311 N. State Road 101, Decatur, Adams County, Indiana (the “4311 Address”) (“Roman Schwartz”).

5. Defendant Adams County Regional Sewer District (the “Sewer District”) is a regional utility district established under the laws of Indiana with an office address of 313 W. Jefferson Street, Room 257b, Decatur, Indiana 46733.

6. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331, this being a civil action arising under the Constitution and the laws of the United States.

7. Jurisdiction is also conferred upon this Court by 28 U.S.C. §1343(a)(3) and (4), 28 U.S.C. §§2201 and 2202 and 42 U.S.C. §§1983 and 1988, this being an action for declaratory judgment, equitable relief, and damages authorized by law to redress deprivations under color

of law of rights, privileges and immunities secured by the Constitution of the United States. Jurisdiction over Plaintiffs state law claim and petition for judicial review is conferred by 28U.S.C. §1367 and *Chicago v. Illinois College of Surgeons*, 522 U.S. 156 (1997).

8. At all times pertinent to this Complaint, and in taking all of the actions described in this Complaint, Defendant, its officers, agents and employees, acted under color of law and were effecting, and will effect, the custom, policy and laws of Adams County, Indiana

FACTS

9. Plaintiffs are practicing, bona fide members of the Amish religion.

10. Plaintiffs religious beliefs are sincerely held, and reflect beliefs that have been followed by Amish communities for centuries.

11. The Defendant is undertaking a project with the stated goal of providing sanitary services through the construction of a municipal sewer system to certain homeowners in the area of Pleasant Mills and along United States Highway 33 in Adams County, Indiana (the “Pleasant Mills Municipal Sewer System”).

12. The Defendant, citing the Indiana Code, has informed Plaintiffs and others in the area constituting Pleasant Mills Municipal Sewer System that, unless a homeowner is afforded an exemption, each homeowner is required to connect to the Defendant’s municipal sewer system, citing Indiana Code (“I.C.”) § 13-26-5-2 Sec. 2 (8)(A)(iii) (the “Sewer Code Provisions”).

13. The Defendant has passed an ordinance and has a policy of requiring that homeowners that are required to connect to the Defendant’s system, provide an easement, for free, to the Defendant for placement of a grinder pump and other such components.

14. If the homeowner does not grant such free easement, the homeowner incurs substantially higher costs to the connect to the system.

15. Plaintiffs seek an order from this Court that they not be required to hook into the Pleasant Mills Municipal Sewer System and that they may enjoy the right to freely exercise their religion, as guaranteed by the Indiana and United States Constitutions.

16. Since Defendant's purported enforcement of the municipal sewer laws interfere with Plaintiffs' practice of their sincerely held religious beliefs, Defendants must establish they have a compelling state interest in doing so and that they have chosen the least restrictive means available.

17. As set forth below, Defendants do not have a compelling state interest in enforcement against Plaintiff to require them to hook into a municipal sewer system.

18. As set forth below, even if the County has a compelling state interest, it has not chosen the least restrictive means of enforcing the law regarding the municipal sewer system.

19. As but one example, Defendants could permit the Plaintiffs to utilize their own safe, effective and clean methods to remove sewage waters from their homes that comply with Plaintiffs' sincerely held religious beliefs.

20. Such methods include utilizing a safe, secure outdoor privy (also referred to as an outhouse) for human waste (sometimes referred to as black water) and a safe, secure system for grey water disposal.

21. The First Amendment to the United States Constitution states, in relevant part for these proceedings, as follows: "Congress shall make no law...prohibiting the free exercise [of religion]."

22. Article I, Section 2 of the Indiana Constitution states, in relevant part for these proceedings, that all Indiana residents "shall be secured in the natural right to worship

Almighty God, according to the dictates of their own consciences” and guarantees at Section 3 that “[n]o law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.”

23. Plaintiffs, like all Indiana residents, enjoy these Constitutional rights under Indiana and American law to freely practice their religion according to their sincerely held religious beliefs.

24. Amish religious observances include simple living and rejection of modern technology.

25. Consistent with these beliefs, Plaintiffs also do not utilize modern indoor plumbing; instead they use what is commonly referred to as an outhouse, or outdoor privy, for elimination of human waste/black water.

26. It is a direct attack and violation of Plaintiffs religious beliefs opposing connection to the greater world and its technology to *force* the Plaintiffs to connect to a municipal sewer system as Defendant seeks to compel the Plaintiffs to do here.

27. Additionally, Deuteronomy 23:12-14 (New International Version) states as follows:

¹² Designate a place outside the camp where you can go to relieve yourself.

¹³ As part of your equipment have something to dig with, and when you relieve yourself, dig a hole and cover up your excrement. ¹⁴ For the LORD your God moves about in your camp to protect you and to deliver your enemies to you. Your camp must be holy, so that he will not see among you anything indecent and turn away from you.

Plaintiffs follow this dictate in their use of outdoor privies.

28. The method by which Plaintiffs dispose of their black water and grey water is sufficient for their and their family's needs and does not present a health or safety threat to them, their family, their neighbors, or the public at large.

29. Adams County officials as well as officials of Defendant Adams County Regional Sewer District have been made aware by Plaintiffs, and other members of the Amish community, of their religious views.

30. Defendant seeks to impose certain black water disposal, grey water disposal and plumbing requirements at the Premises by requiring Plaintiffs to hook into the Pleasant Mills Municipal Sewer System, which would violate Plaintiffs' religious beliefs and practices.

31. Defendant seeks to impose certain black water disposal, grey water disposal and plumbing requirements at the Premises by requiring Plaintiffs to hook into the Pleasant Mills Municipal Sewer System, which would violate Plaintiffs' religious beliefs and practices though this requirement is wholly unnecessary, especially when properly viewed in conjunction with Plaintiffs' religious beliefs and practices.

32. Among other things, removal of human excreta via the municipal sewer system would violate Plaintiffs' sincerely held religious beliefs and practices; instead, their religion dictates that they remove the human excreta through their own toil.

33. Among other things, removal of human excreta via the municipal sewer system would violate Plaintiffs' sincerely held religious beliefs and practices by requiring them to connect to a system that is part of the wider world outside their community.

34. Defendant's requirement that Plaintiffs connect to the Pleasant Mills Municipal Sewer System is inconsistent with Plaintiffs' sincerely held, and Constitutionally protected, religious beliefs.

FIRST CLAIM FOR RELIEF
U.S. CONSTITUTION, AMEND. I; 42 U.S.C. § 1983
Violation of Free Exercise Clause

35. Plaintiffs re-state the preceding paragraphs of this Complaint as if fully re-stated herein.

36. Defendant has informed Plaintiff Roman D. Schwartz that he must connect to the Pleasant Mills Municipal Sewer System on or before January 14, 2021. See, attached Connection Notices, at Exhibits A.

37. Defendant has informed Plaintiffs Noah B. and Martha M. Schwartz as well as the 2891 Plaintiffs that they must connect to the Pleasant Mills Municipal Sewer System on or before January 31, 2021. See, attached Connection Notices, at Exhibits B and C.

38. Defendant has installed grinder pumps in the right of way in front of the residence of Plaintiffs' Noah B. and Martha M. Schwartz as well as Myron Schwartz.

39. Defendant has installed a gravity pump in the right of way in front of the residence of Plaintiff Roman D. Schwartz.

40. Defendant has recently submitted a fee or charge to Plaintiffs related to the claimed requirement to connect to the Pleasant Mills Municipal Sewer System asserting that the charges must be paid on or before January 21, 2020, specifically a charge of \$105.30 (subject to late fees) to Noah B. and Martha M. Schwartz as well as Myron Schwartz and a charge of \$83.30 (subject to late fees) to Roman D. Schwartz.

41. A real and justiciable controversy exists between Plaintiffs and Defendant concerning the constitutionality of the Defendant's claimed requirement that Plaintiffs connect to the Pleasant Mills Municipal Sewer System.

42. The addresses of Plaintiffs identified in this Complaint are Plaintiffs' primary residences.

43. The method by which Plaintiffs have chosen to address black water and grey water disposal is consistent with their religious beliefs.

44. The Defendant does not have a compelling state interest to require the Plaintiffs to connect to the Pleasant Mills Municipal Sewer System.

45. The method by which Plaintiffs have chosen to address black water disposal, grey water disposal, and plumbing does not, and will not, adversely affect the Defendants or any other citizens or visitors of Adams County, Indiana or elsewhere.

46. Even to the extent that Plaintiff has a compelling state interest in these matters, its attack upon the religiously mandated and non-harmful methods by which Plaintiffs have chosen to address plumbing and sewage, and grey water disposal by requiring connection to the Pleasant Mills Municipal Sewer System is not the least restrictive means of enforcing these laws or of protecting the public.

47. As set forth herein, the Sewer Code Provisions as Defendant purports to apply them violate Plaintiffs' right to the free exercise of their religion guaranteed under the First Amendment to the United States Constitution.

48. Plaintiffs ask the Court to declare the Sewer Code Provisions, as interpreted and applied by Defendant, to be unconstitutional under the Constitution of the United States and the Constitution of the State of Indiana as applied to Plaintiffs.

49. Even if the Court finds the Sewer Code Provisions serve a compelling governmental interest, they are not neutral generally applicable requirements under the free exercise clause of the United States constitution, and they are not narrowly tailored to avoid interference with the Defendants' exercise of their exercise of their sincerely held religious beliefs.

50. Defendant has failed to consider Plaintiffs' religious objections to connecting to the Pleasant Mills Municipal Sewer System in lieu of continuing to dispose of grey and black water as they currently do.

51. The First Amendment to the United States Constitution protects Defendants' Free Exercise of their Amish religion.

52. Defendant's enforcement actions as described in the Complaint violates Plaintiffs' First Amendment right to freely exercise their sincerely held religious beliefs.

53. Defendants seek the following relief:

- a. A declaration and injunction ordering that Defendant may not insist and require that Plaintiffs connect to the Pleasant Mills Sewer System or any other municipal sewer system;
- b. An order granting reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and
- c. Any other relief this Court deems just and proper.

SECOND CLAIM FOR RELIEF
INDIANA CONSTITUTION, ARTICLE I, SECTION 4
Violation of the Religious Liberty

54. Plaintiffs restate the preceding allegations of their Complaint as if fully re-stated herein.

55. The State of Indiana Constitution guarantees, *inter alia*, the right to worship God according to the "dictates of [one's] own conscience."

56. A regulation that burdens an individual's religious belief or conduct is invalid under Article I, Sections 2 and 3 of the Indiana Constitution as applied to that individual unless a compelling state interest justifies the burden and there is no less obtrusive form of regulation available to the state.

57. Defendant does not have a compelling state interest in applying the Sewer Code against Plaintiffs in the manner set forth in the Complaint in the context of the Plaintiffs' minimalist and religiously mandated lifestyle.

58. Defendant's insistence that Plaintiffs connect to the Pleasant Mills Municipal Sewer System is not the least obtrusive means of accomplishing any compelling state interest that Defendant may have.

59. Defendants seek the following relief:

- a. A declaration and injunction ordering that Defendant may not insist and require that Plaintiffs connect to the Pleasant Mills Sewer System or any other municipal sewer system;
- b. An order granting reasonable attorneys' fees and costs; and
- c. Any other relief this Court deems just and proper.

THIRD CLAIM FOR RELIEF
INDIANA RELIGIOUS FREEDOM RESTORATION ACT
Violation of the Religious Liberty

60. Plaintiffs restate the preceding allegations of their Complaint as if fully re-stated herein.

61. In 2015, Indiana passed I.C. § 34-13-9, commonly referred to as the "Religious Freedom Restoration Act" ("RFRA") with the stated purpose of protecting Indiana citizens' right to the free exercise of their religion.

62. Section 8 of the RFRA states, in full, as follows:

Sec. 8. (a) Except as provided in subsection (b), a governmental entity may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability. (b) A governmental entity may substantially burden a person's exercise of religion only if the governmental entity demonstrates that application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

63. As Indiana residents, Plaintiffs enjoy the protection of the RFRA.

64. Defendant's enforcement of the Sewer Code against Plaintiffs by requiring that Plaintiffs hook up to the Pleasant Mills Municipal Sewer System, as set forth in this Complaint, violates substantially burdens Plaintiffs exercise of their religion, in violation of Section 8(a) of the RFRA.

65. Defendant's enforcement of the Sewer Code against Plaintiffs by requiring that Plaintiffs hook up to the Pleasant Mills Municipal Sewer System, as set forth in this Complaint does not further a compelling governmental interest, and even if it does further a compelling governmental interest, it is not the least restrictive means of furthering such interest, both as required by Section 8(b) of the RFRA.

66. Defendants seek the following relief:

- a. A declaration and injunction ordering that Defendant may not insist and require that Plaintiffs connect to the Pleasant Mills Sewer System or any other municipal sewer system, all consistent with Section 10(b) of the RFRA;
- b. An order granting reasonable attorneys' fees and costs under Section 10(c) of the RFRA; and
- c. Any other relief this Court deems just and proper.

WHEREFORE, as to all counts of the Complaint, Plaintiffs demand a declaration that Defendant may not insist and require that Plaintiffs connect to the Pleasant Mills Sewer System or any other municipal sewer system, for reasonable attorneys' fees and costs, and for such other relief this Court deems just and proper.

/s/ James P. Buchholz

James P. Buchholz (Bar # 17023-02)

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(Pro Hac Vice to be applied for)

Attorneys for Plaintiffs

ADAMS COUNTY REGIONAL SEWER DISTRICT

313 W. Jefferson Street, Room 257 B
Decatur, IN 46733
Phone (260) 724-2995
www.co.adams.in.us/303/ACRSD

October 16, 2020

CONNECTION NOTICE

ROMAN D SCHWARTZ
4311 N ST RD 101
DECATUR, IN 46733

RE: Residence located at 4311 N STATE RD 101, DECATUR, IN

Dear project resident,

The contractor retained by the Adams County Regional Sewer District has completed the installation of the sanitary sewer system extension in your area. The new sewers have passed the necessary tests and the individual property owner tap-in may commence. In accordance with State Law, I.C. § 13-26-5-2 Sec. 2, (8)(A)(iii) you are hereby requested and required to connect to the District's sewer system within ninety (90) days and discontinue use of your septic system since a sanitary sewer is available within three hundred (300) feet of the structure located on your property.

The following summary documents contain information and instructions about what you must do to connect to the sanitary sewer system.

- 1) Connection Document #1 - Connection and Inspection Procedure and Account Set Up
- 2) Connection Document #2 - General Specifications
- 3) Connection Document #3 - General Information

The first step is explained in Connection Document #1 to identify your connection type, get your work and inspection scheduled and your account set up. Please contact the office of Rebecca Cochran, CPA at 165 N. 2nd Street, Decatur, IN 46733 and they will get the required paperwork completed for you. The specifications and procedure for completing your connection and having the work inspected is set out and explained in Connection Document #2. Connection Document #3 contains general information. Please direct any questions you have concerning tap issues to Barry Scherer, District Superintendent for the Adams County Regional Sewer District at (260) 724-2995.

You should also be aware that pursuant to the Sewer District's Rate Ordinance, if you do not connect within 90 days, then you may be required to pay an additional tap-in fee of Two Thousand Dollars (\$2,000.00) per Rate Ordinance 2020-1 adopted February 14, 2020. By connecting within 90 days, this tap-in fee will not be assessed to you. The Adams County Regional Sewer District looks forward to working with you to provide sanitary sewer service for your property. Thank you for your assistance and cooperation.

ADAMS COUNTY REGIONAL SEWER DISTRICT

EXHIBIT A

ADAMS COUNTY REGIONAL SEWER DISTRICT

313 W. Jefferson Street, Room 257 B
Decatur, IN 46733
Phone (260) 724-2995
www.co.adams.in.us/303/ACRSD

November 2, 2020

CONNECTION NOTICE

Noah B. Schwartz
Or Current Resident
2811 N. US Highway 33
Decatur, IN 46733

RE: Residence located at 2811 N. US Highway 33, Decatur, IN

Dear project resident,

The contractor retained by the Adams County Regional Sewer District has completed the installation of the sanitary sewer system extension in your area. The new sewers have passed the necessary tests and the individual property owner tap-in may commence. In accordance with State Law, I.C. § 13-26-5-2 Sec. 2, (8)(A)(iii) you are hereby requested and required to connect to the District's sewer system within ninety (90) days and discontinue use of your septic system since a sanitary sewer is available within three hundred (300) feet of the structure located on your property.

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ADAMS COUNTY REGIONAL SEWER DISTRICT

EXHIBIT B

ADAMS COUNTY REGIONAL SEWER DISTRICT

313 W. Jefferson Street, Room 257 B

Decatur, IN 46733

Phone (260) 724-2995

www.co.adams.in.us/303/ACRSD

November 2, 2020

CONNECTION NOTICE

Adams County Land Trust
Or Current Resident
2891 N. US Highway 33
Decatur, IN 46733

RE: Residence located at 2891 N. US Highway 33, Decatur, IN

Dear project resident,

The contractor retained by the Adams County Regional Sewer District has completed the installation of the sanitary sewer system extension in your area. The new sewers have passed the necessary tests and the individual property owner tap-in may commence. In accordance with State Law, I.C. § 13-26-5-2 Sec. 2, (8)(A)(iii) you are hereby requested and required to connect to the District's sewer system within ninety (90) days and discontinue use of your septic system since a sanitary sewer is available within three hundred (300) feet of the structure located on your property.

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ADAMS COUNTY REGIONAL SEWER DISTRICT

EXHIBIT C