

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

JOHN SATAWA,

Plaintiff,

v.

BOARD OF COUNTY ROAD
COMMISSIONERS OF MACOMB
COUNTY (“Macomb County Road
Commission”); FRANK L. LLETT,
individually and in her official capacity as
Chairperson, Macomb County Road
Commission; ROBERT P. HOEFNER,
individually and in his official capacity as
County Highway Engineer, Macomb
County Road Commission,

Defendants.

Case No.

COMPLAINT

[FIRST AND FOURTEENTH
AMENDMENTS TO THE UNITED
STATES CONSTITUTION & 42
U.S.C. § 1983]

THOMAS MORE LAW CENTER
Robert J. Muise, Esq. (P62849)
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
rmuise@thomasmore.org
(734) 827-2001

Counsel for Plaintiff

Plaintiff John Satawa (“Plaintiff”), by and through his undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

INTRODUCTION

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States

Constitution and 42 U.S.C. § 1983, challenging Defendants' policy decision to deny Plaintiff the right to engage in protected speech activity in a traditional public forum in the City of Warren, Michigan, which is in Macomb County.

2. Specifically, Plaintiff is challenging Defendants' denial of his request for a permit to temporarily place a nativity scene on a public median in the City of Warren during the Christmas holiday season in a manner similar to how Plaintiff and/or his relatives have done so since approximately 1945.

3. Defendants denied Plaintiff's permit request because Defendants determined that Plaintiff's nativity scene expressed a religious message. Consequently, Defendants' denial is an unconstitutional, content-based restriction on Plaintiff's private expression in a traditional public forum.

4. On account of Defendants' discriminatory policy decision, Plaintiff's longstanding tradition of placing a private nativity scene in the City of Warren during the Christmas holiday season has come to an abrupt end.

5. The United States Supreme Court has long held that "all public streets are held in the public trust and are properly considered traditional public fora." *Frisby v. Schultz*, 487 U.S. 474, 481 (1988). This includes the public streets and associated medians in the City of Warren. Moreover, the United States Supreme Court has unequivocally stated that its "precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).

6. Defendants' discriminatory policy decision violates Plaintiff's fundamental right to freedom of speech protected by the Free Speech Clause of the First Amendment by imposing a content-based restriction on Plaintiff's private expression in a traditional public forum.

7. Defendants' discriminatory policy decision violates the Establishment Clause of the First Amendment by disfavoring religion.

8. Defendants' discriminatory policy decision denies Plaintiff the equal protection of the law guaranteed by the Equal Protection Clause of the Fourteenth Amendment by denying Plaintiff access to a traditional public forum for his private speech because Defendants find his message unacceptable.

9. Plaintiff seeks a declaration that Defendants have deprived him of his constitutional rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983; a preliminary and permanent injunction enjoining the enforcement of Defendants' content-based restriction on Plaintiff's speech; and an award of nominal damages for the loss of Plaintiff's constitutional rights. Plaintiff also seeks an award of reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988.

JURISDICTION AND VENUE

10. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

11. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

12. Plaintiff's claim for damages is made pursuant to 42 U.S.C. § 1983. Plaintiff's prayer for relief regarding costs, including reasonable attorneys' fees, is authorized by 42 U.S.C. § 1988.

13. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

PLAINTIFF

14. Plaintiff John Satawa is an adult citizen of the United States and a resident of the City of Warren, Michigan. Plaintiff is also a devout Christian and a practicing member of the Catholic Church.

DEFENDANTS

15. Defendant Board of County Road Commissioners of Macomb County (hereinafter "Macomb County Road Commission") is a government agency that is part of the executive branch of the Macomb County government. The three-person Macomb County Road Commission, acting as a Board, makes policy decisions for the county. The Macomb County Road Commission has the right to sue and be sued in its own name.

16. The Macomb County Road Commission has the authority to issue permits for the temporary construction or placement of private structures, including signs and other displays, in the rights-of-way of county roads, including median strips.

17. The Macomb County Road Commission is responsible for the policy decision to deny Plaintiff a permit to temporarily place a private nativity scene on a median strip of a county road in the City of Warren during the Christmas holiday season because the road commission determined that the nativity scene is religious. The Macomb County Road Commission's policy decision is a content-based restriction on Plaintiff's private expression in a traditional public forum.

18. Defendant Fran Gillett is the Chairperson of the Macomb County Road Commission. As Chairperson, Defendant Gillett is responsible for adopting, creating, implementing, and enforcing the policy decisions of the road commission, including its policy decision to deny Plaintiff a permit to temporarily place a nativity scene on a median strip of a county road in the City of Warren during the Christmas holiday season because the road commission determined that the nativity scene is religious. Defendant Gillett is sued individually and in her official capacity.

19. Defendant Robert P. Hoepfner is the County Highway Engineer for the Macomb County Road Commission. As County Highway Engineer, Defendant Hoepfner is responsible for implementing and enforcing the policy decisions of the road commission, including its policy decision to deny Plaintiff a permit to temporarily place a nativity scene on a median strip of a county road in the City of Warren during the Christmas holiday season because the road commission determined that the nativity scene is religious. Defendant Hoepfner is sued individually and in his official capacity.

STATEMENT OF FACTS

20. Plaintiff hereby incorporates by reference all above-stated paragraphs.

21. In March, 1945, St. Anne's Parish was established in the Village of Warren, Michigan. During its first year of existence, a set of Christmas statues depicting the nativity scene were donated to the Catholic church. The statues were too large to display on the inside of the church, so some members of the congregation thought it would be a good idea to display the statues and a manger in the center of the village during the Christmas holiday season.

22. The manger for the nativity display was built by Mr. Frank Krause and Mr. Joseph Satawa, Plaintiff's father, in Mr. Satawa's backyard during the cold weather of early December. The lumber for the manger was donated by another member of the community.

23. Mr. Jack Eckstein, President of the Village at the time, granted permission to display the nativity scene on the median between Mound and Chicago Roads in Warren. As a result, a Christmas tradition was born.

24. During nearly every Christmas holiday season since 1945 the nativity scene was temporarily displayed on the median between Mound and Chicago Roads. Mr. Krause and Mr. Joseph Satawa spearheaded the tradition, and they maintained it for many years to follow.

25. The only Christmas holiday season that the nativity scene was not displayed on the median in Warren was Christmas of 1996. Due to major construction on Mound and Chicago Roads that year, it was not possible to display the nativity scene. The nativity scene returned to the median in time for the 1997 Christmas season.

26. The original manger was built from lumber that gave it the appearance of a log cabin. The manger was approximately 8 feet long by 8 feet wide and 7 feet high at its peak, with built-in legs to allow it to stand approximately 18 inches off of the ground. The manger was built so that it could be assembled and disassembled for storage since it was only a temporary

display. The manger also had a window across the front for viewing and a small window in the rear for an entrance once assembled.

27. In the early 1950's, new windows were added to the manger so that the nativity scene could be viewed from both Mound and Chicago Roads. The glass for the windows was donated by Wasik Funeral Home, which at the time was located on Dubois Street in Detroit, Michigan.

28. For a couple of years in the early 1950's, a maintenance crew from the City of Warren would help assemble the manger. Mr. Krause had passed away, but Mr. Joseph Satawa was still assisting with the assembly and disassembly of the nativity display.

29. In 1964, a new set of Christmas statues was donated by the St. Anne's Altar Society.

30. On December 30, 1965, Mr. Joseph Satawa passed away, so his son, Plaintiff John Satawa, and his son-in-law, Mr. Lawrence Green, continued the tradition. Over the years Plaintiff and Mr. Green received assistance with assembling and disassembling the display from other members of the community, including the Boy Scout troop from St. Anne's Parish.

31. In the mid-1970's, a new manger was needed, so Mr. Joseph Satawa's nephew, Mr. John Stapleton, who is now deceased, agreed to build a new one using the same dimensions as the original manger. The new manger was lighter and easier to assemble and disassemble.

32. After approximately 32 years, it came time to refurbish the statues as they were beginning to chip and the paint was fading. In the summer of 1996, the Christmas statues were completely refurbished with the help of donations provided by local businesses.

33. In December, 2008, Plaintiff's longstanding tradition of displaying a private nativity scene on the median between Mound and Chicago Roads would come to an abrupt end when the Macomb County Road Commission ordered him to remove the display.

34. On or about December 11, 2008, Plaintiff received a letter from the Macomb County Road Commission signed by Defendant Hoepfner, directing Plaintiff to "immediately remove" the nativity scene. The letter stated, "It has come to the attention of the Road Commission of Macomb County that you have installed a temporary structure in the median of Mound Road south of Chicago Road in the City of Warren. A search of our records indicates that no permit was issued for this structure to be placed in the Road Commission right-of-way. This letter serves as your notice to immediately remove this structure from the right-of-way. If the removal does not occur within 30 days of the receipt of this letter, the Road Commission forces will remove the structure and bill you for the costs incurred." A true and accurate copy of this letter is attached to this Complaint and incorporated herein as Exhibit 1.

35. Plaintiff complied with Defendants' directive and removed the nativity scene.

36. In January, 2009, Plaintiff went to the office of the Macomb County Road Commission to inquire about seeking and obtaining a permit for the display of his private nativity scene per the letter he received from Defendant Hoepfner.

37. At the road commission office, Plaintiff spoke to a clerk behind the counter and inquired about the permit process. The clerk asked what the permit was for and Plaintiff explained the situation regarding his nativity scene display and the letter he received from Defendant Hoepfner. The clerk indicated to Plaintiff that she was aware of the situation and

asked him to wait while she called another road commission employee, Ms. Sue Van Steelandt, to assist him.

38. Ms. Van Steelandt, who appeared to be a supervisor or a manager in the Permit Department, approached the counter and asked Plaintiff some questions about the nativity scene display, indicating that she had already received some information about it. Ms. Van Steelandt requested that Plaintiff provide some contact information on a permit application, and then directed him to sign and date it. She told Plaintiff that she already had the necessary information to fill in the rest of the application. Plaintiff complied with the request and submitted the application as directed. Ms. Van Steelandt informed Plaintiff that he should receive a letter in about 2 to 3 weeks with a response from the road commission.

39. On or about February 7, 2009, Plaintiff received a letter from the Macomb County Road Commission dated February 6, 2009. Enclosed with the letter was a blank copy of an application for a permit for Plaintiff to use to request permission to temporarily display his nativity scene in the county "right-of-way." The letter stated, "Please sign the enclosed application by the 'X' and return to us in the enclosed envelope. Unfortunately, the application that you submitted prior was incomplete." The letter was signed, "Permit Department, Road Commission of Macomb County." A true and accurate copy of this letter is attached to this Complaint and incorporated herein as Exhibit 2.

40. The permit application provided by the Permit Department of the Macomb County Road Commission is the application that private citizens would use to request a permit to construct or install structures, including temporary structures such as signs or other displays, on public rights-of-way, including medians, in Macomb County.

41. In fact, pursuant to their authority to permit the private display of items on the rights-of-way in Macomb County, Defendants have permitted private organizations, such as “Friends of the Village,” an organization that seeks to maintain the “village” character of Warren, to display various items, including two old wagons, old farming equipment, and a bench, on the median between Mound and Chicago Roads.

42. Defendants’ permit application process is the process a private citizen would also use to temporarily display a private commercial sign on a public right-of-way, including a median, within Macomb County.

43. Consequently, Defendants’ permit application process is a policy or procedure whereby Defendants allow private citizens to construct or install structures, including temporary structures such as signs or displays, on public rights-of-way, including medians, within Macomb County.

44. Defendants established a permit application process so as to ensure that any structures that are installed or constructed by private citizens on public rights-of-ways, including medians, within Macomb County are installed or constructed in a manner that does not obstruct pedestrian or vehicular traffic or pose any public safety concerns.

45. In order to ensure that Plaintiff’s renewed permit application was not rejected for being “incomplete,” on or about February 12, 2009, Plaintiff submitted an application that set forth the details of his proposed nativity scene display, including photographs to show its size and precise location and to demonstrate that the display would not obstruct any vehicular or pedestrian traffic or create any public safety issues. Indeed, the nativity display, or one similar to it, had been displayed in this location without any public safety issues for approximately 63

years. A true and accurate copy of Plaintiff's permit application, which includes true and accurate copies of photographs of the proposed display, is attached to this Complaint and incorporated herein as Exhibit 3.

46. In his permit application, Plaintiff stated the following:

Applicant, Mr. John Satawa, requests permission to temporarily display a Nativity Scene in the median of Mound Road south of Chicago Road in the City of Warren for a period beginning on November 28, 2009 and ending on January 9, 2010. Applicant's display is intended to be an exercise of his private religious speech, which is fully protected under the Free Speech Clause of the First Amendment.

The proposed Nativity Scene is approximately 8' x 8' x 8' at the peak, and it will be displayed in a manner similar to how it has been displayed at this location for the past 60 years. The enclosed photographs, which were taken of the display in January 2009, illustrate the nature, size, and location of the proposed display. As demonstrated by the photographs, there are no obstructions to vehicular or pedestrian traffic or any other safety concerns caused by the display.

The proposed display will be lighted by two 150W floodlights and two 100W light bulbs. There is an electrical outlet available at the median location that has been used in previous years to provide power for the display. Applicant will pay for all electrical costs associated with his display. Additionally, applicant will be responsible for putting up and taking down the display. No assistance from government employees will be required.

Please advise if any insurance will be required, the reasons for said insurance, and the amount. Applicant is willing to pay all *reasonable* costs associated with his temporary display. Applicant is also willing to post a sign at the display which states clearly that it is his private display and not the display of Macomb County, the City of Warren, or any other government entity. Applicant is willing to coordinate and cooperate with Macomb County on the content, size, and location of this sign.

47. By submitting his permit application, Plaintiff was requesting permission to display a private nativity scene on a public right-of-way—the median of Mound Road south of Chicago Road in the City of Warren—similar to how other private citizens request and receive

permission to construct or install temporary structures on other public rights-of-way, including medians, within Macomb County.

48. On March 9, 2009, Defendants issued a “formal denial” of Plaintiff’s application for a permit “to erect a nativity scene in the Mound Road right of way.” Defendants denied Plaintiff his right to display his private nativity scene not because the proposed display obstructed vehicular or pedestrian traffic or created any public safety issues, but because the nativity scene “displays a religious message,” which is a content-based restriction on Plaintiff’s private expression. A true and accurate copy of Defendants’ “formal denial” is attached to this Complaint and incorporated herein as Exhibit 4.

49. There are no government or other public buildings within the vicinity of the median where Plaintiff would like to display his private nativity scene, and this is the same location where the nativity scene has been displayed in Warren without complaint for approximately 63 years.

FIRST CLAIM FOR RELIEF

(First Amendment—Free Speech Clause)

50. Plaintiff hereby incorporates by reference all above-stated paragraphs.

51. By reason of the aforementioned policy, practice, custom, acts, and omissions, engaged in under color of state law, Defendants have imposed a content-based restriction on Plaintiff’s private speech in a traditional public forum in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

52. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

SECOND CLAIM FOR RELIEF

(First Amendment—Establishment Clause)

53. Plaintiff hereby incorporates by reference all above-stated paragraphs.

54. By reason of the aforementioned policy, practice, custom, acts, and omissions, engaged in under color of state law, Defendants have violated the Establishment Clause of the First Amendment to the United States Constitution as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

55. Defendants' policy, practice, and/or custom of prohibiting the display of Plaintiff's private nativity scene lacks a valid secular purpose, has the primary effect of inhibiting religion, and creates an excessive entanglement with religion in violation of the United States Constitution.

56. Defendants' policy, practice, and/or custom of prohibiting the display of Plaintiff's private nativity scene conveys an impermissible, government-sponsored message of disapproval of and hostility toward the Christian religion and our Nation's religious heritage. As a result, Defendants' policy, practice, and/or custom sends a clear message to Plaintiff that he is an outsider, not a full member of the political community and an accompanying message that those who disfavor the Christian religion and our Nation's religious heritage are insiders, favored members of the political community in violation of the United States Constitution.

57. As a direct and proximate result of Defendants' violation of the Establishment Clause of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

THIRD CLAIM FOR RELIEF

(Fourteenth Amendment—Equal Protection)

58. Plaintiff hereby incorporates by reference all above-stated paragraphs.

59. By reason of the aforementioned policy, practice, custom, acts, and omissions, engaged in under color of state law, Defendants have unconstitutionally deprived Plaintiff of the equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, in that Defendants, through their acts, policies, practices, and/or customs, prevented Plaintiff from expressing a private message in a public forum based on the content of his speech, thereby denying the use of this forum to those whose messages Defendants find unacceptable.

60. As a direct and proximate result of Defendants' violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court:

A) to declare that Defendants violated Plaintiff's rights protected by the First and Fourteenth Amendments to the United States Constitution as set forth in this Complaint;

B) to enjoin Defendants' policy decision to deny Plaintiff a permit to temporarily display a nativity scene in a traditional public forum in the City of Warren during the 2009 Christmas holiday season and during future Christmas holiday seasons as set forth in this Complaint;

C) to award Plaintiff nominal damages for the loss of his constitutional rights;

D) to award Plaintiff his reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

E) to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,

THOMAS MORE LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)

INDEX OF EXHIBITS

- | | |
|-----------|---|
| Exhibit 1 | Letter from Board of County Road Commissioners of Macomb County to Plaintiff John Satawa dated December 11, 2008, ordering Plaintiff to remove his nativity scene |
| Exhibit 2 | Letter from Board of County Road Commissioners of Macomb County to Plaintiff John Satawa dated February 6, 2009, regarding Plaintiff's permit application |
| Exhibit 3 | Permit application to display a nativity scene on a county "right-of-way" in the City of Warren, Michigan submitted to the Road Commission of Macomb County by Plaintiff John Satawa on February 12, 2009 |
| Exhibit 4 | Letter of Board of County Road Commissioners of Macomb County dated March 9, 2009, which served as the "formal denial" of Plaintiff John Satawa's permit application to display a nativity scene on a county "right-of-way" in the City of Warren, Michigan |

Fran Gillett
CHAIRPERSON

Thomas L. Raymus
VICE-CHAIR

Robert M. Sawicki
COMMISSIONER



BOARD OF COUNTY ROAD COMMISSIONERS
OF MACOMB COUNTY

Administration Building
117 S. Groesbeck Highway
Mount Clemens, Michigan 48043
www.rcmcweb.org
(586) 463-8671

December 11, 2008

Mr. John Satawa
8171 Gerald
Warren, MI 48093

Dear Mr. Satawa:

It has come to the attention of the Road Commission of Macomb County that you have installed a temporary structure in the median of Mound Road south of Chicago Road in the City of Warren. A search of our records indicates that no permit was issued for this structure to be placed in the Road Commission right of way.

This letter serves as your notice to immediately remove this structure from the right of way. If the removal does not occur within 30 days of the receipt of this letter, the Road Commission forces will remove the structure and bill you for the costs incurred.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Robert P. Hoepfner, P.E.
County Highway Engineer

RPH/svs

cc: Board of County Road Commissioners
G. Bowman

EXHIBIT

1

tabbles®

Fran Gillett
CHAIRPERSON
Thomas L. Raymus
VICE-CHAIR
Robert M. Sawicki
COMMISSIONER



BOARD OF COUNTY ROAD COMMISSIONERS
OF MACOMB COUNTY

Administration Building
117 S. Groesbeck Highway
Mount Clemens, Michigan 48043
www.rcmcweb.org
(586) 463-8671

February 6, 2009

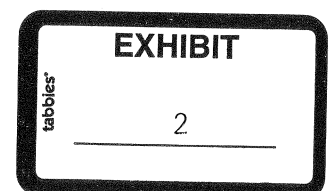
Mr. Satawa:

Please sign the enclosed application by the "X" and return to us in the enclosed envelope.

Unfortunately, the application that you submitted prior was incomplete.

Thank you.

Permit Department
Road Commission of Macomb County





THOMAS MORE
Law Center

Richard Thompson
President and Chief Counsel
Admitted in Michigan

February 12, 2009

Road Commission of Macomb County
Attn: Permit Department
117 S. Groesbeck Highway
Mt. Clemens, MI 48043

Re: *Private Holiday Display of the Nativity*

To Whom It May Concern:

On behalf of my client, Mr. John Satawa, I have enclosed his completed permit application with attached plans for the display of a Nativity Scene during the 2009-2010 Christmas season.

We look forward to a favorable reply.

Should the permit application be denied, we respectfully request that you notify us of this in writing, stating the reason(s) for the denial.

Thank you.

Sincerely,

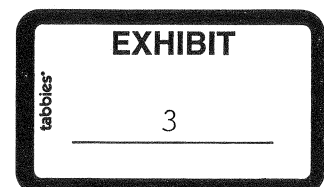
THOMAS MORE LAW CENTER



Robert J. Muise, Esq.

cc: Mr. John Satawa

Enclosure:



ROAD COMMISSION OF MACOMB COUNTY
117 S. GROESBECK HIGHWAY
MT. CLEMENS, MI 48043
Phone: 586-463-8671
Fax: 586-463-4277

APPLICATION AND PERMIT TO CONSTRUCT, OPERATE, USE AND/OR MAINTAIN WITHIN THE RIGHT-OF-WAY; OR TO CLOSE A COUNTY ROAD. If a contractor is to perform the construction entailed in this application and permit, and is supplying the deposit, and bond, he will fill out the information block provided, and thereby assumes responsibility, along with the applicant, for any provisions of this application and permit which apply to him.

Application No. 40962
Permit No. 2009-000000
Date

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John Satawa
8171 Gerald
Warren, MI 48093
Phone(s): 586-573-4993 / 586-596-5547

Signature

Title

Date 2/12/09

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Receipt No.
To Be Billed
Letter/Credit
Work Order No.

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To place a Nativity Scene in the
County Right of Way

Signature

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Date

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Plans Insurance No

Plans attached
pp. 1-4

Job Mound @ Chicago

3 WORKING DAYS
BEFORE YOU DIG - DIAL
(MISS DIG)
(TOLL FREE)
(800-482-7171)

Applicant and/or Contractor request a Permit for the purpose indicated in the attached plans and specifications at the following location:

City/Township Warren
Name of Road Mound Road
Between Chicago

Project Work in ROW
Roadside
and

For a Period Beginning 11/28/09 and Ending 1/9/10
and Agrees to the terms of this permit.

Applicant to place a Nativity Scene in the right of way at the above location.

Recommended For Issuance:

(Investigator)

Date

(Project/Traffic Engineer)

Date

Board of County Road Commissioners
MACOMB COUNTY, Michigan

By

Shane M. Herrick

PERMIT DEPARTMENT MANAGER

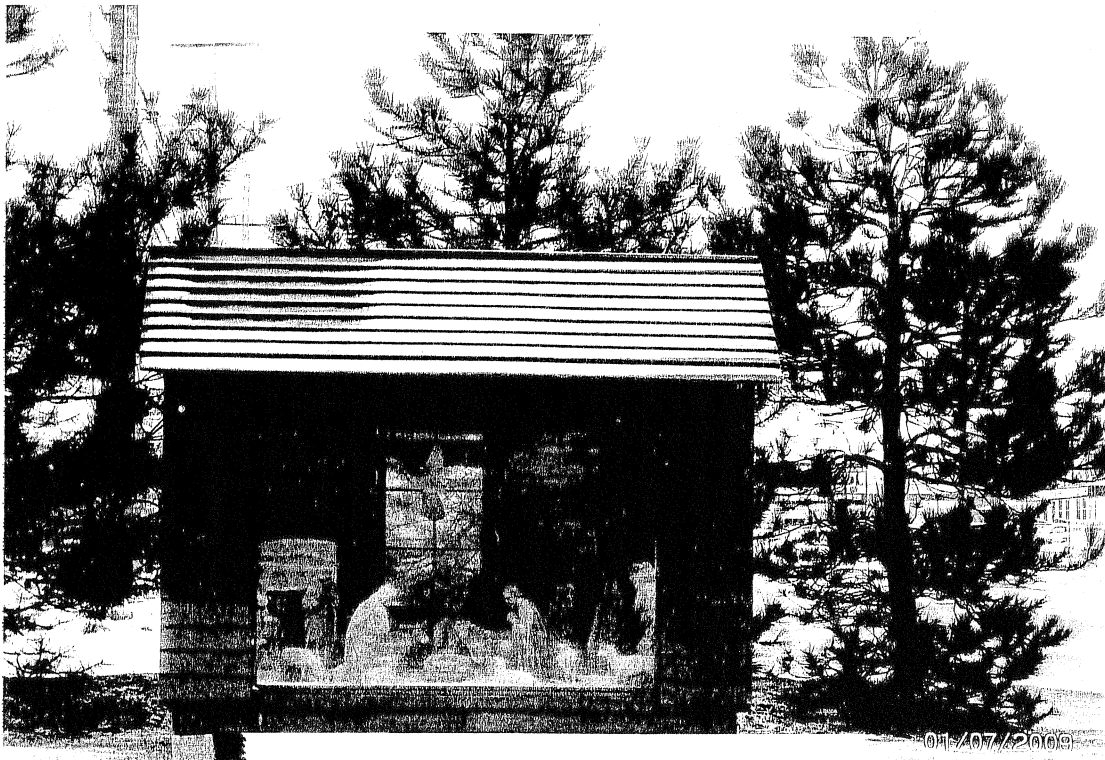
Plans for Display of Nativity Scene in the median of Mount Road south of Chicago Road

Applicant, Mr. John Satawa, requests permission to temporarily display a Nativity Scene in the median of Mound Road south of Chicago Road in the City of Warren for a period beginning on November 28, 2009 and ending on January 9, 2010. Applicant's display is intended to be an exercise of his private religious speech, which is fully protected under the Free Speech Clause of the First Amendment.

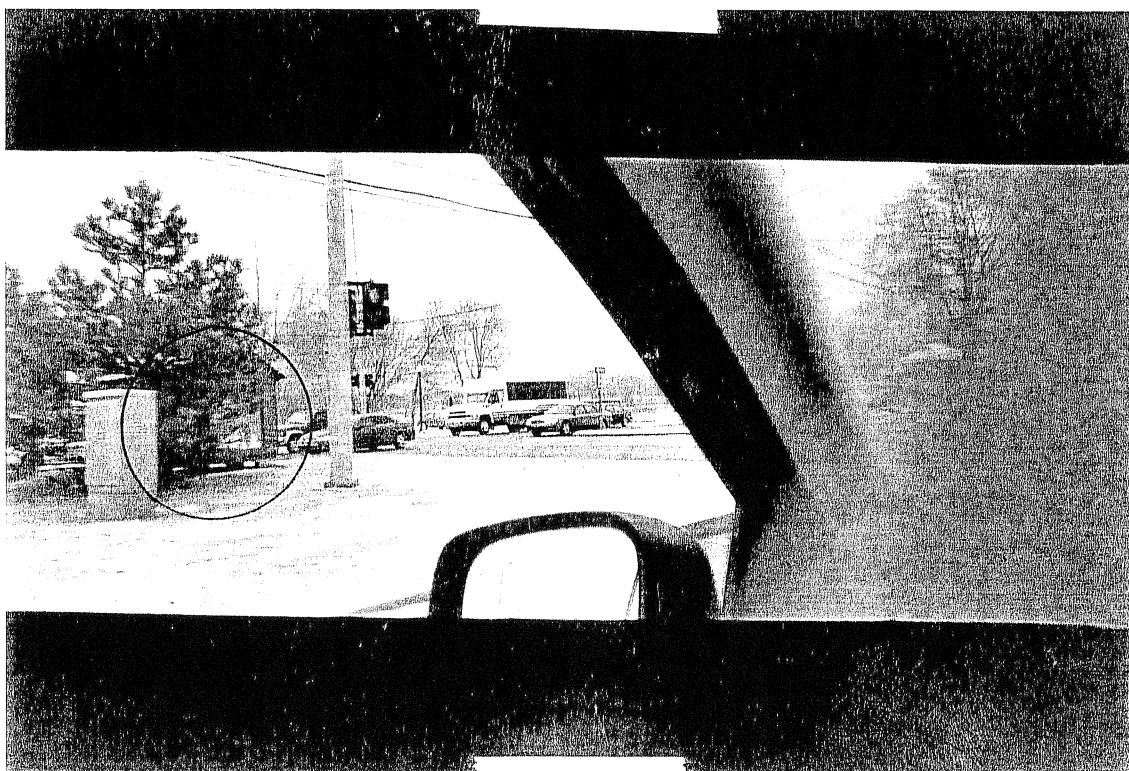
The proposed Nativity Scene is approximately 8' x 8' x 8' at the peak, and it will be displayed in a manner similar to how it has been displayed at this location for the past 60 years. The enclosed photographs, which were taken of the display in January 2009, illustrate the nature, size, and location of the proposed display. As demonstrated by the photographs, there are no obstructions to vehicular or pedestrian traffic or any other safety concerns caused by the display.

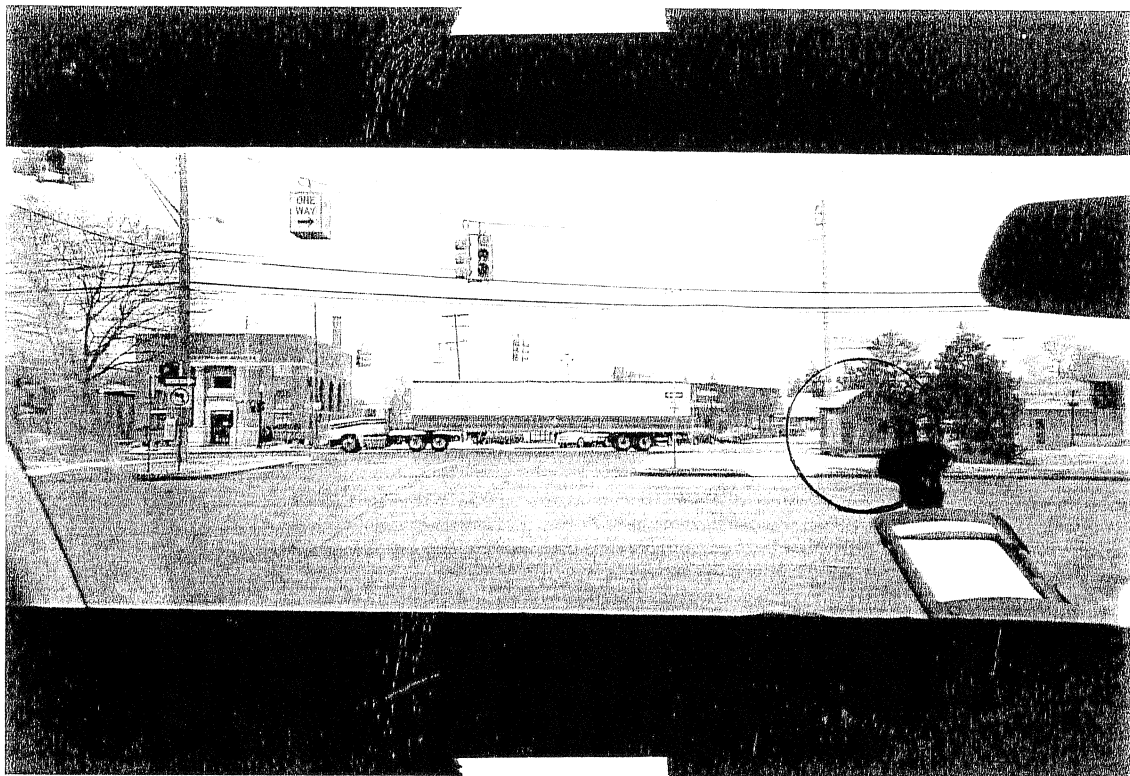
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Please advise if any insurance will be required, the reasons for said insurance, and the amount. Applicant is willing to pay all *reasonable* costs associated with his temporary display. Applicant is also willing to post a sign at the display which states clearly that it is his private display and not the display of Macomb County, the City of Warren, or any other government entity. Applicant is willing to coordinate and cooperate with Macomb County on the content, size, and location of this sign.









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CHAIRPERSON

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March 9, 2009

Robert J. Muise, Esq.
Thomas More Law Center
24 Frank Lloyd Wright Drive
PO Box 393
Ann Arbor, MI 48106

Dear Mr. Muise:

Please allow this letter to serve as the Board of County Road Commissioners for the County of Macomb's formal denial of the January 7, 2009 Application for Permit submitted by John Satawa to erect a nativity scene in the Mound Road right of way. Given the religious nature of your nativity scene, the Road Commission of Macomb County as a governmental agency must weigh whether or not the approval of such a permit would be deemed a violation of the First Amendment of the United States Constitution.

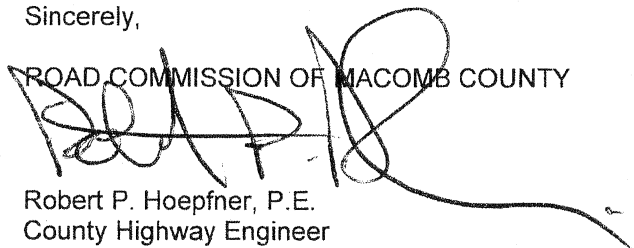
A statute or practice that touches on religion, if it to be permissible under the establishment of religion clause of the Constitution's First Amendment, (1) must have a secular purpose, (2) must neither advance nor inhibit religion in its principal or primary effect, and (3) must not foster an excessive entanglement of government with religion. In *Allegheny v ACLU of Pittsburg*, 492 U.S. 573 (1989), the U.S. Supreme Court held that "there is no doubt, of course, that the crèche (nativity scene) itself is capable of communicating a religious message."

Since the nativity scene Mr. Satawa desires to place in the right of way clearly displays a religious message, this would be a violation of the Establishment Clause of the First Amendment: "*Establishment Clause*, at the very least, prohibits government from appearing to take a position on questions of religious belief or from 'making any adherence to a religion relevant in any way to a person's standing in the political community.'" *Allegheny*, at 594.

The Road Commission of Macomb County cannot permit you to display this nativity scene in the Road Commission's right of way. This undoubtedly would be interpreted as our endorsement of religion, in violation of the *Establishment Clause of the U.S. Constitution*.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

ROAD COMMISSION OF MACOMB COUNTY


Robert P. Hoepfner, P.E.
County Highway Engineer

RPH/svs

cc: J. Satawa

EXHIBIT

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