

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

TENAFLY ERUV ASSOCIATION, INC.,  
CHAIM BOOK, YOSIFA BOOK, STEFANIE  
DARDIK GOTLIEB, and STEPHEN  
BRENNER,

Plaintiffs,

Case No. 00-6051 (WGB)

- against -

THE BOROUGH OF TENAFLY, ANN  
MOSCOVITZ, individually and in her official  
capacity as Mayor of the Borough of Tenaflly,  
CHARLES LIPSON, MARTHA B. KERGE,  
RICHARD WILSON, ARTHUR PECK, JOHN  
T. SULLIVAN, each individually and in their  
official capacities as Council Members of the  
Borough of Tenaflly,

Defendants.

**NOTICE OF MOTION FOR SUMMARY JUDGMENT AND A PERMANENT  
INJUNCTION**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment and a Permanent Injunction, the accompanying 56.1 Statement of Undisputed Facts, the exhibits referenced therein, and all other prior proceedings before this Court, Plaintiffs, by and through the undersigned counsel of record, will move this Court before the Honorable William G. Bassler, United States District Judge, at the Martin Luther King Courthouse, 50 Walnut Street, Room 5060 Newark, NJ 07101, on March 26, 2004, for the following relief:

1. Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, an order for Summary Judgment based on defendants' violations of 42 U.S.C. § 1983 as a

result of defendants' violations of plaintiffs' constitutional rights under the Free Exercise Clause of the First Amendment of the Constitution of the United States; and

2. Pursuant to Federal Rule of Civil Procedure 65, a permanent injunction barring defendants from removing, or effectuating the removal of, or causing a third party to remove or effectuate the removal of, the eruv from Tenafly.

Dated: March 26, 2004

Respectfully submitted,

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**PLAINTIFFS TENAFLY ERUV ASSOCIATION, INC., CHAIM BOOK, YOSIFA BOOK,  
STEFANIE DARDIK GOTLIEB AND STEPHEN BRENNER'S MEMORANDUM OF  
LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND A  
PERMANENT INJUNCTION**

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Plaintiffs Tenaflly Eruv Association, Inc. (“TEAI”), Chaim Book, Yosifa Book, Stephen Brenner and Stefanie Dardik Gotlieb (collectively, “Plaintiffs”) respectively submit this memorandum of law in support of their motion, pursuant to Federal Rule of Civil Procedure (F.R.C.P.) 56, for summary judgment on the First, Second and Third Claims for Relief in the Complaint and to convert the preliminary injunction into a permanent injunction.

#### PRELIMINARY STATEMENT

The factual background and procedural history of this matter are fully set forth both in this Court’s opinion, 155 F. Supp. 2d 142, 145-71, and the opinion of the Court of Appeals for the Third Circuit (“Third Circuit”), 309 F.3d 144, 151-156 and will not be repeated here.

The Third Circuit held that “the Borough [of Tenaflly’s] selective, discretionary application of [Tenaflly] Ordinance 691 against the lechis<sup>1</sup> violates the neutrality principle...because it ‘devalues’ Orthodox Jewish reasons for posting items on utility poles by ‘judging them to be of lesser import than nonreligious reasons,’ and thus ‘singles out’ the plaintiffs’ religiously motivated conduct for discriminatory treatment.” Citations omitted. Tenaflly Eruv Association, Inc. v. The Borough of Tenaflly, 309 F.3d 144, 168 (3d Cir. 2002). The Third Circuit also held that defendants’ decision to remove

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<sup>1</sup> As explained in greater detail in both this Court’s decision, 155 F. Supp. 2d at 149, and the Third Circuit’s decision, 309 F.3d at 152, the “Lechis” are individual, thin black pieces of weather-stripping that are attached to the sides of utility poles to physically create the eruv. The weather-stripping used is identical to the pieces of weather-stripping attached to the poles by Verizon to cover its ground wires, and it is impossible to differentiate between a lechi and a piece of weather-stripping that is covering ground wires.

the eruv from Tenafly does not withstand the required level of scrutiny -- strict scrutiny -- as it did not advance interests of the highest order and it was not narrowly tailored in the pursuit of those interests. In holding that the defendants' decision to order removal of the eruv did not withstand strict scrutiny, the Third Circuit rejected the reasons proffered by defendants as justification for that decision. 309 F.3d at 172-79. The facts on which the Third Circuit's legal decision was based were undisputed. Those facts have not changed since the Third Circuit's decision and remain undisputed. There are, therefore, no genuine issues of material fact and, based on the holding of the Third Circuit, plaintiffs' motion for summary judgment should be granted on the First, Second and Third Claims for Relief. As a result, this Court's preliminary injunction barring defendants from removing, effectuating the removal of, or causing a third party to remove or effectuate the removal of, the eruv should be converted into a permanent injunction.

#### STATEMENT OF FACTS

The only facts relevant to this motion are those facts on which the Third Circuit relied concerning the Borough's actions, or failure to act, with respect to permitting use of the poles, the right of way and other public property for a variety of religious and secular purposes, despite the absolute prohibitions of Ordinance 691:

- Each year, the Chamber of Commerce was permitted to place holiday decorations on the telephone poles. Affidavit of Jay Nelkin, dated March 30, 2001, ("Nelkin Aff. dated 3/30/01") at ¶ 4, Exhibit B; Affidavit of Borough Administrator Joseph DiGiacomo, dated April 23, 2001 ("DiGiacomo Aff. dated 4/23/01") at ¶ 4; April 30, 2001 Testimony of Borough

Administrator Joseph DiGiacomo (“DiGiacomo Testimony”) at 19:19-20:4, 27:7-144; 309 F. 3d at 151-52, 167; 155 F. Supp. 2d at 170.

- Local churches were permitted to place permanent directional signs in the municipal right of way, some with religious symbols and times of worship services. DiGiacomo Testimony at 28:20-29:29; May 3, 2001 Affidavit of Borough Administrator Joseph DiGiacomo (DiGiacomo Aff. dated 5/3/01) at ¶ 2, Exhibits B, C; DiGiacomo Aff. dated 4/23/01 at ¶ 6; Nelkin Aff. dated 3/30/01 at ¶ 2, 3, Exhibit A; 309 F. 3d at 151, 167; 155 F. Supp. 2d at 169-70. In fact, the Borough encouraged one church to put its sign on Borough, rather than county, property because it would be more “meaningful” located on the former. Letter dated March 14, 1996 from Robert P. Miller to Mr. Michael Parlamis, attached to the Stipulation Modifying the Record, submitted October 30, 2001.
- Opponents of a school regionalization plan were permitted to put orange ribbons on the telephone poles to express their point of view. May 1, 2001 Testimony of Mayor Ann Moscovitz (“Moscovitz Testimony”) at 75:7 – 76:2; December 12, 2000 Borough of Tenaflly Public Hearing re: In the Matter of the Application of the Tenaflly Eruv Association for An Eruv Transcript, attached as Exhibit B to the Certification of Richard Shapiro dated April 6, 2001 (“12/12/00 Tr.”), comments of Lee

Rosenbaum, at 52:12-16; 309 F. 3d at 151, 167, 168 n.28, 173; 155 F. Supp. 2d at 171.

- Residents were permitted to attach permanent house numbers, lost animal and other private signs to the utility poles. Plaintiffs' Exhibits 21-31; Nelkin Aff. dated 3/30/01 at ¶ 5, Exhibit C; DiGiacomo Testimony at 48:23 – 50:13; 309 F. 3d at 151, 167, 173; 155 F. Supp. 2d at 169;
- A private company was allowed to attach radio transmitters to poles in the right of way. Tenaflly Ordinance 1127; DiGiacomo Testimony at 20:5-21, 47:16 – 48:22; 155 F. Supp. 2d at 169.
- Residents are permitted to use Borough property for the installation of sprinklers, fences, walls columns and driveways. Plaintiffs' Exhibits 3, 4, 5, 6, 8, 9, 10, 11, 12, 19; DiGiacomo Testimony, at 40:15 -- 44:15, 46:19 – 47:12; 155 F. Supp. 2d at 169.
- In order to use Borough property for the installation of sprinklers, walls and driveways, residents are required to "rent" the Borough property for \$1. Plaintiffs' Exhibits 3, 5, 7, 8, 9, 10, 11, 12, 19.

On November 7, 2000, TEAI filed an application requesting that the Council not remove or order the removal of the Eruv. Letter from Chaim Book to Mayor Ann Moscovitz, dated November 7, 2000, attached as Exhibit A to the Complaint; Complaint at ¶ 48; Affidavit of Chaim Book, dated December 14, 2000 ("Chaim Book Aff."), at ¶ 42; 309 F. 3d at 154; 155 F. Supp. 2d at 159. The application was filed

pursuant to an agreement negotiated by Richard D. Shapiro, counsel for TEAI, and then Borough Attorney Walter Lesnevic. Chaim Book Aff. at ¶ 41; Plaintiffs' Exhibit 14; 155 F. Supp. 2d at 159. In his letter memorializing the agreement, Mr. Shapiro wrote: "I also appreciate your advice that the Borough has no specific ordinance covering this matter . . ." Plaintiffs' Exhibit 14; 155 F. Supp. 2d. at 159. The Borough Council met on November 21, 2000 to discuss how to proceed with TEAI's application. Mr. Shapiro's November 2 letter was circulated to the Mayor and members of the Council and discussed during this meeting. November 21, 2000 Tenaflly Borough Council Meeting Transcript ("11/21/00 Tr.") at pp. 3-4; 309 F.3d at 154; 155 F. Supp. 2d at 159. No one disputed his statement that "the Borough has no specific ordinance governing this matter...." 11/21/00 Tr. at pp. 3-4; Id.

The Borough Council decided to hold two public hearings to discuss TEAI's proposal. Chaim Book Aff. at 43; 11/21/00 Tr. at 8; 309 F.3d at 154; 155 F. Supp. 2d at 159. The Public hearings were held on November 28, 2000 and December 12, 2000. Chaim Book Aff. at 43; 11/21/00 Tr. at 8; November 28, 2000 Borough of Tenaflly Public Hearing re: In the Matter of the Application of the Tenaflly Eruv Association for An Eruv Transcript, attached as Exhibit B to the Certification of Richard Shapiro dated April 6, 2001 ("11/28/00 Tr."); 12/12/00 Tr. at 14; 309 F.3d at 154; 155 F. Supp. 2d at 159. Neither the Mayor nor the Council members discussed their views concerning TEAI's application at the November 28, 2000 public hearing. see 11/28/00 Tr.; 309 F.3d at 154; 155 F. Supp. 2d at 160-62. Furthermore, neither the Mayor nor the Council members made any reference to the existence or the applicability

of Tenaflly Ordinance 691, or to any other municipal ordinance or state law that might be relevant to the application. see 11/28/00 Tr.; 309 F.3d at 154; 155 F. Supp. 2d at 160-62.

The second hearing on December 12, 2000 proceeded in much the same manner, with only members of the public sharing their views about the eruv. see 12/12/00 Tr.; 309 F.3d at 154; 155 F. Supp. 2d at 162-63. At the end of the December 12, 2000 meeting the Council, without taking a recess to deliberate, voted 5-0 to deny TEAI's application. Chaim Book Aff. at 47; 12/12/00 Tr. at 126:14-15; 309 F.3d at 154; 155 F. Supp. 2d at 163. Just before the vote, Councilman Sullivan stated: "To the best of my knowledge – and this can be confirmed – there is no ordinance, no resolution that says that you cannot hang something from a utility pole, to the best of my knowledge, and please correct me if I'm wrong. There's no ordinance." 12/12/00 Tr. at 121:21 – 125:7; May 8, 2001 Testimony of John T. Sullivan ("Sullivan Testimony") at 17:18 – 18:1; 309 F.3d at 154. At that point, the Mayor corrected Mr. Sullivan and stated that "there is an ordinance." 12/12/00 Tr. at 124:12; 309 F.3d at 154. Borough Attorney Lesnevich then identified the ordinance as Ordinance 691; this was the first time Borough officials referred to Ordinance 691 with regard to the lechis. 12/12/00 Tr. at 125:9-21; 309 F.3d at 154.

On December 13, 2000, Borough Attorney Lesnevich wrote to Cablevision's Director of Operations and informed him of the Council's vote. 12/13/00 Letter from the Borough to Cablevision, Plaintiffs' Exhibit 13; 309 F.3d at 154; 155 F. Supp. 2d at 163. In his letter Mr. Lesnevich ordered Mr. Gaffney to "take action" to remove the lechis "as soon as possible." Id. Mayor Moscovitz called Cablevision on the same day and also requested that Cablevision remove the lechis "as soon as possible."

Moscovitz testimony at 103:19; 155 F. Supp. 2d at 163. The very next day, Cablevision commenced removing the lechis. Chaim Book Aff. at ¶ 48; 155 F. Supp. 2d at 163. This litigation was then immediately commenced.

On December 15, 2000, plaintiffs filed this suit under 42 U.S.C. §1983 and 1985 for violation of their First Amendment rights of Free Exercise of Religion and Freedom of Speech, and for violation of their rights under the federal Fair Housing Act, and sought a Temporary Restraining Order and a Preliminary Injunction barring the defendants from removing, or effectuating the removal of, the eruv from Tenaflly. see Complaint, at ¶ 57 - 75. That same day this Court granted plaintiffs' application for a Temporary Restraining Order. see December 15, 2000 Transcript of Proceedings ("12/15/00 Tr."). On August 10, 2001, following an evidentiary hearing, this Court denied plaintiffs' motion for a preliminary injunction, holding, among other things, that Tenaflly Ordinance 691 barred affixing any materials to the utility poles. 155 F. Supp. 2d 142, 190-91 (D.N.J. 2001).

On October 24, 2002, the Third Circuit reversed this Court's decision. 309 F.3d 144 (3d Cir. 2002). The Third Circuit determined, based on undisputed facts, that plaintiffs were entitled to a preliminary injunction barring defendants from removing the eruv by detaching the lechis from the utility poles located in the Borough's right of way. 309 F.3d at 178-9. This Court subsequently entered the Preliminary Injunction. see Consent Order, dated March 28, 2003.

## ARGUMENT

### POINT I

#### PLAINTIFFS ARE ENTITLED AS A MATTER OF LAW TO SUMMARY JUDGMENT ON THE MERITS OF THEIR CLAIM THAT DEFENDANTS' REFUSAL TO ALLOW THE TENAFLY ERUV TO BE MAINTAINED VIOLATED PLAINTIFFS' FIRST AMENDMENT RIGHTS TO FREE EXERCISE OF RELIGION

Based on the undisputed facts enumerated, and the legal conclusions set forth in the Third Circuit opinion, plaintiffs are entitled to summary judgment. The Third Circuit found that the defendants had permitted placement of various materials on the poles and in the right of way and that their decision to order removal of the lechis from the poles discriminated against plaintiffs' religiously motivated conduct. Based on that finding, the Third Circuit held that defendants' actions were subject to strict scrutiny – that their actions had to advance interests of the highest order and be narrowly tailored in pursuit of those interests. The Court held that defendants did not make this showing and that, as a result, they violated plaintiffs' rights under the free exercise clause of the First Amendment.

Summary judgment is, therefore, appropriate pursuant to F.R.C.P. 56 because there are no genuine issues of material fact in dispute. The record clearly and conclusively establishes, without question or dispute, that the Borough has previously allowed private citizens and organizations to both attach materials to its utility poles and make use of the municipal right of way for both secular and religious purposes, notwithstanding Ordinance 691's "absolute" prohibition of such conduct. It is also undisputed that the defendants nevertheless refused to allow plaintiffs to attach the lechis to the utility poles. These are the only facts relevant to the issue of whether defendants'

action singled out plaintiffs' religiously motivated conduct for discriminatory treatment, and since these facts are undisputed, summary judgment is appropriate.

A. The Legal Standard

Under F.R.C.P. 56(c), it is appropriate for a district court to grant summary judgment if "there is no genuine issue as to any material fact and...the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c); Indo-American Cultural Society, Inc. v. Township of Edison, New Jersey, 930 F.Supp. 1062, 1065 (D.N.J. 1996). The applicable substantive law determines whether or not a fact is material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Ekhaus v. Consolidated Rail Corp., No. Civ. 00-5748(WGB), 2003 WL 23205042, \*6, (D.N.J. Dec. 24, 2003). An issue of fact is genuine only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248; Ekhaus, 2003 WL 23205042 at \*6 (quoting Anderson). The moving party has the initial burden of showing that no genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Indo-American Cultural Society, Inc., 930 F.Supp. at 1065. If the moving party satisfies this requirement, the burden is then shifted to the nonmoving party to set forth specific facts showing that there is a genuine issue for trial. Celotex Corp., 477 U.S. at 324; Ekhaus, 2003 WL 23205042 at \*6 (citing Celotex Corp.); Indo-American Cultural Society, Inc., 930 F.Supp. at 1065.

The nonmoving party "may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 248 (quoting F.R.C.P. 56(e)). Since a motion for summary judgment is designed to go beyond the pleadings, "factual specificity is

required of a party who opposes such a motion". Herbert v. Newton Memorial Hospital, et al., 933 F. Supp. 1222, 1229 (D.N.J. 1996) (citing Celotex Corp.). If the non-moving party fails to provide evidence supporting every essential element of his case, "he is not entitled to a trial and the moving-party is entitled to summary judgment as a matter of law." Herbert, 933 F. Supp. at 1229 (citing F.R.C.P. 56(e)).

B. Defendants' Action Violated the First Amendment Because It Burdened Plaintiffs' Religious Exercise in a Non-Neutral and Specific Manner and It Did Not Serve A Compelling Interest

1. Defendants' Selective Enforcement of Ordinance 691 Discriminated Against Plaintiffs' Religiously Motivated Conduct.

The Third Circuit concluded that the factual record clearly established that the defendants' decision to order removal of the lechis from the poles "singled out" plaintiffs' religiously motivated conduct for discriminatory treatment in light of the Borough's prior practice of permitting secular and religious uses of the poles and the right of way, despite the facially neutral language of Ordinance 691 which prohibited any such use. 309 F.3d at 167-68. In that regard, the Third Circuit observed: "Because Ordinance 691 is neutral and generally applicable on its face, if the Borough had enforced it uniformly, Smith would control and the plaintiffs' claim would accordingly fail. The Borough insists it has done so, but the record shows otherwise. Indeed, the Borough has tacitly or expressly granted exemptions from the ordinance's unyielding language for various secular and religious – though never Orthodox Jewish – purposes." 309 F.3d at 167.

As a result, under the Supreme Court's decisions in Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993) and Employment Div. v. Smith,

494 U.S. 872, 879 (1990), and the Third Circuit's decision in Fraternal Order of Police v. City of Newark, 170 F.3d 359, 365 (3d Cir. 1999) (hereafter "FOP"), the Third Circuit concluded that defendants' selective, discriminatory application of Ordinance 691 impermissibly "devalued" plaintiffs' religious reasons for attaching the lechis to the poles by "judging them to be of lesser import than nonreligious reasons."

In reaching this conclusion, the Third Circuit stated: "Just as the exemptions for secularly motivated killings in Lukumi indicated that the city was discriminating against Santeria animal sacrifice, and just as the medical exemption in Fraternal Order of Police indicated that the police department was discriminating against religiously motivated requests to grow beards, the Borough's invocation of the often-dormant Ordinance 691 against conduct motivated by Orthodox Jewish beliefs is "sufficiently suggestive of discriminatory intent, FOP, 170 F.3d at 365, that we must apply strict scrutiny. See Lukumi. 508 U.S. at 546." 309 F.3d at 168.<sup>2</sup>

2. Defendants' Action Did Not Advance Interests Of The Highest Order And Was Not Narrowly Tailored To Advance A Compelling Governmental Interest And Did Not, Therefore, Survive Strict Scrutiny

Under the strict scrutiny test, a challenged law or governmental action "must be narrowly tailored to advance a compelling government interest." Tenafly Eruv Association, 309 F.3d at 165 n. 24. However, "it is a rare case" in which a discriminatory law or governmental action can be justified by a compelling interest. Burson v. Freeman,

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<sup>2</sup> The Third Circuit rejected each of the arguments advanced by the Borough in seeking "to place [this case] outside the framework of Lukumi and [FOP] and thus preclude us from applying strict scrutiny even though the Borough has discriminated against conduct motivated by Orthodox Jewish Beliefs." 309 F.3d at 168. See 309 F.3d at 168-72.

504 U.S. 191, 211 (1992) (plurality). It is not every or even most legitimate government interests that are compelling. “Compelling” does not mean merely a “reasonable means of promoting a legitimate public interest.” Hobbie v. Unemployment Appeals Commission, 480 U.S. 136, 141 (1987). Compelling does not mean merely “important.” Thomas v. Review Board, 450 U.S. 707, 719 (1981). Rather, “compelling interests” include only those few interests “of the highest order,” Smith, 494 U.S. at 888; Wisconsin v. Yoder, 406 U.S. 205, 215 (1972), or in similar formulation, “[o]nly the gravest abuses, endangering paramount interests,” Sherbert v. Verner, 374 U.S. 398, 406 (1963), quoting Thomas v. Collins, 323 U.S. 516, 530 (1945).<sup>3</sup>

In order to survive strict scrutiny, and therefore be permissible under the Free Exercise Clause, the Borough’s action in ordering the removal of the eruv must “advance interests of the highest order and must be narrowly tailored in pursuit of those interests.” Tenaflly Eruv Association, Inc., 309 F.3d at 172 (citing Lukumi). Defendants attempted to justify their decision to remove the eruv, and thus withstand strict scrutiny, by arguing that the lechis were permanent and religious in nature. The Third Circuit considered and rejected both arguments. 309 F.3d at 172-178.

The Third Circuit rejected the defendants’ claim that it had a compelling interest to prevent materials from being attached permanently to the utility poles on three grounds. First, the Court observed that “for many years – and, the record shows, after the

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<sup>3</sup> Cases approving the imposition of state controls over religious practices illustrate the kinds of grave and immediate threats to important state interests which the Supreme Court has recognized. E.g., Jacobson v. Massachusetts, 197 U.S. 11 (1905) (vaccination); Prince v. Massachusetts, 321 U.S. 158 (1944) (child labor laws). Compare Wisconsin v. Yoder, 406 U.S. 205, 217-18, 229-30 (1972) (the substantial interest in education yields to the religious interest of parents in the formation of their children).

plaintiffs sued – the Borough has allowed its residents to nail house numbers to utility poles. Because the Borough has tolerated equally permanent house numbers, it hardly has a compelling interest in refusing to allow the inconspicuous lechis on the grounds that they are permanent.” 309 F.3d at 172. Second, the Court concluded, again based on undisputed evidence, that the lechis are extremely unobtrusive, and, in fact, cannot be distinguished from the ordinary black plastic weather-stripping used to cover ground wires on the poles. Id. at 167. “It is hard to see how the alleged permanent nature of the unobtrusive lechis somehow undermines Ordinance 691’s objective of avoiding visual clutter and maintaining control over municipality property more than items like bright orange ribbons and lost animal signs.” Id. at 172. Third, the Court concluded, “...even if the Borough had a compelling interest in preventing permanent fixtures on its utility poles, its decision to remove the eruv, while allowing the house numbers is not narrowly tailored to promote that interest.” Id.

The Third Circuit then concluded that defendants’ second reason for denying plaintiffs’ application to maintain the eruv -- the religious nature of the lechis and the defendants’ interest in avoiding an Establishment clause controversy – did not withstand strict scrutiny. The Third Circuit first held that, “contrary to the Borough’s position, however, a governmental interest in imposing greater separation of church and state than the federal Establishment Clause mandates is not compelling in the First Amendment context.” 309 F.3d at 172. The Third Circuit also rejected the defendants’ argument “that leaving the eruv in place would constitute an actual Establishment Clause violation, and that the need to avoid such a violation justifies discriminating against plaintiffs’ religiously motivated conduct.” 309 F.3d at 174-8. In rejecting that argument,

the Court analyzed, in detail, the Supreme Court's recent Establishment Clause decisions and the undisputed facts of this case, id at 174-78, and concluded "...the Borough has no Establishment Clause justification for discriminating against the plaintiffs' religiously motivated conduct." Id. at 178.

C. Summary Judgment is Appropriate Because There Are No Genuine Issues of Material Facts in Dispute

Summary judgment is appropriate in this instance because, just as the Third Circuit resolved all relevant factual and legal issues pertaining to plaintiffs' claim that defendants' decision to remove the eruv from Tenaflly violates plaintiffs' rights under the Free Exercise Clause of the First Amendment, this court should do so as well.

Pursuant to its constitutional duty in a First Amendment case, the Third Circuit "conducted an independent examination of the record as a whole." 309 F.3d at 168 n. 28. In its decision, the Third Circuit carefully and explicitly set out its factual determinations, and relied exclusively upon those determinations in finding a violation of plaintiffs' First Amendment Rights. The record today is identical to the record that was reviewed and relied upon by the Third Circuit. Those facts will never change. What defendants did in the past, they did. And, just as the Third Circuit found that those undisputed facts led inexorably to the legal conclusion that defendants violated plaintiffs' rights under the Free Exercise Clause of the First Amendment, so should this court determine.

Similarly, the Third Circuit determined that (i) the defendants' actions warranted the application of strict scrutiny, and (ii) that defendants' decision to remove the eruv from Tenaflly did not advance interests of the highest order and was not narrowly

tailored to advance a compelling governmental interest. This Court should, as well, decide that those conclusions compel the grant of summary judgment to plaintiffs on their First, Second and Third Claims for Relief.

## POINT II

### PLAINTIFFS ARE ENTITLED TO A PERMANENT INJUNCTION PREVENTING DEFENDANTS FROM REMOVING, EFFECTUATING THE REMOVAL OF, OR CAUSING A THIRD PARTY TO REMOVE OR EFFECTUATE THE REMOVAL OF THE ERUV IN TENAFLY

The standard for an award of a permanent injunction is identical to that for the award of a preliminary injunction, except that actual success on the merits, rather than likelihood of success, must be established. New Jersey Payphone Association v. Town of West New York, 130 F. Supp. 2d 631, 640 (D.N.J. 2001). A party is entitled to a permanent injunction upon a showing of: i) actual success on the merits; ii) whether the moving party will be irreparably injured by the denial of injunctive relief; iii) whether the granting of the permanent injunction will result in even greater harm to the defendant; and iv) whether the injunction would be in the public interest. Gucci America, Inc. v. Daffy's, Inc., 354 F.3d 228, 236-37 (3d Cir. 2003); Shields v. Zuccarini, 254 F.3d 476, 482 (3d Cir. 2001).

#### A. Plaintiffs Have Demonstrated Actual Success On The Merits

This Court's grant of plaintiffs' motion for summary judgment, establishes the requisite actual success on the merits of plaintiffs' First Amendment claim. "A court's decision to grant summary judgment stands as its plenary decision on the merits,

and thus plaintiffs have established actual success in th[e] matter.” New Jersey Payphone Association, Inc., 130 F. Supp. 2d at 641.

B. Plaintiffs Will Be Irreparably Harmed If Defendants Are Not Enjoined From Removing The Eruv

The Third Circuit has already determined that “the plaintiffs have demonstrated that, if the eruv is removed, they will be unable to push and carry objects outside the home on the Sabbath, and those who are disabled or have small children consequently will be unable to attend synagogue. This showing easily satisfies the irreparable injury requirement.” Tenaflly Eruv Association, Inc., 309 F.3d at 178.

C. The Balance Of Hardships Favors The Plaintiffs

The Third Circuit has also concluded that “a preliminary injunction would not harm the Borough more than denying relief would harm the plaintiffs. Enjoining removal of the eruv would cause neither the Borough nor its residents any serious injury. Without an injunction, on the other hand, the plaintiffs’ free exercise of religion will be impaired. The balance easily tips in the plaintiffs’ favor.” 309 F.3d at 178. The factual circumstances now are no different than they were when the Third Circuit reached that conclusion.

D. The Public Interest Warrants Granting The Requested Injunction

The Third Circuit observed that “[w]here there are no societal benefits justifying a burden on religious freedom, the public interest clearly favors the protection of constitutional rights,” Tenaflly Eruv Association, Inc., 309 F.3d at 178 (citations omitted). The Court went on to conclude: “[w]e do not see how removing the lechis

could advance any interests sufficient to outweigh the infringement of the plaintiffs' free exercise rights." Id. Again, nothing has changed since the Third Circuit's decision.

### CONCLUSION

For all of the foregoing reasons, plaintiffs respectfully request that their motions for summary judgment on the First, Second and Third Claims for Relief and for a permanent injunction be granted.

Dated: March 26, 2004

Respectfully submitted,

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

TENAFLY ERUV ASSOCIATION, INC.,  
CHAIM BOOK, YOSIFA BOOK, STEFANIE  
DARDIK GOTLIEB, and STEPHEN  
BRENNER,

Plaintiffs,

Case No. 00-6051 (WGB)

- against -

THE BOROUGH OF TENAFLY, ANN  
MOSCOVITZ, individually and in her official  
capacity as Mayor of the Borough of Tenaflly,  
CHARLES LIPSON, MARTHA B. KERGE,  
RICHARD WILSON, ARTHUR PECK, JOHN  
T. SULLIVAN, each individually and in their  
official capacities as Council Members of the  
Borough of Tenaflly,

Defendants.

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**PLAINTIFFS TENAFLY ERUV ASSOCIATION, INC., CHAIM BOOK, YOSIFA BOOK,  
STEFANIE DARDIK GOTLIEB AND STEPHEN BRENNER'S RULE 56.1  
STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT AND A PERMANENT INJUNCTION**

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UNITED STATES DISTRICT COURT  
NEW JERSEY DISTRICT OF NEW JERSEY

TENAFLY ERUV ASSOCIATION, INC.,  
CHAIM BOOK, YOSIFA BOOK,  
STEFANIE DARDIK GOTLIEB and  
STEPHEN BRENNER,

Plaintiffs,

v.

THE BOROUGH OF TENAFLY, ANN  
MOSCOVITZ, individually and in her  
official capacity as Mayor of the Borough of  
Tenafly, CHARLES LIPSON, MARTHA B.  
KERGE, RICHARD WILSON, ARTHUR  
PECK, JOHN T. SULLIVAN, each  
individually and in their official capacity as  
Council Members of the Borough of Tenafly,

Defendants.

Case No. 00-CV-6051 (WGB)

PLAINTIFFS TENAFLY ERUV  
ASSOCIATION, INC., CHAIM  
BOOK, YOSIFA BOOK, STEFANIE  
DARDIK GOTLIEB AND STEPHEN  
BRENNER'S RULE 56.1  
STATEMENT OF UNDISPUTED  
MATERIAL FACTS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND A  
PERMANENT INJUNCTION

Pursuant to Local Rule 56.1, Plaintiffs Tenaflly Eruv Association, Inc.  
("TEAI"), Chaim Book, Yosifa Book, Stefanie Dardik Gotlieb and Stephen Brenner  
("Plaintiffs") hereby submit the following statement of material facts as to which  
Plaintiffs contend there are no issues to be tried.

1. Plaintiff Tenaflly Eruv Association, Inc. is a not-for-profit organization  
that was formed by Orthodox Jewish residents of the Borough of Tenaflly for the  
purpose of promoting the creation and establishment of an eruv in the Borough of  
Tenaflly. Complaint, at ¶ 3; Tenaflly Eruv Association, Inc. v. The Borough of Tenaflly,  
309 F.3d 144, 152 n.3 (3d Cir. 2002).

2. Plaintiff Chaim Book is an Orthodox Jew who lives in the Borough of  
Tenaflly. At the time this action commenced, Plaintiff Chaim Book had three children  
ages four, two and one. Complaint, at ¶ 4; May 14, 2001 Evidentiary Hearing

Transcript at 83:17-21; November 28, 2000 Borough of Tenaflly Public Hearing re: In the Matter of the Application of the Tenaflly Eruv Association for An Eruv Transcript, (“11/28/00 Tr.”) at p. 14:10-18; Certification of Chaim Book, dated December 14, 2001 (“Chaim Book Cert.”) at ¶ 1, 50; 309 F.3d at 152, n3.

3. Plaintiff Yosifa Book is an Orthodox Jew who lives in the Borough of Tenaflly. Complaint, at ¶ 4; 11/28/00 Tr. at p. 14:10-18; Certification of Yosifa Book, dated December 14, 2001, (“Yosifa Book Cert.”) at ¶ 1; 309 F.3d at 152, n3. At the time this action commenced, Plaintiff Yosifa Book had three children ages four, two and one. Yosifa Book Cert. at ¶ 5.

4. Plaintiff Stefanie Dardik Gotlieb is an Orthodox Jew who lives in the Borough of Tenaflly. Complaint, at ¶ 5; May 14, 2001 Evidentiary Hearing Transcript at 83:22-23; 11/28/00 Tr. at 34:14–35:3; Certification of Stefanie Dardik Gotlieb, dated December 14, 2001 (“Gotlieb Cert.”) at ¶ 1; 309 F.3d at 152, n3. At the time this action commenced, Plaintiff Stefanie Dardik Gotlieb had two children ages five and three. Gotlieb Cert. at ¶ 5.

5. Plaintiff Stephen Brenner is an Orthodox Jew who did not live in Tenaflly at the time this action was commenced but was building a house in Tenaflly at the time this action was commenced and planned to move into said house once it was completed. Complaint, at ¶ 6; May 14, 2001 Evidentiary Hearing Transcript at 84:1-3; Certification of Stephen Brenner, dated December 14, 2001, (“Brenner Cert.”) at ¶ 1; 309 F.3d at 152, n3.

6. Defendant the Borough of Tenaflly is a municipality in the state of New Jersey. The legislative branch of the Borough is the Tenaflly Borough Council, which is composed of six Council members. The Mayor of Tenaflly does not participate in lawmaking unless the Council is deadlocked, in which case the mayor casts the tie-breaking vote. Complaint, at ¶ 7; Answer, at ¶ 7; May 1, 2001 Testimony of Mayor

Ann Moscovitz (“Moscovitz Testimony”) at 70:2-5, 82:24-83:2; 309 F.3d at 152 n.6; Tenaflly Eruv Association, Inc. v. The Borough of Tenaflly, 155 F. Supp. 2d 142, 163 n.17 (D.N.J. 2001).

7. Defendant Ann Moscovitz was a resident of Tenaflly and the Mayor of Tenaflly both at the time the Borough Council voted to deny TEAI’s request to maintain the eruv within Tenaflly and at the time this action was commenced. Complaint, at ¶ 8; Answer, at ¶ 8; Moscovitz Testimony at 69:19-24; Affidavit of Mayor Ann Moscovitz, dated March 5, 2001 (“Moscovitz Aff.”) at ¶ 1; 155 F. Supp. 2d at 168.

8. Defendant Charles Lipson was a resident of Tenaflly and a duly elected member of the Tenaflly Borough Council both at the time the Borough Council voted to deny TEAI’s request to maintain the eruv within Tenaflly and at the time this action was commenced. Complaint, at ¶ 9; Answer, at ¶ 9; May 1, 2001 Testimony of Charles Lipson (“Lipson Testimony”) at 6:11 – 7:6; Affidavit of Charles Lipson, dated March 5, 2001 (“Lipson Aff.”) at ¶ 1; 155 F. Supp. 2d at 164.

9. Defendant Martha B. Kerge was a resident of Tenaflly and a duly elected member of the Tenaflly Borough Council both at the time the Borough Council voted to deny TEAI’s request to maintain the eruv within Tenaflly and at the time this action was commenced. Complaint, at ¶ 10; Answer, at ¶ 10; May 1, 2001 Testimony of Martha Kerge (“Kerge Testimony”) at 41:7-19; Affidavit of Martha Kerge, dated March 5, 2001 (“Kerge Aff.”) at ¶ 1; 155 F. Supp. 2d at 165.

10. Defendant Richard Wilson was a resident of Tenaflly and was a duly elected member of the Tenaflly Borough Council both at the time the Borough Council voted to deny TEAI’s request to maintain the eruv within Tenaflly and at the time this action was commenced. Mr. Wilson passed away subsequent to the commencement of this action. Complaint, at ¶ 11; Answer, at ¶ 11; April 30, 2001 Testimony of Richard Wilson (“Wilson Testimony”) at 62:8-19; Affidavit of Richard Wilson, dated March 3,

2001 (“Wilson Aff.”) at ¶ 1; 155 F. Supp. 2d at 165-66.

11. Defendant Arthur Peck was a resident of Tenaflly and a duly elected member of the Tenaflly Borough Council both at the time the Borough Council voted to deny TEAI’s request to maintain the eruv within Tenaflly and at the time this action was commenced. Complaint, at ¶ 12; Answer, at ¶ 12; April 30, 2001 Testimony of Arthur Peck (“Peck Testimony”) at 90:8-18; Affidavit of Arthur Peck, dated March 5, 2001 (“Peck Aff.”) at ¶ 1; 155 F. Supp. 2d at 166-67.

12. Defendant John T. Sullivan was a resident of Tenaflly and a duly elected member of the Tenaflly Borough Council both at the time the Borough Council voted to deny TEAI’s request to maintain the eruv within Tenaflly and at the time this action was commenced. Complaint, at ¶ 13; Answer, at ¶ 13; May 8, 2001 Testimony of John Sullivan (“Sullivan Testimony”) at 5:16 - 6:1; Affidavit of John T. Sullivan, dated March 6, 2001 (“Sullivan Aff.”) at ¶ 1; 155 F. Supp. 2d at 167-8.

13. An eruv is a religious convention which has been practiced by the Jewish people for over 2,000 years. The eruv is based on principles derived from the Bible, developed in the Talmud and codified in the Codes of Jewish law. There is an entire tractate of the Talmud which discussed eruvs. May 14, 2001 Testimony of Jay Nelkin (“Nelkin Testimony”) at 55:23-56:3; December 12, 2000 Borough of Tenaflly Public Hearing re: In the Matter of the Application of the Tenaflly Eruv Association for An Eruv Transcript (“12/12/00 Tr.”), comments of Rabbi Hershel Schachter, at 22:11-23:4; Schachter Aff. at ¶ 3; 309 F.3d at 152; 155 F. Supp. 2d at 146.

14. An eruv is a ceremonial, unbroken, physical demarcation of area. It extends the space within which pushing, lifting and carrying objects is permitted on the Sabbath and Yom Kippur beyond the boundaries of the home to those public areas outside the home located within the boundaries of the eruv. Complaint, at ¶ 14, 15; 11/28/00 Tr. at 18:6-12, 19:8-24; Chaim Book Cert. at ¶ 3, 4; 309 F.3d at 152; 155 F.

Supp. 2d at 146.

15. An eruv enables Plaintiffs and other Orthodox Jews to push baby strollers, wheelchairs and carriages and carry small children, eyeglasses, canes, and medicine when traveling between their home and synagogue on the Sabbath and Yom Kippur, or when traveling to the homes of family and friends to celebrate the Sabbath or observe Yom Kippur. May 1, 2001 Testimony of Charles Agus (“Agus Testimony”), at 123:22-124:3; Nelkin Testimony at 27:12-36:6; Lipson Testimony at 27:1-7; 11/28/00 Tr. at 19:8-17, 36:1-21; 12/12/00 Tr. at 111:6-12; Chaim Book Cert. at ¶ 4, 49, 50; Brenner Cert. at ¶ 4, 5; Yosifa Book Cert. at ¶ 5; Gotlieb Cert. at ¶ 5; 309 F.3d at 152; 155 F. Supp. 2d at 146.

16. By enabling plaintiffs and other Orthodox Jews who have small children, are disabled, are elderly and/or confined to a wheelchair to attend synagogue services on the Sabbath and Yom Kippur, an eruv allows plaintiffs and other Orthodox Jews to participate in communal prayer services and take part in those portions of the prayer service – including the weekly Torah reading – that they otherwise would be unable to do because those portions of the prayer service can only be done in a group and not alone in private prayer, thus significantly and meaningfully enhancing their Jewish observance. Nelkin Testimony at 54:9-55:6; Schachter Aff. at ¶ 4.

17. The eruv in the Borough of Tenaflly (the “Tenaflly eruv”) physically consists of (i) pre-existing overhead utility and telephone lines that run horizontally along the streets of the Borough of Tenaflly and (ii) hard black plastic strips, called “lechis” which run vertically along certain utility poles. Nelkin Testimony at 10:10-13:5; 11/28/00 Tr. at 19:18-21:5; 12/12/00 Tr. at 28:6-18; Chaim Book Cert. at ¶ 3; 309 F.3d at 152; 155 F. Supp. 2d at 149.

18. The lechis are U-shaped, approximately three quarters of an inch wide by one half inch deep. The lechis are identical to the same material that is used by Verizon

to cover its ground wires which run vertically along the sides of utility poles in Tenaflly. Plaintiffs' Exhibits 34, 35(a), 35(b), 36(a); Nelkin Testimony at 11:18-13:5; Lipson Testimony at 22:11-23:2, 26:21-25; 11/28/00 Tr. at 20:1-11; 12/12/00 at 112:14-18; Chaim Book Cert. at ¶ 51; 309 F.3d at 152; 155 F. Supp. 2d at 149. Lechis were attached to approximately 183 utility poles in Tenaflly. Joint Exhibit 2; 155 F. Supp. 2d at 149.

19. Unless a person knows which plastic strips have been hung by Verizon to cover its ground wires and which plastic strips are lechis which have been hung by plaintiffs to create the eruv, it is absolutely impossible to distinguish between a lechi and a covered Verizon ground wire. Plaintiffs' Exhibits 35(a), 36(a); Nelkin Testimony, at 11:21-13:5; Lipson Testimony at 26:21-25; 11/28/00 Tr. at 20:12-19; Chaim Book Cert. at ¶ 51; 309 F.3d at 152; 155 F. Supp. 2d at 149.

20. The Tenaflly eruv is, and has been, privately maintained and funded. No municipal funds or assistance of any other kind has been needed to maintain the Tenaflly eruv. 11/28/00 Tr. at 25:24-26:14, 31:19-25; 12/12/00 Tr. at 112:19-22; Chaim Book Cert. at ¶ 51; 309 F.3d at 153; 155 F. Supp. 2d at 155.

21. In October, 2000, after the Borough requested Cablevision to remove all of the lechis "as soon as possible" from the utility poles, an agreement between TEAI and the Borough was reached allowing the eruv to remain up for a period 30 days to provide TEAI the opportunity to formally apply to the Borough Council for permission to maintain the eruv in place. 10/23/00 Letter from Cablevision to Plaintiffs, attached to Chaim Book Cert. as Exhibit C; 11/28/00 Tr. at 29:16-30:14; Chaim Book Cert. at ¶ 39, 41; Affidavit of Borough Administrator Joseph DiGiacomo ("DiGiacomo 3/5/01 Aff.") at ¶ 8-10; 309 F.3d at 154; 155 F. Supp. 2d at 158-59.

22. This agreement was negotiated by Richard Shapiro, Esq., counsel for TEAI, and then Borough Attorney Walter Lesnevich, and memorialized in a letter dated

November 2, 2000, from Mr. Shapiro to Mr. Lesnevich. Plaintiffs' Exhibit 14, 11/2/00 Letter from Richard Shapiro, Esq. to Walter Lesnevich; DiGiacomo Testimony at 52:25-53:15; Chaim Book Cert. at ¶ 41; DiGiacomo 3/5/01 Aff. at ¶ 10; 309 F.3d at 154; 155 F. Supp. 2d at 158-59.

23. The November 2, 2000 letter from Mr. Shapiro to Mr. Lesnevich states in part: "I also appreciate your advice that the borough has no specific ordinance covering this matter or any particular format for the Eruv Association to follow in submitting its request. A written request will be promptly submitted." Plaintiffs' Exhibit 14, 11/2/00 Letter from Richard Shapiro, Esq. to Walter Lesnevich; 309 F.3d at 154; 155 F. Supp. 2d at 158-59.

24. On November 7, 2000, TEAI filed an application with the Borough asking the Council not to remove or order the removal of the lechis from the utility poles. Formal Application dated 11/7/00, attached as Exhibit A to the Complaint; 11/28/00 Tr. at 30:21-25; Chaim Book Cert. at ¶ 42; 309 F.3d at 154; 155 F. Supp. 2d at 159.

25. The November 7, 2000 letter read in part: "Please consider this a formal request by the Tenaflly Eruv Association that the Borough of Tenaflly not remove plastic strips called 'lechis' on certain telephone poles within the Borough. The 'lechis' are required by certain Jewish residents of Tenaflly for the establishment of an 'Eruv.'" Formal Application dated 11/7/00, attached as Exhibit A to the Complaint.

26. At a work session on November 21, 2000, the Borough Council decided to hear TEAI's formal proposal and allow members of the public to comment on TEAI's proposal at the two public hearings, scheduled for November 28, 2000 and December 12, 2000. November 21, 2000 Borough of Tenaflly Work Session Transcript ("11/21/00 Tr.") at p. 8; 309 F.3d at 154; 155 F. Supp. 2d at 154.

27. During the November 21, 2000 work session copies of Mr. Shapiro's

letter dated November 2, 2000 were provided to the Mayor and the members of the Borough Council. Neither the Mayor nor any member of the Council disputed the statement in the letter that “the Borough has no specific ordinance concerning this matter...” nor was any reference made to any applicable local ordinance or state statute. 11/21/00 Tr. at p. 8; see 11/21/00 Tr.

28. On November 28, 2000, the first public hearing was held. Numerous members of the public, including Chaim Book, addressed the Borough Council. The Borough Council members and Mayor Moscovitz did not express their views regarding the eruv throughout the night. see 11/28/00 Tr.; 309 F.3d at 154; 155 F. Supp. 2d at 160-61.

29. At no time during the November 28, 2000 public hearing was any reference made to any applicable local ordinance or state statute. Sullivan Testimony at 17:11-17; see 11/28/00 Tr.; 309 F.3d at 154.

30. On December 12, 2000, the second public hearing was held. Numerous members of the public, including Chaim Book, addressed the Borough Council. The Borough Council members and Mayor Moscovitz did not express their views regarding the eruv while members of the public spoke. see 12/12/00 Tr.; 309 F.3d at 154; 155 F. Supp. 2d at 160-61.

31. At no time during the time for public comments was any reference made to any applicable local ordinance or state statute. Sullivan Testimony at 17:11-17; see 12/12/00 Tr.; 309 F.3d at 154.

32. After the public comments finished, Councilwoman Kerge moved “to deny the application to construct or to dedicate or to maintain an Eruv in the Borough of Tenaflly.” 12/12/00 Tr. at 121:11-14.

33. Before the Borough Council voted on Councilwoman Kerge’s motion to deny TEAI’s application, Councilman Sullivan expressed his views about the eruv and

TEAI's application and stated that "to the best of my knowledge," the Borough of Tenaflly had "no ordinance, no resolution that says you cannot hang something from a utility pole." 12/12/00 Tr. at 121:21-125:7, 124:6-10; 309 F.3d at 154; 155 F. Supp. 2d at 163.

34. Mayor Moscovitz then responded by saying that "there is an ordinance." 12/12/00 Tr. at 124:12; 309 F.3d at 154.

35. Mr. Lesnevich then identified the Ordinance as Tenaflly Ordinance 691 and described the ordinance. 12/12/00 Tr. at 125:9-21; 309 F.3d at 154.

36. This was the first time that the Borough of Tenaflly, the Borough Council, Mayor Moscovitz, and Borough Attorney Lesnevich had publicly disclosed Tenaflly Ordinance 691 with regard to the lechis. This was the first time the Borough of Tenaflly, the Borough Council, Mayor Moscovitz, and Borough Attorney Lesnevich had ever advised TEAI, TEAI's representatives, or TEAI's attorneys that there was a Tenaflly Ordinance that applied to TEAI's request to attach the lechis to, and maintain the lechis on, the utility poles. Neither Mayor Moscovitz, Borough Administrator Lesnevich nor any member of the Council made any reference to any other ordinance or statute that they claimed applied to the matter. Nelkin Testimony at 19:9-20, 38:18-22, 62:13-63:1; 11/28/00 Tr. at 23:1-16; 12/12/00 Tr. at 117:10-15; see June 8, 1999 Borough Council Meeting Transcript ("7/8/99 Tr."); see 11/21/00 Tr.; see 11/28/00 Tr.; see 12/12/00 Tr.; 309 F.3d at 154.

37. The Tenaflly Borough Council then voted 5-0 to deny TEAI's application. Councilmen Peck, Sullivan, Lipson, and Wilson, and Councilwoman Kerge all voted to deny TEAI's application. 12/12/00 Tr. at 126:4-15; Chaim Book Cert. at ¶ 47; 309 F.3d at 154; 155 F. Supp. 2d at 163.

38. Borough Councilman Christian Yegen was not present at the hearing and did not vote on the matter. 12/12/00 at 5: 7-8, 126:4-15; 309 F.3d at 154 n.9; 155 F.

Supp. 2d at 163 n.19.

39. Mayor Moscovitz did not vote. Moscovitz Testimony at 126:4-15; 309 F.3d at 154; 155 F. Supp. 2d at 163.

40. On December 13, 2000, Borough Attorney Lesnevich wrote to Cablevision's Director of Operations, Jim Gaffney, informing him that the Borough Council had denied TEAI's application. Plaintiffs' Exhibit 13, 12/13/00 Letter from the Borough to Cablevision; 309 F.3d at 154; 155 F. Supp. 2d at 163.

41. In the December 13, 2000 letter Borough Attorney Lesnevich ordered Cablevision to "take action" to remove the lechis "as soon as possible." Plaintiffs' Exhibit 13, 12/13/00 Letter from the Borough to Cablevision; Chaim Book Cert. at ¶ 48; 309 F.3d at 154; 155 F. Supp. 2d at 163.

42. Mayor Moscovitz called Cablevision on December 13, 2000 and requested that Cablevision remove the lechis from the poles "as soon as they could." Moscovitz Testimony at 103:16-21, 106:2-5; 155 F. Supp. 2d at 163.

43. Tenaflly Ordinance 691 provides in part: "No person shall place any sign or advertisement, or other matter upon any pole, tree, curbstone, sidewalk or elsewhere, in any public street or public place, excepting as may be authorized by this or any other ordinance of the Borough. Tenaflly Ordinance 691, Article VIII(7).

44. Certain of Verizon's utility and telephone poles are located in Tenaflly's right of way. DiGiacomo Testimony at 48:10-14; Moscovitz Aff. at ¶ 18; Tenaflly Ordinance 1127; 309 F.3d at 153; 155 F. Supp. 2d at 168-9.

45. Prior to TEAI's application, the Borough of Tenaflly allowed other individuals and groups to formally apply for permission to make use of, place materials on, or attach objects to poles located on, the Borough's public right of way, and has granted other individuals and groups authorization to make use of, place materials on, or attach objects to poles located on, the Borough's right of way. Plaintiffs' Exhibits 3-12,

19, 20; DiGiacomo Testimony at 20:9-21, 21:7-15, 24:20-25:5, 27:3-28:8, 34:18-36:2, 40:19-41:14, 41:20-43:18; 44:2-5, 46:6-13, 46:14-21, 47:16-48:22; Lipson Testimony at 32:6-33:4; Kerge Testimony at 60:12-61:17; Tenaflly Ordinance 1127; Affidavit of Jay Nelkin dated 3/30/01 (“Nelkin 3/30/01 Aff.”) at ¶ 4, Exhibit B; Affidavit of Borough Administrator Joseph DiGiacomo, dated April 23, 2001 (“DiGiacomo 4/23/01 Aff.”) at ¶ 4.

46. Prior to TEAI’s application, materials have been both placed on the Borough’s right of way and attached to poles located on the Borough’s right of way without the Borough’s permission and the Borough has neither removed these materials nor ordered them to be removed. Plaintiffs’ Exhibits 21-31; Moscovitz Testimony at 75:7-76:2; DiGiacomo Testimony 28:20-29:16; 49:8-15; 12/12/00 Tr., comments of Lee Rosenbaum, at 52:12-16; Nelkin 3/30/01 Aff. at 5, Exhibit C; DiGiacomo 4/23/01 Aff. at ¶ 6; 309 F.3d at 151, 167-8; 155 F. Supp. 2d at 169-70.

47. Two permanent church directional signs are in the Borough right of way. Both signs contain religious crosses. DiGiacomo Testimony at 28:20-29:7; Nelkin Testimony at 39:24 – 42:12; Affidavit of Borough Administrator Joseph DiGiacomo, dated 5/3/01 (DiGiacomo 5/30/01 Aff.”), at ¶ 2(b), 2(c), Exhibits B, C; Supplemental Affirmation of Jay Nelkin dated July 18, 2001 (“Nelkin 7/18/01 Aff.”) at Exhibits A, B; Nelkin 3/30/01 Aff. at ¶ 3; DiGiacomo 4/23/01 Aff. at ¶ 6; 309 F.3d at 151, 167; 155 F. Supp. 2d at 169.

48. In a letter dated March 14, 1996, then Borough Administrator Robert P. Miller encouraged Mr. Michael Parlamis of the Greek Orthodox Cathedral to put one of its signs on Borough property rather than County property because “the sign would be more meaningful if it was erected west of the tracks on Borough property.” Letter dated March 14, 1996 from Robert P. Miller to Mr. Michael Parlamis, attached to the Stipulation Modifying the Record, submitted October 30, 2001.

49. No application to place the church directional sign permanently in the Borough's right of way was ever submitted to the Tenaflly Borough Council. DiGiacomo Testimony 28:20-29:16; 309 F.3d at 151; 155 F. Supp. 2d at 169-70.

50. The Borough never formally gave its permission for the church directional signs to be permanently placed within the Borough's right of way. DiGiacomo Testimony 28:20-29:7; 309 F.3d at 151; 155 F. Supp. 2d at 169.

51. The Borough of Tenaflly allowed these church directional signs to remain in the Borough's right of way even though there is no provision in the Borough ordinances allowing these signs to be placed in the Borough's right of way. DiGiacomo Testimony at 29:7-29:13; Tenaflly Ordinance 691; 309 F.3d at 151; 155 F. Supp. 2d at 169-70.

52. Each year during the December holiday season, holiday displays are placed on the utility poles by the Tenaflly Chamber of Commerce, even though such attachments are not permitted by Borough ordinance. DiGiacomo Testimony at 27:3-28:8; Tenaflly Ordinance 691; Nelkin 3/30/01 Aff. at ¶ 4, Exhibit B; DiGiacomo 4/23/01 Aff. at ¶ 4; 309 F.3d at 151-52, 167; 155 F. Supp. 2d at 170.

53. The holiday displays consist of wreaths, white lanterns with lights in the center of the lantern, seasonal holiday lights and red bows. DiGiacomo Testimony at 19:19-20:4, 27:7-14; Nelkin 3/30/01 Aff. at ¶ 4, Exhibit B; 309 F.2d at 151-52, 167; 155 F. Supp. 2d at 170.

54. The Borough has permitted the wireless communication company Metricom, Inc. to attach wireless communication devices to the utility poles. DiGiacomo Testimony at 20:9-21, 47:16-48:22; Right of Way Use Agreement between the Borough of Tenaflly and Metricom, Inc. dated January 31, 2001; 155 F. Supp. 2d at 169.

55. Several years prior to TEAI's application, Tenaflly residents attached

orange ribbons to the utility poles in the Borough's right of way to oppose a proposal for school regionalization, even though such attachments are not permitted by Borough ordinance. Moscovitz Testimony at 75:7-76:2; 12/12/00 Tr., comments of Lee Rosenbaum, at 52:12-16; 309 F.3d at 151, 167, 168 n.28.

56. These orange ribbons remained attached to the utility poles "for a lengthy period of time." Moscovitz Testimony at 75:7-16; 12/12/00 Tr. at 52:12-16; 309 F.3d at 151, 167, 168 n.28.

57. The Borough Council knew that the orange ribbons had been attached to the utility poles but never took any action to either remove the ribbons or have them removed. Moscovitz Testimony at 75:17-76:2; 309 F.3d at 167, 168 n.28.

58. Lost animal signs have been attached to utility and telephone poles located within the Borough's right of way. Plaintiffs' Exhibits 21, 23, 27, 29; Nelkin Testimony at 42:16-43:4, 43:13-17, 44:45:18, 46:10-21; 309 F.3d at 151, 167; 155 F. Supp. 2d at 169.

59. The Borough has allowed these lost animal signs to remain attached to the utility and telephone poles located within the Borough's right of way, even though such attachments are not permitted by Borough ordinance. Plaintiffs' Exhibits 21, 23, 27, 29; Tenaflly Ordinance 691; 309 F.3d at 151, 167; 155 F. Supp. 2d at 169.

60. Private postings such as garage sale signs and offices for rent signs have been attached to utility and telephone poles located within the Borough's right of way, even though such attachments are not permitted by Borough ordinance. Plaintiffs' Exhibits 24, 25; Nelkin 3/30/01 Aff. at ¶ 5, Exhibit C; Nelkin Testimony at 43:18-44:13; 309 F.3d at 151; F. Supp. 2d at 169.

61. The Borough has allowed these private postings such as garage sale signs and offices for rent signs to remain attached to the utility and telephone poles located within the Borough's right of way even though such attachments are not permitted by

Borough ordinance. Plaintiffs' Exhibits 24, 25; DiGiacomo Testimony at 49:8-15; Tenaflly Ordinance 691; 309 F.3d at 151.

62. Permanent house numbers have been permanently attached to utility and telephone poles located within the Borough's right of way. Plaintiffs' Exhibits 22, 26, 28, 30; Nelkin Testimony at 43:5-13, 44:4-8, 45:19-46:9; Nelkin 3/30/01 Aff. at ¶ 5, Exhibit C; 309 F.3d at 151, 167, 172.

63. The Borough has allowed these permanent house numbers to remain attached to the utility and telephone poles located within the Borough's right of way even though such attachments are not permitted by Borough ordinance. Plaintiffs' Exhibits 22, 26, 28, 30; DiGiacomo Testimony at 49:16 – 50:13; Nelkin Testimony at 45:19-46:9; Nelkin 3/30/01 Aff. at ¶ 5, Exhibit C; Tenaflly Ordinance 691; 309 F.3d at 151, 167, 172.

64. The Borough has formally allowed private homeowners to place sprinkler systems in the public right of way. Plaintiffs' Exhibits 4, 5, 6, 19; DiGiacomo Testimony at 41:20-43:18, 44:2-5; Kerge Testimony at 60:12-23; 155 F. Supp. 2d at 169.

65. The Borough received one dollar in compensation in exchange for formally allowing homeowners to place sprinkler systems in the public right of way. Plaintiffs' Exhibits 5, 19.

66. The Borough has formally granted permission to private homeowners to place columns with lights attached to the tops of the columns in the public right of way. Plaintiffs' Exhibit 3; DiGiacomo Testimony at 40:19-41:14; 155 F. Supp. 2d at 169.

67. The Borough has formally granted permission to allow free standing signs to be constructed within and placed in the public right of way. Plaintiffs' Exhibit 7; DiGiacomo Testimony at 44:15-21.

68. The Borough received one dollar in compensation in exchange for

formally allowing free standing signs to be constructed within and placed in the public right of way. Plaintiffs' Exhibits 7.

69. The Borough has formally granted permission to allow fences to be constructed within and placed in the public right of way. Plaintiffs' Exhibits 9 and 10; DiGiacomo Testimony at 46:6-13; Kerge Testimony at 61:10-17; 155 F. Supp. 2d at 169.

70. The Borough has formally granted permission for a fence to be maintained in the public right of way after the fence was already constructed without the Borough's permission and an application for authorization was submitted to the Borough Council after construction was completed. Plaintiffs' Exhibit 10.

71. The Borough has formally granted permission to allow dry stone walls to be constructed within and remain in the public right of way. Plaintiffs' Exhibit 11; DiGiacomo Testimony at 46:14-21; Kerge Testimony at 60:24-9; 155 F. Supp. 2d at 169.

72. The Borough received one dollar in compensation in exchange for formally allowing dry stone walls to be constructed within and placed in the public right of way. Plaintiffs' Exhibits 11.

73. The Borough formally has granted permission to allow a private parking space be constructed within and remain in the public right of way. Plaintiffs' Exhibit 12.

74. The Borough received one dollar in compensation in exchange for formally allowing a private parking space to be constructed within and remain in the public right of way. Plaintiffs' Exhibits 12.

Dated: March 26, 2004

Respectfully submitted,

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

TENAFLY ERUV ASSOCIATION, INC.,  
CHAIM BOOK, YOSIFA BOOK, STEFANIE  
DARDIK GOTLIEB, and STEPHEN  
BRENNER,

Plaintiffs,

Case No. 00-6051 (WGB)

- against -

THE BOROUGH OF TENAFLY, ANN  
MOSCOVITZ, individually and in her official  
capacity as Mayor of the Borough of Tenaflly,  
CHARLES LIPSON, MARTHA B. KERGE,  
RICHARD WILSON, ARTHUR PECK, JOHN  
T. SULLIVAN, each individually and in their  
official capacities as Council Members of the  
Borough of Tenaflly,

Defendants.

---

**APPENDIX FOR PLAINTIFFS TENAFLY ERUV ASSOCIATION, INC., CHAIM  
BOOK, YOSIFA BOOK, STEFANIE DARDIK GOTLIEB AND STEPHEN BRENNER'S  
MOTION FOR SUMMARY JUDGMENT AND A PERMANENT INJUNCTION**

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

TENAFLY ERUV ASSOCIATION, INC., CHAIM  
BOOK, YOSIFA BOOK, STEFANIE DARDIK  
GOTLIEB, and STEPHEN BRENNER

Plaintiff,

-against-

THE BOROUGH OF TENAFLY, ANN  
MOSCOVITZ, individually and in her official  
capacity as Mayor of the Borough of Tenaflly,  
CHARLES LIPSON, MARTHA B. KERGE,  
RICHARD WILSON, ARTHUR PECK, JOHN T.  
SULLIVAN, each individually and in their official  
capacities as Council Members of the Borough of  
Tenaflly,

Defendants.

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs, Tenaflly Eruv Association, Inc. ("TEAI"), Chaim Book, Yosifa Book, Stefanie Dardik Gotlieb, and Stephen Brenner ("individual plaintiffs") by its attorneys, Weil, Gotshal & Manges, and Hellring Lindeman Goldstein & Siegal, LLP, allege for their Complaint herein, as follows:

### **JURISDICTION AND VENUE**

1. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. Section 1343.

2. Venue is proper in this district, pursuant to 28 U.S.C. Section 1391(b), because all of the defendants are located or reside in this district and because the events giving rise to the claim occurred in this district.

### **THE PARTIES**

3. Plaintiff TEAI is a not-for-profit corporation duly formed under New Jersey law, with an address at 136 Engle Street, Tenaflly, New Jersey 07670.

4. Plaintiffs Chaim and Yosifa Book are individuals living in Tenaflly, New Jersey.

5. Plaintiff Stefanie Dardik Gotlieb is an individual living in Tenaflly, New Jersey..

6. Plaintiff Stephen Brenner is an individual living in New York who is in the process of building a house in Tenaflly..

7. Defendant The Borough of Tenaflly is a municipality.

8. Defendant Ann A. Moscovitz is the Mayor of Tenaflly.

9. Defendant Charles Lipson is a member of the Tenaflly Borough Council.

10. Defendant Martha B. Kerge is a member of the Tenaflly Borough Council.

11. Defendant Richard Wilson is a member of the Tenaflly Borough Council.

12. Defendant Arthur Peck is a member of the Tenaflly Borough Council.

13. Defendant John T. Sullivan is a member of the Tenaflly Borough Council.

### **SUMMARY OF FACTS**

14. An Eruv, under Jewish law, is an unbroken delineation of an area. The demarcation of the Eruv boundary is created using existing telephone or utility poles and wires and with rubber or plastic strips attached to the sides of certain of the poles.

15. The designation of an Eruv allows observant Jews to carry or push objects, from place to place within the area during the Sabbath. Thus, within the boundaries of an Eruv, observant Jews may carry books, food or other items, and push baby carriages and strollers, to synagogue, to other homes, or the park or playground.

16. Without an Eruv, observant Jews are not permitted to push or carry objects in the public domain on the Sabbath. As a result, men or women with small children cannot attend Sabbath services or go to the park or to a friend's house.

17. A multitude of Eruvs have been established nationwide and worldwide. These include: Englewood, Fort Lee, Teaneck, Edison and Long Branch, New Jersey, Manhattan and Lawrence, New York, Philadelphia, Pennsylvania, Baltimore Maryland, Charleston, South Carolina, Jacksonville, Florida, and Washington D.C.

18. In June of 1999, several observant Jews residing in Tenaflly, New Jersey sought to establish an Eruv in Tenaflly.

19. Two representatives of TEAI approached Mayor Ann Moscovitz and discussed with her the prospect of having her issue a ceremonial proclamation required by Jewish law to establish the Eruv.

20. Mayor Moscovitz stated that she was personally in favor of it and did not believe that it would be a problem but she felt that it would be appropriate for her first to consult

with the Borough Council. Mayor Moscovitz did not state or suggest that any application for approval was required under state or local law.

21. On or about July 9, 1999, the Mayor met with the Borough Council for its regularly scheduled work session. During the work session, Mayor Moscovitz raised the issue regarding the Eruv proclamation. The issue was not on the published agenda for the work session, nor was TEAI informed that the issue would be discussed and thus no one attended.

22. During the work session, contrary to established Council procedures, public comment was permitted. The comments by the public were replete with anti-Semitic and anti-Orthodox Jewish rhetoric.

23. During the work session, several Council members stated, and the Borough attorney agreed, that they did not see why they had to grant the proclamation when TEAI could go directly to the utilities and get permission to erect the Eruv without the Borough Council's approval.

24. After the meeting Mayor Moscovitz informed Mr. Erez Gotlieb of the TEAI that the council members present at the work session were opposed to the Eruv.

25. In view of the Council members' reluctance to grant the proclamation and their view that TEAI did not need the Borough Council's approval, which was consistent with the TEAI's research, in November of 1999, members of TEAI approached Bergen County Executive William "Pat" Schuber and asked if he would issue the ceremonial proclamation required to allow TEAI to erect an Eruv according to Jewish law. Mr. Schuber agreed to do so.

26. On or about December 15, 1999, Mr. Schuber issued the proclamation

27. TEAI members then approached Bell Atlantic (now Verizon) and requested permission from Bell Atlantic to affix certain rubber strips ("Eruv materials") to Bell Atlantic's poles in order to complete the Eruv. Bell Atlantic agreed to grant permission.

28. On or about June 5, 2000, TEAI and Bell Atlantic entered into a license agreement, whereby Bell Atlantic agreed to allow TEAI to affix Eruv materials to Bell Atlantic's poles to complete an Eruv, conditioned upon TEAI obtaining insurance coverage in the event of any accident involving the Eruv materials.

29. TEAI obtained an insurance policy providing \$1,000,000 in coverage.

30. Upon entering the license agreement with Bell Atlantic, TEAI believed that it had fulfilled its legal obligations to establish an Eruv. TEAI did not know of any legal requirement to obtain the consent of the Borough of Tenaflly.

31. In the middle of June 2000, as a community service, Cablevision agreed to provide personnel and trucks to assist TEAI in erecting the Eruv materials.

32. The Eruv was completed in September of 2000.

33. The Eruv consists of existing telephone wires strung between existing telephone poles. No additional poles were erected. No additional wires were strung between the existing poles. In order to comply with religious law, the Eruv materials -- rubber strips -- were added to certain poles from the ground to the telephone wires. These rubber strips are identical to the rubber strips used to cover wires which need to be run from the ground to the overhead wires. One cannot tell the difference between a rubber strip added because of the Eruv and a rubber strip used to cover a wire.

34. On September 14, 2000, Mayor Moscovitz called Rabbi Mordechai Shain, spiritual leader of Lubavitch on the Palisades, to complain about the Eruv. Mayor Moscovitz

told Shain that the people who put up the Eruv had no right to do so and she would make sure that the Eruv came down. Rabbi Shain told Mayor Moscovitz that he was not involved in the project but that he would convey the message to the people who were involved.

35. That same day, Rabbi Shain apprised representatives of the TEAI of Mayor Moscovitz' telephone call.

36. Thereafter, Chaim Book called Mayor Moscovitz and left a message for her to call him back to discuss the Eruv. Mayor Moscovitz did not return the call. Book later called Mayor Moscovitz several additional times but Mayor Moscovitz did not return the calls.

37. Instead Mayor Moscovitz began a campaign to remove the Eruv.

38. Upon information and belief, Mayor Moscovitz and her accomplices called Bell Atlantic and demanded to see a copy of the agreement between TEAI and Bell Atlantic. Upon information and belief, she and her accomplices then attempted to interfere with the agreement and asked Bell Atlantic to revoke the agreement.

39. Mayor Moscovitz gave an interview to the Bergen Record in which she falsely characterized TEAI's actions as unlawful and portrayed TEAI's members as a danger to the Tenafly community

40. On or about September 14, 2000, in an attempt to resolve the dispute, Rabbi Shmuel Golden, rabbi of Congregation Ahavas Torah in Englewood, and Joy Kurland, Director of the Jewish Community Relations Council, met with Mayor Moscovitz and Charles Lipson, a member of the Town Council.

41. During the meeting, Mayor Moscovitz stated to Golden and Kurland that they did not want those (Orthodox Jewish) people in their town and expressed concern that

Orthodox Jews will throw rocks at persons who drive on Sabbath, and block traffic when they walk to the synagogue.

42. At the end of the meeting, Mayor Moscovitz agreed to explore options to resolve the dispute and stated that she would get back to Kurland and Rabbi Goldin.

43. Mayor Moscovitz did not contact Kurland or Rabbi Goldin and did not respond to their telephone calls.

44. Upon information and belief, the Tenaflly Borough Council then ordered Joseph Di Giacomo, the Tenaflly Borough Administrator, to contact Cablevision and threaten not to renew Cablevision's franchise agreement with Tenaflly unless Cablevision removed the Eruv materials from the telephone poles.

45. Upon information and belief, in October, 2000, Mr. Di Giacomo wrote to Cablevision and ordered it to remove the Eruv materials from the telephone poles.

46. On or about October 23, 2000, Cablevision wrote to TEAI, apologizing for the inconvenience, but informing TEAI that it had been instructed to remove the Eruv materials unless TEAI demonstrated that it had permission from the Borough of Tenaflly to erect the Eruv. Cablevision stated that it would begin removing the materials within three business days of TEAI's receipt of the letter.

47. Through a compromise achieved by counsel, on or about November 1, 2000, the Borough of Tenaflly agreed to instruct Cablevision not to remove the Eruv materials for thirty days and to allow TEAI to file an application with the Town Council for permission to retain the Eruv in its place.

48. On or about November 7, 2000, TEAI filed an application with the Tenaflly Town Council, requesting that the Council not require Cablevision to remove the Eruv materials from certain telephone poles within the Borough.

49. In its application, attached as Exhibit A, TEAI explained that the establishment of an Eruv in no way impinges upon the rights of any individuals living within the Eruv's borders. It is virtually invisible from an aesthetic point of view because the Eruv consists of existing telephone and utility poles and lines and rubber strips affixed to certain poles which are identical to those used to cover telephone wires.. Furthermore, TEAI explained, the Eruv will not obstruct traffic signs or impede the utility companies in any way from performing their services.

50. In its application, TEAI also explained that it would be responsible for all of the costs involved in establishing and maintaining the Eruv, including \$1,000,000 of insurance coverage, as requested by Verizon.

51. Finally, TEAI explained in its application that the Eruv is not a religious symbol. Jews do not ascribe any spiritual significance to the materials comprising the Eruv. In addition, TEAI specifically cited case law in this district, See ACLU v. City of Long Branch, 670 F. Supp. 1293 (D.N.J. 1987), which specifically held that municipal approval of the establishment of an Eruv does not violate the Establishment Clause of the First Amendment of the United States Constitution.

52. A work session of the Borough Council took place on November 21, 2000 to consider TEAI's application.

53. A public session of the Borough Council took place on November 28, 2000. Another public session of the Borough Council took place on December 12, 2000.

54. At no time during any of the public sessions did any defendant articulate any legitimate, non-discriminatory reason for denying TEAI's application.

55. At the conclusion of the public session, the Borough Council voted, 5-0, to deny TEAI's application to establish and maintain the Eruv. Council member Yegen was not present. Mayor Moscovitz did not vote.

56. On December 13, 2000 the Borough attorney sent a letter to Cablevision directing Cablevision to remove the Eruv material as soon as possible. On December 14, 2000 Cablevision started to remove the Eruv materials.

#### FIRST CLAIM FOR RELIEF

57. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 56 as if fully set forth herein.

58. Plaintiffs have a constitutional right under the First and Fourteenth Amendment to the United States Constitution to freely practice their religion.

59. Without an Eruv in Tenaflly plaintiffs who have small children and other Orthodox Jews cannot freely practice their religion because they cannot carry objects, or push baby carriages or strollers to synagogue on the Sabbath.

60. The object and motivation of the Borough Council was to suppress the religious practices of the plaintiffs and other Orthodox Jews who would otherwise move to Tenaflly.

61. The Eruv, which is made up of existing overhead telephone wires and rubber strips running from the ground to the overhead wires on certain telephone poles, which are identical to and indistinguishable from the rubber strips used to cover ground wires on other

telephone poles, presents no aesthetic, safety, traffic, fiscal, or other problem to the town of Tenafly. There is, therefore, no compelling State interest in prohibiting maintenance of the Eruv.

62. The Borough Council's denial of the application of the TEAI to maintain the Eruv denies plaintiffs their rights to freely practice their religion in violation of the First and Fourteenth Amendments to the United States Constitution.

63. As a result of the actions of the Borough Council, plaintiffs will be irreparably harmed and will suffer damages.

#### SECOND CLAIM FOR RELIEF

(42 U.S.C. 1983)

64. Plaintiffs repeats and realleges each and every allegation of paragraphs 1 through 56 as if more fully set forth herein.

65. The plaintiffs have a constitutionally protected right under the First and Fourteenth Amendments to the United States Constitution to freely practice their religion.

66. Defendants acted under color of State Law to deprive plaintiffs of their rights, privileges or immunities secured by the Constitution and the laws of the United States in violation of 42 U.S.C. Section 1983.

67. As a result of the actions of the defendants plaintiffs have and will continue to suffer and are entitled to recover their attorney's fees

#### THIRD CLAIM FOR RELIEF

(42 U.S.C. 1985)

68. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 56 as if fully set forth herein.

69. The plaintiffs have a constitutionally protected right under the First and Fourteenth Amendments to the United States Constitution to freely practice their religion.

70. Defendants have conspired to discriminate against plaintiffs because of their religion and religious practices for the purpose of depriving plaintiffs of their constitutional rights.

71. As a result of the actions of the defendants, plaintiffs have and will continue to suffer and are entitled to recover their attorney's fees.

FOURTH CLAIM FOR RELIEF

(42 U.S.C. 3604)

72. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 56 as if fully set forth herein.

73. The plaintiffs have a constitutionally protected right under the Federal Fair Housing Act to either buy or rent a dwelling after the making of a bona fide offer and it is unlawful to refuse to sell or rent, or otherwise make unavailable, the dwelling to the plaintiffs because of the plaintiffs' religion.

74. Defendants' refusal to allow plaintiffs to maintain the Eruv was designed to make dwellings within Tenaflly unavailable to both the plaintiffs and potential Orthodox Jewish buyers of dwellings within Tenaflly.

75. As a result of the actions of the defendants, plaintiffs have and will continue to suffer irreparable harm and are entitled to compensatory damages.

WHEREFORE, Plaintiffs respectfully demand judgment against all defendants as follows:

A. On the First Claim For Relief, (1) preliminarily and permanently enjoining defendants from taking any actions which would prevent the plaintiffs from maintaining the Eruv and (2) directing defendants to take such actions that will allow plaintiffs to maintain the Eruv.

B. On the Second and Fourth Claims For Relief, (1) preliminarily and permanently enjoining defendants from continuing to engage in the discriminatory practices alleged therein; and (2) awarding compensatory damages in an amount to be established at trial.

C. On the Third Claim For relief, (1) preliminarily and permanently enjoining defendants from continuing their conspiracy; and (2) awarding compensatory damages in an amount to be established at trial.

D. Awarding the costs of this action, including reasonable attorney's fees pursuant to 42 U.S.C. Section 1988; and

E. Awarding such other and further relief as this Court deems appropriate.

JURY DEMANDED

Plaintiffs demand a Jury Trial.

Dated: Newark, New Jersey  
December 15, 2000

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Richard D. Shapiro  
HELLRING LINDEMAN GOLDSTEIN &  
SIEGAL LLP  
One Gateway Center  
Newark, New Jersey  
(973) 621-9020

AND

Robert G. Sugarman  
Harris J. Yale  
WEIL GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153  
212 310 8000

Attorneys for Plaintiffs

Exhibit A

TENAFLY ERUV ASSOCIATION, INC.  
112 HIGHWOOD AVENUE  
TENAFLY, NEW JERSEY 07670  
201-568-3191  
201-568-8493

November 7, 2000

Mayor Ann Moscovitz  
100 Riveredge Road  
Tenaflly, NJ 07670-2086

Re: Borough of Tenaflly and Tenaflly Eruv Association

Dear Mayor Moscovitz:

Please consider this a formal request by the Tenaflly Eruv Association that the Borough of Tenaflly not remove plastic strips called "lehis" on certain telephone poles within the Borough. The "lehis" are required by certain Jewish residents of Tenaflly for the establishment of an "Eruv." In simple terms, an "Eruv" is an artificial or natural boundary established with the agreement of a governmental authority that integrates private and public domains for the sole purpose of permitting observant Jews to carry on the Sabbath.

The practice of establishing an Eruv to permit Jews to carry on the Sabbath has been in use throughout the world for over 2,000 years. Currently, Eruvs are in place in at least six communities in Bergen County, and in numerous communities in New Jersey. Such communities include Fort Lee, Englewood, Elizabeth, Long Branch, Edison, West Orange, Passaic, Highland Park, Fair Lawn, Bergenfield, Paramus and Teaneck. Furthermore, hundreds of Eruvs have been established throughout the United States and Canada, including Manhattan; Great Neck, New York; Scarsdale, New York; Los Angeles, California; Charleston, South Carolina; Washington, D.C.; Boca Raton, Miami and Jacksonville, Florida; Cincinnati, Ohio; Philadelphia, Pennsylvania; Chicago, Illinois; Baltimore, Maryland; Montreal, Canada; and Toronto, Canada.

Although the establishment of an Eruv is symbolic in nature, it does require some physical demarcation. Generally,

Mayor Ann Moscovitz  
November 7, 2000  
Page 2

the physical demarcation is accomplished through the placement of short, plastic strips called "lehis" on the top of existing telephone or utility poles.

The impact of an Eruv on Jewish communal life is tremendous and spans the Jewish community from infants to seniors. The restriction against carrying on the Sabbath in the public domain applies to many things including, but not limited to, the use of walkers, crutches, wheelchairs, strollers and infant carriers. Thus, the Eruv opens the door for observant Jews of all ages and abilities to obtain access to the synagogue.

The Tenaflly Eruv Association requested and obtained permission to use utility poles from the local utilities. Specifically, the Tenaflly Eruv Association entered into a licensing agreement with Verizon (formerly Bell Atlantic) to use the existing telephone poles to adhere the "lehis". On that basis, the "lehis" were adhered to certain telephone poles in Tenaflly covered by the licensing agreement. Believing that the license agreement with Verizon was sufficient legal authority for adhering the "lehis" on the telephone poles, the Tenaflly Eruv Association did not make a formal request of the Borough of Tenaflly.

We have recently been advised that the Borough of Tenaflly believes that the placement of the "lehis" on the poles requires consideration by the Borough. Accordingly, the Tenaflly Eruv Association requests that the Borough consider this request and conclude that the "lehis" should not be removed from the utility poles in the Borough of Tenaflly for the following reasons:

First, the establishment of an Eruv in no way impinges upon the rights of any individuals living within the Eruv's borders. It is virtually invisible from an aesthetic point of view (as can evidenced by the enclosed photographs of utility poles both with and without lehis) because, with the exception of the lehis, the Eruv is established by use of existing telephone and utility poles and lines. Furthermore, the Eruv will not obstruct traffic signs or impede the utility companies in any way from performing their services.

Second, the Tenaflly Eruv Association will be responsible for all of the costs involved in establishing and maintaining the Eruv. Cablevision was kind enough to offer to erect the Eruv at no charge as a service to the community. The

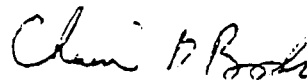
Mayor Ann Moscovitz  
November 7, 2000  
Page 3

Tenaflly Eruv Association has purchased \$1,000,000 of insurance coverage, as requested by Verizon. Moreover, Jewish law requires regular examination of the Eruv to ensure that it is not damaged.

Finally, the Eruv is not a religious symbol. We do not ascribe any spiritual significance to the materials comprising the Eruv. Further, case law in New Jersey has specifically held that municipal approval of the establishment of an Eruv does not create prohibited governmental involvement with religion. See ACLU v. City of Long Branch, 670 F. Supp. 1293 (D.N.J. 1987), a copy of which is enclosed.

On behalf of the Tenaflly Eruv Association and all observant Jewish residents of Tenaflly, I therefore urge you and the members of the Borough Council not to remove, or order the removal of, the "lehis" on the utility poles in the Borough of Tenaflly. It is further respectfully requested that this application be placed on the Council's agenda for prompt consideration. In conjunction with the anticipated meeting of the Borough Council Committee of the Whole, which will be held on this subject, additional information concerning the "lehis," and the purpose they serve will be furnished. However, should you or any of the other Council Members desire additional information or clarification on any particular point prior to our formal presentation, I will make every effort to respond in a timely and forthright manner.

Very truly yours,



Chaim B. Book



UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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CHAIM BOOK, YOSIFA BOOK,  
STEFANIE DARDIK GOTLIEB,  
STEPHEN BRENNER, and TENAFLY  
ERUV ASSOCIATION, INC.,

Plaintiff,

- against -

THE BOROUGH OF TENAFLY, ANN  
MOSCOVITZ, individually and in her  
official capacity as Mayor of the Borough  
of Tenaflly, CHARLES LIPSON,  
MARTHA B. KERGE, RICHARD  
WILSON, ARTHUR PECK, JOHN T.  
SULLIVAN, each individually and in their  
official capacities as Council Members of  
the Borough of Tenaflly ,

Defendants.

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**CERTIFICATION OF CHAIM B.  
BOOK IN SUPPORT OF PLAINTIFF'S  
APPLICATION FOR A TEMPORARY  
RESTRAINING ORDER**

STATE OF NEW JERSEY

COUNTY OF BERGEN

CHAIM B. BOOK, being duly sworn deposes and says:

1. I am a resident of the Borough of Tenaflly and the Treasurer of the Tenaflly Eruv Association, Inc. ("TEAI") I served as TEAI's representative and spokesperson in discussions and meetings with local officials and representatives of Bell Atlantic (now Verizon) and Cablevision, Inc. and during the public hearings held by the Tenaflly Borough Council on November 28, 2000 and December 12, 2000. I make this certification in support of plaintiff's application for a temporary restraining order preventing defendants from taking any further action which would disturb the status quo,

including ordering Cablevision or any other entity to remove any materials which form part of an "Eruv" from utility poles in Tenaflly, New Jersey and allowing the TEAI to maintain and repair the ERUV, if necessary. I make these statements on personal knowledge or based on conversations I have had with persons involved in the events described.

2. At approximately 5:00 P.M. this evening I learned that Cablevision had started removing Eruv materials, as defined below. It is, therefore, necessary that this application be granted without delay.

3. An Eruv, under Jewish law, is an unbroken delineation of an area. The demarcation of the Eruv boundary is primarily created using existing telephone poles and fences with wires connecting them and with rubber or plastic strips attached to some of the poles.

4. The designation of an Eruv allows observant Jews to carry or push objects from place to place during the Sabbath. For example, within the Eruv, men and women can push baby carriages or strollers from their homes to the Synagogue, to other people's homes and to the playground or park.

5. I have been personally involved in the establishment of an Eruv in Tenaflly since August of 1999.

6. I conducted research in August and September of 1999 which led me to the conclusion that there was no state statute requiring approval of the Tenaflly Borough Council to erect an Eruv on utility poles.

7. While I did not believe there was any statutory requirement that the Tenafly Borough Council approve the Eruv, for purposes of complying with religious requirements, TEAI needed a ceremonial proclamation or permission from a public official whose dominion included the geographic area of the Eruv in order to transform, for religious purposes, the public domain included in the Eruv into a private one and thus allow carrying on the Jewish Sabbath. This ceremonial proclamation or granting of permission has no legal effect or implication from the standpoint of American civil law. Accordingly, it did not matter whether it was obtained from the Mayor of Tenafly, the Bergen County Executive or the Governor of the State of New Jersey.

8. Eruvs have been established in many communities in the United States, including: Teaneck, Fort Lee, Edison, Elizabeth and Long Branch, New Jersey, Manhattan Island, Forest Hills and Lawrence, New York, Cincinnati, Ohio, Jacksonville, Florida, Philadelphia, Pennsylvania, Baltimore, Maryland, Charleston, South Carolina and Washington, D.C. When the Eruv was inaugurated in the District of Columbia in 1990, President George Bush wrote a letter to the Orthodox Jewish Community in Washington, a copy of which is attached as Exhibit A, in which he stated: "By permitting Jewish families to spend more time together on the Sabbath, [the Eruv ] will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington." Copies of the Proclamations for the Eruvs established in Cincinnati, Ohio, Jacksonville, Florida, Philadelphia, Pennsylvania, Baltimore, Maryland, Charleston, south Carolina and Washington, D.C. are attached as Exhibit B.

9. On June 1, 1999, two representatives of TEAI approached Mayor Ann Moscovitz of the Borough of Tenaflly and discussed with her the prospect of having her issue the ceremonial proclamation required by Jewish law to create the legal fiction of establishing a private domain within the area of the Eruv.

10. Mayor Moscovitz stated that she was personally in favor of issuing the ceremonial proclamation and did not believe that it would be a problem, but she felt that it would be appropriate for her first to consult with members of the Borough Council.

11. On or about July 9, 1999, the Mayor met with the Borough Council for its regularly scheduled work session. On August, 1999, I received a tape recording of the meeting. During the work session, Mayor Moscovitz raised the issue regarding the Eruv proclamation. The issue had not been on the published agenda for the work session, nor was TEAI informed that the issue would be discussed in this formal setting. However, on information and belief, selected members of the public were notified by Councilwoman Martha Kerge that the issue would be discussed.

12. During the work session, contrary to established Council procedures, where public comment is not allowed, public comment was permitted. The comments made by the persons in attendance were universally antagonistic to the concept of an Eruv. Several audience members expressed opposition to the Eruv on grounds that an Eruv would encourage Orthodox Jews to move into Tenaflly. Several individuals asserted that these Jews would compromise the local school system, damage the prospects for revitalizing the downtown area or "change the community." One member of the public stated that: "If this is granted, let's all be honest, more and more Orthodox

people are going to move in here. They're not going to buy their meat in the Grant Union, they're going to want to go to a Glatt Kosher Orthodox store. They are going to open up businesses in Tenaflly. You are going to have the same thing that happened in Teaneck [New Jersey]."

13. I understand that Councilman Charles Lipson characterized the desire for an Eruv proclamation as coming from the "Ultra-orthodox" and stated that "... in certain towns where they do it, it creates an atmosphere of a community within a community that brings people of that type, Orthodox people, only ultra-Orthodox people. And what happens in communities where they do this is that you have groups of small churches that spring up. What do you do with a whole town like that?"

14. At the meeting, Mayor Moscovitz indicated that in her opinion, regardless of whether she issued the ceremonial proclamation, "They can do it anyway ... Anybody can do it tomorrow." She further added: "It's municipal property. I'm not sure we could even stop them from doing it." Another council member stated that he "was told that they could deal directly with the cable company." Yet, another Councilman stated: "If they dealt with the cable company, there is nothing you could do about it because they have the right to do that." Borough attorney Walter Lesnevich was present at the meeting and did not correct the Councilman.

15. This exchange, in turn, yielded this comment from Councilwoman Kerge: "I think the issue is really had to do with the recognition, it's the recognition of their being able to do this. If they can go directly to cable and they don't need to have any agreement from us than why not do that? Wouldn't that be easier?"

16. Realizing that the Tenaflly Borough Council was opposed to the Eruv and would not approve the issuance of the ceremonial proclamation, in or about August of 1999, a representative of the TEAI approached the office of Bergen County Executive William "Pat" Schuber and asked if he would issue the ceremonial proclamation thereby allowing the TEAI to erect an Eruv according to Jewish law.

17. On information and belief, legal counsel for Bergen County examined the TEAI's request to determine whether there was any reason why Mr. Schuber should not issue the ceremonial proclamation. The TEAI was informed that in the opinion of the County's legal counsel there was no legal impediment to issuing the proclamation and therefore, Mr. Schuber agreed to do so.

18. On or about December 15, 1999, Mr. Schuber issued the ceremonial proclamation.

19. In April 2000, believing in good faith that approval of the Tenaflly Borough Council was not necessary and that Bell Atlantic had the right to grant permission for the use of the poles, I approached Bell Atlantic (now Verizon). My belief was based on my research, the statements of the members of the Borough Council quoted above and conversations I had with both PSE&G officials and Bell Atlantic officials.

20. TEAI requested permission from Bell Atlantic to attach rubber strips ("Eruv materials") to certain Bell Atlantic's poles in Tenaflly. The Eruv materials together with existing telephone poles and wires would constitute the Eruv. Bell Atlantic agreed to grant permission and affirmatively furnished the TEAI with a standard form agreement it routinely uses for Eruvs. During my discussions with Bell Atlantic

officials, I spoke to an in-house attorney for Bell Atlantic. He asked me to send him evidence of our legal authority to place and maintain the Eruv materials. I told him that while we had received a proclamation from the Bergen County Executive, I was not aware of any other requirement for local municipal approval. He told me that he would research the issue and would call me back. He called me several days later and told me that he researched the issue and concluded that there was no requirement for local municipal approval.

21. On or about June 5, 2000, TEAI and Bell Atlantic entered into a license agreement, whereby Bell Atlantic agreed to allow TEAI to erect an Eruv, using the telephone poles, conditioned upon TEAI obtaining insurance coverage for the Eruv materials.

22. TEAI obtained an insurance policy providing \$1,000,000 in coverage annually.

23. Upon entering the license agreement with Bell Atlantic, TEAI believed that it had fulfilled its legal obligations in obtaining permission to use the telephone poles in establishing an Eruv. TEAI did not know of any additional legal requirement to obtain the consent of the Borough of Tenafly. And, based on the comments of the Mayor and other council members, TEAI did not believe any such consent was required.

24. In mid-June, 2000, as a community service, Cablevision agreed to assist TEAI in affixing the Eruv materials to the poles and provided personnel and trucks to get the job done.

25. The Eruv was completed in September of 2000.

26. On information and belief, on or about September 14, 2000, Mayor Moscovitz called Rabbi Mordechai Shain, spiritual leader of Lubavitch on the Palisades, located in Tenaflly, New Jersey, to complain about the Eruv. Mayor Moscovitz told Shain that the people who put up the Eruv had no right to do so and she would make sure that the Eruv came down. Rabbi Shain told Mayor Moscovitz that he was not involved in the project, but that he would convey the message to the people who were involved. That same day, Rabbi Shain apprised representatives of TEAI of Mayor Moscovitz' telephone call.

27. On September 17, 2000, I called Mayor Moscovitz and left a message for her to call me back to discuss the Eruv. Mayor Moscovitz did not return the call. I later called Mayor Moscovitz several additional times but Mayor Moscovitz did not return the calls. Instead Mayor Moscovitz began taking measures to sabotage the Eruv.

28. On information and belief, some time between September 5 and September 18, both Mayor Moscovitz and Council Member Kerge placed telephone calls to the office of County Executive Schubert complaining about the proclamation that he had issued and demanding that it be rescinded immediately before "those people" moved into Tenaflly and ruined the public school system. Both Kerge and Mayor Moscovitz incorrectly claimed that the Borough of Tenaflly had previously denied TEAI's application for an Eruv and that the actions of the County Executive in effect usurped the Borough's local authority. As pointed out above, no application was made to the

Borough of Tenaflly because TEAI believed, based in part on statements made by Mayor Moscovitz and Kerge, that none was necessary.

29. On information and belief, Adam Strobel, the Chief of Staff for Mr. Schuber informed both Kerge and Mayor Moscovitz that Mr. Schuber had no plans to rescind the proclamation and that he regarded it to be reasonable community accommodation.

30. On information and belief, during this same period of time, Mayor Moscovitz and others contacted Bell Atlantic/Verizon and demanded to see a copy of the agreement between TEAI and Bell Atlantic/Verizon. She then attempted to interfere with the agreement by demanding that Bell Atlantic/Verizon revoke the agreement.

31. On September 14, 2000, Mayor Moscovitz gave an interview to the Bergen Record in which she again falsely characterized TEAI's actions as unlawful and portrayed TEAI's members as a danger to the Tenaflly community.

32. As set forth in accompanying affidavit of Rabbi Shmuel Goldin, on that same day, September 14, 2000, in an attempt to resolve the dispute, Rabbi Goldin, Rabbi of Congregation Ahavas Torah in Englewood, New Jersey and Joy Kurland, Director of the Jewish Community Relations Council, met with Mayor Moscovitz and Council member Charles Lipson.

33. During the meeting, Mayor Moscovitz and Lipson expressed to Goldin and Kurland that they did not want those (Orthodox Jewish) people in their town. They expressed concern that Tenaflly would become like Teaneck (i.e., too Orthodox), that the Orthodox might throw rocks at Sabbath violators, and block traffic when they

walked to the synagogue, and that if the Orthodox Jews moved into town, “they would ruin it for us.”

34. Rabbi Goldin, at one point, threatened to leave the meeting because of the offensive comments made by Mayor Moscovitz, but eventually a better tone was set and by the end of the meeting a compromise was proposed. That evening, Rabbi Goldin and Ms. Kurland notified the TEAI that the Mayor appeared willing to “drop the matter” if the TEAI agreed not to place any wires on town property and to remove existing wires in the Nature Center. TEAI had mistakenly strung some wires through the Town Nature Center. These wires have been removed and do not constitute a part of the Eruv.

35. On Friday, September 22, 2000, the TEAI informed Rabbi Goldin of its agreement to the proposed compromise and Ms. Kurland then promptly telephoned Mayor Moscovitz to communicate the offer.

36. Mayor Moscovitz never returned that telephone call nor did she respond to several subsequent telephone calls placed by Ms. Kurland during the week of September 25th.

37. Mayor Moscovitz did, however, make herself available to both the Bergen Record newspaper and Channel 9 news (on September 28th), again falsely telling reporters that “the Eruv application was rejected” and the actions of the TEAI were “highly illegal.”

38. On information and belief, thereafter, it appears that two members of the Borough Council and Mayor Moscovitz instructed Joseph Di Giacomo, the Tenaflly

Borough Administrator, to contact Cablevision and threaten not to renew Cablevision's franchise agreement with Tenaflly unless Cablevision removed the Eruv materials from the telephone poles.

39. On or about October 23, 2000, Cablevision wrote to TEAI, apologizing for the inconvenience, but informing TEAI that it had been instructed by the Borough of Tenaflly to remove the Eruv materials unless TEAI demonstrated that it had permission from the Borough of Tenaflly to erect the Eruv. Cablevision stated that it would begin removing the materials within three business days of TEAI's receipt of the letter. (A copy of Cablevision's October 23, 2000 letter is attached hereto as Exhibit C).

40. In a subsequent telephone conversation, Mr. Jim Gaffney, director of operations for Cablevision, told me that he had received a letter from the Borough of Tenaflly, demanding that the Eruv materials be removed and threatening that if Cablevision did not comply, its franchise with the Borough would be jeopardized.

41. Through a compromise reached by counsel, on or about November 1, 2000, the Borough of Tenaflly agreed to instruct Cablevision not to remove the Eruv materials for thirty days and to allow TEAI to file an application with the Borough Council for permission to retain the Eruv in place.

42. On November 7, 2000, TEAI filed an application with the Tenaflly Borough Council, requesting that the council not take any action, remove or order the removal of the Eruv.

43. Public hearings were held by the Tenaflly Borough Council on November 28, 2000 and December 12, 2000.

44. In addition to the opposition expressed during the November 28, 2000 and December 12, 2000 council meetings, correspondence was sent to the Mayor and Borough Council urging the council to deny TEAI's application. (One such letter is attached hereto as Exhibit D). It said, in part: "Once this eruv wire is put up on public property, that will be the signal for many more orthodox people to move into Tenaflly and the value of property in Tenaflly will go down and welfare will go up. This will be the making of a ghetto and, Mayor, I don't think you want this to happen on your watch."

45. At the two public hearings, numerous individuals spoke in opposition to TEAI's application. Their reasons for opposing the application were either factually erroneous or overtly discriminatory. Some of the statements made by the public at the December 12, 2000 Council meeting were that the orthodox Jewish supporters of the Eruv were merely "a little group of a few people trying to ruin this community" and that the Eruv was "a thorn in our side which will become a festering wound." One member of the public stated that she had, prior to moving to Tenaflly, "lived in Teaneck and [therefore] has a long term view of what happens when these people move in." Another member of the public warned that the supporters of the Eruv are a "small select group of people who will slash and burn to achieve their personal goals." Still another individual encouraged the Council not to feel that if "you vote against them you are Nazis."

46. Several persons, including three local Christian clergy and Charles "Shai" Goldstein of the Anti-Defamation League spoke in support of the TEAI

application. The Anti-Defamation League had written a letter which is attached as Exhibit E.

47. On December 12, 2000, the Tenaflly Borough Council voted 5-0 to deny TEAI's application. Council Member Christian Yegen was not present. Mayor Moscovitz did not vote.

48. On December 13, 2000 the Borough of Tenaflly instructed Cablevision to remove the Eruv materials as soon as possible, thereby destroying the Eruv. I am informed that because of a telephone call from Mayor Moskovitz in which Mayor Moskovitz demanded that the rubber strips be removed immediately, as of late this afternoon, Cablevision has already started removing the Eruv materials.

49. If the Tenaflly Borough Council is allowed to remove the Eruv during the pendency of the instant litigation, my family and I will suffer irreparable harm as indicated above. The Eruv allows observant Jews such as myself and my wife to carry or push objects from place to place within Tenaflly (and into Englewood) during the Sabbath. Without an Eruv, we cannot push or carry objects outside our house on the Sabbath.

50. My wife and I have three children, ages four, two and one. Without an Eruv, we cannot all attend synagogue services or visit friends together because one of us has to stay at home with our youngest child who is not yet walking. Moreover, we cannot enjoy the public parks on Saturday because we cannot carry snacks for the children or a change of diapers or even a toy or ball for the children to play with.

51. Conversely, leaving the Eruv in place will not harm anyone. The rubber strips which constitute Eruv materials are identical to and indistinguishable from the rubber strips used by Verizon to cover ground wires. Someone looking at a telephone pole cannot tell whether the rubber strips are part of the Eruv or part of Verizon's wiring system. The Eruv does not, therefore, create any aesthetic problem. Nor does it cost the Borough any amount to maintain because it is privately funded.

52. I, therefore, respectfully request that this Court grant plaintiff's application for a temporary restraining order, preventing the Borough of Tenaflly from removing the materials constituting an Eruv from the utility poles and allowing the TEAI to maintain and repair the Eruv, if necessary.

I certify under penalty of perjury that the foregoing statements made by me are true and correct, and based upon my personal knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

*Chaim B. Book*

---

CHAIM B. BOOK

December 14, 2000

Exhibit A

THE WHITE HOUSE

WASHINGTON

Eruv Sabbath, 1990

I am pleased to send greetings to Congregation Keshar Israel and to the Orthodox Jewish community in Washington as you celebrate the inauguration of the first eruv in the District of Columbia.

The construction of this eruv is particularly significant not only because it marks the growth of the Orthodox Jewish community in Washington but also because this city is our Nation's Capital. Indeed, there is a long tradition linking the establishment of eruvin with the secular authorities in the great political centers where Jewish communities have lived. In the words of a responsa of Rabbi Moses Sofer: "Bless the Lord, God of Israel, who has inclined the hearts of kings, rulers, and officers -- under whose sovereign jurisdiction we, the Jewish people find protection -- to grant permission to us to keep our faith in general, and specifically to establish eruvin in their thoroughfares, even on streets where the most important members of the government themselves live . . . in this city, there are places where we need to install a number of objects in order to create an eruv and we have not hidden our work, rather, it is publicized and open to all without doubt and permission has been granted."

Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other Federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. God bless you.

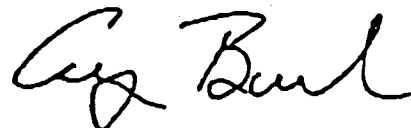


Exhibit B



OFFICE OF THE MAYOR  
WASHINGTON, D. C.

# Proclamation

ERUV DOMAIN DAY

BY THE MAYOR OF THE DISTRICT OF COLUMBIA

WHEREAS, in accordance with the Jewish religion, the laws of the Sabbath contain the Commandment, "Let no man go out of his place on the Sabbath day (Exodus 16:29):" and

WHEREAS, a person's place is defined by (1) specifying certain natural and artificial boundaries, and (2) letting the use of the domain within these boundaries by mutual agreement; and

WHEREAS, the Office of the Mayor of the District of Columbia has been requested by The Keshet Israel Congregation--The Georgetown Synagogue and The Keshet Israel Eruv Project, on behalf of those of the Jewish faith who live within the eruv district of the District of Columbia whose boundaries are delineated on the map of the District of Columbia hereunto attached, to rent, according to Jewish Religious Law, to the President of The Keshet Israel Eruv Project, at a rental of one United States dollar (\$1.00), in hand paid, the rights to the domain within the aforesaid area solely for the purpose of "carrying" on the Sabbath and other Jewish holy days; and

WHEREAS, the Office of the Mayor of the District of Columbia deems it to be in the public interest that those of its residents of the Jewish faith on whose behalf the request has been presented be granted the rights requested, and likewise deems it to be of no detriment to the rights and general welfare of other members of the public;

NOW, THEREFORE, I, THE MAYOR OF THE DISTRICT OF COLUMBIA, do hereby proclaim a grant of the rights requested to the President of The Keshet Israel Eruv Project at a rental of one United States dollar (\$1.00), in hand paid, solely in order to define the Sabbath bounds in accordance with Jewish Religious Law.

ATTEST

  
Secretary  
of the District of Columbia

  
MARION BARRY JR.  
MAYOR

Date:

4-3-96


DOCT - 3-09 TUE 15:18 P. 22W

P. 01

LEASE AGREEMENT  
BETWEEN THE CITY OF PHILADELPHIA  
AND NORTHEAST ERUV CORPORATION

In consideration of one Silver Dollar (\$1.00) legal coinage of the United States of America delivered by the undersigned, Northeast Eruv Corporation, a Pennsylvania non-profit corporation, to and accepted by the Honorable W. Wilson Goode, Mayor of the City of Philadelphia this 3<sup>rd</sup> day of October, 1989, Mayor Goode hereby leases for a period of twenty-five (25) years to Northeast Eruv Corporation that portion of the domain of the City of Philadelphia which falls within the Eruv boundaries encompassed by Roosevelt Boulevard on the east, Central Avenue on the west, Syberry Road on the north and Adams Avenue on the south, for the limited purpose of satisfying the requirements of Orthodox Jewish law and practice as they relate to carrying on the Jewish Sabbath and Yom Kippur.

Executed this 3<sup>rd</sup> day of October, 1989 and intended to take effect immediately.

  
W. WILSON GOODE  
Mayor, City of Philadelphia

  
EZRA WOHLGEHERTER  
For Northeast Eruv Corporation



# Proclamation

BY

MAYOR WILLIAM DONALD SCHAEFER

WHEREAS, in accordance with the Jewish religion, the laws of the Sabbath contain the Commandment "Let no man go out of his place on the Sabbath day" (Exodus 16:29); and a man's "place" is defined by (1) specifying certain natural or artificial boundaries, and (2) letting the use of the domain by mutual agreement; and

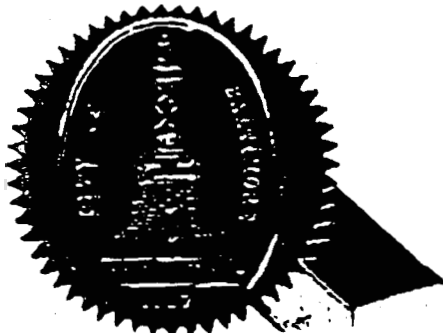
WHEREAS, an Eruv District in the northwest Baltimore metropolitan area has been declared by Joint Resolution of the Mayor of Baltimore City and the County Executive of Baltimore County for the Orthodox Jewish purposes referred to above; and

WHEREAS, an Agreement is being or has been entered into by and between the Mayor and City Council of Baltimore and The Eruv of Baltimore, Inc. for the installation and maintenance of an Eruv bounding the Eruv district; and

WHEREAS, the Office of the Mayor of the City of Baltimore, Maryland has been requested by The Eruv of Baltimore, Inc., on behalf of those of the Orthodox Jewish faith who reside within the Eruv district bounded by and including Liberty Road on the west, the Beltway on the north, the Jones Falls Expressway on the east and Coldspring Lane and Garrison Boulevard on the south, to rent, according to the Jewish Torah Laws, to the President of The Eruv of Baltimore, Inc., at a rental of One United States Dollar (\$1.00) in hand paid, the rights to the domain within the aforesaid area solely for the purpose of "carrying" on the Sabbath and other Jewish holy days in accordance with Orthodox Jewish law; and

WHEREAS, the Office of the Mayor of the City of Baltimore deems it to be in the public interest that those of its residents of the Jewish faith for whom the request has been presented be granted the rights requested, and likewise deems it to be of no detriment to the rights and general welfare of other members of the public.

NOW, THEREFORE, I, WILLIAM DONALD SCHAEFER, MAYOR OF THE CITY OF BALTIMORE, do hereby proclaim a grant of the rights requested to the President of Eruv, Inc. at a rental of One United States Dollar (\$1.00), in hand paid, in order to define the Sabbath bounds in accordance with Jewish religious Law.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the great Seal of the City of Baltimore to be affixed this seventh day of November, in the year, one thousand nine hundred and seventy-nine.

*William Donald Schaefer*  
Mayor

# City of Cincinnati

OFFICE OF THE MAYOR

## Proclamation

BE IT PROCLAIMED:

WHEREAS, In accordance with the Jewish religion, the laws of the Sabbath contain the commandment "Let no man go out of his place on the Sabbath Day" (Exodus 16:29); and a man's "place" is defined by (1) Specifying certain natural or artificial boundaries, and (2) Letting the use of the domain within these boundaries by mutual agreement; and

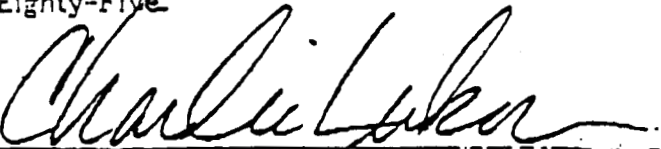
WHEREAS, The Mayor of Cincinnati, Ohio has been requested by the Eruv Committee of the Cincinnati Orthodox Jewish Council on behalf of those of the Orthodox Jewish faith who reside within the Eruv District bounded on the north by Galbraith Road, on the east by Ridge Road, on the south by Langdon Farm and Seymour Avenue and on the West by I-75, according to the Jewish Torah laws to the Eruv of Cincinnati to have use of the rights to the domain within this area solely for the purpose of "carrying" on the Sabbath and other Jewish Holy Days in accordance with Orthodox Jewish law and for no other purpose; and

WHEREAS, It is in the public interest that those Cincinnati residents of the Jewish faith for whom the request has been presented be granted the rights requested, so long as the granting thereof in no way acts to the detriment of the rights and welfare of other members of the public.

NOW, THEREFORE, I, CHARLIE LUKEN, Mayor of the City of Cincinnati, do hereby proclaim a grant of the Eruv domain rights for the City of Cincinnati, for the purpose of carrying on the Sabbath and other Jewish Holy Days in accordance with the Orthodox Jewish Law.



IN WITNESS WHEREOF, I have hereunto set my hand and caused this seal of the City of Cincinnati to be affixed this 16th day of July in the year Nineteen Hundred and Eighty-Five.

  
Charlie Luken, Mayor



*City of Charleston*

*Joseph P. Riley, Jr.*  
*Mayor*

## RESOLUTION

Whereas, the Office of the Mayor of Charleston, South Carolina, and the City Council of Charleston, South Carolina, have been petitioned by Ms. Jill E.M. HaLevi, member of Brith Sholom Beth Israel Congregation, on behalf of those of the Jewish faith who reside within Peninsular Charleston, bounded by the Ashley and Cooper Rivers, Charleston Harbour and Mt Pleasant Street, to rent according to Jewish Laws, to Ms. Jill E.M. HaLevi, member of Brith Sholom Beth Israel Congregation, and to those designated residing within the boundaries specified above, for a period of 99 years at a rental of One United States Dollar (\$1.00) in hand paid, the rights to the aforesaid area for the purpose of carrying on the Sabbath and Jewish holidays;

Whereas, the office of the Mayor of Charleston, South Carolina and the City Council deem it to be in the public interest that those of its residents for whom the petition has presented be granted the rights requested in the petition,

Now, therefore, I, Joseph P. Riley, Jr., Mayor of Charleston, South Carolina do hereby proclaim a grant of the rights to the aforesaid area requested by the aforementioned individual for a period of 99 years at a rental of One United States Dollar (\$1.00) in hand paid. This resolution shall not diminish, increase or affect any other rights granted under South Carolina law.

Done at City Hall, 80 Broad Street  
Charleston, South Carolina, November 10<sup>th</sup> 1998.

Honorable Joseph P. Riley, Jr.  
Mayor



*P.O. Box 622, Charleston, South Carolina 29402*  
*803-577-6970 Fax 803-220-3377*

# PROCLAMATION

WHEREAS: In accordance with the Jewish religion, the laws of the Sabbath contain the Commandment, "Let no man go out of his place on the Sabbath day" (Exodus 16:29); and a man's "place" is defined by (1) specifying certain natural or artificial boundaries, and (2) letting the use of the domain within these boundaries by mutual agreement; and

WHEREAS: An Eruv District in the Mandarin area of Jacksonville is declared for the Jewish religious purposes referred to above; and

WHEREAS: An agreement is being entered into by and between the Mayor of the City of Jacksonville and Eruv of Jacksonville, Inc. for the installation and maintenance of an Eruv bounding the Eruv District; and

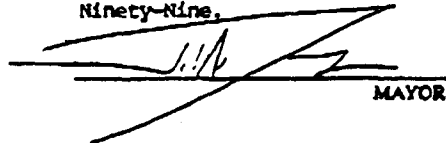
WHEREAS: The Office of the Mayor of Jacksonville has been requested by Eruv of Jacksonville, Inc., on behalf of observant Jews who reside within the Eruv District bounded by and including Baymeadows Road to the north, Interstate 95 to the east, Interstate 295 to the south, and the St. Johns River to the west, to rent, according to Jewish Torah laws, to the President of Eruv of Jacksonville, Inc. at a rental of one United States Dollar (\$1.00) in hand paid, the rights to the domain within the aforesaid area solely for the purposes of "carrying" on the Sabbath and other Jewish holy days in accordance with Orthodox Jewish Law; and

WHEREAS: The Office of the Mayor of Jacksonville deems it to be in the public interest that those residents of the Jewish faith for whom the request has been presented be granted the rights requested, and likewise deems it to be of no detriment to the rights and general welfare of other members of the public.

NOW, THEREFORE, I, JOHN A. DELANEY, MAYOR OF THE CITY OF JACKSONVILLE, by virtue of the authority vested in me do hereby proclaim a grant of the rights requested to the President of Eruv of Jacksonville, Inc. at a rental of one United States Dollar (\$1.00), in hand paid, in order to define the Sabbath bounds in accordance with Orthodox Jewish religious law and no other purpose.



IN WITNESS THEREOF, this 15th day of June  
in the year One Thousand Nine Hundred and  
Ninety-Nine.

  
MAYOR

CITY OF JACKSONVILLE, FLORIDA

Exhibit C

October 23, 2000



Chaim Book  
Treasurer  
112 Highwood Avenue  
Tenafly, NJ 07670

Dear Mr. Book:

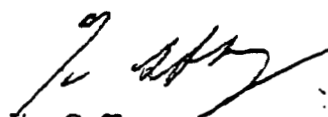
As you know, Cablevision agreed to assist you with the Eruv project in Tenafly as a community service in reliance upon your representation that you had obtained all authorizations necessary to place these plastic holders in the public right-of-ways. You provided us with copies of the pole licenses, but we have now been notified by the municipality that you never obtained the consent of the Borough for use of the public right-of-ways. As a result, Cablevision has been instructed by the municipality to immediately remove these plastic holders.

Accordingly, this letter serves to notify you that, unless you can present us with a duly authorized right to use the municipal rights-of-way for the purpose of an eruv, Cablevision shall be compelled to honor the municipality's request and shall commence taking the holders down within three days of your receipt of this letter.

We regret the position in which we find ourselves and hope you understand that Cablevision cannot afford to jeopardize its relationship with the Borough or its franchise to provide telecommunication services within the Borough.

Please contact me at 201-569-3720 ext. 201 if you wish to discuss this matter.

Sincerely,

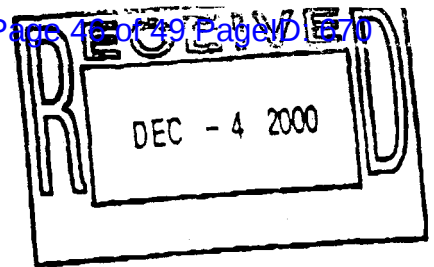
  
Jim Gaffney  
Director of Operations

Cc: Joseph Di Giacomo, Borough Administrator

Exhibit D

**Mrs. Bernard H. Golden, Sr.**

88 Sussex Road  
Tenafly, NJ 07670



CORRESPONDENCE  
12/7 5-0

November 30, 2000

Mayor Ann Moscovitz  
Tenafly Borough Hall  
100 Riveredge Road  
Tenafly, NJ 07670

Dear Mayor Moscovitz; *and Council*

I was present at the meeting of Tuesday, November 28<sup>th</sup>, and I would like to make a comment.

This is a matter of separation of church and state. It will also be the beginning of many more demands the orthodox people will impose on the town of Tenafly and its non-orthodox residents. Once this eruv wire is put up on public property, that will be the signal for many more orthodox people to move into Tenafly and the value of property in Tenafly will go down and welfare will go up. This will be the making of a ghetto and, Mayor, I don't think you want this to happen on your watch.

Think of your legacy. If you don't believe me, look what happened to Monroe, New York. I rest my case. This is not anti-anything. It's just freedom and public property.

Sincerely,

Mrs. Bernard H. Golden, Sr.

*bc Mrs. Bernard H. Golden Sr.*

CERTIFIED MAIL/RETURN RECEIPT REQUESTED #Z 7099 3400 0001 2594 6283

**Exhibit E**



## NEW JERSEY REGIONAL OFFICE

NEW JERSEY REGIONAL  
ADVISORY BOARD

Chair  
MARK WILF  
Immediate Past Chair  
EDWARD M. MITH  
Chair, Development  
WILLIAM DAVIDSON  
Treasurer  
EROME N. WALDOOR  
Chair, Society of Fellows  
IR. NORMAN RSTMAN  
Past-Chair  
MURRAY BEER  
EVALDE BRADY  
IR. JACOB KIRSCHNER  
LEONOR LAMBERT  
EARL RANDALL-LEHRHOFF  
HILIP ROSENBAUM  
ERI SAMUEL  
ENNETT SCHWARTZ  
Past Chair  
ERALD A. FLANZBAUM  
INFORD HOLLANDER  
ERINARD A. JUTTNER  
WIN D. MARKS  
VIN L. ROCKOFF  
WARD WEISS  
WARD WISSEBERG  
Past Chair  
JEAN PENN  
UNIL RUBIN  
JUGLAS STANGER  
LUD STENER  
ERY TANENBAUM  
Honorary Chair  
Past Chair  
ROYL CHERTOFF  
KLIP ROSENBAUM  
Honorary Chair  
ERI SAMUEL  
CHIL SCHERL  
Honorary Chair  
EPHEN MOSES  
EVE SOME

December 6, 2000

Mayor Ann Moscovitz and Council Members  
Tenaflly Borough Hall  
100 Riveredge Road  
Tenaflly, New Jersey 07670

Dear Mayor Moscovitz and Council Members,

The New Jersey Region of the Anti-Defamation League urges you to vote in favor of the Tenaflly *Eruv* Association's application requesting permission to maintain an *eruv* that was previously erected by Cablevision. We request that you rescind any prior order to Cablevision to remove the *eruv*.

In making your decision please consider the following facts as determined by Judge Anne Thompson of the Federal District Court of New Jersey in the case of *ACLU vs. City of Long Branch* 670F.Supp129 (D.N.J.1987).

- (1) An *eruv* allows observant Jews to perform the following tasks on the Sabbath (Saturday) that they would not otherwise be allowed to perform according to Jewish law, including: pushing a wheelchair or baby carriage, and carrying books or food.
- (2) Providing equal access to public facilities to people of all religions and enabling individuals to get to and from their chosen places of worship safely are permissible accommodations by the government. The government is permitted to fix sidewalks outside churches, provide police protection and basic utilities for mass outdoor religious gatherings, provide police to direct traffic into synagogue parking lots and authorize a house of worship to install additional street lights on public property to facilitate access to evening services. (*O'Hair v. Andrus*, 613F.2d 931 (D.C.Cir.1979) and *L. Tribe*, American Constitutional Law 839-840 (1978).
- (3) A city resolution approving the pre-existing *eruv* will not advance any particular religion. It merely will accommodate the religious practice of those residents who are observant Jews. All of the law in this area indicates that the approval by a municipality for an *eruv* in no way violates separation of church and state.
- (4) The *eruv* itself has no religious significance or symbolism and is not part of any religious ritual. A religious accommodation is not a religious symbol.

## REGIONAL COMMISSIONERS

ERY M. MARCH  
AN L. ROCKOFF  
YER ROSENTHAL  
WARD WISSEBERG  
MARK WILF  
Past National Commissioners  
EARL RANDALL-LEHRHOFF  
WARD M. MITH  
ERI SAMUEL  
Honorary Life Members  
WARD A. FLANZBAUM  
WARD WEISS  
MATS A. FERMAGUCH

## REGIONAL STAFF

Regional Director  
VILIS "SHAY" GOLDSTEIN  
Exec. Development  
LE MITTELMAN

MEMBERS OF THE  
REGIONAL COMMISSION

Past Chair  
WARD P. BERKOWITZ  
Past Director  
AHAM H. FORMAN  
Past National Executive Committee  
A. A. TOBIAS  
Past National Director  
Exec. Development  
R. T. WILLNER  
Operating Officer  
Exec. Marketing & Communications  
ALD FRIEDMAN

Honorary Executive Committee  
Honorary Vice Chair

Furthermore, the court in *Long Branch* ruled "the *eruv* sends no religious message to the rest of the community... an *eruv* does not in any way force other residents to confront daily images and symbols of another religion."

In addition, the recently enacted Religious Land Use and Institutionalized Persons Act of 2000 mandates that no government, including the local government, can impose a substantial burden on the religious exercise of a person(s) unless there is a "compelling state interest" on such a burden.

By failing to issue the requested permit, the Borough would be imposing such a burden on observant Jews in your community.

Bear in mind that the ADL is requesting you approve a permit for the *eruv* not because we believe government should support religion, but because government should not interfere with a legally mandated religious accommodation or a religious practice unless there is a compelling state interest. Our democracy flourishes because, for the most part, government does not interfere with religious practice or accommodations. It certainly should not interfere or prevent a religious accommodation that will assist the handicapped and children from participating in religious services without violating their religious code.

By failing to provide the permit, the Borough would in essence be prohibiting the free exercise of religion. With the additional information in this letter, the ADL is confident the Borough will act in accordance with the Constitution and in the best interests of the community, including young children, their parents and those whose access to prayer in a synagogue on the Sabbath requires them to use wheelchairs.

Sincerely,



Charles "Shai" Goldstein  
Regional Director

cc: Rev. Charles Rush, Executive Director, N.J. Coalition for Free Exercise of Religion; Rev. Stephen Giordano, Clinton Avenue Reform Church, Bergenfield; Abraham H. Foxman, ADL National Director; Elizabeth Coleman, ADL National Director of Civil Rights





3. On December 12, 2000, the Tenaflly Borough Council voted to deny the application of the Tenaflly Eruv Association, Inc. and ordered Cablevision to remove the Eruv immediately.

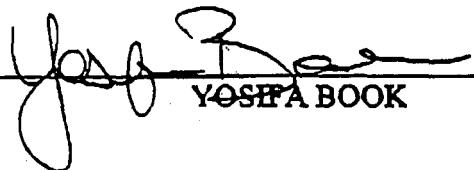
4. If the Tenaflly Borough Council is allowed to remove the Eruv pending the instant litigation, my family and I will suffer irreparable harm.

5. My husband and I have three children, ages four, two and one. Without an Eruv, we cannot all attend synagogue services or visit friends together because someone has to stay at home with the youngest child who is not yet walking. Moreover, we cannot enjoy the public parks on Saturday because we cannot carry snacks for the children or a change of diapers or even a toy or ball for the children to play with.

6. Conversely, leaving the Eruv in place will not harm anyone. The Eruv is virtually invisible, it is not aesthetically displeasing. It does not cost the Borough any amount to maintain, it is privately funded.

7. I therefore respectfully request that this Court grant plaintiff's application for a temporary restraining order, preventing the Borough of Tenaflly from removing the materials constituting an Eruv from the utility poles.

I certify under penalty of perjury that the foregoing statements made by me are true and correct, and based upon my personal knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
YOSEFA BOOK

December 14, 2000



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

CHAIM B. BOOK, YOSIFA BOOK,  
STEFANIE DARDIK GOTLIEB, STEPHEN  
BRENNER and TENAFly ERUV  
ASSOCIATION, INC.,

Plaintiffs,

-against-

THE BOROUGH OF TENAFly, ANN  
MOSCOVITZ, individually and in her  
official capacity as Mayor of the  
Borough of Tenaflly, CHARLES  
LIPSON, MARTHA B. KERGE, CHRISTIAN  
YEGEN, RICHARD WILSON, ARTHUR  
PECK, JOHN T. SULLIVAN, each  
individually and in their official  
capacities as Council Members of  
the Borough of Tenaflly,

Defendants.

CERTIFICATION OF STEFANIE  
DARDIK GOTLIEB IN SUPPORT OF  
PLAINTIFFS APPLICATION FOR A  
TEMPORARY RESTRAINING ORDER

STATE OF NEW JERSEY:

COUNTY OF BERGEN:

I, STEFANIE DARDIK GOTLIEB, hereby declare:

1. I am an Orthodox Jew and I reside in Tenaflly, New Jersey. I make this affidavit in support of plaintiffs' application for a temporary restraining order preventing defendants from ordering Cablevision, Inc. to remove the materials constituting an "Eruv" from utility poles in Tenaflly, New Jersey.

2. I am a Tenaflly resident and I have lived in Tenaflly since May of 1994.

3. Upon information and belief, on December 12, 2000, the Tenaflly Borough Council voted to deny the application of the Tenaflly Eruv Association, Inc. and thereafter ordered Cablevision to remove the Eruv immediately.

4. If the Tenaflly Borough Council is allowed to remove the Eruv pending the instant litigation, my family and I will suffer irreparable harm.

5. My husband and I have two children, ages five and <sup>three</sup> two and we are expecting another child soon. Without an Eruv, we cannot all attend synagogue services, or visit friends together because someone has to stay at home with our youngest child who is too young to walk any substantial distance. Moreover, we cannot enjoy the public parks on Saturday because we cannot carry snacks for the children or a change of diapers or even a toy or ball for the children to play with.


6. Conversely, leaving the Eruv in place will not harm anyone. The Eruv is virtually invisible, it is not aesthetically displeasing. It does not cost the Borough any amount of money to maintain, since it is privately funded.

7. I therefore respectfully request that this Court grant plaintiffs' application for a temporary restraining order,

preventing the Borough of Tenafly from removing the materials constituting an Eruv from the utility poles.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 14 December 2000

  
Stefanie Dardik Gotlieb



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

CHAIM BOOK, YOSIFA BOOK, STEPHANIE  
DARDICK GOTTLIEB, STEPHEN BRENNER,  
and TENAFLY ERUV ASSOCIATION, INC.,

Plaintiff,

Vs.

THE BOROUGH OF TENAFLY, ANN  
MOSCOVITZ, individually and in her official  
capacity as Mayor of the Borough of Tenafly,  
CHARLES LIPSON; MARTHA B. KERGE;  
RICHARD WILSON, ARTHUR PECK, JOHN T.  
SULLIVAN each individually and in their official  
capacities as Council Members of the Borough of  
Tenafly,

Defendants.

**CERTIFICATION**  
**OF STEPHEN BRENNER**  
**IN SUPPORT OF PLAINTIFF'S**  
**APPLICATION FOR A TEMPORARY**  
**RESTRAINING ORDER**

STATE OF NEW JERSEY )

COUNTY OF BERGEN )

SS.:

STEPHEN BRENNER, of full age and being first duly sworn, hereby deposes and says:

1. I am a plaintiff in this action and make this affidavit in support of plaintiff's application for a temporary restraining order preventing defendant Borough of Tenafly from taking any action which would disturb the status quo, including ordering Cablevision or any other entity to remove any materials which form part of an "Eruv" from utility poles in Tenafly, New Jersey.

2. I am an observant Jew and I am in the process of building a house in Tenafly. I plan to move in to the house in several months from now.

3. If the Tenafly Borough Council is allowed to remove the Eruv during the pendency of the instant litigation, my family and I will suffer irreparable harm.

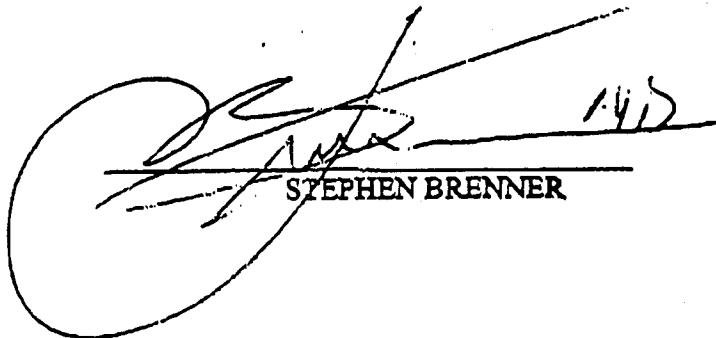
4. My wife and I have lived in Manhattan, where there is an Eruv, for almost three years. With the Eruv in Manhattan, we can carry eyeglasses, books, medications while strolling outdoors, or on the way to the park, visit friends or to attend synagogue services on the Sabbath.

5. To live in Tenafly without an Eruv would mean that we would not be able to carry on the Sabbath and that friends with young children could not visit us on the Sabbath and not be able to enjoy a Sabbath meal with us.

6. My wife and I would not be able to live with such restrictions and therefore, if we are not able to have an Eruv, we will sell our house and move elsewhere.

7. I, therefore, respectfully request that this Court grant plaintiff's application for a temporary restraining order, preventing the Borough of Tenafly from removing the materials constituting an Eruv from the utility poles.

I certify that the foregoing statements made by me are true, based upon my personal knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



STEPHEN BRENNER

December 14, 2000



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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

TENAFLY ERUV ASSOCIATION, INC.,  
CHAIM BOOK, YOSIFA BOOK, STEFANIE  
DARDIK GOTLIEB and STEPHEN  
BRENNER,

Plaintiffs,

v.

THE BOROUGH OF TENAFLY, ANN  
MOSCOVITZ, individually and in her official  
capacity as Mayor of the Borough of Tenaflly,  
CHARLES LIPSON, MARTHA KERGE,  
RICHARD WILSON, ARNOLD PECK, JOHN  
T. SULLIVAN, each individually and in their  
official capacities as Council Members of the  
Borough of Tenaflly,

Defendants.

Case No. 00 CV 6051 (WGB)

AFFIRMATION OF RABBI  
HERSHEL SCHACHTER

HERSHEL SCHACHTER hereby affirms, under penalty of perjury:

1. I am an ordained Orthodox rabbi and the Rosh Yeshiva and Nathan and Vivian Fink Distinguished Professor of Talmud at the Rabbi Isaac Elchanan Theological Seminary (RIETS) affiliated with Yeshiva University. I am a graduate of Yeshiva College and have been teaching at RIETS for over 30 years. RIETS is the principal rabbinical school for the ordination of orthodox rabbis in the United States.

2. I have an expertise both in the laws of eruv, as well as in the practical aspects of setting up an eruv. For the past several years I have been giving a six-week seminar to the fourth year students studying for ordination at RIETS. I personally was consulted at one point to check out one specific issue concerning the Tenaflly eruv, on a pro bono basis, as I have been consulted regarding more than 30 eruvs in the New York, New Jersey, and Connecticut areas.

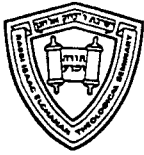
3. The institution of the eruv has been practiced by the Jewish people for over 2,000 years. It is based on principles derived from the Bible which are developed in the Talmud and codified in the Codes of Jewish Law. Indeed, there is an entire tractate of the Talmud which deals with the subject.

4. The primary benefit of the eruv is to enable couples with younger children (who cannot walk on their own) and disabled and elderly persons confined to wheelchairs to attend synagogue services on the Sabbath and Yom Kippur, and thereby participate in communal prayer services and the Torah reading. In fact, certain portions of the prayer service, including

the weekly Torah reading, can only be done in a group and not alone in private prayer. The ability to participate in communal prayer in the synagogue on the Sabbath and Yom Kippur is, therefore, a meaningful and significant enhancement of Jewish observance. The eruv also enables Jews to enhance their observance of the Sabbath by permitting them to mingle more freely with their neighbors, thereby bringing about more friendship and camaraderie.

Dated: New York, New York  
April 4, 2001

  
HERSHEL SCHACHTER



# NEWS

Rabbi Isaac Elchanan  
Theological Seminary

500 WEST 185TH STREET (AT AMSTERDAM AVENUE)  
NEW YORK, NEW YORK 10033-3201  
(212) 960-5285 • (212) 960-5488 • FAX (212) 960-0043

**HEDY SHULMAN** DIRECTOR, MEDIA RELATIONS

## BIOGRAPHICAL SKETCH

Rabbi Hershel Schachter

Rosh Kollel, Marcos and Adina Katz Kollel

(Institute for Advanced Research in Rabbinics)

Nathan and Vivian Fink Distinguished Professor of Talmud

Rabbi Hershel Schachter, a noted Talmudic scholar, has had a distinguished career with the Yeshiva University affiliated Rabbi Isaac Theological Seminary (RIETS) for more than 30 years. He joined the faculty in 1967 and, at the age of 26, was then the youngest rosh yeshiva (professor of Talmud) at RIETS.

He directs RIETS' Marcos and Adina Katz Kollel (Institute for Advanced Research in Rabbinics) and also holds the institution's Nathan and Vivian Fink Distinguished Professorial Chair in Talmud. He has been rosh kollel there since 1974.

In addition to his teaching duties, Rabbi Schachter lectures, writes, and serves as a decisor of Jewish law. He is a frequent participant in synagogue retreats and conferences in communities throughout North America, including those of the Union of Orthodox Jewish Congregations of America.

—more—

Add One/SCHACHTER BIO

A prolific author, he has published three Hebrew books, *Eretz Hatzevi*, *B'eikvie Hatzohn*, and *Nefesh Harav*, the latter about his rebbe, Rabbi Joseph B. Soloveitchik. He has also published many articles, both in Hebrew and English, for such scholarly publications as *HaPardes*, *Hadarom*, *Beer Yitzchak*, and *Or Hamizrach*. He has also contributed to Yeshiva University affiliated publications, among them the *Journal of Jewish Music and Liturgy*, published by the Cantorial Council of America, an entity of RIETS' Philip and Sarah Belz School of Jewish Music, and a student-edited *Haggada*, which includes articles by leading scholars.

Rabbi Schachter is also actively involved with the Orthodox Union Kashrus Halachic Commission as consultant on kashrus matters.

Born in Scranton, Pa., in 1941, Rabbi Schachter is the son of Dr. Melech Schachter, a Yeshiva University alumnus and nationally recognized scholar. He graduated from the Yeshiva University High School for Boys in 1958, earned his bachelor's degree at Yeshiva College in 1962, and his M.H.L. degree from the Bernard Revel Graduate School in 1967. He was ordained at RIETS that same year.

When he was 22 years old, Rabbi Schachter was appointed assistant to the renowned Rabbi Joseph B. Soloveitchik, Leib Merkin Distinguished Professor of Talmud and Jewish Philosophy at RIETS.

-more-

Add Two/SCHACHTER BIO

He resides in the Washington Heights section of Manhattan with his wife, the former Shoshana Shapiro, and their nine children, of whom five are married.

-30--

September 2000



UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

TENAFLY ERUV ASSOCIATION, INC., CHAIM  
BOOK, YOSIFA BOOK, STEPHANIE DARDICK  
GOTLIEB and STEPHEN BRENNER,

Plaintiffs,

- against -

THE BOROUGH OF TENAFLY, ANN  
MOSCOVITZ, individually and in her official  
capacity as Mayor of the Borough of Tenafly,  
CHARLES LIPSON, MARTHA B. KERGE,  
RICHARD WILSON, ARTHUR PECK, JOHN T.  
SULLIVAN, each individually and in their official  
capacities as Council Members of the Borough of  
Tenafly,

Defendants.

Case No. 00-6051 (WGB)

**AFFIDAVIT OF JAY NELKIN IN  
SUPPORT OF PLAINTIFFS'  
APPLICATION FOR A  
PRELIMINARY INJUNCTION**

STATE OF NEW JERSEY    )  
                                  ) ss.:  
COUNTY OF BERGEN     )

JAY NELKIN, being first duly sworn, hereby deposes and says:

1.     I am a homeowner in Englewood, New Jersey and an observant Jew. I make this affidavit in support of plaintiffs' application for a preliminary injunction preventing Defendants from ordering the removal of the materials constituting an "Eruv" from utility poles in Tenafly, New Jersey.

2.     Annexed hereto as Exhibits A-D are photographs of telephone poles and signs located within the town of Tenafly. I took the photographs of these telephone poles and signs on various dates between December 20, 2000 and March 25, 2001.

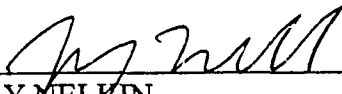
3. Exhibit A is pictures of directional signs to Churches located in Tenaflly.

The directional signs are permanently placed on public throughways in Tenaflly and, in most instances, include the display of the particular form of crucifix affiliated with each Church. Exhibit A also includes a photograph of a sign permanently placed on a public throughway in Tenaflly which lists the days and times of weekly religious services conducted at the Roman Catholic Church in Tenaflly.

4. Exhibit B is photographs of Christmas-related decorations (wreaths, red ribbons and lights) affixed to telephone poles in the downtown area of Tenaflly.

5. Exhibit C is a photograph of a garage sale sign affixed to a telephone pole in Tenaflly as well as photographs of private house numbers permanently affixed to telephone poles in front of residences in Tenaflly.

6. Exhibit D is photographs of large stores of excess telephone cable wire affixed to telephone poles located in Tenaflly.

  
JAY NELKIN

Sworn to before me this 30  
day of March, 2001.

  
Notary Public

Notary Public, State of NY  
My Commission Expires 11/1/01  
100-110-999

Exhibit A



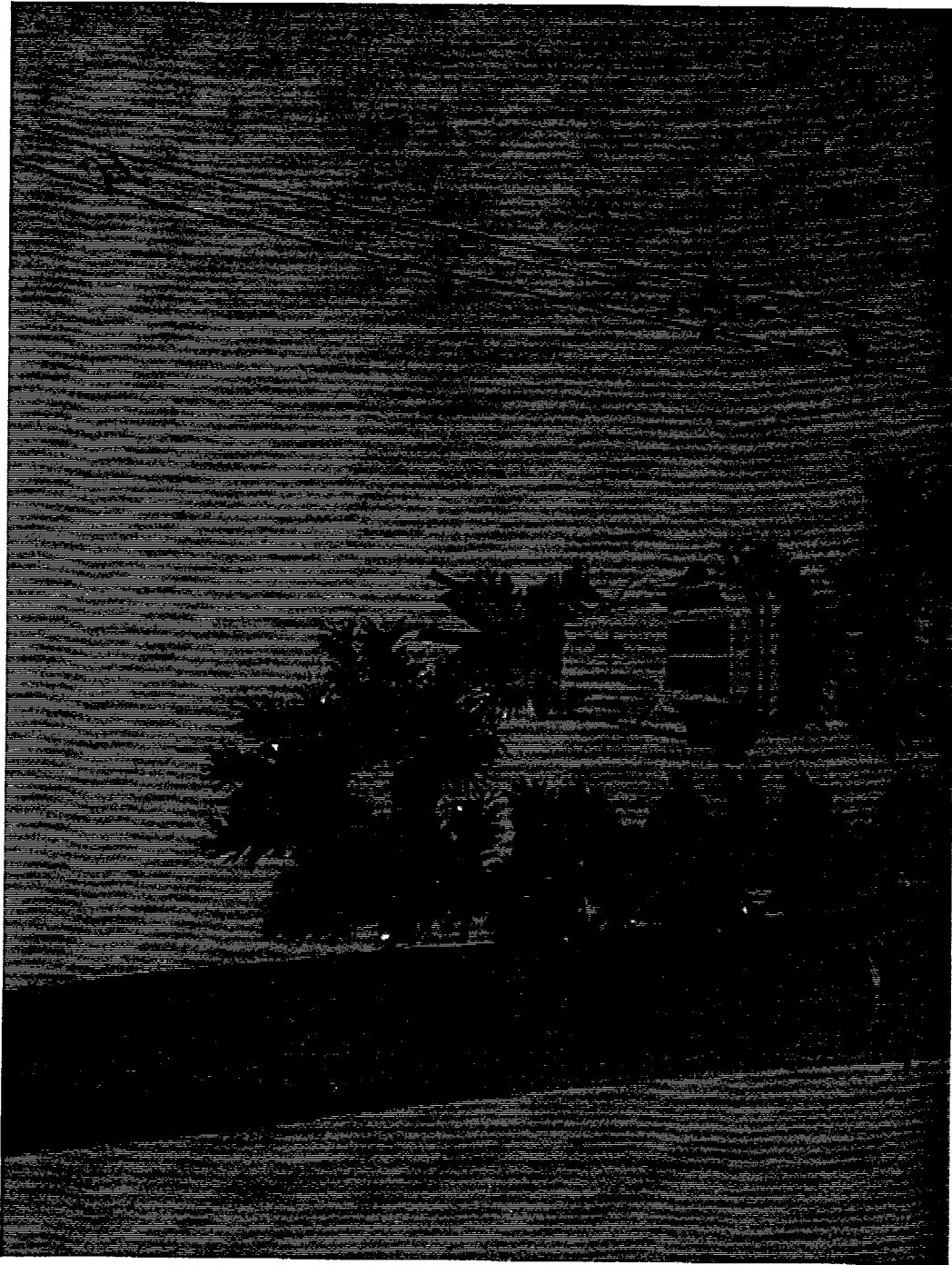




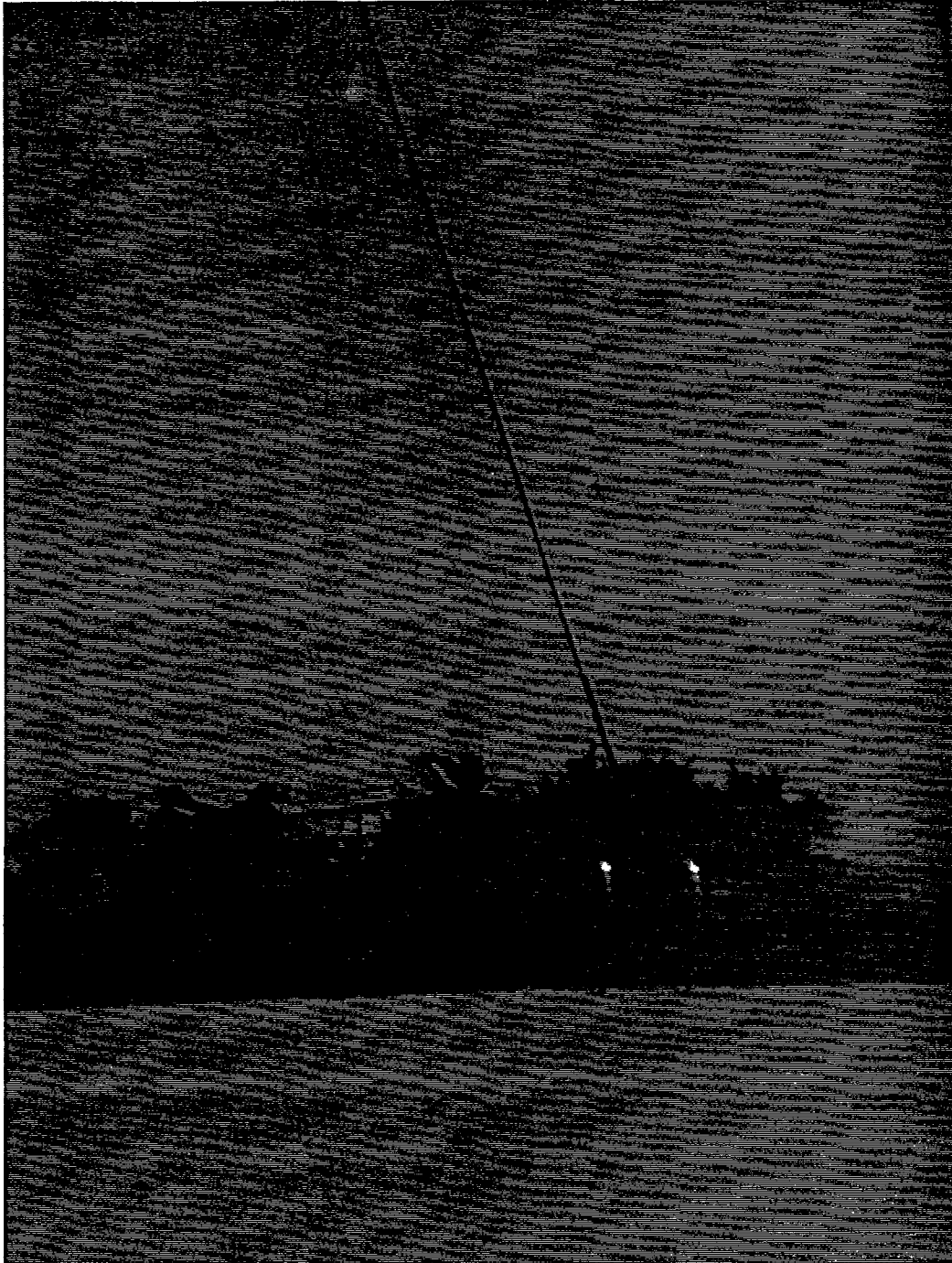




Exhibit B







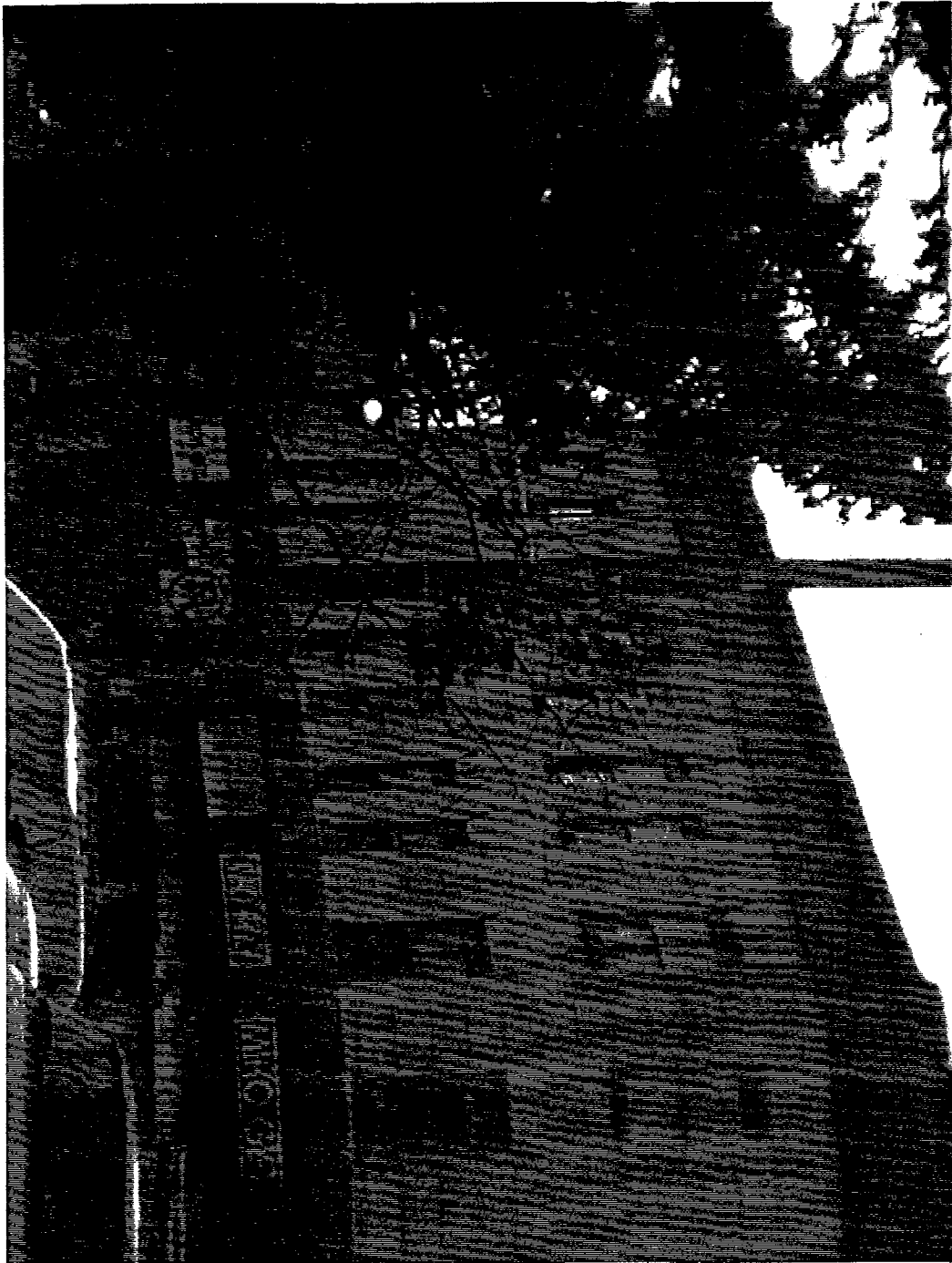


Exhibit C

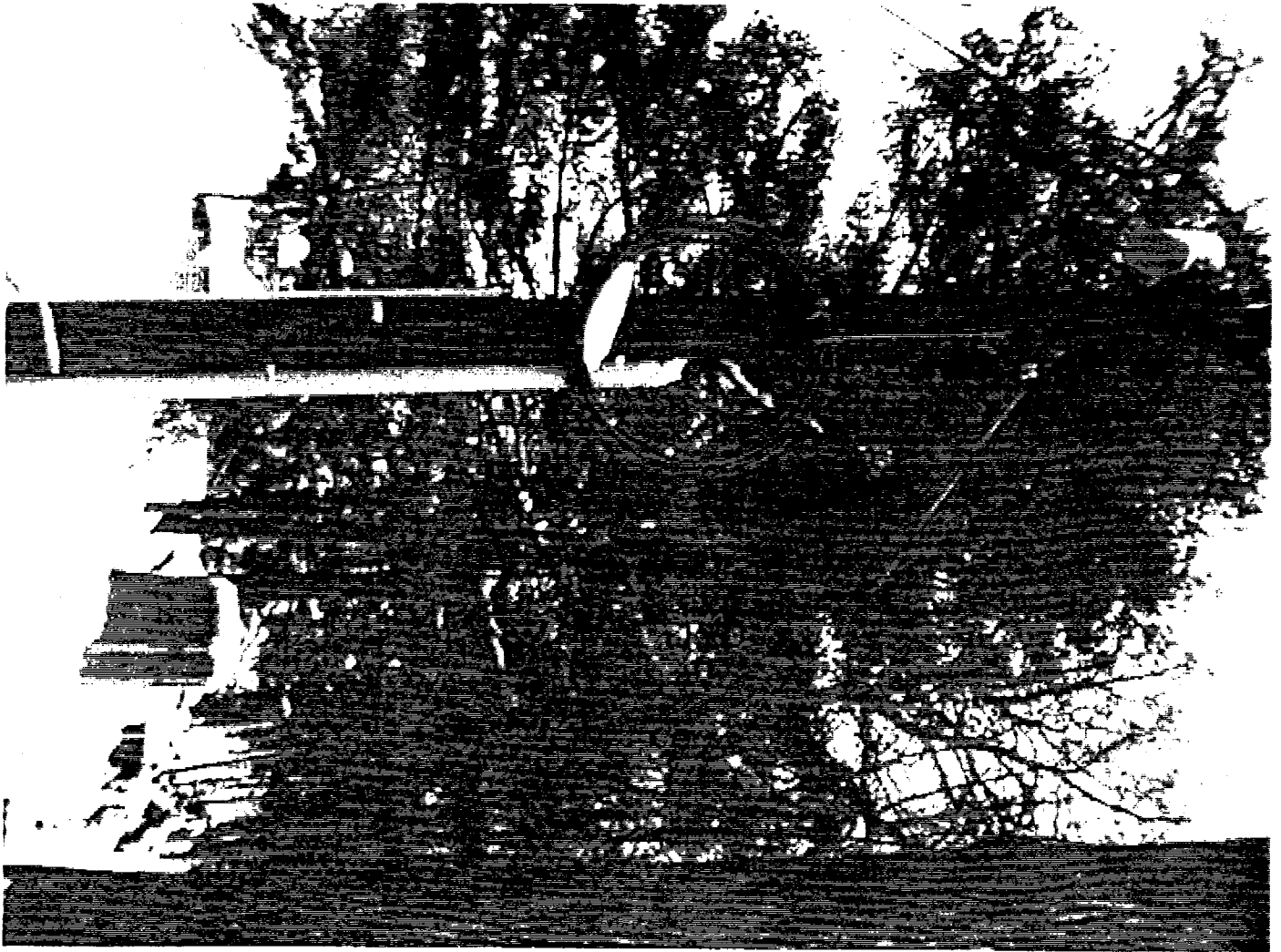


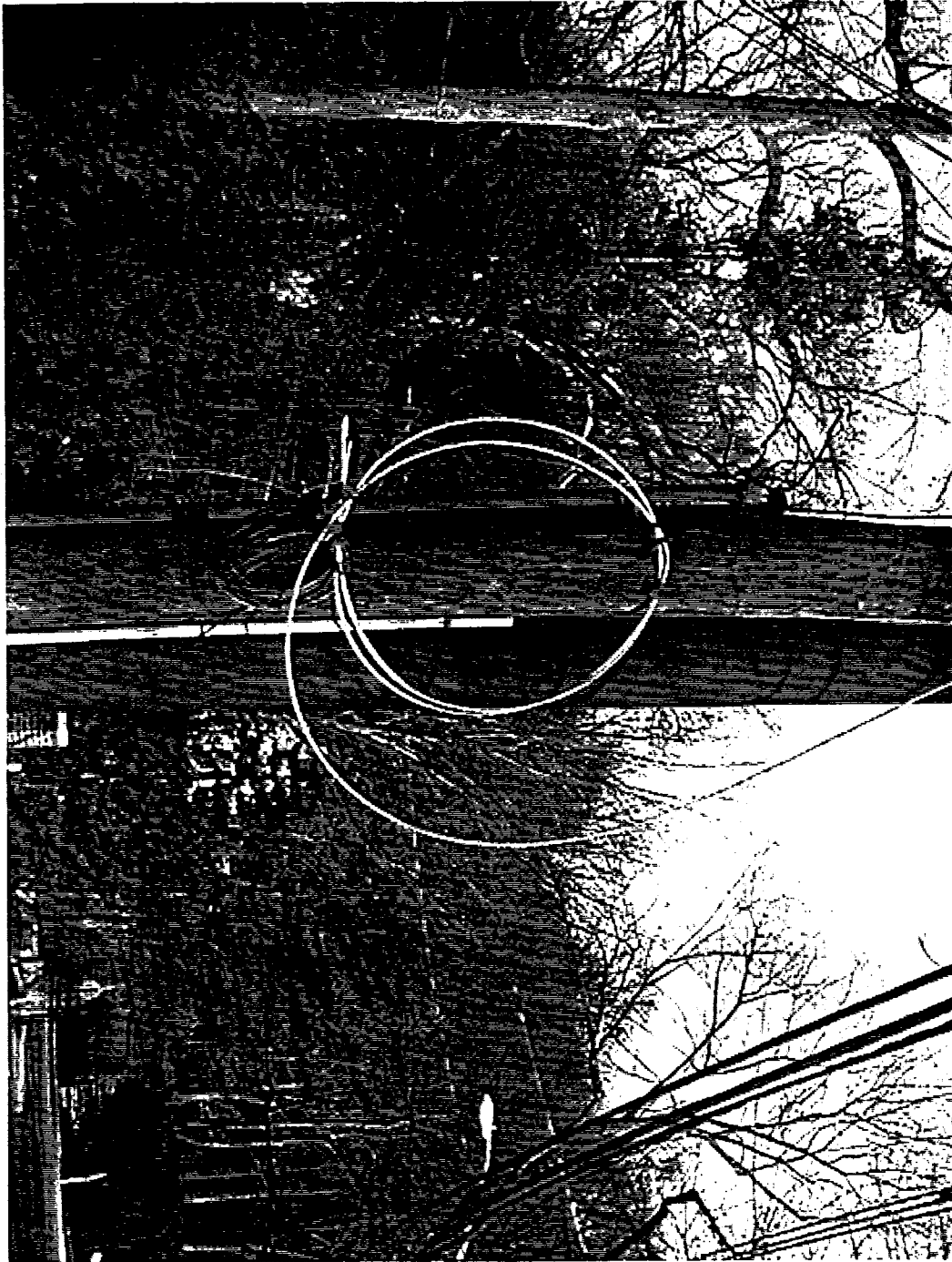






Exhibit D







UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

TENAFLY ERUV ASSOCIATION, INC., CHAIM  
BOOK, YOSIFA BOOK, STEPHANIE DARDICK  
GOTLIEB and STEPHEN BRENNER,

Plaintiffs,

v.

THE BOROUGH OF TENAFLY, ANN MOSCOVITZ,  
individually and in her official capacity as mayor of the  
Borough of Tenaflly, CHARLES LIPSON, MARTHA B.  
KERGE, RICHARD WILSON, ARTHUR PECK, JOHN  
T. SULLIVAN, each individually and in their official  
capacities as Council Members of the Borough of Tenaflly,

Defendants.

Case No. 00-6051 (WGB)

**SUPPLEMENTAL  
AFFIRMATION OF JAY  
NELKIN IN SUPPORT OF  
PLAINTIFFS'  
APPLICATION FOR A  
PRELIMINARY  
INJUNCTION**

STATE OF NEW JERSEY )  
COUNTY OF BERGEN ) ss.:

JAY NELKIN hereby affirms, under the penalties of perjury:

1. I make this affirmation in support of Plaintiffs' application for a preliminary injunction preventing Defendants from ordering the removal of the materials constituting an "Eruv" from utility poles in Tenaflly, New Jersey.

2. Attached hereto as Exhibits A, B and C are photographs of church directional signs affixed to utility poles located on Engle Street within Tenaflly, New Jersey. I took these three pictures on July 18, 2001.

3. These church directional signs are the same signs which I photographed on various dates between December 20, 2000 and March 25, 2001, pictures which are attached as Exhibit A to my Affidavit dated March 30, 2001.

Dated: New York, New York  
July 18, 2001

\_\_\_\_\_  
JAY NELKIN

# CATHOLIC CHURCH

OUR LADY OF MOUNT CARMEL

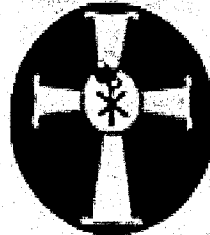
SUNDAY MASSES

8:00 AM

10:00 AM ←

12 NOON

ALSO SAT. AT 5 PM



# GREEK ORTHODOX CHURCH

1 MILE →







WALTER A. LESNEVICH ESQ (3227)  
LESNEVICH & MARZANO-LESNEVICH  
15 WEST RAILROAD AVENUE  
TENAFLY NEW JERSEY 07670  
(201) 567-8177; FAX (201) 567-8583  
Attorney for Defendants

---

TENAFLY ERUV ASSOCIATION, INC et al.,	PLAINTIFFS	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CIVIL DOCKET NO 00-6051(WGB)
V.		
THE BOROUGH OF TENAFLY, et al.	DEFENDANTS.	1 <sup>st</sup> AMENDED ANSWER

---

The Defendants answer the Complaint of the Plaintiff's stating:

1. Jurisdiction is admitted.
2. Venue is admitted.
3. The Defendants lack knowledge sufficient to form an answer.
4. The Defendants lack knowledge sufficient to form an answer
5. The Defendants lack knowledge sufficient to form an answer
6. The Defendants lack knowledge sufficient to form an answer
7. Admit.
8. Admit.

9 Charles Lipson was a member of the Borough council at all times releveant in the  
complaint. As of January 1, 2001, he ceased being a member of the council

10. Admit.

11. Admit.

12. Admit.

13. Admit.

14. The Defendants lack knowledge sufficient to form an answer

15. The Defendants lack knowledge sufficient to form an answer.

16. The Defendants lack knowledge sufficient to form an answer.

17. The Defendants lack knowledge sufficient to form an answer.

18. The Defendants lack knowledge sufficient to form an answer

19. Defendants admit that Mayor Moskowitz had a meeting concerning an eruv. The  
representatives did not identify themselves as being from TEAI. The remaining  
allegations are denied.

20. Denies

21. Denies.

22 Denies.

23 Denies.

24 Denies.

25 Denies.

26 The Defendants lack knowledge sufficient to form an answer.

27 The Defendants lack knowledge sufficient to form an answer.

28 The Defendants lack knowledge sufficient to form an answer.

29 The Defendants lack knowledge sufficient to form an answer.

30 The Defendants lack knowledge sufficient to form an answer.

31 The Defendants lack knowledge sufficient to form an answer.

32 The Defendants lack knowledge sufficient to form an answer.

33 The Defendants lack knowledge sufficient to form an answer.

34 Denies.

35 The Defendants lack knowledge sufficient to form an answer.

36 Denies.

37 Denies.

38. Denies

39. Denies.

40. Denies

41. Denies

42. Denies

43. Denies

44. Denies

45. Admits.

46. Admits.

47. Admits.

48. Admits.

49. Denies

50. Denies

51. The Defendants lack knowledge sufficient to form an answer

52. Admits

53. Admits.

54. Denies

55. Admits.

56. Admits.

57. Repeat and reiterate as appropriate

58. Admits.

59. The Defendants lack knowledge sufficient to form an answer

60. Denies.

61. Denies.

62. Denies

63. Denies

64. Repeats and reiterate as appropriate.

65. Admits.

66. Denies.

67. Denies.

68. Repeats and reiterate as appropriate

69. Admits.

70. Denies.

71. Denies.

72. Repeats and reiterate as appropriate.

73. Admits.

74. Denies.

75. Denies.

WHEREFORE, the Defendants respectfully demand judgment against the Plaintiff's

1. Dismissing the Complaint.

2. Dissolving the restraining Order.

3. Awarding the costs of this action, including reasonable attorneys fees to the

Defendant.

4. Further relief as this court deems appropriate

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

The Complaint is barred against the individual Defendants because of the doctrine of Legislative Immunity.

### **SECOND AFFIRMATIVE DEFENSE**

The Complaint is barred by good faith beliefs of the individual Defendants.

### **THIRD AFFIRMATIVE DEFENSE**

The Complaint is barred against the individual Defendants because of the doctrine of Qualified Immunity.

### **FOURTH AFFIRMATIVE DEFENSE**

The Complaint in whole or part, fails to state a claim on which relief can be granted.

### **FIFTH AFFIRMATIVE DEFENSE**

The Complaint is barred by the equitable doctrine of unclean hands.

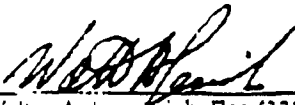
**SIXTH AFFIRMATIVE DEFENSE**

The Complaint is barred by the equitable doctrines of estoppel and quasi-estoppel

**WHEREFORE**, Defendant, Borough of Tenafly, prays that the Court

1. Dismiss the Complaint with prejudice
2. Award to Defendant its costs of suit.
3. Award to Defendant such further relief as the Court deems just and proper

DATED: March 2, 2001

  
Walter A. Lesnevich, Esq.(3227)  
Lesnevich & Marzano-Lesnevich  
15 West Railroad Avenue  
Tenafly, New Jersey

**CERTIFICATION**

I hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding.

  
Walter A. Lesnevich, Esq.



WALTER A. LESNEVICH, ESQ. (3227)  
 LESNEVICH & MARZANO-LESNEVICH  
 15 WEST RAILROAD AVENUE  
 TENAFLY, NEW JERSEY 07670  
 (201) 567-8377; FAX (201) 567-8583  
 Attorney for Defendants

TENAFLY ERUV ASSOCIATION, INC. et al.,  PLAINTIFFS,  V.  THE BOROUGH OF TENAFLY, et al.,  DEFENDANTS.	: UNITED STATES DISTRICT COURT : DISTRICT OF NEW JERSEY : CIVIL DOCKET NO: 00-6051 (WGB) : : : AFFIDAVIT OF MAYOR ANN MOSCOVITZ : : :
---	---

State of New Jersey :  
 :  
 County of Bergen :

Mayor Ann Moscovitz, being duly sworn upon oath, states as follows:

1. I am the Mayor of Tenaflly, and have served as such for six years. Under our system of government the Mayor only votes in the case a of a tie, and therefore I did not vote on the TEAI.'s application.
2. I make this affidavit because numerous comments were made concerning me both in the moving papers by the plaintiffs and in their public statements. I am Jewish. However, I have made a policy of being the Mayor of Tenaflly, who happens to be Jewish, not, as the plaintiffs call me, "the Jewish Mayor of Tenaflly."
3. I met with Mr. Erez Gottelib and Mr. Gary Osen in my office at 5:00 p.m. on June 1, 1999. At that time they told me that they wanted to create an eruv to surround the entire Borough of Tenaflly. They explained that the reason for constructing an eruv was to allow Orthodox Jews to perform acts outside the home that would otherwise be

prohibited on the Sabbath by Jewish law. In effect, the eruv would become an extension of the home. As I recall it, they said they would "rent" the Borough of Tenafly for one dollar or some small gift so that they could call the streets their domain. They said that they needed the permission of the Borough and that they needed to pay something to make a contractual agreement.

4. At that time I told them I could see no objection, but I did not have the authority to grant or deny such a request. I told them that they would have to make a formal proposal to the Mayor and Council at a public meeting. I tried to explain that I do not have the power as a Mayor to make unilateral decisions.
5. Mr. Gottlieb and Mr. Osen asked what I thought the response would be. I said I did not know, but, if they wished me to sound it out first, I would present their request at the next work session. I said that usually the public is not invited to speak at work sessions, but they were certainly welcome to attend and listen.
6. At the work session on July 8, 1999, I was surprised to see approximately 30 residents present. I was very surprised that neither Mr. Gottlieb nor Mr. Osen were present. I was shocked and dismayed by the reaction of some of the residents present. The council voted to allow them to speak. Some citizens made statements that I did not consider to be appropriate.
7. In thinking about it I became concerned about renting the streets of Tenafly, even symbolically, to anyone. I spoke to Mr. Gottlieb on the phone later and told him that I did not think the Council was favorably disposed to grant their application. I also told them that they could make a formal proposal at a public meeting so there would be an

official public vote. They said that they would get back to me. That was the last I heard from Mr. Gottlieb or Mr. Osen.

8. The next week Rabbi Shain of the Lubavitch on the Palisades came to see me in my office. I have had numerous meetings with Rabbi Shain in the past. He is a wonderful man whom I admire. We have worked on various projects for the betterment of Tenaflly. He said that he wanted me to understand that the request to construct an eruv did not come from him or from his congregation. He explained that the Lubavitch do not recognize an eruv.
9. I will respond to several of the points made by Mr. Book. First of all, the question of the eruv was listed on the work session agenda for July 9, 1999. TEAI was not informed because we did not know that TEAI existed. I thought Mr. Gottlieb or Mr. Osen would attend. They were the only ones I knew that were interested in the eruv.
10. The comment by Mr. Book that I began taking measures to "sabotage" the eruv is sadly the type of attitude we have been presented with by the members of TEAI. The word sabotage makes is sound as if I were doing something illegal. TEAI put the wires up, particularly in the Nature Center, in direct violation of a Tenaflly ordinance. I upheld the Tenaflly ordinance. That is not sabotage.
11. In response to inquiries by residents adjacent to the Nature Center, the matter was brought to the attention of myself and the borough administration. Knowing no permit had been issued, I ordered the wire removed.
12. I did call Bergen County Executive Pat Schuber's office to complain about the propriety of his issuing a proclamation concerning the use of our municipal property. Mr. Schuber was not in, so I left a message. Mr. Book's allegation that I demanded that he rescind the

proclamation immediately before "those people" moved into Tenaflly and ruined the public school system is a total fabrication. I never said those words and I never had those thoughts.

13. I am alleged to have told Mr. Schuber or his representative that the Borough of Tenaflly previously denied an application for an eruv. This is another fabrication. I would never have said, "previously denied" because the TEAI never made an application.
14. The allegation that Councilwoman Kerge and myself told anyone that no application was necessary to construct an eruv on borough property is ridiculous. We are both highly experienced in municipal government and would never have said something as inaccurate as that.
15. I never spoke to anyone at Bell Atlantic demanding anything. I spoke to the Director of Operations, Mr. Gaffney, of Cablevision and told him that no permission had been granted by Tenaflly to put the wires up and I asked him to take them down.
16. I did say that using municipal property without a permit is unlawful. It is. I never said that TEAI members are a danger to the Tenaflly community because I did not then, and I do not now, think that to be the case. I did have a meeting with Rabbi Golden. I was not aware, and I am saddened, that the comments I made would be twisted and thrown back at me in a lawsuit by a Rabbi. I told the Rabbi that some people had expressed concern that the Orthodox might act to stop people from doing things on the Sabbath. He asked me if I thought that it would happen in Tenaflly, and I said that I absolutely did not think it would happen here. I did tell him that stones had been thrown at my daughter while she was on horseback in the Catskills on the Sabbath.. They were. It did happen.

17. I never complained to Rabbi Shane or told him that I would make sure that the eruv came down.
18. The statement that the "Mayor appeared willing to drop the matter if the TEAI agreed not to place any wires on town property," demonstrates that Rabbi Goldin and Ms. Kurland do not understand the law. Of course the matter would be over if there were no wires on town property. However, the municipal poles are on town property and municipal approval is necessary. I told them that if the eruv was erected on private property it was not the concern of the Borough.
19. I am not opposed to Orthodox Jews or persons of any religion moving into Tenaflly. Mr. Agus, in his affidavit, takes my comments out of context. My questions regard the impact of large numbers of families potentially withholding their children from the public schools, as is their right, was simply that, a question. Arguments can be made both ways, that I may harm the schools or aid the schools by lowering the number of pupils and keeping the same budget. My concern was and is keeping Tenaflly an open, diverse and inclusive community. I have publicly stated at an event at the Lubavitch Chabad House: "I am so pleased to welcome new young families to Tenaflly. You're building the most beautiful homes, adding generously to our tax roles, and you don't even send your kids to the public schools!" Increased tax receipts from families that do not utilize the public schools may be viewed as a financial benefit to the town.
20. We all choose our homes because the house, the location and the community facilities meet our needs. Homes may be rejected from consideration because of price, location, too few bedrooms, or because the configuration of the rooms is inappropriate for the family. The property may be of an undesirable size or shape. The school system may

not provide the desired classes or quality of education. There may not be a house of worship of the chosen denomination. There may not be an eruv.

21. It is my feeling that irreparable harm need not be caused by objects alone. Ideas and misleading inferences can also cause irreparable harm. By leaving the eruv in place temporarily, some people might infer that an approved and permanent eruv exists in Tenaflly. An Orthodox Jew, desiring to live in a neighborhood containing an eruv, may be the victim of irreparable harm if he purchases a home based on this misunderstanding.
22. I am very proud to be the first woman mayor of Tenaflly. I am very proud of being Jewish. I do what I think is best for the people of Tenaflly. I follow my oath of office in doing that. I am upset, however, about the comments made about myself, Dr. Peck and Mr. Lipson by the members of the TEAI. Because we are Jewish they assume, and seem to demand, that we set aside our thought process in coming to a decision about what is best for the town, and that we should do what they want just because we are Jewish. The members of the TEAI do not expect the members of the Council who are Christian to act in this manner. I will continue to follow my oath of office and do what I think is best for Tenaflly regardless of my personal religious beliefs.

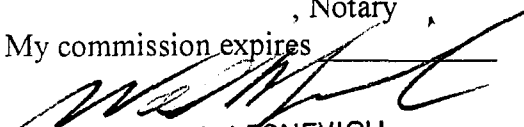
DATED:

3/5/01

Duly Sworn & Subscribed  
To me this 5<sup>th</sup> day of  
MARCH, 2001

  
Mayor Ann Moscovitz

\_\_\_\_\_, Notary  
My commission expires

  
WALTER A. LESNEVICH  
Attorney at Law  
State of New Jersey



WALTER A. LESNEVICH, ESQ.(3227)  
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(201) 567-8377; FAX (201) 567-8583  
Attorney for Defendants

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TENAFLY ERUV ASSOCIATION, INC.	:	UNITED STATES DISTRICT COURT
et al.,	:	DISTRICT OF NEW JERSEY
PLAINTIFFS,	:	CIVIL DOCKET NO: 00-6051(WGB)
V.	:	
THE BOROUGH OF TENAFLY,	:	AFFIDAVIT OF CHARLES LIPSON
et al.,	:	
DEFENDANTS.	:	

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State of New Jersey :

County of Bergen :

Charles Lipson, being duly sworn upon oath, states as follows:

1. I was a council member of the Borough of Tenaflly from 1997 to 2000. I voted against the application to erect an eruv.
2. I was present at the Committee of the Whole meeting on July 9, 1999. Committee of the Whole meetings are the meetings the council referred to as work sessions. Work sessions are when we do most of our work. They are public in that they are open for the public to attend, except for closed door discussions concerning litigation and personnel. Normally members of the public do not speak at work sessions, although the Mayor and Council may allow public attendees to speak. On July 9, 1999 we did allow members of the public to speak.
3. I did state that the desire for an eruv proclamation came from an organization associated with the ultra-Orthodox community. As a person who is Jewish, and a

member of Temple Sinai in Tenafly, I know that Reform Jews do not use an eruv to practice their religion. I grew up in Brooklyn, New York, and, as a child, went to a Conservative Temple. There was never a mention of an eruv.

4. I did mention that in Teaneck, after the establishment of an eruv, many small houses of worship were established throughout the town on quiet residential streets, some within ten blocks of one another. I mentioned this as a point of information, not to denigrate the Orthodox community. The way in which the statement was taken depends upon whether the listener sees this as a factual statement or reads things into it. I was pointing out a fact. The establishment of eruven has in Teaneck led to the creation of more houses of worship.
5. At some time after the initial council meeting, I was at the office of my Republican running-mate Martha Kerge. We were going over the upcoming reelection campaign when Martha learned that County Executive Pat Schuber had signed a proclamation establishing an eruv. Martha called Mr. Schuber's office and asked for a copy of the proclamation. His chief of staff, Adam Strobel, spoke to Martha and she asked him to fax a copy to us so that we could read it. At no time did Martha demand that the proclamation be rescinded immediately or ever. At no time did she claim that the Borough had denied the application. The statement in the Order to Show Cause that Martha asked Mr. Schuber to rescind the proclamation is false.
6. I have read the allegation that I said that I did not want "those people in our town, that Orthodox would throw rocks at Sabbath violators and that they would block

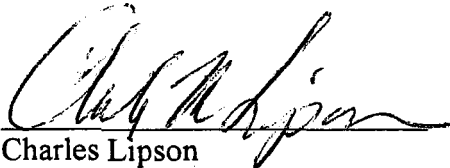
traffic as they walked to Temple.” It is further alleged that I said if the Orthodox move into town they would ruin it for us. I never made these statements.

7. I have reviewed the affidavit of Rabbi Shmuel Goldin concerning the meeting we had. The Rabbi did, at one point, get up to leave because he perceived some comments to be offensive. In my opinion, Mayor Moscovitz never made any offensive comments. Rabbi Golden may have chosen to hear them as offensive.
8. At the meeting, the Mayor never said that the town would drop the matter. She did tell the Rabbi and Joy Kurland, who was in attendance, that they had to immediately remove the wires in the Nature Center. They had no permit to put up wires on this public property. I think the Mayor was absolutely right in telling them to remove those wires. If the wires were on private property, the Mayor told them, then she could not ask the citizens to remove them.
9. The statement I made that an eruv created an atmosphere of a community within a community is true. I think Tenaflly is a great town because it has multiple races, religions, and ethic groups mixed within it. It is a community.
10. The main reason I voted against allowing an eruv to be established on public property is that I believe it will be disruptive. I am very upset at the comments made by Orthodox Jews against those of us who are Jewish who do not agree with them. I think the tone of the attack on Tenaflly in the papers filed by the TEAI shows that I am right in thinking that an eruv leads to anger and strife within a town.
11. We have many religions, and groups within religions, who could ask the Borough to use the telephone poles on the right of way for their own purposes. We strictly


enforce our right-of-way law. If a homeowner wants to move a fence or cut a new curbside or move a wall or do something that interferes with the Borough's right of way, we do not allow it unless the homeowners apply, present detailed plans, explain it all and then we decide whether we think it is good for the town. It is not something that we normally allow. If we allow an eruv for Orthodox Jews, then how do we say no to any other group, religious or non-religious, that wants to use the right of way for their own purpose? It would be a terrible precedent.

12. I have thought a great deal about this issue. I listened carefully to the numerous speakers before us. Unfortunately, some were obnoxious in their expressions against the eruv but those comments did not influence me. What affected me most is my own experience and knowledge and my understanding of the Borough of Tenafly, the way it is and the way I want it to be. I believe that in voting against the eruv I was doing what I was elected to do: be concerned with the best interests of the residents of the Borough, all of them, and, in addition, voting my conscious. I stand by my vote.

DATED:

  
Charles Lipson

Duly Sworn & Subscribed  
To me this 5<sup>th</sup> day of  
March, 2001

  
\_\_\_\_\_, Notary

My commission expires  
**ROXANNE HIGHSMITH**  
A Notary Public of New Jersey  
My Commission Expires 10/4/2001



WALTER A. LESNEVICH, ESQ. (3227)  
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(201) 567-8377; FAX (201) 567-8583  
Attorney for Defendants

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TENAFLY ERUV ASSOCIATION, INC.	:	UNITED STATES DISTRICT COURT
et al.,	:	DISTRICT OF NEW JERSEY
PLAINTIFFS,	:	CIVIL DOCKET NO: 00-6051 (WGB)
V.	:	
THE BOROUGH OF TENAFLY,	:	AFFIDAVIT OF MARTHA KERGE
et al.,	:	
DEFENDANTS.	:	

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State of New Jersey :

County of Bergen :

Martha Kerge, being duly sworn upon oath, states as follows:

1. I am presently a Councilwoman in the Borough of Tenaflly, and have served as such for nine years. I voted against the TEAI application.
2. It is unfortunate that so many false statements have been made in the moving papers. I will try to set the record straight. At the work session on July 9, 1999, the revised agenda for that meeting did include the eruv as a discussion item.
3. I asked the question as to whether the eruv proponents could deal directly with Cablevision and not have to obtain our agreement. At the time, it was not clear to me that the cable wires on the telephone poles are on Borough property and therefore it does require the permission of the governing body to erect an eruv.
4. I was surprised to learn that County Executive Pat Schuber had signed a proclamation concerning an eruv in Tenaflly. I spoke to him and to his assistant

Adam Strobel. I never demanded anything. I questioned Mr. Schubert's authority to issue a binding proclamation, until I noted that the bottom of the proclamation had a statement that the proclamation could not substitute for local law and therefore had no force and effect. I resent the implication that I demanded that the County Executive rescind the proclamation. I have never referred to Orthodox Jews as "those people." The members of the TEAI had no way of knowing what I said during my phone call with Mr. Schubert. The plaintiffs made up strong charges out of nothing.

5. In late August 2000, I was made aware that wires had been found in the Tenaflly Nature Center. I put on boots and went with our Building Inspector, Raymond Eckel, and others to the Nature Center. I saw the wires hanging down.
6. In arriving at a decision on what to do regarding the eruv, I spoke to many people. I received many phone calls and much correspondence, and, of course, attended two lengthy hearings during which numerous speakers voiced opinions. I heard from many people with strong feelings on both sides.
7. I agree that the plaintiffs have a constitutional right to practice their religion. Tenaflly has always been a welcoming community to people of all different races, cultures, and religions. Tenaflly has many different religious congregations, including an Orthodox congregation. It is my belief that all the different religions do worship freely and practice their religion freely. It is my further understanding that Orthodox congregations can and do practice their religion freely without the accommodation of an eruv and that a town may establish an eruv or may deny an eruv. No one ever told me that a town must establish an eruv.

8. It is my understanding that our neighboring town of Englewood has had the Orthodox Congregation of Ahavath Torah many years. The plaintiffs' own statements in data provided to the Borough Council state that the congregation has thrived for many years without the benefit of an eruv. As I understand it, an eruv is an accommodation, the absence of which does not in any way prohibit the free practice of religion.
9. Tenaflly is a small town, only 4.5 square miles. In the "vision statement" for the Tenaflly Community Synagogue, references are made to "building a new community." Tenaflly is a community comprised of diverse people of many different faiths. The concept of building a community within a community poses serious questions for Tenaflly.
10. I disagree with plaintiffs' assertion that Tenaflly's refusal to allow plaintiffs to maintain the eruv was designed to make dwellings within Tenaflly unavailable to plaintiffs and to potential Orthodox Jewish home purchasers in Tenaflly. Every person has a constitutionally protected right to choose to buy or rent a home of choice in any community, neighborhood or town of choice. Every person makes the choice based upon his own needs as well as the area, community, neighborhood, and town which best suits the needs of the purchasers. For example, people move to Northern New Jersey to avail themselves of the suburban lifestyle, the school system, the easy commute to New York City, and for many personal reasons. As a licensed real estate broker and owner of a long established business in Tenaflly, I especially resent the claim by plaintiffs that the

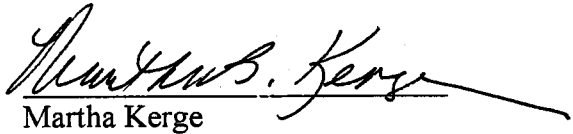
Mayor and Council acted in a discriminatory manner in its decision to take down the eruv.

11. Tenaflly has a history of strictness regarding the Borough's right of way and, in most cases, does not permit any encroachment, whether planting, fences, driveways, signs, etc. I know, for example, that we cannot put a for-sale sign on the Borough right of way. None of this matches the seriousness of the eruv; however, the practical aspect is the same: the right of way should remain free of encumbrances. They should not be used for symbolic or religious or accommodation purposes for any group.
12. Governing bodies study carefully all requests that come before them to ensure the best interest of all and not to set precedents which cannot be followed in future requests. I have long exercised my role, and my vote as a Councilperson, based on that belief. Special accommodation for any group would be precedent setting and could impinge upon the rights of others. One resident called me and asked me a serious question: "How does one opt out of the eruv boundary?" I believe that this accommodation would affect the rights of those who do not want to live within an eruv. I do not want to vote to establish something that makes people within an eruv feel awkward or put upon by a symbol of a religious group. I have had extensive discussions with several persons who have raised a very good point about the opting out issue.
13. Irreparable harm, it seems to me, does not occur by the failure of government to create a special accommodation for the practice of religion by a specific group within that religion. The practice of religion is an individual action with, perhaps,

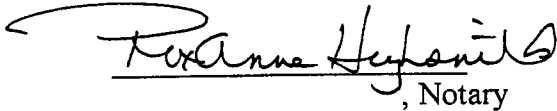
those of like intentions, but government should not be required to make special accommodations for such.

14. I am a Presbyterian. I honor the religious faith and convictions of others. I believe the Orthodox community in Tenaflly has and will continue to thrive without an eruv.

DATED:

  
Martha Kerge

Duly Sworn & Subscribed  
To me this 5<sup>th</sup> day of  
March, 2001

  
, Notary

My commission expires \_\_\_\_\_  
**ROXANNE HIGHSMITH**  
**A Notary Public of New Jersey**  
**My Commission Expires 10/4/2001**



WALTER A. LESNEVICH, ESQ. (3227)  
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(201) 567-8377; FAX (201) 567-8583  
Attorney for Defendants

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TENAFLY ERUV ASSOCIATION, INC.	:	UNITED STATES DISTRICT COURT
et al.,	:	DISTRICT OF NEW JERSEY
PLAINTIFFS	:	CIVIL DOCKET NO: 00-6051- (WGB)
V.	:	
THE BOROUGH OF TENAFLY,	:	AFFIDAVIT OF RICHARD D. WILSON
et al.,	:	
DEFENDANTS.	:	

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State of New Jersey :

County of Bergen :

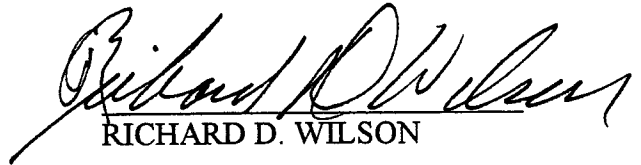
Richard D. Wilson, being duly sworn upon oath, states as follows:

1. I am a council member of the Borough of Tenaflly. I sign this Affidavit to set forth my fundamental reasons for voting for the resolution to deny the application to erect an eruv in the Borough of Tenaflly.
2. I have given due consideration to the various points presented. I listened carefully to of discussions by members of the public, learned rabbis, proponents and opponents. As I reflect upon this, I find the most relevant facts that affected my thinking were presented in the Rabbi's history lesson, which he gave to the Mayor and Council. He explained at length how the civil authorities have allowed an eruv to be erected as long as 500 hundred years ago in central and eastern Europe.

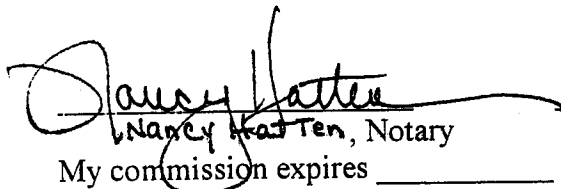
3. I myself am a Ruling Elder in the Presbyterian church and consider myself to be a very religious person.
4. From my own knowledge of medieval history I am aware that one of the main reasons the first eruv was approved was because the authorities of the day, including the Catholic church, were very happy for Jews of all kinds to restrict themselves to activities within a confined area. Indeed, these first steps were the beginning of what was later to be known and characterized as ghettos. The most famous of these is the Warsaw ghetto in Poland, where the authorities created physical walls, which still existed into the 20<sup>th</sup> century.
5. The very essence of the community of Tenaflly is a full diversity of religious beliefs. In my opinion the community of Tenaflly would be at great risk and would encourage the creation of what has become in recent history a symbol of the restriction of religious freedom if an eruv is erected.
6. The presentation by the applicants to the council was riddled with inconsistencies as they tried to both rationalize the eruv as a religious symbol and yet stated that it was merely an insignificant secular accommodation, and yet the accommodation was for their religious practices.
7. What I found most ominous however in the rational for erecting an eruv was the permanency of the installation once completed. This would be in sharp contrast to other religious symbols currently erected on Borough properties temporarily for a matter of weeks to celebrate the holiday season. This includes the menorah, which is erected on a Borough park for a limited number of days each year.

8. If permission for the erection of an eruv is granted future councilpersons may find it virtually impossible to retrace and retract both practically and legally a council's decision made in the year 2001. The permanency of the project bothers me a great deal.
9. I believe and truly hope that I bear no animosity toward any religion or any sect or division or group within a religion. Having heard all the evidence, I think that an eruv in Tenaflly would be divisive and detrimental to the town. I believe that, in my role as council member, I should vote for what I believe is in the best interest of Borough of Tenaflly and that is why I voted against the application.

DATED:

  
RICHARD D. WILSON

Duly Sworn & Subscribed  
To me this 3<sup>rd</sup> day of  
March, 2001

  
Nancy Hatten, Notary  
My commission expires \_\_\_\_\_

NANCY HATTEN  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES AUGUST 9, 2003



WALTER A. LESNEVICH, ESQ.(3227)  
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TENAFLY, NEW JERSEY 07670  
(201) 567-8377; FAX (201) 567-8583  
Attorney for Defendants

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TENAFLY ERUV ASSOCIATION, INC.	:	UNITED STATES DISTRICT COURT
et als.,	:	DISTRICT OF NEW JERSEY
PLAINTIFFS,	:	CIVIL DOCKET NO:
V.	:	
THE BOROUGH OF TENAFLY,	:	AFFIDAVIT OF
et als.,	:	ARTHUR PECK
DEFENDANTS.	:	

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State of New Jersey :

County of Bergen :

Arthur Peck, being duly sworn upon oath, states as follows:

1. I am a defendant in the above-captioned matter, and as such I am fully familiar with the circumstances herein. The following are my reasons for voting to deny the TEAI's request to demarcate a large area of Tenaflly as an "eruv."
2. The eruv was established without permission or knowledge of the council or the Borough of Tenaflly, in violation of the Tenaflly law requiring permission for installation of any item upon any poles on our right of way. To fail to enforce

local law would be to violate the oath Tenaflly officials take when sworn into office.

3. To give a right to use public property and land permanently for a particular religious purpose would establish a precedent for the similar granting of rights to any groups who request them in the future. On what ground would local authorities pick and choose between multiple , perhaps mutually exclusive, requests?

4. To state, as does the TEAI, that the eruv is not a religious matter is contradicted by its own statement that, without it, its members cannot properly observe the Sabbath. Since they also believe that only a civil authority can grant permission § for an eruv, such a request would bring the civil authority to act on behalf of a particular religious group. This appears to me to violate the constitutional separation of church and state.

5. For the past five (5) years, an Orthodox synagogue has been functioning in Tenaflly. This congregation has never requested an eruv. Its members are free to walk to the synagogue on the Sabbath and do so. There has never been a single

complaint from or about that congregation, nor has that congregation come forward to support the TEAI's requests.

6. From statements made at the public hearings of the Tenaflly council in November and December 2000, I learned that most persons in favor of an eruv reside outside of Tenaflly. Residents of Tenaflly are empowered by voting to decide who will represent them and indirectly express their will. Non-residents have no such responsibility or empowerment. I view this issue as a Tenaflly matter. In my opinion the desires of the Englewood residents are not my major concern.

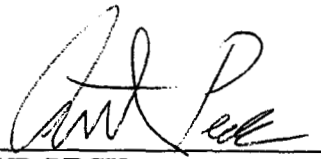
7. The argument was raised concerning the effect Orthodox Jewish residents have on our schools. Some persons claim that a large Orthodox Jewish population which does not send its children to public schools will harm the schools. I served for 3 years on the Tenaflly Board of Education and I believe I have knowledge concerning these issues. In my opinion, the presence or absence of the children of Orthodox Jews would have no effect upon the functioning of the schools. Tenaflly has a very diverse enrollment. For example, approximately 28% of our school children of East Asian background. In my opinion the presence or absence of any

segment of the population would not affect the stability of our school system. For this reason I did not give any credence to any comments concerning the school system in determining my vote.

8. We have had a Roman Catholic school in Tenaflly for a long time which many Tenaflly children attend instead of our public shcools, yet Tenaflly has a tradition of passing it's school budget.

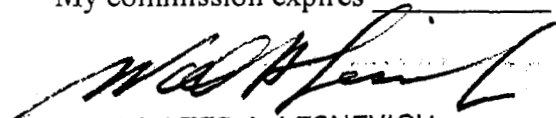
DATED:

3/5/01

  
ARTHUR PECK

Duly Sworn & Subscribed  
To me this 5<sup>th</sup> day of  
MARCH, 2001

\_\_\_\_\_, Notary  
My commission expires \_\_\_\_\_

  
WALTER A. LESNEVICH  
Attorney at Law  
State of New Jersey



WALTER A. LESNEVICH, ESQ. (3227)  
LESNEVICH & MARZANO-LESNEVICH  
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(201) 567-8377; FAX (201) 567-8583  
Attorney for Defendants

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TENAFLY ERUV ASSOCIATION, INC.	:	UNITED STATES DISTRICT COURT
et al.,	:	DISTRICT OF NEW JERSEY
PLAINTIFFS,	:	CIVIL DOCKET NO: 00-6051 (WGB)
V.	:	
THE BOROUGH OF TENAFLY,	:	AFFIDAVIT OF JOHN T. SULLIVAN
et al.,	:	
DEFENDANTS.	:	

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State of New Jersey :  
:  
County of Bergen :

John T. Sullivan, being duly sworn upon oath, states as follows:

1. I was a council member in good standing for the Borough of Tenaflly on December 12, 2000. On that date I voted to deny the TEAI application requesting permission to maintain the illegally erected eruv on utility poles on the Borough's right of way.
2. My vote was predicated on personal research, discussions with members of the Orthodox and non-Orthodox Jewish community of Tenaflly, non-Jewish residents of Tenaflly and City Administrators and City District attorneys in California where eruvs were being considered. In my research of websites, I discovered that both the City Councils of Palo Alto and San Diego had debated and continue to debate the right of establishing an eruv on public property. I contacted and spoke to the respective City Administrators and their legal staff throughout the country where

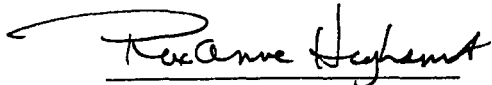
- eruv where under consideration to determine their arguments for and against an eruv. In particular, I spoke to numerous people in Palo Alto and San Diego, California.
3. As a result of several private meetings with members and supporters of the TEAI, I undertook an independent study of the potential benefits of an eruv. With the information in hand, I continued discussion with the TEAI in an effort to find a compromise.
  4. After careful reflection of the eruv, I discerned that the eruv is an explicit religious symbol that, while not necessarily required to practice Orthodox Judaism, does designate the area enclosed by an eruv as reshut hayachid. Certain Orthodox rabbinical writings refer to the reshut hayachid as the religious extension of the home, a private domain. Therefore, I determined that the eruv contravenes the rights of Tenaflly's residents to free association without religious and government interference.
  5. Upon research and reading of past Borough ordinances, the erection of an eruv upon a utility pole or any other public use facility without the explicit prior approval of the Borough Council is a violation of enacted law.
  6. My vote took into account that the TEAI offered no workable procedure for a citizen of Tenaflly to opt out of the eruv's encirclement and establishment of a religious domain through the reshut hayachid. I am particularly concerned that there is no procedure for a citizen of Tenaflly to opt out of the religious Orthodox Jewish sect's domain. Persons living within the eruv must be part of that domain whether they want to or not.

7. During my research of the interpretation of Jewish law as it pertained to an eruv, I came across the statement that "Eruvim should promote peace and not be a cause of dissension within a community." (An excerpt from the Laws of Creating an ERUV Part III-a study tract written by the Orthodox Rabbi Howard Jachter, Teaneck, N.J.) Upon review, the TEAI erected an eruv in a manner that presented and created a situation, causing much dissension in Tenaflly. The failure to find harmony and to compromise by seeking to establish an eruv with natural boundaries weighed upon my decision.
8. Tenaflly is ecumenical. It is the proud home of a vibrant, Orthodox Jewish community and synagogue. The town has an Orthodox Greek Church, an Armenian Orthodox Church, a Reformed Jewish Synagogue, a Roman Catholic convent, a Roman Catholic priory, a Carmelite rectory and numerous Protestant denominated Houses of Worship. Hindus, Muslims and Buddhists also reside in Tenaflly. The town is proud to share its cultures and religious traditions. I believe that we as citizens can help each other rather than permit government to dictate how we practice religion through fiat.

DATED:

  
John T. Sullivan

Duly Sworn & Subscribed  
To me this 6<sup>th</sup> day of  
March, 2001

  
\_\_\_\_\_, Notary

My commission expires \_\_\_\_\_

**ROXANNE HIGHSMITH**  
A Notary Public of New Jersey  
My Commission Expires 10/4/2001



WALTER A. LESNEVICH, ESQ. (3227)  
LESNEVICH & MARZANO-LESNEVICH  
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(201) 567-8377; FAX (201) 567-8583  
Attorney for Defendants

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TENAFLY ERUV ASSOCIATION, INC.	:	UNITED STATES DISTRICT COURT
et al.,	:	DISTRICT OF NEW JERSEY
PLAINTIFFS,	:	CIVIL DOCKET NO: 00-6051 (WGB)
V.	:	
THE BOROUGH OF TENAFLY,	:	AFFIDAVIT OF TENAFLY BOROUGH
et al.,	:	ADMINISTRATOR JOSEPH
DEFENDANTS.	:	DIGIACOMO

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State of New Jersey :

County of Bergen :

Joseph DiGiacomo, being duly sworn upon oath, states as follows:

1. I am a professional borough administrator, non political, with a Masters Degree in public administration and twenty-six years of local government experience in New Jersey. I was present through all discussion and testimony and was involved in the decision concerning the application for an eruv. The first time I heard that an eruv was actually being constructed was in late December 1999 when residents who live near the Nature Center informed various Borough personell that persons were erecting wires on poles in their backyards. After some investigation and discussions with Mayor Moscovitz, it was clear that an eruv was being constructed without the required permit. The Mayor ordered the wires removed.
2. I have read, in the Order to Show Cause, the statement that "two members of the Borough Council and Mayor Moscovitz instructed Mr. DiGiacomo...to contact Cablevision and threaten not to renew Cablevision's franchise agreement with

Tenaflly unless Cablevision removed the eruv material . . .”(Order to Show Cause at page 38).

3. I have further read, in the Complaint, that “the Tenaflly Borough Council then ordered . . . DiGiacomo . . . to contact Cablevision and threaten not to renew Cablevision’s franchise agreement . . . unless Cablevision removed the eruv materials . . .” (paragraph 44).
4. I have further read, in the Complaint, “in October 2000, DiGiacomo wrote to Cablevision in order to remove the eruv materials . . .” (paragraph 45).
5. I never threatened Cablevision. It would be ridiculous and nonsensical for me to do so as we have no such power. Pursuant to New Jersey law, with which I am familiar, renewal of cable television franchisees is not at the discretion of any municipality. Furthermore, the mayor and council granted municipal consent in February 1999 for the renewal of the franchise with Cablevision for a ten year term. Cablevision’s franchise is locked in until 2009. At that time, when it is up for municipal consent again, if the law stays the same, the municipality will be required to conduct a public hearing on the question of renewing the franchise. Ultimately, however, the New Jersey Board of Public Utilities has the authority to grant or deny renewal of the franchise unless there was specific evidence of the cable company’s failure to perform or financial inability to provide the cable services.
6. In late August, several residents brought the existence of a wire running through the Tenaflly Nature Center to the attention of various Borough personnel. Tenaflly Construction Official, Ray Eckel, visited the site. He told Bob Beutel, Director of

the Department of Public Works, to have it removed. A laborer removed it under the direction of Mr. Beutel.

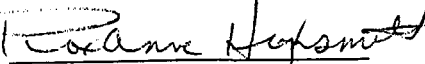
7. In September 2000 I was asked by Mayor Ann Moscovitz to contact Cablevision to inquire about the construction of an eruv utilizing utility polls within the Borough of Tenaflly.
8. On September 26, 2000, I called Maureen Parenta, manager of public affairs, at Cablevision. I learned that the former Director of Operations (DOO) had agreed to allow Cablevision employees to assist representatives of the TEAI to install plastic holders on certain utility poles within the municipality in order to construct an eruv. I inquired why Cablevision did not contact the Borough of Tenaflly prior to installing the plastic holders. Ms. Parenta responded that a Rabbi represented to Cablevision that TEAI had obtained all of the required municipal approvals. I knew that this was not true.
8. On October 5, 2000, at a Committee Of The Whole meeting of the Mayor and Council, I was directed to write to Cablevision requesting that Cablevision remove the plastic holders as soon as possible.
9. On October 10, 2000, I wrote to Maureen Parenta asking her to do so.
10. On November 1, 2000, I sent a note, via fax, to James Gaffeny, DOO at Cablevision, requesting that Cablevision hold off on removing the eruv until Cablevision heard from the Borough because of the agreement reached by the Borough and TEAI. I also faxed him a copy of the borough attorney's letter dated October 31, 2000, which had been sent by Mr. Walter Lesnevich, Esq. to Richard Shapiro, Esq.

11. The Mayor and Council never instructed me to threaten Cablevision. At no time during my telephone conversation with Ms. Parenta did I threaten, nor did I imply, that Cablevision's actions would somehow jeopardize its franchise agreement with the Borough of Tenaflly.

DATED:

  
Joseph DiGiacomo

Duly Sworn & Subscribed  
To me this 5<sup>th</sup> day of  
March, 2001

  
, Notary

My commission expires \_\_\_\_\_  
**ROXANNE HIGHSMITH**  
**A Notary Public of New Jersey**  
**My Commission Expires 10/4/2001**



WALTER A. LESNEVICH, ESQ. (3227)  
LESNEVICH & MARZANO-LESNEVICH  
15 WEST RAILROAD AVENUE  
TENAFLY NEW JERSEY 07670  
(201) 567-8377; FAX (201) 567-8583  
Attorney for Defendants

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TENAFLY ERUV ASSOCIATION, INC., : UNITED STATES DISTRICT COURT  
CHAIM BOOK, YOSIFA BOOK, : DISTRICT OF NEW JERSEY  
STEPHANIE DARDICK GOTTEB and : CIVIL DOCKET NO: 00-6051- (WGB)  
STEPHEN BRENNER, :

PLAINTIFFS, :

V. :

THE BOROUGH OF TENAFLY, ANN : AFFIDAVIT OF JOSEPH DIGIACOMO  
MOSCOVITZ, individually and in her :  
Official capacity as Mayor of the Borough :  
Of Tenafly, CHARLES LIBSON, :  
MARTHA B. KERGE, RICHARD :  
WILSON, ARTHUR PECK, JOHN T. :  
SULLIVAN, each individually :  
In their official capacities as Council :  
Members of the Borough of Tenafly :

DEFENDANTS. :

---

State of New Jersey :

County of Bergen :

JOSEPH DIGIACOMO, being duly sworn upon oath, states as follows:

1. I am the Borough Administrator of the Borough of Tenafly. As such I make this affidavit with full factual knowledge of the operations of the Borough.

2. Attached hereto as Exhibit A is Ordinance number 99-24 "an ordinance to regulate garage sales within the Borough of Tenafly" This ordinance has been enforced since May 1999. Amongst other things it prohibits, at section 3E, signs from being

affixed to telephone or utility poles. This ordinance is vigorously enforced by the borough. We do not allow signs on our telephone poles. Police and DPW personnel tear them down when they find them. The garage sale sign pictured in the exhibits to the Nelkin affidavit is no longer in place.

3. The Borough of Tenaflly does not permit house numbers on telephone poles. When we find them we advise the homeowner that they must remove them. I do this through our Code Enforcement Official or through the Police Department.

4. The holiday decorations placed on utility poles are paid for by local businesses. This is done through the Chamber of Commerce. The purpose is to promote a shopping atmosphere in downtown Tenaflly during the holiday season. They remain in place for approximately six weeks. They are intended to be nondenominational and are certainly nonreligious. They are intended to convey a wintry holiday theme and nothing else.

5. I have reviewed the photos of telephone poles with excess wire in the affidavit of Jay Nelkin. These wires are the property of the utility company which utilizes the poles.

6. I have also reviewed the photos of directional signs. The borough has numerous directional signs throughout it including ones placed by religious institutions. I have conferred with the Police Department and the Department of Public Works. The Borough of Tenaflly does not erect these signs. There is no provision in our Borough Ordinances allowing these signs. They have been allowed to remain as they serve a public purpose in that they provide directions to motorists.

7. The involvement of the borough in the parade mentioned in the plaintiff's arguments is simply that of public safety. This is a transient event that draws people onto the street and therefore the Police Department acts in order to provide for the public safety. Similar events occur from time to time throughout the year requiring special police attendance. For example, the Jewish Community Center sponsors a foot race and the Police Department guards the roads and monitors auto traffic as the runners traverse the streets of the town. The Greek Orthodox Church and the Armenian Orthodox Church, from time to time, have fairs which cause extra traffic on to the streets, the Police Department acts to monitor and assist that. The Bartlett funeral home, in the center of town, has had numerous occasions when the wake and funeral of prominent persons have caused great traffic to be present and the Police Department has assisted with the monitoring of this traffic. All of these events and numerous similar other ones require the Police Department to take action to provide for public safety.

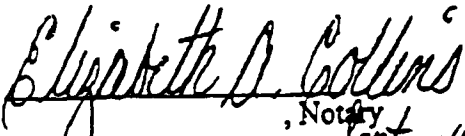
8. The decorations in the public park each year are temporary in nature. They are put up by the Lion's Club and by the Tenaflly Lubauitch Synagogue. The crèche and menorah are holiday decorations of a transient nature. These decorations have been the subject of controversy in the past. The ACLU threatened to sue the Borough of Tenaflly several years ago over their erection. We are in the process of enacting an ordinance which will require application to be made according to a set of rules for the use of this particular park. However, because this park is not in the proximity of the municipal building I have been advised that the law concerning these displays is different than if these symbols were placed on or in proximity to the municipal building.

9. Tenafly is a Mayor and Council form of government known as a "weak Mayor system." The Mayor votes if and only if there is a tie in the council vote.

DATED:

  
JOSEPH DIGIACOMO

Duly Sworn & Subscribed  
To me this 23rd day of  
Sept, 2001

  
, Notary  
My commission expires Sept. 17, 2001

ELIZABETH A. COLLINS  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES SEPT. 17, 2001

**PUBLIC NOTICE**

**BOROUGH OF TENAFLY**

**ORDINANCE NO. 99-24**

**AN ORDINANCE TO REGULATE GARAGES SALES  
WITHIN THE BOROUGH OF TENAFLY.**

**BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE  
BOROUGH OF TENAFLY, IN THE COUNTY OF BERGEN, NEW  
JERSEY, AS FOLLOWS:**

**Section 1. Findings and Purpose.**

The Borough Council of the Borough of Tenaflly finds that unrestricted casual sales within the municipality, such as garage sales, lawn sales, attic sales, rummage sales, flea market sales, estate sales, etc. have created problems which have a negative effect upon the health, safety and welfare of the residents of the Borough of Tenaflly. Included among these problems are litter, improper posting of signs, parking and traffic violations, noise and neighborhood disturbances. In an effort to minimize such problems, while recognizing that such sales have become a part of our community life, this ordinance is intended to preserve the ability of individuals to conduct such casual sales but to restrict these sales in such a manner as to reduce their negative impact upon the residents of the Borough of Tenaflly.

**Section 2. Definitions.**

As used in the chapter, the following terms shall have the meanings indicated:

**GARAGE SALES** – Includes all sales in residential zones of the Borough of Tenaflly under the following categories: garage sale, lawn sale, attic sale, rummage sale, flea market sale, estate sale or any casual sale of tangible personal property which is advertised by any means where the public at large is or can be made aware of said sale.

**GOODS** – Includes any goods, merchandise or other property capable of being the object of a sale regulated hereunder.

**PERSON** – Includes individuals, partnerships, voluntary associations and corporations.

**Section 3. Regulations.**

- A. **Conduct of sale.** The person to whom such license is issued and the owner or tenant of the premises on which such sale or activity is conducted shall be jointly and severally responsible for the maintenance of good order and decorum on the premises during all hours of such sale or activity. No such person shall permit any loud or boisterous conduct on said premises or permit vehicles to impede the passage of traffic on any roads or streets in the area of such premises.
- B. **Limit on number.** No garage sale shall be licensed for more than two (2) days, which shall be consecutive. No person shall conduct more than two (2) garage sales in any one (1) calendar year. No premises shall be the subject of more than two (2) garage sales in any one (1) calendar year.
- C. **Rain date.** In the event that inclement weather causes a scheduled sale to be cancelled, the property owner shall be entitled to hold the sale the following week on the same day of the week as originally scheduled.
- D. **Hours of sale.** All garage sales shall be conducted between the hours of 9:00 a.m. and 6:00 p.m.
- E. **Signs.** Two (2) temporary signs provided by the Borough of Tenaflly shall be permitted to be displayed or posted forty-eight (48) hours prior to the sale and during the period of the sale. All temporary signs are to be removed simultaneously with the ending of the sale, or the cancellation of the sale due to inclement weather. The temporary signs shall be returned to the Borough by the end of the next business day after the sale. One temporary sign shall be permitted on the premises of the

sale, and one temporary sign shall be permitted off the premises, except that no sign shall be posted, located or displayed on a right-of-way, street or alley without obtaining the consent of the abutting property owner, and no sign shall be located, placed or displayed on private property without the consent of the private property owner. No signs shall be affixed to trees, telephone or utility poles, street or traffic signs.

**Section 4. Licenses and fees; sign deposit.**

- A. It shall be unlawful for any person to conduct a garage sale within the Borough of Tenafly without first obtaining a license therefor from the Borough Clerk. The fee for such permit shall be ten dollars (\$10.).
- B. Prior to the issuance of said license, the person conducting the garage sale shall post a sign deposit in the amount of \$ 25.00 to assure the return of the two (2) temporary signs to the Borough. Failure to return the two (2) temporary signs to the Borough as provided herein shall result in the forfeiture of the sign deposit.

**Section 5. Display of license.**

Each license issued pursuant to this chapter is required to be prominently displayed on the premises upon which the garage sale is conducted throughout the entire period of the licensed sale.

**Section 6. Information to be Filed with Borough Clerk.**

The information to be filed with the Borough Clerk, pursuant to this chapter, shall be as follows:

- A. The names of the person, firm, group, corporation, association or organization conducting the sale.
- B. The name of the owner of the property on which said sale is to be conducted, and consent of the owner if applicant is other than the owner.
- C. The location at which the sale is to be conducted.

- D. The number of days of sale [not to exceed two (2) days].
- E. The date and nature of any past sale.
- F. The relationship or connection the applicant may have had with any other person, firm, group, organization, association or corporation conducting said sale and the date or dates of such sales.
- G. Whether or not applicant has been issued any other vendor's license by any local, state or federal agency.
- H. The number, nature and location of signs.
- I. A sworn state or affirmation by the person signing the applicant that the information therein given is full and true and known to him or her to be so.

**Section 7. Persons and sales excepted.**

The following persons and sales shall be excepted:

- A. Persons selling goods pursuant to an order or process of a court of competent jurisdiction.
- B. Persons acting in accordance with their powers and duties as public officials.
- C. Any person selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement and which separate items do not exceed five (5) in number.
- D. Any sale conducted by any merchant or mercantile or other business establishment from or at a place of business wherein such sale would be permitted by the zoning code of the Borough of Tenaflly or under the protection of the nonconforming use section thereof, or any other sale conducted by a manufacturer, dealer or vendor and which sale would be

conducted from properly zoned premises and not otherwise prohibited in the ordinances.

- E. Any bona fide charitable, eleemosynary, educational, cultural or governmental institution or organization; provided, however, that the burden of establishing the exemption under this subsection shall be on the organization or institution claiming the exemption. Any such sale shall be conducted only on the premises owned or occupied for exempt purposes by the exempt organization.

**Section 8. Enforcement; violations and penalties.**

- A. This chapter shall be enforced by any officer of the Borough of Tenaflly, including the Police Department and the Code Enforcement Officer. It shall be the duty of such officer to investigate any reported violation.
- B. Any person who violates any provision of this chapter shall, upon conviction thereof, be punished by a fine, the amount of which shall be within the discretion of and shall be fixed by the Municipal Court, but which, in no case, shall be greater than one thousand dollars (\$1,000.). A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

**Section 9. Severability.**

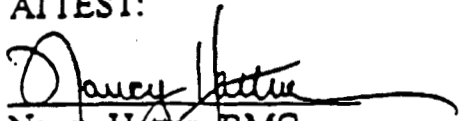
If any sentence, section, clause or other portion of this ordinance or the application thereof to any person or circumstance shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or repeal the remainder of this ordinance.

**Section 10. Effective Date.**

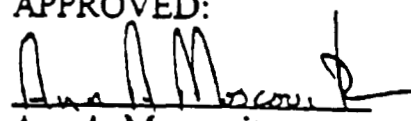
This ordinance shall take effect immediately upon passage and publication as required by law.

INTRODUCED: May 11, 1999  
ADOPTED: May 25, 1999

ATTEST:

  
Nancy Hatten, RMC  
Borough Clerk

APPROVED:

  
Ann A. Moscovitz  
Mayor



WALTER A. LESNEVICH, ESQ. (3227)  
LESNEVICH & MARZANO-LESNEVICH  
15 WEST RAILROAD AVENUE  
TENAFLY, NEW JERSEY 07670  
(201) 567-8377; FAX (201) 567-8583  
Attorney for Defendants

TENAFLY ERUV ASSOCIATION, INC.  
et al.,

PLAINTIFFS,

V.

THE BOROUGH OF TENAFLY,  
et al.,

DEFENDANTS.

: UNITED STATES DISTRICT COURT  
: DISTRICT OF NEW JERSEY  
: CIVIL DOCKET NO: 00-6051 (WGB)

: AFFIDAVIT OF TENAFLY BOROUGH  
: ADMINISTRATOR JOSEPH  
: DIGIACOMO

State of New Jersey :

County of Bergen :

Joseph DiGiacomo, being duly sworn upon oath, states as follows:

1. I am a professional borough administrator, non political, with a Masters Degree in public administration and twenty-six years of local government experience in New Jersey.
2. In furtherance of my testimony before this Court on April 30, 2001, I investigated the location of various signs. Pursuant to this search, I was able to discover the following:
  - a. The two signs in the first picture, attached hereto as Exhibit "A," represent the signs that I identified during my testimony on April 30, 2000. These signs are attached to the County's directional sign at the southeast corner of Engle Street and East Clinton Avenue. East Clinton Avenue is a road owned and controlled by the county. The right-of-way is therefore county-owned. These directional signs are not within the Borough's control.

b. The sign shown in the photograph annexed hereto as **Exhibit B** is attached to a traffic sign located at the northwest corner of Engle Street and East Clinton Avenue. Engle Street is a municipal road. The directional sign is located within the municipal right-of-way.

c. The sign shown in **Exhibit C** is located on Engle Street, at the T-intersection with Hillside Avenue. The sign is located within the municipal right-of-way.

d. **Exhibit D** reflects two signs that are located on the north side of East Clinton Avenue, east of the intersection of East Clinton Avenue and Engle Street. East Clinton Avenue is a road owned and controlled by the County. The right-of-way is therefore county-owned. These directional signs are not within the Borough's control.

e. Attached hereto, as **Exhibit E**, is a photograph of the same two signs shown in **Exhibit D**. These signs are located on a road owned and controlled by the county. The right-of-what is therefore county-owned. These directional signs are not within the Borough's control.

DATED:

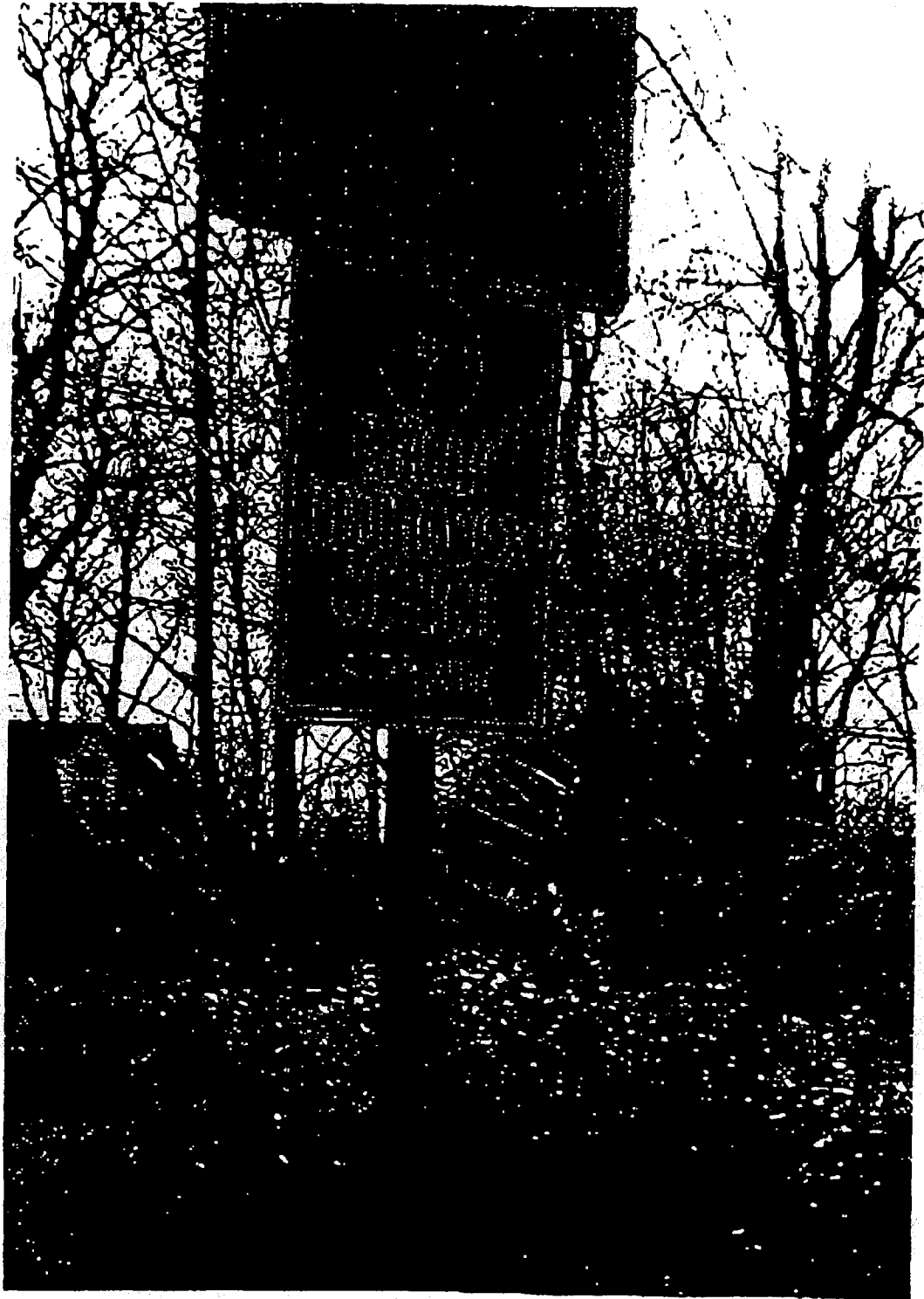
  
Joseph DiGiacomo

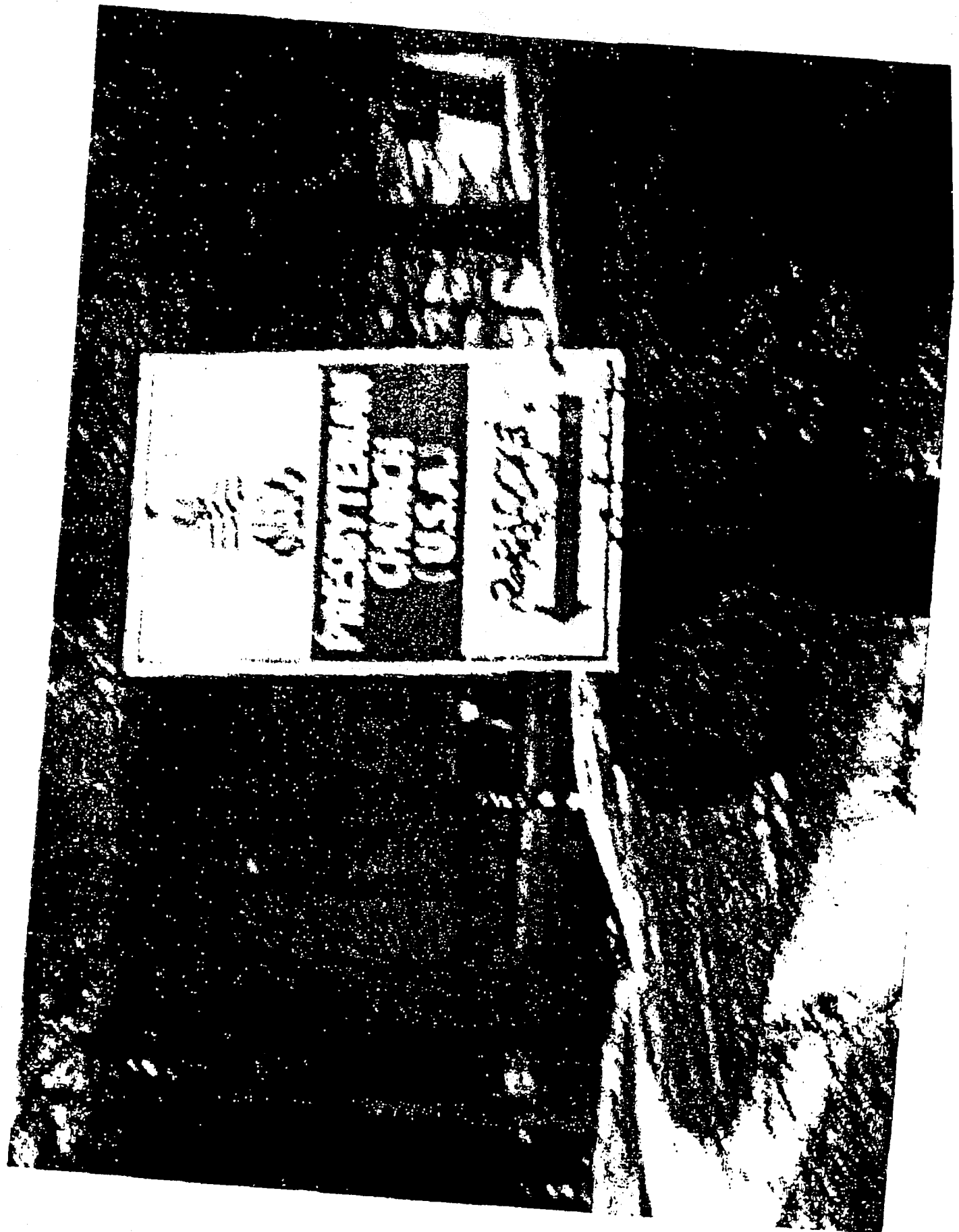
Duly Sworn & Subscribed  
To me this 3<sup>rd</sup> day of  
May, 2001

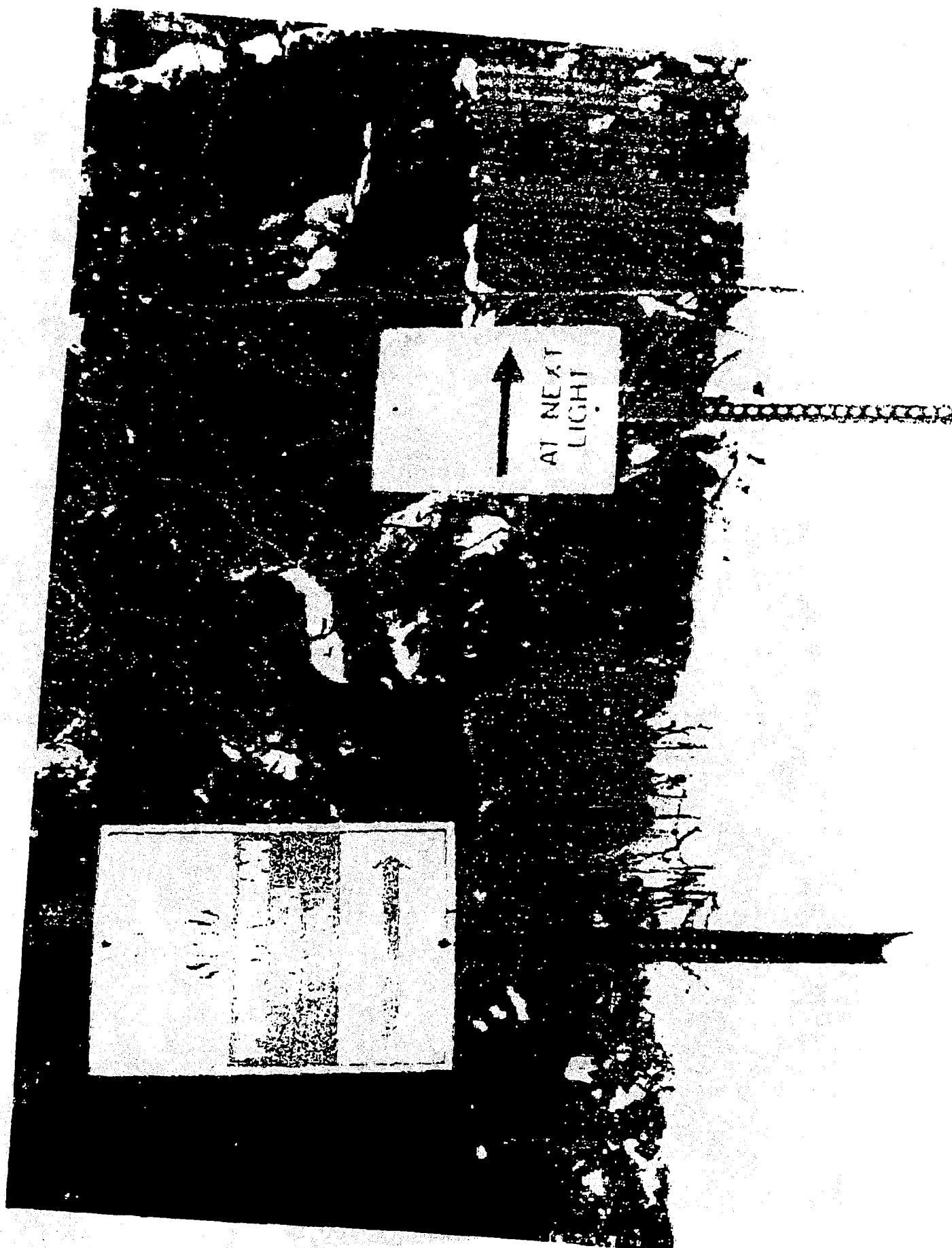
  
, Notary  
My commission expires \_\_\_\_\_

**NANCY HATTEN**  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES AUGUST 3, 2003













BOROUGH OF TENAFLY

ORDINANCE NO.

691

AN ORDINANCE REGULATING STREETS, ROADS, SEWERS, SIDEWALKS,  
PUBLIC PLACES AND THE IMPROVEMENT AND USE THEREOF.

BE IT ORDAINED by the Mayor and Council of the Borough of Tenafly,  
County of Bergen and the State of New Jersey, as follows:

ARTICLE I  
Definitions

(1) Unless otherwise expressly stated, the following terms whenever used in this ordinance, shall respectively be deemed to mean:

- (a) "OWNER" means the person, firm or corporation having the legal title to lands and premises or to personal property.
- (b) "OCCUPANT" means the owner, tenant, lessee, or person in charge of or in control of, or in possession of any building or premises, or part thereof, or of any personal property.
- (c) "PERSON" means an individual or individuals, or a corporation, or voluntary association.
- (d) "DEVELOPER" means any person who engages, either through himself or by an agent or contractor, in a land subdivision or the construction of two or more buildings within the Borough, or undertaking any project involving the construction or improvement of any street.
- (e) "STREET" means any dedicated public thoroughfare, road, avenue or highway, whether accepted or unaccepted, including the sidewalk area.
- (f) "STREET LINE" means the dividing line between the street and the lot.
- (g) "SIDEWALK" means the pavement between the curb line and street line.
- (h) "SIDEWALK AREA" means the area between the curb line and the street line, whether paved or unpaved.
- (i) "ROADWAY" means that portion of the street lying between the curb lines.
- (j) "SUPERINTENDENT OF PUBLIC WORKS" or "SUPERINTENDENT" means the Superintendent of the Dept. of Public Works appointed by the Mayor and Council, or such person or persons as shall succeed to his office, powers and duties.
- (k) "SINGULAR" includes the plural: masculine includes the feminine, and also corporation and voluntary associations.
- (l) "COUNCIL" means the Mayor and Council of the Borough of Tenafly.
- (m) "DRAINAGE" means the run off, natural or otherwise, or any surface or underground water including but not limited to rainfall.

-2-

ARTICLE II  
General Conditions

(1) No permit authorized by this ordinance shall be granted except pursuant to an application in writing therefor signed by the person desiring such permit, or his agent, which application shall set forth such facts as are hereinafter required by the provisions of this ordinance.

(2) In case any permit shall be refused by any officer authorized to issue the same, an appeal of such officers' determination may be taken to the Mayor and Council, and the Mayor and Council, after hearing the applicant and such officer and such other evidence as may be produced, may either direct the issuance of such permit or sustain the refusal of the officer.

(3) No permit shall be issued until the fee therefor shall have been paid to the officer authorized to issue such permit. The permit fee for all work started prior to the issuance of a permit covering same shall be twice the regular fee as herein required.

ARTICLE III  
Street Improvements

(1) No street, highway or public way shall be improved by any person, firm or corporation, until permission shall have been granted by resolution of the Mayor and Council upon formal application in writing as herein provided, accompanied by three complete sets of plans, maps, profiles and specifications for the project. It shall be within the discretion of the Mayor and Council to refuse permission to improve any street, highway or public way unless the same is proposed to be fully improved by grading, the construction of sanitary sewer mains and laterals, storm sewers and catchbasins, gas and water mains and laterals, curbs, sidewalks and pavement therein.

*done* (2) The plans, maps, profiles and specifications shall be referred to the Borough Engineer who shall submit his report and recommendations to the Mayor and Council before approval is granted. All construction work shall be done under the general supervision of the Borough Engineer, and the applicant shall agree to pay his supervision and inspection fees.

(3) In the construction of new streets, the applicant shall as a part of the improvement install and pay for street name signs at such places as may be designated by the Superintendent of Public Works; and shall likewise plant shade trees in the sidewalk area one foot inside of the street line.

(4) The maps, plans and specifications shall indicate surface contours of the surrounding land, and shall make proper provision for the drainage and run-off of rainfall and surface waters from such lands and streets, indicating the place where the same will be eventually deposited or discharged.

-3-

(5) No permit shall be issued for the improvement of any street unless and until adequate provisions are indicated on the map or plans, for the proper drainage thereof and disposition of surface water therefrom.

(6) The applicant shall prior to the issuance of a permit, enter into an agreement with the Borough, setting forth his entire undertaking in connection with the improvement. All legal charges in connection with the preparation of the agreement and the approval of the bond shall be paid by the applicant.

The provisions of the agreement shall be substantially as follows:

- (a) That the applicant shall agree to construct the required improvements in the street or streets.
- (b) That the applicant shall furnish a bond of a surety company authorized to do business in the State of New Jersey, in an amount agreed upon by the Mayor and Council, to insure the installation of the improvements and the performance of the agreement.
- (c) That all work shall be done in a competent and workmanlike manner within a specified period of time.
- (d) That the applicant shall agree to comply with the ordinances of the Borough of Tenafly and the laws of the State of New Jersey in the performance of the work, and also shall agree to insure against liability for injury or death by accident to his employees employed upon the work herein provided for as required by the laws of the State of New Jersey.
- (e) That the applicant shall agree to maintain the improvement for a period of one year after completion and acceptance thereof by the Borough and to repair or rectify all defects, sinking, wear and tear, washouts or any other condition detrimental to such streets during that period.

(7) No street shall be deemed accepted by the Borough until it has been completely and fully improved as provided for herein, and accepted by ordinance.

- (a) The Borough Engineer shall make a final inspection of completed streets immediately upon being notified by the developer of their completion, and report his findings in writing to the Mayor and Council.
- (b) The approval of the construction shall be by resolution of the Mayor and Council.
- (c) After approval as above set forth the developer shall deposit with the Borough an amount sufficient to defray the costs of drawing, publishing, and recording of the ordinance accepting the street or improvement.

- (d) The Mayor and Council shall, upon being satisfied that all of the prerequisites herein provided have been met, introduce an acceptance ordinance.
- (e) The passage of an acceptance ordinance shall not in any way be deemed to release the developer from any of the provisions of his contract or from the obligations of his bonds.

(8) The provisions of this Article shall not apply to any general improvement work undertaken by the Borough itself.

#### ARTICLE IV Street Openings

(1) All permits required by this article shall be issued by the Borough Clerk following approval of the application by the Superintendent of Public Works, and the submission by the applicant of a bond running to the "Mayor and Council of the Borough of Tenafly" or in lieu thereof a cash bond in the amount sufficient to defray the cost of replacing the pavement excavated in case the applicant fails to replace such pavement in a manner acceptable to the Superintendent. The minimum amount of either bond shall be \$100.00. Upon the issuance of such a permit the Borough Clerk shall forthwith notify the Chief of Police of the character of the work authorized.

(2) No person shall make any street opening in or tear up or disturb the surface of the roadway of any street, park or public place, without a written permit therefor; provided, however, that any Public Utility corporation having pipes, conduits or rails in any public street or place shall not be required to obtain any other permit than that provided for in Section (6) hereof.

(3) As amended by Ordinance No. 983, adopted October 28, 1969  
The following permit fees are established and shall be paid to the Borough Clerk, before the permits are issued.

- (a) For opening any road paved with Portland cement concrete, bituminous concrete, bituminous penetration macadam, water bound macadam with or without bituminous dressing or asphalt surface treated pavement, ~~\$10.00~~ per square yard or fraction thereof; minimum fee ~~\$100.00~~ <sup>15.00</sup> <sub>150.00</sub>
- (b) For opening any unimproved road; ~~\$5.00~~ per square yard or fraction thereof; minimum fee ~~\$25.00~~ <sup>10.00</sup> <sub>50.00</sub>

The person, firm or corporation to whom such permit is issued shall guard the excavation or excavations by suitable barricades and warning signs by day and suitable barricades and lights by night until the excavation is safely closed. It is the responsibility of the permittee to maintain such road opening in a safe condition for traffic until such time as he replaces the pavement and said pavement replacement shall have been approved by the Superintendent.

-4-

- (d) The Mayor and Council shall, upon being satisfied that all of the prerequisites herein provided have been met, introduce an acceptance ordinance.
- (e) The passage of an acceptance ordinance shall not in any way be deemed to release the developer from any of the provisions of his contract or from the obligations of his bonds.
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- (a) For opening any road paved with Portland cement concrete, bituminous concrete, bituminous penetration macadam, water bound macadam with or without bituminous dressing or asphalt surface treated pavement, \$5.00 per square yard or fraction thereof; minimum fee \$25.00.
- (b) For opening any unimproved road; \$2.00 per square yard or fraction thereof; minimum fee \$5.00.

The person, firm or corporation to whom such permit is issued shall guard the excavation or excavations by suitable barricades and warning signs by day and suitable barricades and lights by night until the excavation is safely closed. It is the responsibility of the permittee to maintain such road opening in a safe condition for traffic until such time as he replaces the pavement and said pavement replacement shall have been approved by the Superintendent.

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rock — (4) The permit for any such excavation as aforesaid shall state the maximum time allowed for the completion of the excavation and the back-filling thereof and the back-filling shall be completed within the time stated in such permit. The material to be used for such back-fill shall be earth, or earth and crushed stone in even quantities. No stone larger than 6 inches in diameter, and no shale ~~rock~~ shall be used for such purpose. It shall be within the discretion of the Superintendent to require crushed stone dust if in his opinion the available earth fill is unsuitable. No more than 6 inches of material shall be back-filled at one time. Upon back-filling an amount not exceeding 6 inches, the same shall be thoroughly moistened and tamped and thoroughly compacted before any further back-fill is placed. It shall be within the discretion of the Superintendent to require tamping by means of a pneumatic ram tamper in place of the puddling method. The back-filling shall be continued until the top thereof, after being thoroughly tamped, shall be 1 inch higher than the surface of the pavement. All excess materials shall be removed. Immediately upon the completion of the back-filling the Superintendent shall be notified, and it shall be his duty to make an inspection of the work for compliance with the provisions of this ordinance.

The excavated pavement shall be replaced by the permittee upon notification by the Superintendent, who after completion of the pavement replacement shall make a final inspection and immediately notify the Borough Clerk in writing of his approval in order that the bond may be returned.

(5) Whenever possible, excavations shall be made on either side of the pavement, and pipes to be laid shall be driven from one excavation to the other so as not to disturb the pavement. No boring or tunneling under the pavement of any road shall be done except by special permission of the Superintendent, and under his personal supervision. When necessary to excavate across the entire roadway of any road, the work shall be performed so that at least one-half of such roadway shall remain open to traffic. No person shall permit any street or road to be closed to travel by reason of any excavation made therein in pursuance of this article.

(6) Any Public Utility corporation having the lawful right to construct or maintain pipes, conduits or tracks in any public street or place, may file with the Borough Clerk a bond running to "The Mayor and Council of the Borough of Tenaflly," in the sum of \$1,000.00 conditioned for the making of all excavations in accordance with the provisions of this ordinance, and further conditioned that it will restore the pavement of any roadway excavated, torn up or disturbed by it, or under its authority to the satisfaction of the Superintendent, within 5 days after notice from such Superintendent, and that in case of its failure so to do, it will upon demand pay to the Borough the cost of restoring such pavement, also to pay a fee of \$2.00 for each opening within 30 days after each such opening. Such bond shall be renewed each calendar year. Such corporation, upon filing such bond, shall be entitled to make excavations for the purpose of construction or maintenance of its pipes, conduits or tracks for a period of one year.

ARTICLE V  
Sewers

(1) No sewer connection shall be made without a permit therefor by the Department of Health in accordance with the Plumbing Code of the Borough of Tenaflly.

(2) No person, firm or corporation shall construct a private sewer in or through any street or portion thereof except under such circumstances as would make it impracticable to extend a main sewer line. Special permission may be granted by the Mayor and Council upon submission of an application containing a description of the unusual circumstances requiring a private sewer line. Such permission shall create no vested rights and shall be revocable by the Mayor and Council at any time.

(3) No person, firm or corporation shall construct an extension of a main sewer line without first having obtained permission therefor from the Mayor and Council by Resolution of said Mayor and Council. Said permission so given shall be subject to the construction of said sewer main or mains under the supervision of the Borough Engineer and in accordance with specifications approved by the Mayor and Council.

Upon application being made for permission to construct a sewer main or mains the Mayor and Council may, in their discretion, require the person so applying to furnish bonds for the proper completion and maintenance of such sewer.

The applicant, its successors, heirs or assigns, shall agree to convey the said sewer and all its appurtenances to the Borough upon acceptance of the construction by the Mayor and Council, at which time the said sewer and all its appurtenances shall become a part of the sewerage system of the Borough of Tenaflly.

No house sewer shall be connected to the sewer main until the construction of the sewer main shall have been accepted by the Mayor and Council.

(4) The owner of record of each building lot adjoining all new sewer lines shall pay his proportionate share, as determined by the Mayor and Council, of trunk sewer line and sewerage system charges prior to the issuance of a sewer connection permit by the Department of Health.

(5) The owners or occupants of premises in the Borough of Tenaflly shall be responsible for the proper maintenance and repair of all house sewer connections between the dwelling and the main sanitary sewer line.

(6) In case a stoppage in the sanitary sewer occurs, the owner or occupant shall immediately notify the Superintendent, who shall make an inspection of the sewer main line. If the main sewer is obstructed, it shall be the responsibility of the Superintendent to cause the obstruction to be removed. If the main sewer is not obstructed the Superintendent shall, immediately following his inspection, notify the owner or occupant that it is his responsibility to remove the obstruction in the house sewer line.

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(7) No inflammable substance such as gasoline, naptha, kerosene, oil or similar liquid or material which could cause a fire or explosion shall be permitted to flow into the sanitary sewer.

(8) No leader drains, foundation drains, sump pumps or similar fresh water sources shall be permitted to flow into the sanitary sewers.

(9) No swimming pool or water cooled air conditioning unit shall be connected into the sanitary sewer system of the Borough except where no storm sewer is accessible for discharge. All such connections into the sanitary sewer shall be subject to the payment of an annual service fee.

The annual service fees shall be as follows:

Air conditioning units	-- \$10.00 per ton of rated refrigeration capacity
Swimming pools	-- \$25.00

The foregoing fees shall apply to all existing or installed air conditioning units or swimming pools connected into the sanitary sewer or those hereafter installed or constructed and connected into the sanitary sewer.

Upon the effective date of this ordinance and on or before the fifteenth day of May of each ensuing calendar year, the Borough shall mail to each owner of an air conditioning unit or swimming pool connected into the sanitary sewer a statement of the service fee due and payable to the Borough which sum shall be due and payable to the Borough 15 days after the effective date of this ordinance and on the first day of June in each subsequent year. Any unpaid service charges shall be a lien upon the property served until paid.

In the event of the installation of an air conditioning unit or the construction of a swimming pool connected into the sanitary sewer system after May 15th in any calendar year, the fees above setforth shall be paid to the Borough for that calendar year upon such installation or construction.

#### ARTICLE VI Sidewalks

(1) The owner or occupant of premises abutting any blue stone or concrete sidewalk, shall maintain such sidewalk at all times in a good and passable condition at a grade which will prevent water accumulating thereon, and shall replace any flag stones which become broken, and shall maintain the flag stones so that the joints thereof are even. The surface of all concrete sidewalks shall be kept properly roughened so as not to become smooth and slippery.

(2) No person, firm or corporation shall remove, excavate or disturb any sidewalk or curb except for the sole purpose of relaying or repairing same, without a permit therefor, which permit shall state the maximum length of time that it shall remain in force. The fee for such a permit shall be \$2.00.

During the time that any such sidewalk shall be removed, provision shall be made by the permittee for safe and convenient means of passage by pedestrians.

(3) In case any sidewalk becomes out of repair, the owner or occupant of the lands abutting such sidewalk shall forthwith, upon receipt of written notice from the Superintendent of Public Works, repair or cause the same to be repaired and made in a good and passable condition conforming with the requirements of Section (1) of this Article.

(4) No person shall make an opening through a concrete curb for the purpose of connecting a leader drain into the gutter without a permit therefor from the Borough Clerk. The fee for each such opening shall be \$1.00.

(5) No person shall place any bridging over any gutter or any pipe or other obstruction in any gutter without first having secured the consent of the Mayor and Council.

(6) No person shall place or permit to be placed upon any sidewalk or sidewalk area any object or thing that shall in any manner encumber or obstruct such sidewalk or sidewalk area or render travel upon such sidewalk or sidewalk area dangerous or unsafe.

No steps, walls, fences, driveway curbs or similar features shall extend into the sidewalk area, nor shall hedges or shrubbery be permitted to project into a sidewalk area so as to obstruct pedestrian traffic.

(7) No person shall place or maintain any drop awning extending over any sidewalk, which when lowered shall be less than 7 feet above such sidewalk.

(8) Temporary awnings may be erected across a sidewalk and permitted to remain for a period not exceeding 24 hours, provided the same shall be securely fastened, and shall be so arranged as to permit travel along the sidewalk.

(9) No person shall lower a concrete curb for the purpose of providing a driveway across a sidewalk without a permit therefor from the Borough Clerk. The fee for such a permit shall be \$5.00.

A concrete curb shall not be broken off at pavement level in order to construct a driveway. Sections of the curb shall be removed and a new concrete curb constructed providing a dropped section for the driveway. The minimum thickness of the base of the new curb shall be 9 inches, the minimum depth below the gutter grade shall be 15 inches and the minimum height of the dropped section above the gutter grade shall be  $1\frac{1}{2}$  inches. Concrete for curb reconstruction shall be Class B, New Jersey State Highway Specification.

No person shall remove a section of asphalt rolled curb for the purpose of constructing a driveway across a sidewalk without a permit therefor from the Borough Clerk. The fee for such a permit shall be \$5.00. The apron shall consist of a compacted stone base course dust-bound not less than 4 inches in depth with a bituminous concrete or penetration macadam surface course not less than  $1\frac{1}{2}$  inches in depth.

ARTICLE VII  
Shade Trees

(1) It shall be the responsibility of the Department of Public Works to exercise jurisdiction over all matters pertaining to parks and shade trees or to the care and preservation thereof, including the maintenance of all parks within the Borough except Roosevelt Common. The Department shall also have jurisdiction over shade trees on the public highways and streets of the Borough, including care, maintenance and preservation of existing trees within the street lines and the planting of new trees within the street lines.

(2) No person in possession of property, as owner or tenant, abutting upon a street shall plant or permit the planting of any bush, vine, hedge, shrub, shade or ornamental tree, or other plant life, within the sidewalk area of any street, without first having secured the approval of the Department of Public Works as to the type of tree and the location of the planting of such bush, vine, hedge, shrub, shade or ornamental tree or other plant life.

(3) Whenever necessary and expedient for the preservation of the public safety, the person in possession of property, as owner or tenant, shall, upon notification by the Chief of Police, trim or cut all bushes, hedges and plant life, except shade trees, to a height of not more than two and one-half ( $2\frac{1}{2}$ ) feet or to remove same if it is located:

- (a) In the sidewalk area.
- (b) Within a radius of twenty (20) feet of the intersection of the street lines of two intersecting streets.

It shall be the responsibility of the person in possession of property, as owner or tenant, to maintain all shade and ornamental trees, hedges and other plant life growing on private property so that the lowest branches overhanging a sidewalk area are at a height of not less than nine (9) feet above ground level.

(4) No person shall fasten any electric wire or wires upon any shade tree on any public street.

(5) No person shall climb any tree on any of the public streets or places by the use of spurs or other instruments which perforate or injure the bark of such tree. Nor shall any person destroy, mutilate or injure any such tree.

(6) No person shall remove or cut down any shade tree located upon any of the public streets or places, without a permit therefor from the Department of Public Works.

(7) No person shall hereafter plant or permit to be planted any Poplar or Willow tree within fifty (50) feet of any street line or sanitary or storm sewer.

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(8) All Poplar or Willow Trees standing within fifty (50) feet of any street are hereby declared nuisances; and all such trees standing on private property within fifty (50) feet of such street shall be removed by the owner thereof, within 30 days after written notice is given by the Superintendent of Public Works.

ARTICLE VIII  
Use of Streets

(1) No person shall permit any building, structure, erection or any part thereof, to encroach upon or extend over, under or into any public street or public place, excepting as in this ordinance permitted and authorized.

(2) The owner of every building, structure or erection, which either in whole or in part, encroaches upon or extends over, under or into any public street or place, shall cause such encroachment to be removed within 10 days after receiving written notice from the Superintendent so to do. Every day that such owner shall fail, refuse or neglect to comply with said order after the expiration of said period of ten days, shall constitute a separate and distinct violation of this ordinance.

(3) No person shall obstruct or permit the obstruction of any street or public place by the storage or placing of any building material or other material or merchandise thereon and permitting the same to remain longer than is necessary to convey the same on or into private property, unless a permit therefor shall be obtained from the Borough Clerk. No permit shall be granted which permits the use or obstruction of more than one quarter of the width of the roadway of such street or public place at any point.

The application for such permit shall state the kind and character of material to be stored or placed in such public street or place, the exact location where the same is to be stored or placed, and the maximum length of time that such obstruction shall continue. The Superintendent may impose conditions in any permit issued under this section with respect to keeping the sidewalk open for travel and any other conditions which he shall deem proper in the interest of the public safety and convenience. The fee for such a permit shall be \$2.00. Such permit shall be kept posted in a conspicuous place on or near the material, and shall be kept there so as to be readily accessible to inspection.

(4) No cellarway or hoistway shall be constructed in any public street without a permit therefor issued by the Borough Clerk. The fee for such permit shall be \$5.00. No permit shall be granted for any such cellarway or hoistway which extends into the street more than 5 feet from the property line. All such cellarways or hoistways shall be covered with iron doors flush with the sidewalk, and when opened shall at all times be protected by either guard rails or chains. No such cellarway or hoistway shall remain open so that the sidewalk or street is obstructed for a longer period than is necessary for the reasonable use thereof.

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(5) No person shall move any building or structure across, along or through any street or public place without obtaining a permit therefore from the Borough Clerk. The fee for such permit shall be fifty (\$50.00) dollars.

A deposit of \$50.00 in cash must accompany any application. From this amount an inspection fee of \$4.00 will be charged for each inspection necessary prior to and during the moving of such building, and also regardless of whether permit is granted or rejected, the number of such inspections to be left to the judgement of the Department of Public Works. If in the judgement of the Department of Public Works a larger deposit is necessary, applicant will be so informed and must deposit such additional amount before further action will be taken on such application.

- (a) An applicant must fill out all questions in detail on the regular application blank and give all information necessary relating to the moving, without any attempt to minimize the hazards connected therewith.
- (b) It shall be required that the Building Inspector shall cause a proper examination to be made of the building to see that same is substantial in every respect for the purpose of moving. The place from which the building is to be moved and the place where the building is to be located is to be approved by the municipal authorities so that it may meet all the requirements of the zoning law or any zoning ordinance which may then be in force.
- (c) Permits in writing must be obtained from the utility corporations whose appliances may be interfered with, as the Borough does not assume any responsibility for damage to poles, wires, cross arms, street lights, automatic signals or other structures which may be damaged by such moving.
- (d) No wedge, bar or spike shall be driven into the surface of the highways, and no trees shall be cut, trimmed or in any way interfered with and no Borough property shall be used except special permission in writing is granted by the Department of Public Works and full responsibility for any damage thereto be accepted by the applicant for a permit.

No building which is to be on the Borough highways more than five days shall be moved over any Borough highway unless the detour during a Sunday or holiday is conveniently located and in proper condition.

The owner and the contractor moving the building shall jointly and severally be responsible to the Borough for the moving of any building, and both will save the Borough of Tenafly harmless from all damage of every kind and assume full liability for all damages.

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(e) The time of moving must be so arranged as will cause the least inconvenience to the public at large. This time will be specified in the permit and must be strictly adhered to. All other requirements specified in the permit which are not part of these rules must also be adhered to, and any deviation therefrom will mean revoking of permit. The route to be taken will be specified in the permit.

(f) Under no circumstances shall an applicant begin moving operations until permit in writing is secured.

(6) No person shall organize or conduct or assist in the organization or conduct of any parade upon any of the public streets or public places, without obtaining a permit therefor from the Borough Clerk.

The Borough Clerk shall not issue any such permit until an application therefor shall have been submitted to the Mayor and Council at a regular or special meeting and such permission has been granted and a permit authorized by a resolution of the Mayor and Council.

(7) No person shall place any sign or advertisement, or other matter upon any pole, tree, curbstone, sidewalk or elsewhere, in any public street or public place, excepting such as may be authorized by this or any other ordinance of the Borough.

(8) No person shall injure, deface, obliterate, remove, take down or disturb, or in any other manner interfere with or disturb any signboard containing the name of any street or public place, or any bulletin board, or sign or notice erected, posted or placed, bearing the name of the Mayor and Council or any officer of the Borough.

(9) No person, firm or corporation shall place or permit to be placed any ashes, garbage, dirt, paper, tree limbs or branches, garden refuse or other waste material upon any street or public place; provided that clean ashes or sand may be placed upon ice which has formed upon any sidewalk.

(10) No person, firm or corporation shall burn any leaves or other waste material or cause same to be burned upon any street or public place.

(11) No person shall throw or place, or permit or aid the throwing or placing of glass, tacks or other like sharp substance upon any public street or public place.

(12) No person shall remove, displace, break or change any sign or lights or signals set up or placed in any street or public place as a warning of danger, or indicating an excavation or obstruction, or showing that any street or public place is closed to traffic; and no person shall between the hours of sunset and sunrise extinguish any light used for any of the purposes aforesaid.

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(13) No person shall open any manhole or remove the cover thereof, unless such opening shall be guarded by a guard rail, and shall be so marked by both day and night as to be plainly seen at a distance of 50 feet, which guard rail shall be maintained so long as such manhole shall remain opened or uncovered.

(14) No person shall coast by sleigh or sled upon any street, unless such street or the portion thereof used for coasting shall be closed to vehicular traffic.

(15) The Superintendent of Public Works may close any street or public place or section thereof to public traffic for the purpose of repairing, constructing or reconstructing the same. When any street or public place or portion thereof is closed, there shall be a sign at each end of the portion closed, plainly visible to approaching traffic, reading substantially as follows: "STREET CLOSED."

(16) No person, firm or corporation shall place or erect any electric light, telegraph, telephone or other pole in or upon any street or public place except pursuant to permission granted by the Mayor and Council. No wires shall be run or strung upon any pole at a distance less than 18 feet from the ground.

(17) No person, firm or corporation shall connect foundation drains, sump pumps, surface drains or other constant or semi-constant sources of water into the gutter of any street or public place. Leader drains may be connected into the gutter of a street where no storm sewer exists.

Where a storm sewer exists in a public street such sources of water as noted in the paragraph next above shall be connected to the storm sewer upon the issuance of a permit therefor and the payment of a fee of five (\$5.00) dollars. Such connections shall be made under the supervision of the Department of Public Works.

(18) It shall be the responsibility of the Department of Public Works to maintain the pavement and to clear snow from all streets and thoroughfares which have been accepted by ordinance duly adopted by the Mayor and Council of the Borough of Tenafly. The Public Works Department shall not undertake the maintenance or snow removal upon any street or highway which has not been accepted by ordinance except by resolution of the Mayor and Council authorizing such work.

(19) No person, firm or corporation shall cast or throw ice or snow upon a public street or thoroughfare from which snow has been plowed or removed.



BOROUGH OF TENAFLY

ORDINANCE NO. 1127

"AN ORDINANCE GRANTING PERMISSION AND CONSENT TO NEW JERSEY BELL TELEPHONE COMPANY, ITS SUCCESSORS AND ASSIGNS, TO USE ALL OF THE VARIOUS STREETS, ROADS, AVENUES AND HIGHWAYS, BRIDGES AND WATERWAYS AND PARTS THEREOF IN THE BOROUGH OF TENAFLY, BERGEN COUNTY, NEW JERSEY, BOTH ABOVE AND BELOW THE SURFACE THEREOF, FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF ITS LOCAL AND THROUGH LINES AND COMMUNICATIONS FACILITIES IN CONNECTION WITH THE TRANSACTION OF ITS BUSINESS, AND PRESCRIBING THE MANNER OF DOING SO."

BE IT ORDAINED by the Mayor and Council of the Borough of Tenafly in the County of Bergen and State of New Jersey as follows:

Section 1. Permission and consent be and the same is hereby granted to New Jersey Bell Telephone Company, its successors and assigns, to erect, construct, reconstruct, remove, inspect, maintain and operate its communications facilities, including underground conduits, subways, cables and related appurtenances, aerial and buried cables, wires and related appurtenances, poles, posts, guys, pedestals, manholes and all other related appurtenances, in, through, upon, along, over, under and across all of the various streets, roads, avenues, highways, bridges, and waterways and parts thereof, throughout their entire length, and to effect necessary street openings and lateral con-

nections to curb poles, property lines and other facilities in this Borough for its local and through lines and communications facilities, in connection with the transaction of its business. All of the various streets, roads, avenues, highways, bridges and waterways and parts thereof, throughout their entire length in this Borough, are hereby designated and prescribed for the uses and purposes of said Company as aforementioned.

Section 2. All poles, posts, or pedestals hereafter to be erected, constructed, reconstructed, maintained and operated shall be located and placed back of and adjacent to the curb lines where shown by official maps of this Borough and within eighteen inches thereof, or as may be mutually agreed to by both parties, and at the points or places now occupied by the poles, posts or pedestals of said Company, its successors and assigns, and where there are no curb lines, at other convenient points or places upon the streets, roads, avenues and highways as may be mutually agreed to by both parties.

Section 3. Underground conduits shall be placed below the surface of said streets, roads, avenues and highways and parts thereof and, with the exception of lateral branches to curb poles and property lines and other facilities, said conduits generally shall not be constructed more than ten feet from the curb line, unless obstructions make it necessary to deviate from such course

or unless the parties mutually agreed to another location. All underground conduits shall be placed at least eighteen inches below the surface.

All manholes shall be located at such points along the line of the subways or underground conduits as may be necessary or convenient for placing, maintaining and operating the cables and other conductors and appurtenances which said Company may from time to time place in said subways or underground conduits and shall be so constructed as to conform to the cross-sectional and longitudinal grade of the surface so as not to interfere with the safety or convenience of persons or vehicles.

Said Company may bury its cables and associated equipment, fixtures and appurtenances within the right of way of the various streets, roads, avenues and highways and parts thereof and at such locations as shall be mutually agreed upon by the parties in this Borough for its local and through lines and communications facilities.

Section 4. Before proceeding with any of the work for which permission and consent is required under this ordinance, said Company shall file with the Mayor and Council of this Borough a map or plan showing the location and size of any such facilities, which map or plan shall be first approved by said Mayor and Council or their authorized representatives.

Prior to the opening or excavating of any streets, roads, avenues and highways and parts thereof for the purpose of laying, maintaining and operating its underground systems after the approval of the map and plan as aforementioned, the said Company shall first obtain a permit for such opening or excavation upon payment of such reasonable fee therefor as may be required to cover the costs of administration and inspection and as provided by any ordinance regulating openings and excavations of streets.

Section 5. That said New Jersey Bell Telephone Company, its successors and assigns, shall indemnify and save harmless the Borough of Tenafly from any and all claims for damages which may at any time arise or occur by reason of the exercise of any of the rights granted under this ordinance to said Telephone Company.

Section 6. The surface of the streets, roads, avenues and highways and any pavement or flagging taken up or soil and/or planting disturbed by said Company in building its lines, shall be restored to as good condition as it was before the commencement of work thereon. Provided, however, if the road opening or similar permit fee shall include a charge for highway restoration by the municipality and/or County the Company shall not be required to do the restoration. No highways shall be encumbered for a longer period than shall be necessary to execute the work. Such restora-

tion shall be subject to the approval of the Borough after an inspection by its authorized representatives upon completion of the work.

Nothing, however, shall be deemed to prohibit the Borough of Tenafly from requiring a performance bond to be posted on behalf of the Company in order to guarantee road repairs and restoration as provided for herein.

Section 7. Wherever the curb line shall be established on streets where one does not now exist or where an established curb line shall be relocated in order to widen an existing street or highway, said Company shall change the location of its poles, pedestals and related appurtenances at its own expense so that the same shall be back of and adjacent to the new curb line so established, upon receipt of notice from the municipal officials that the curb line has been so established, so long as the Borough has acted with reasonable care in establishing the new curb line and providing notice thereof.

Section 8. Upon any of the streets, roads, avenues and highways in this Borough now or hereafter occupied by the poles, posts or pedestals of said New Jersey Bell Telephone Company, its successors and assigns, or any other companies or corporations having legal authority to erect and maintain poles, posts or pedestals, the New Jersey Bell Telephone Company and such other

companies or corporations may use the same poles, posts, or pedestals, provided they can agree so to do.

Section 9. Said Telephone Company shall provide free of charge to this Borough as long as this ordinance continues in effect, space on its poles so long as said poles are occupied by said Company, and space in its main subways (not exceeding one (1) clear duct of standard size) to accomodate the wires or electrical conductors required for signal control in connection with its police patrol, fire alarm telegraph signal systems and traffic signal control systems, but not to include circuits for the supply of electrical energy for the traffic or other signals; provided, however, that such use by the municipality shall not interfere with the equipment or operation of said Company, and said Borough shall indemnify and save harmless said Telephone Company from all claims or suits for damages arising from the attachment to its poles or the location in its main subways of any such crossarms, wires or electrical conductors used by this Borough. Before proceeding with the attachment of its wires to the poles or the placing of its electrical conductors in the main subways or manholes of said Company, either by itself or by a person, firm or corporation engaged to perform such work, this Borough shall give the said Company thirty (30) days notice in writing. All such work shall be performed under the supervision

of said Company. If any or all of the said streets or highways be later taken over by the Board of Chosen Freeholders of the County of Bergen or the State of New Jersey Department of Transportation, then such Board of Chosen Freeholders or the Department of Transportation may use the same clear duct of standard size referred to, for their respective police patrol, fire alarm telegraph and traffic signal control systems in conjunction with the Borough's use thereof for similar purposes, but only after making such satisfactory arrangements as may be necessary with the Borough and the Telephone Company for the full protection of each other's interests.

Nothing herein shall prohibit the Borough of Tenaflly from granting a franchise or franchises to companies in order to provide cable television service for the Borough of Tenaflly, provided, however, that any Company furnishing cable television in the Borough must obtain a written agreement from the New Jersey Bell Telephone Company for the joint use of any poles in which said Company has an interest in the Borough of Tenaflly.

Section 10. Following final passage of this ordinance and acceptance thereof by said Company, the permission and consent granted herein shall continue and be in force for a period of 50 years from the date of its approval by the New Jersey Board of Public Utilities Commission as required by law. Throughout the

full term of this ordinance, said Company, its successors and assigns, shall furnish safe, adequate and proper service within this Borough and keep and maintain its property and equipment in such condition as to enable it to do so.

Section 11. Nothing herein contained shall be construed to grant unto said New Jersey Bell Telephone Company, its successors and assigns, an exclusive right, or to prevent the granting of permission and consent to other companies for like purposes on any of the streets, roads, avenues or highways of this Borough.

Section 12. The term "Borough" as used in this ordinance shall be held to apply to and include any form of municipality or government into which this Borough or any part thereof, may at any time hereafter be changed, annexed or merged, and the term "Borough" or any other term herein used in referring to the governing body of this Borough shall be held to apply to and include the governing body of such other form of municipality.

Section 13. The permission and consent hereby granted shall apply to and cover all existing communications facilities and related appurtenances heretofore erected, constructed, reconstructed, maintained and operated by New Jersey Bell Telephone Company or its predecessors.

In the event that any expansion of facilities requires approval from the Bergen County Planning Board, the Department

of Environmental Protection or any other agency having jurisdiction therefore, the New Jersey Bell Telephone Company agrees to first obtain said consent prior to seeking permission of the Borough of Tenafly.

Section 14. Upon adoption, this ordinance, will cancel and supersede an ordinance enacted May 27, 1947 and June 13, 1927 by the Borough of Tenafly.

Section 15. Said Company shall pay the expenses incurred for advertising done in connection with the passage of this ordinance within thirty (30) days after the date of its going into effect.

Section 16. Upon passage of this ordinance in accordance with law, the Borough Clerk shall provide said Company with written notice thereof by certified mail. Said Company shall file with the Borough Clerk, its written acceptance of said ordinance within 30 days of the receipt of said notice.

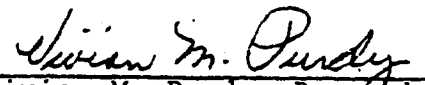
INTRODUCED: July 12, 1977

ADOPTED: August 9, 1977

APPROVED:

ATTEST:

  
John G. Manos, Mayor

  
Vivian M. Purdy, Borough Clerk



**TENAFLY BOROUGH COUNCIL MEETING - 7/8/99**

**Mayor:** I was visited by two members of the Orthodox Jewish community. This request did not come from the Lubavitch; it came from two citizens. I will explain it to you, as I understand it. They explained it to me.

**Mayor:** An Eruv is an area within which an Orthodox Jew is considered to be at home. This is important on the Sabbath, because an Orthodox Jew on the Sabbath may do no labor; and labor includes carrying things, and things include children. Therefore, since they also cannot drive or push a baby carriage or carry a child, they cannot go to temple with a child. With a young child as is the custom to bring your young babies and children to the temple. The only way they can do it is to do what has been done in Teaneck and in Englewood and in many other communities is to create what they call an Eruv. This is done very simply in modern day, in the old tradition, they would actually tie some kind of string or a rope or a ribbon or something around an area. Within that area, you can carry.

**Man #1:** Is that considered part of your home?

**Mayor:** It's considered part of your home. Generally a town, but it is your home. In this case, you're home. Today, it's done very much more simply because the town is encircled by wires. Cable television, for instance. What they wish to do and with these two people representing a few other families I believe. They say this didn't come from the Lubavitch, it came from individuals. What they proposed to do, there has to be a connection between the cables and they have done this through Cablevision in other communities. They run, it's like an empty wire, it's like the casing of a wire, the black rubber whatever, casing of the wire; not the wire inside, it's just a thin little black wire. And they put it right down one side of the pole that holds up the cable.

**Man #1:** Connected to the cable?

**Mayor:** I'm not sure if it actually connects, I guess it connects with the cable. I'm not sure.

**Man #2:** It connects to the pole. It doesn't have to connect to the cable.

**Man #1:** When do they want to start this?

**Mayor:** Let me explain what they want to do. They want to put this on the parameter pole around town, which creates the connecting wire around town. Nothing can be seen, I mean, the wires are there anyway. It's just this little stick of black that goes on the ... If you see them? You were going to go to Englewood to see if you can see them.  
coughing

**Woman #2:** Bless you. What's happening?

laughter

**Mayor:** Many of poles now have wires going up them. I mean there are wires that go up and down a lot of these poles from the ground up. I noticed it as I was coming down here at the corner they're putting in there. A whole bunch of wires going up and down the pole.

**Man #1:** Is there a frequency required on the vertical member?

**Mayor:** I don't know.

**Man #2:** No.

**Mayor:** The point is that you can see by the ordinance here. Actually it isn't an ordinance, it's just an agreement with the City of Englewood. They gave Englewood one dollar and Englewood said okay you've rented the town for the purpose of an Eruv. But it's something that could never seen by anybody is nothing significant about this. Anybody not looking for it would know it was even there. It's not an obvious thing but allows these people to bring their children to temple. That's all. You know, whether it makes sense to you or not is not really important. It's something that's not. I mean we don't have to agree with everyone's religion and what everybody's...

Lipson **Man #3:** Is there a request to do the whole town?

**Mayor:** They are requesting to put these strips of wire, they pay for it, Cablevision does it.

Lipson **Man #3:** Around the whole town?

**Mayor:** I guess on the parameter of the town.

Lipson **Man #3:** The whole town?

**Mayor:** The whole town. They're willing to pay for it. You'll never notice it, you'll never notice it's there.

Lipson **Man #3:** I do know that in certain towns where they do this, it creates an atmosphere of the community within a community that brings people, Orthodox people, only ultra-Orthodox people. And what happens in communities where they do this. You have groups of small churches that sprang up because, that's what you do in a whole town like that, the whole town becomes a church which is really what they're doing. They're asking for a home. The whole town becomes their home. It's an area for that. I don't know

whether we want to establish that.

**Mayor:** Establish what?

*Lipson* **Man:** To create this town.

**Mayor:** You've got wires going around your town anyway.

**Man:** But it's not the same thing. What you're doing is creating a professional type...

**Man #2:** Excuse me, really, you don't get to talk in work session, you don't get to comment out loud and you don't get today's question. I'm sorry, but it's a work session.

**Woman #1:** Excuse me.

**Man #2:** You can take a formal vote. Unless you take a formal vote, but even in a formal vote you don't get to shout out feelings at a work session.

*Kerge* **Woman #1:** Oh, no, of course not, but I've seen hands going up.

**Man:** Well then we can take a vote

*Kerge* **Woman #1:** I would move...

**Man #2:** I'm just telling you...

*Kerge* **Woman #1:** I know what you're doing.

**Man:** Then we can take a vote.

*Kerge* **Woman #1:** I know, I know what you're doing. I will move that after the Council has expressed their initial questions or statements that the public, if that's why they're here, be permitted to speak about this. Because it is something that I think some of us want to know more about. And I just have one question. You said, I have no opinion at this point. You said that this is not a request from the Lubavitch Synagogue that it's Orthodox families. But my question to you is where are they walking to, there is no Orthodox temple in Tenafly.

**Mayor:** Yes, the Lubavitch is the Orthodox Temple.

*Kerge* **Woman #1:** So, it is connected with the Lubavitch.

**Mayor:** These are members of the Lubavitch who want to walk to the Lubavitch on the Sabbath...

*Kerge* **Woman #1:** OK, because I misunderstood

**Mayor:** Rabbi Shane did not make this request.

*Kerge* **Woman #1:** Rabbi Shane.

**Mayor:** It was not made in the name of the Lubavitch it was made by two individuals who came to my office and made the request.

*Kerge* **Woman #1:** I saw the fax, I thought maybe the request was faxed to you.

**Mayor:** What fax did you see? Where's the fax?

*Kerge* **Woman #1:** Here's the fax coversheet that was sent. We didn't see the letter because it says "Personal" to you.

**Mayor:** What was faxed to me was the City of Englewood...

*Kerge* **Woman #1:** Oh, OK, OK.

**Mayor:** That's what was faxed to me. The permission from the City of Englewood. The only reason really that it has to come before us here is because they have to give us something, they have to rent it for the purpose of being an Eruv.

**Man #1:** Rent what?

**Mayor:** The area, rent to the town. For the purpose of walking to temple. Whatever you want to charge them.

*Lipsa* **Man #3:** This town's very expensive, I don't know.

**Mayor:** It's such an innocuous thing. It's something that nobody can see or know that's there. It's a religious thing, and we have a reputation in this town of permitting people to go to whatever church they wish to go to or temple they wish to go to and to bring their children. No? What's the look? We're not permitted to bring our children? And if it's...

*Kerge* **Woman #1:** I didn't give a look I'm thinking about what you've said.

**Mayor:** Oh, I'm sorry. I thought that was.

*Kerge* **Woman #1:** This is a very inclusive town. Everybody has always been welcome.

**Mayor:** And we've always, not when I moved here, but anyway.

*Kerge* **Woman #1:** Oh my goodness.

**Mayor:** I was not shown homes in certain areas of this town when I moved here. I was told by the realtor that it would be a waste of their time if they showed me homes in the Smith, all Smith area of town. What, or... You don't know. I, this town has not been accepting at all. So, I'm deeply sensitive about an issue like this.

*Large* **Woman #1:** In my mind it was, ever since I've been in here, I've known Tenaflly to be an inclusive town.

**Mayor:** It was not always inclusive.

**Mayor:** I believe that we should be inclusive and I think that here is something that will inconvenience nobody. It is not something that even seems. You don't know what wires are going up your telephone pole. I mean, you just don't know. You don't see, you don't look; you won't see this and I would hate to think that Tenaflly would deny these people who are going to pay for it themselves the right to put these old wires on the parameter poles in this town. It just; I would be very upset if this Council did not permit such a simple request.

**Man:** I'm also of the Jewish faith and I'm just as sensitive to you of the struggle that we as a people has always had. This is not what we were talking about. What I do know is that if we would ring the town.

**Mayor:** We're not ringing the town, that's why it's up there right now.

**Man:** Symbolically ring the town. Symbolically that's what you're asking. Not physically ringing the town, but symbolically ring the town. What you'll do... what you'll create is a overall that the town, becoming for religious purposes, an area where they can establish their own synagogue in.....

**Mayor:** It has nothing to do with this.

**Man:** Yes, it does. If you look at what happened to Teaneck, if you look at what happened to, in towns.

**Mayor:** I know what you are talking about.

**Man:** If you look at what happened in...

**Mayor:** They can do it anyway, it has nothing to do with that...

**Man:** They can do it anyway, correct.

**Mayor:** Anybody can do it tomorrow.

**Man:** If you make it so where it can be done \_\_\_\_\_, just make it an easier process which, that's what it becomes. An easier process to do that. I don't see why we need to do that. If we include everybody in this town, and we are including everybody in this town; suppose another religion comes before us and they ask us to allow them to do something that's for their religion. I don't know what that religion could be or what it is, but once we establish the fact that we do something special for one particular sect of a religion that we open ourselves to allow, again to allow anybody and use that as a precedent to establish whatever they want to do. If they want to build a wooden elephant to worship in one section of the town. They can ask permission to do that.

**Man #1:** They could do that.

**Mayor:** They can do that anyway. And they can have a creche in Highland Park and I have no objection to that

**Man:** I just think that we maybe do something that we don't need to do.

**Mayor:** It's certainly as obvious as having a creche in Highland Park. You know it's just municipal property. I'm not sure we can even stop them from doing it, but, you know, it's not.

**Man:** You can stop them. They can't force you to rent it to them for a dollar, they can do whatever they want as far as calling it what they want within their concept but they could not force you to sign an ordinance renting it.

**Man:** I was told that they can deal directly with the Cable Company.

**Man:** If they dealt with the cable company it's nothing you can do about it because Cablevision can do, they have the right to do that.

**Man:** That was my understanding.

**Mayor:** My understanding is that they have to give us something in exchange.

*Kege*  
**Woman #1:** Well, I think,

**Man:** Cable won't do it for a dollar.

group talks over each other

**Woman #2:** I think the issue really, probably has to do with a recognition, their recognition of their being able to do it. If they can go directly to cable and they don't need to rent, to have any agreement from us, then why not do that. Wouldn't that be easier?

**Man #2:** I don't know perhaps. I certainly don't know the answer. Their theology requires that government, governmental entity to give the rental as opposed to a commercial enterprise.

**Man:** I think they need some token set.

**Mayor:** \_\_\_\_\_

**Man:** The Englewood resolution or grants refers to the rights to the public domain within the boundaries of the City of Englewood. So I they're looking for some sort of a formality or formalizing the granting of the right to the public domain to establish this pole. What has concerned me, is the kind of thing that Chuck is saying. Some of my Jewish friends objecting to this very strongly and you know, Jewish faith and tell me why?

**Mayor:** I have no answer for you.

**Man:** I've heard why.

**Mayor:** Why?

**Man:** They think we're going to turn it into an Orthodox community.

**Mayor:** Really? Are we going to become Orthodox because of wires going on the poles?

**Man:** That's a stretch. That's a real stretch.

**Mayor:** That's a real stretch. I'm not going to become Orthodox see?

**Man:** I'm not impugning any religion at this point in time. I'm not imputing the Orthodox at all, but that seems to be a concern that the Orthodoxy would take over.

**Mayor:** That's what Adrian Meltzer said I believe when she voted against having the Lubavitch in town in the first place. I think that's a terrible thing to do. I cannot believe it.

*Kerge* **Woman #1:** I think that the Lubavitch Temple, Synagogue has been here now about five or six years because I know that I met Rabbi Shane the first time when I was in office maybe '94.

**Mayor:** I wasn't here, keep going.

*Kerge* **Woman #1:** And, they have built a beautiful temple in town and they've done good things for people in town; for people that I personally have known and are fond of and

I've been trying to understand it because the point I guess that I don't understand is they've been here for this long period of time and this has not been requested before. So I'm wondering why it's necessary at this point in time since the request has not been made before during the five or six years that they've been here. But I have a definition from what seems to be the scholar of the age that came from the Internet as to what this is. Because I've truly have been trying to study and to understand. It speaks about the public domain and it speaks about the private domain and the definition says that the Eruv and some of you people who know better than I Shat Surrat? is that it; which means of mixture courtyards and it involves joining together the inhabitants of an area ranging from a few houses to whole streets or even a whole town to form one private domain on the Sabbath. The reason I'm reading this is because Phil spoke about the public domain, you spoke about the public domain and this says that it's creating a private domain on the Sabbath. This enables people to carry things throughout the area of the Eruv since it is normally forbidden. It says it has to be surrounded by a rule of symbolic boundaries in order for it to be effective and it goes ahead and mentions some other symbols and but it talks about all members of the new private domain participate together in this. So, it refers to it no longer than as a public domain but the private domain.

**Mayor:** What's the purpose of carrying on the Sabbath. That's the purpose. That's for what? If they're not going to pave the streets, then we're not going to get that.

Kage **Woman #1:** I know as Bill said, I've had some telephone calls, I've been trying to understand this.

**Mayor:** How did people all find out about it? How come all these people are here and everybody got phone calls?

Kage **Woman #1:** I don't know.

**Man:** I guess it wasn't just a secret. I don't know.

**Mayor:** I wasn't trying to keep it a secret. I'm just curious as to how this became a thing where everyone's making phone calls. I've only heard about because they came into my office.

Kage **Woman #1:** I heard about it about sometime around the middle of June that it was being discussed. Somebody called me and I said no, no I know nothing about it.

**Man:** Do we have any of the supporters over here this evening? Who can speak to us in support of it?

**Man:** Perhaps what you ought to do is schedule it for September for a hearing. Ask supporters and people opposed to come to a public hearing and speak on it.

Kage **Woman #1:** I'd like to hear if these people who are here this evening are hear for this I

would like to hear this evening because I would like to spend some time thinking about it myself and did I make my motion to let the people speak if they wanted to.

**Mayor:** You would like to make that motion?

*Here* **Woman #1:** I would like to make that motion.

**Woman #3:** Is there a second?

**Man #2:** I'll second it.

**Woman #3:** All in favor?

aye

**Mayor:** All opposed?

**Mayor:** Alright, would anybody care to speak to this issue? Alright, would anybody care to speak to this issue? Yes? Give us your name.

**Man:** May I ask you to state your name and address please.

**Mr. Meltzer:** (inaudible)

**Man:** That's fine. You can speak from there.

**Mr. Meltzer:** My name is Murray Meltzer. I live at One Grand Lane in Tenaflly. Been a resident of Tenaflly for 30 years. I'm quite familiar with the concept of an Eruv having been brought up Jewish and the concept of the Eruv is innocuous in its implications to a community as our Mayor has portrayed and I don't think it should be kept a secret, although it does not physically change the surroundings. In essence it has the potential for changing the entire character of the community. I have lived in communities which were involved with Eruvs and was brought up in a community that was in Brooklyn which is part of a large city where our community was entirely changed in Borough Park, Brooklyn. My brother brought his family up in Long Island in the community of Lawrence, Long Island. There was an Eruv created by the orthodox and the entire community changed over a period of five to ten years to the point where shopkeepers were ostracized if they kept their shops open on Saturday on the Sabbath. It is not simply a matter of being able to carry your child to the synagogue, they have been able to go to synagogue for five years with nobody interfering. This is something that has considerable implications in terms of changing the social community. It makes it part of their private domain. I personally object to the use of our public property to converting it to anyone's private domain. Everyone has the use of the streets and the facilities in this town. They have it now, there is no reason to change it. Incidentally, this has been brought up in Kreskill where they are to be starting an Eruv and it was turned down. The

town has the right to do that. It is not something that will happen inevitably. It will only happen with the consent of the town and it has immediate effects and long-term effects on the community. I'm not a lawyer, I don't know the legalities of it; I just know the social changes as Mr. Lipsig intimated it is more than this simple innocuous thing. I have no intent in becoming involved in trying to keep out certain religions and this is not a matter of anti-Semitism or keeping out any religion or any church. It's a matter of not allowing any church or any religion to impose their beliefs and their use of our public properties beyond what it should be.

**Mayor:** This is imposing their beliefs?

**Mr. Melzer:** It allows....

**Mayor:** I don't think so. It doesn't mean that other people...

**Mr. Melzer:** I'm saying that it changes the character of a community and it is not a simple matter of just carrying their children to synagogues. They have been in town for five years, they carried their children.

**Mayor:** I believe these two couples who came to me are fairly new in town and have not been able to; they haven't been here since the establishment

**Mr. Melzer:** Since you didn't say who it was I can't probably know them, but at any rate. It is not a simple innocuous thing and they have to my knowledge, there is a school associated with the religious synagogue here and the children for five years must have had some way to get to and from that school and I'm not being prejudiced.

**Mayor:** I believe not all members follow that, you know, it's as with any of the other traditions. Some members follow some and some members follow others. The whole Orthodox community really .

Mr. Melzer and Mayor talk over each other.

**Mayor:** All members of the Lubavitch don't follow all the rules of Orthodox.

group talks over each other

**Man:** We're in litigation, as you probably know, with the ACLU and the Lubavitch over the displays at Highland Park. The ACLU sued us, we basically said okay we'll take everything down. The Lubavitch sued us and said we'll sue you if you take everything down, we're in the middle.

**Mayor:** Wait a minute, wait a minute, we have a suit...

**Man:** No, no, no, I'm sorry, a threatened suit. Wait a minute, okay, you're right. They

filed, they went to federal court, we, the ACLU two days before the holidays, December 22nd we convinced them to withdraw it. So technically we're not in suit; but they were both threatening suits.

*Kage* **Woman #1:** We weren't threatened in court by the Lubavitch group were we?

**Man:** No, they have threatened to sue us. They've told us. Not threatened. They've said if you do this we will sue you because then you're impinging on us. And we've tried to work that out. We're right in the middle. All I'm trying to say.

**Man:** What is the relevance of that to this?

**Man:** Okay, I'm trying to get to that which is what is. I, it's the first time I've heard of this. What are the legal ramifications of denying them, and what are the legal ramifications of allowing it. Are there freedom of religion restraints that prevent a town from granting or denying this. I just want to tell you.

**Man:** Walter, this is my question.

**Man:** Let me finish this. Let me give your four more words. Four more words please? I have no idea.

group talks over each other

**Man:** This is not about practicing a new religion, this is about asking for a different right

**Mayor:** This is about establishment under which...You can argue that that this is the same as the creche.

**Man:** I don't know what's right or wrong.

**Mayor:** You're involving a government entity in supporting a religion. So that argument can go...

group talks over each other

**Mayor:** It's not supporting the establishment of religion, it's supporting the practice of a religion and we're not establishing this as a religion for everybody in town and saying you have to do this. These people wish to do it. You can grant them permission to do what they want to do.

group talks over each other

*Kage* **Woman #1:** I thought that we were here to hear the public. I would like to continue to hear the public since they're here.

**Man:** Well it's a committee of the whole, its really not the appropriate place for the... public

group talks over each other

**Mayor:** I'm happy to let them speak would you please,

**Mr. Wilner:** My name's John Wilner, 41 Magnolia Tenaflly. I'm a Presbyterian minister. I came because I wanted to speak to just these issues. I have, I'm not an expert on religious liberties but I have significant background in human rights, civil rights issues. I talked to two attorneys about this before I came. In the law there are really three basic issues, circles of issues concerning religion. The first of those is free exercise of religion. I was the only Christian clergy person who stood twice for the Lubavitcher at the hearing on their property to testify that, in fact, was a free exercise issue; that the zoning variance be awarded.

I've come tonight to speak against this because it is not a free exercise issue. This enters the realm of the second and third areas of concern. Second area of concern is separation of church and state. No religious group in a democracy gets preferential treatment. Anytime you start to give preferential treatment to a particular village or group you are violating that separation of church and state. The Supreme Court's been very consistent even on issues that most of us would like to see more work by religious groups in the human services area, they've taken a pretty hard line. Third area has to do with practices by religious groups that are against the law. Polygamy is against the law. And anything by a religious group that \_\_\_\_\_ other people's civil rights, we can think of some of the right-wing racist religious groups that violates civil rights. I believe this enters the second and third realm.

**Mayor:** Could you explain?

**Mr. Wilner:** This is not about wires on cable. It has to do with character of community. This is a community that I absolutely agree celebrates our diversity. But by giving the legal lesson to a concept that comes out of the notion of religious state, not secular state, but religious state. That's the origins of this concept. Israel is a religious state. Islamic states are religious states. We're a democracy. We separate the private from the public and this is bringing those together. Secondly were this concept gets more fully developed, as Dr. Meltzer suggests, sometimes that begins to invite infringement on other people's civil rights.

**Mayor:** I don't understand how, could you explain.

**Mr. Wilner:** Well, they start to insist that shops close on Saturday. If they start to try to think of the neighborhood as their sole possession. The attitudes of community change. So, I would say this is not a simple issue about cables on poles. This is much more an issue the character of a community being committed to diversity rather than beginning to

be separate sectors supporters of a town. And therefore I very strongly oppose this as a person who absolutely would be there at the drop of a hat to protect their free exercise of religion. This is not about that.

Further, I believe this could become a test case in the courts over this matter because there are very strong feelings in the community, Christians and Jews on this. That are concerned that this community maintain a separation of church and state and be committed to diversity.

**Man:** May I just, Reverend the two attorneys you've spoken to that obviously they're probably pro bono, not...

**Mr. Wilner:** They're friends of mine.

**Man:** Would you mind asking them to give me a call. I, because this has hit me out of the blue. This is a great way to start research to talk to somebody who knows something about it.

**Mayor:** I would just like to clarify for myself that part of this that you object to...

**Man:** I'm sorry, may I just go ahead and try to get to...

**Mayor:** I just want to clarify. Is this symbolic only renting of the town?

**Mr. Wilner:** We're taking action that favors a particular religious conviction.

**Mayor:** Well, I'm not sure that it favors over anybody else, it might ask for something comperable, I don't think that it...

**Mr. Wilner:** Legally that's what you're doing.

**Mayor:** But what you are saying is that it's the symbolic, I think. And this is what concerned me at first. And I did speak to them at first, and said that I can't make this decision. This is a question for the Mayor's Council. But, the part that concerned me was the wording, where it said that they were renting the town. That's the part that concerned me. Having the wires go up and having, symbolically wrap around the town didn't bother me at all because it's something that isn't seen, it isn't an imposition on anybody else, anymore than having a little k with a circle on your margarin is going to make you kosher. Most people don't know that a k with a circle around it means that the product is kosher. And almost nobody would know that a wire going up a telephone pole means that you're inside of an Eruv. I mean, that it just doesn't impose anything on anybody in any way and nobody else has to carry within it or without it or anything like that. The part that really was a concern to me was the word rental. That they were renting the city of Tenafly.

**Man:** They know what that means it we don't.

**Mayor:** Huh?

**Man:** They know what that means it we don't.

**Mayor:** That they're renting it, you know, for a dollar or for in exchange for giving us a book for the library, or for whatever it is, just something, they have to give us something in exchange for it. That is the part that for me, was, was questionable. And I'm wondering if...

**Man:** It's like what Chris said, why don't they just rent from the cable people. Is there something that requires a governmental implementor, and if that's the case, now we're getting into an interesting area.

**Man:** I think it's one of the quirks of how this whole thing is set up. That they must have official permission and they must give something for that official permission. I think that may be the origin of the dollar.

**Mayor:** Right.

**Man:** That's the way it was explained to me. I mean, I don't understand it, but that's the way it was explained to me.

**Man:** They generally rent from the community and that's what they're talking about. These are very helpful and interesting comments and I appreciate it.

**Mayor:** Yes.

**Man:** These are amazing times, you never know what's going to happen next.

**Ms. Jacobs:** I'm Janice Jacobs, 56 Magnolia, and a number of the Lubavitch walk down on the High Woods and it's just delightful I mean it's beautiful to see people living their faith, literally \_\_\_\_\_. It's beautiful.

**Mayor:** They have no trouble getting there, it's getting home that I admire.

group laughs

**Ms. Jacobs:** When people live their faith like that, I really think it's beautiful. I think that Tenaflly, that most of us would agree that the community is very diverse, and the people of all nationalities and all religious, I mean, there's no block in town that's like Korean or a Chinese quarter. It's a small town and the beauty of it is the diversity and the richness and that's what I think we're all about. I would worry that by our giving this, we're saying that they have a right to have a community in our community, and our

community is so small, isn't not like we're so big that they need to congregate in one area. I mean that our town is so small. I just don't see a need to give this to them because we're all about diversity and they're free to wherever they want.

**Mayor:** This doesn't change anything.

**Ms. Jacobs:** And if they're walking to church, I'm sorry if that's imposing on their, you know, their religious, making it easier for them, but they can move closer to the synagogue and walk if they feel it's an important thing.

**Man:** It's not a question of distance.

**Ms. Jacobs:** Huh?

**Man:** They can't carry the kid. It's not a question of distance.

**Ms. Jacobs:** Well...

**Man:** It's their rules, you know. That's what they are.

**Mayor:** The ones that choose to follow that.

**Ms. Jacobs:** Yeah, but I mean, what I'm saying is but I don't that that we should be \_\_\_\_\_ to think that this is an enhancement for a religious group and the town is small enough that, I don't feel it's wise to make sort of enhancement. I don't think that it's our place to do that.

**Mr. Evans:** My name is Hugh Evans, I live at 165 Serpentine Road. When I heard that the Lubavitch were involved, this resigned with me because of the, well, potentially involved, resigned with me because the Lubavitch visited my wife every Friday night offering prayers and flowers for the duration of her hospitalization, and expressed great concern in the interest of her well-being in the remainder of her life. Both in her lifetime and since we've been very supportive of the Lubavitch financially and to continue to do so. Ah, so I hope that this will be an issue that will be taken seriously and in the appropriate forum. There's a little bit of a concern to hear this presented as something that was nominal consequential than procedural a matter of establishing the wires around town that clearly while that technically may be true, in fact it evokes all sorts of concerns an otherwise. And with great respect to the Mayor, I think that it might be much more appropriate if this issue, that is the presence of this issue, on the agenda as executive and legislative business be announced in advance to the general population so that everyone can be here, not merely those who happen to be in town at the moment and...

**Mayor:** This is just a work session...

**Mr. Evans:** \_\_\_\_\_ I heard about it, and I would hope that you would

consider this and consider this very seriously there may be very important reasons to do this and there may be important reasons to not do this. But I'm very concerned with process.

**Mayor:** Do you understand that we take no action at this table? We only take action at public meetings, and the agenda is always published. This is not to take action in this case, and I was very surprised to know that so many people were coming down...

<end of tape #1>

**Mr. Evans:** but rather have the standard open meeting at the outset so that we're all on a level playing field.

**Man:** I don't think that you understand the process. The normal way that the Council functions is to go through an agenda and discuss items in a work session and then present them at a public meeting. It's not a two-phased or a two-level process. That's the normal functioning of the Council because we take public action at public meetings and we have this workshop for the purposes of discussion amongst the Council. Normally, there isn't anybody here, and normally nobody speaks, but they are here. This is a little bit of an unusual process. What Ann has described is the norm. It's not something that's surreptitious.

**Mr. Evans:** I'm not suggesting that it was surreptitious, I'm just saying in the interest of harmony and openness within the town, it might have been useful at least for an issue as complex as this that the process be reversed.

**Man:** It can't really get on the public agenda without coming through here.

Group talks over each other

**Man:** Some items have been on both agendas 20, 30 times.

**Mayor:** But there's never \_\_\_\_\_ for anything without being at a public meeting.

**Man:** Right.

**Woman #1:** Work sessions are public.

group talks over each other

**Mayor:** But the public is invited to speak. This is an unusual situation. I'm very glad that you all came because I think that we've learned a lot from the comments that you've had to make. For me it was simply as I said, something that is not going to interfere with anybody else, or anybody else's freedom, or impose anything on anybody else, what made me think of some other issues.

**Man:** It turns out not to be as trivial as you suspected or hoped.

**Mayor:** Well... I wouldn't use the word trivial, I've never though it was trivial. I always had a concern about the word rental. Which is the part that I still think is the important part. Yes.

**Man:** Is the procedure that we're going to follow to ask somebody to come and present this to a public meeting, is that where we're headed?

**Mayor:** Well, we'll decide that after the public speaks.

**Man:** Oh, I'm sorry, I thought that the public had spoken.

**Mayor:** No, not yet.

**Ms. Coleman:** Martha Coleman, 2 \_\_\_\_\_, Tenaflly. I similarly with you and with \_\_\_\_\_ have witnessed the wonderful celebrations of religion. I think it's beautiful \_\_\_\_\_. I just have some questions. How other towns have resolved the question of conflict between church and state on this issue when so many of the surrounding towns already have \_\_\_\_\_. And then I also wonder whether they have a school situation set up for their children to attend. This is based on the knowledge that I have, as limited as it is, of the situation in Englewood where there does exist the real estate in that area as a result is evenly sought after by those people who want to live within the Eruv. And then their children don't attend the public school but attend Yeshivas. So I'm curious as to whether there is a school situation within the Temple where there children will be attending that as opposed to the Temple's.

**Mayor:** I think that they have a nursery school and a religious school, I don't believe beyond that. I know that a lot of their students have been, is it called Mariah?

**Woman:** Mariah \_\_\_\_\_

**Mayor:** and other \_\_\_\_\_. I don't think that all of them do. I have no idea. I do not believe that they all do. I believe that a lot of them go up to the ...

I just relate this to you, I was talking to Rabbi Shane, I get all of their mailings. And I said to him Rabbi, I wish that I were more religious, I would consider joining your congregation because you have such fun and you celebrate absolutely everything. And he said to me, you know you don't have to be religious to join a Lubavitch, people drive to temple. People of all different categories of religious values etc, tradition I mean. Which was informative for me because I thought that they were all ultra-Orthodox. They're not, it's their traditional. And I think that's more of what they are. So, do they all attend Yeshivas? I don't think so. Anymore then they all do not carry on the Sabbath. Many of them do drive to temple. There's a great variety.

**Woman:** Yes, I ....

**Mayor:** I thought that they were all ultra-Orthodox, but they're not.

**Ms. Coleman:** But I'd be curious as to how other towns have resolved this situation and also...

**Mayor:** Did we just hear the ...

Group talks over each other

**Man:** Englewood made the arrangements and Creskill apparently turned it down. Who said that?

**Mayor:** Dr. Meltzer said that Creskill turned it down.

Group talks over each other

**Man:** Ultimately it's up to the courts. We make the first decision and then somebody challenges it.

**Man:** Englewood did it 26 years ago. Different world...

Group talks over each other

**Ms. Burn:** My name is Freda Burn, I've lived in this town for 34 years. I went into the, I'm retired now, I went into the real estate business 30 years ago. And 30 years ago when I just started out as a sales person I did a lot of business in Teaneck. And I saw what happened in Teaneck and what evolved. I first found out about an Eruv, I never knew what an Eruv was, because 30 some years ago in Teaneck, before they had permission to do this around the whole town, the individual homes would put a wire from their house to the telephone pole in the street, in other words it was a parameter all around the house and this way, from what they told me, they were able to pick up their newspaper. If it was on Saturday, they could pick up their newspaper, they could do anything that they wanted, they could pick up their mail. However, through the course of years, more and more, many more Orthodox people have been attracted to Teaneck. Now, we have a big problem here in our town with Washington Avenue, this is a problem of the Council, you're trying very hard to revive the town, to bring in new business, to bring in new stores. Just take a look at what happened in Teaneck. Teaneck was beautiful. I love this area. I've lived here for 65 years. I used to shop in Teaneck. Teaneck when I lived in Englewood. Teaneck had beautiful stores. Almost every store in Teaneck today is geared towards the Orthodox. There is a racial imbalance in the school system in Teaneck because most of the Orthodox children go to Yeshivas and they go to religious \_\_\_\_\_. Who's left in the Teaneck school system but those children can not afford to go

to a private school. There is a serious imbalance there and I have concern that this could possibly happen to Tenaflly because the more... If this is granted, let's all be honest, more and more Orthodox people are going to move here. The more people that move here, they're not going to buy their meat in the Grand Union, they're going to want to go to glat Kosher Orthodox store. They're going to be looking to open up businesses in Tenaflly. They're going to have the same thing that happened in Teaneck. This is my concern. I have no children in school anymore, but I am concerned about the school system, and I am concerned about what will come in to our local shopping areas. And I think that we should seriously consider this.

**Man:** I guess what we have to do now if we want to proceed with this is ask the people who made their request to you to come down and make the same request before the whole Council.

**Man:** Do you want a request (inaudible).

**Man:** I don't think that it's a Temple issue.

**Woman #1:** She said that...

**Man:** It's not a temple issue.

**Man:** I understand that. Do you want to entertain a request from two individual citizens to do this?

**Man:** I would prefer... I would prefer... Well, whoever is... we have no formal request from the Temple, why should we, we've asked them to come before us, If they didn't ask to come before us. Obviously if these people are in their congregation, and I assume that they speak to their Rabbi. I speak to my Rabbi when I have questions that I... that my wife can't answer for me.

Laughter

**Man:** I'm serious. We can't be flippant. This is a very serious concern that. And It's a concern that I have (coughing) that's expressed from, by a lot of people about a change in the community. And it's true, it does become a change in the community. It's become a change in every community where an ultra-orthodox group has come in. They've willed the change. They've willed a change in the state of Israel. They've willed it so much so that they've stoned cars that drive down the streets on the Sabbath. Ultra-Orthodox. My friend's son became an Ultra-Orthodox person so I'm not \_\_\_\_ that's that person's belief if that's that person's belief, and that person has the right to have that belief and I'm not dennagrating that belief. I do know that one of the reasons that attracted me to Tenaflly early on, knowing full well because I did go up to Teaneck, for a portion of that time, and when my wife chose to look for houses in Tenaflly, I was a little ambivolant about it because when I came into the community, I saw what kind of community is was, and it's

a well-rounded well-versed type of community. People of all walks of life, people who live in sub-standard kinds of housing, people who live in \$10 million mansions, and we all get along. And there's no reason for us not to all get along. And I think when you start to establish a particular area geared to a particular group, you can go on and become inclusive. You can become...

**Mayor:** This isn't a particular area, it's the whole town.

**Man:** Well, but what happens in that whole town, and you have to be aware of what happens within the town that have it, various people establish what they establish is a prayer group.

**Mayor:** A what?

**Man:** A house becomes a prayer group.

**Woman:** That's what happens.

**Mayor:** What does the Eruv have to do with that?

**Man:** It's within the Eruv. So that they can establish their church within that Eruv.

**Mayor:** People can do it anyway.

**Man:** I understand that.

**Mayor:** Anybody can take his own piece of property and put those wires around it.

Group talk over each other

**Man:** Why do they have to... Let them put their wire around their house.

**Mayor:** Anybody can do that.

**Man:** Let them put it around their house if they want to. If they want to put it around their house, let them put it around their house. They shouldn't be coming to the Mayor's Council to come and ask us to put it around their house.

**Mayor:** I think that what we have to decide right now is whether we want to pursue this at a public meeting or.

**Man:** Are we willing to invite them to come and make a formal request or do we feel we don't want to do this, or do we feel...

**Mayor:** Or do we want to say that this request only comes from two people, or do we

don't feel...

**Man:** I suggest we not pursue it unless we get a request and then we'll deal with the request.

**Man:** If you get a request, you have to...

Group talks over each other

**Man:** I don't have a request, I have a fax that says...

**Mayor:** We don't have a request in writing.

**Man:** And I have an ordinance from 1973 and a cover letter that says Attention Mayor Maskowitz, so I don't know what else... that's not a request.

**Mayor:** No, no.

Group talks over each other.

**Mayor:** They came to see me, they made an appointment to see me. I didn't order the request. They presented it to me in my office. Is said I can't handle this myself, this is a question for the Mayor's Council. And uh, you know we have this from Englewood, and I'll mail it to you, fax it to you, and they faxed me that. And, uh, that's it. I mean.

**Man:** That's not enough

*Kere* **Woman #1:** I would agree with Bill unless we hear something further then this is just it. We ...

**Mayor:** Well they have to be answered. Shall I tell them...

Group talks over each other

*Kere* **Woman #1:** I don't see their question.

**Woman #2:** But they do... even this... but Mayor it's not even addressed... it's not addressed to the Mayor and Council.

**Mayor:** Because they came in...

**Man:** Maybe I can short circuit this, maybe I can short circuit this. It is possible that this could lead to litigation. Therefore anything they request should be in writing.

**Mayor:** Well I will call them.

**Man:** Tell them your attorney said because of the history of these issues, we require any request in this nature to be in writing. And then put it on your agenda for September. And create a public meeting if you wish and then go from there.

**Mayor:** All right.

**Man:** I'll take the weight.

**Mayor:** I thank the public for their input. It's very important that...  
group talks over each other.

**Mayor:** We'll take a two minute break.

<end of relevant portion of tape>



**TENAFLY BOROUGH CITY COUNCIL MEETING**  
**NOVEMBER 21, 2000**

MAYOR MOSCOVITZ: And now I don't know if anybody in the room is interested in the Tenaflly Eruv Associates subject, but in case they are, I would like to remind them that this is a work session. And, ah, we do not accept comments from the public here. Next Tuesday night will be the time for comments from the public. We have received a great deal of paperwork from all of you. As a matter of fact, after speaking to Dr. Peck this evening, I realized that there was something out in front of my front door. I never use my front door. So I hadn't looked for anything there and did find something from the Akos family sitting there which I have not had time to read. This is the paperwork I have so far received from the various organizations, etc. So we have all received all of this. I don't know, have all of you found your packets that were hand-delivered today?

MR. LIPSON: I just, I was just handed it by my wife, so

MAYOR MOSCOVITZ: And I just found mine at 7:30. Some of us have not seen that. So I will open this for discussion to the council if anybody has any comments to make on the information received so far.

MR. LIPSON: Well, what are we...First of all, what are we debating here? Whether or not we are going to have a resolution to permit an Eruv?

MR. LESNEVICH: Well there's been a ... If I may Mayor. There's been a request, a request to use Borough property and therefore the request has to be voted upon to either allow it or to deny it.

MR. LIPSON: Will it come in the form of a resolution?

MR. LESNEVICH: Yes, it would.

MR. LIPSON: Thank you.

MR. LESNEVICH: And I presume the best way to have a resolution would be to allow it to be used and then voted for or against.

MR. LIPSON: So this evening we will discuss whether or not we will place it on next Tuesday night's meeting a resolution to permit an Eruv within Tenaflly?

MR. LESNEVICH: Correct. Now in closed session later I will give you my legal opinion as to what will happen. Whether there will be a lawsuit on either side of the issue. But you all have gotten the ACLU Longbranch case. And I've sent you all of you brand new Title 42 Religious Land Use and Religious Persons Law for your review. As I've said previously, I can say in public my legal opinion is that you have the right to

grant it or not grant it as you deem fit. But in closed session I will tell you my prognosis of what would happen if there were to be a lawsuit either way. But that's not appropriate for public comment.

MR. LIPSON: My sense is that there will be a lawsuit either way regardless of the fact that the first time in a real long time that I can remember we have a council work session so very well attended. It really is nice to see an awful lot of people take time from their busy lives to see government works behind the scenes rather than government works (quiet) council chambers. Ah, there's a lot that we have to look at with this paperwork that's been given. This morning I couldn't walk out of my front door without stepping on a package. So I had time when I went to work to read through some very well written material this morning. Um, I appreciate the hard work and effort that this obviously took to prepare this. It's a well-written piece. The mission statement has a... I don't know, I'm a little concerned. It's just semantics, probably, Tenaflly (inaudible) Tenaflly has always been a (quiet). And a community of various peoples, all of which make up a community. All different types of religions in Tenaflly are all welcomed. None of the religions are excluded as far as I know. And, I think when people move in to Tenaflly, they move in to Tenaflly because of Tenaflly. They don't move in to Tenaflly and then say we want to build a new community in Tenaflly. I think that's why it accepts everybody. We've always accepted everybody. I moved in 30 years ago and then I moved on a street and I was the second Jewish person to move on our street. And up and down the street I was accepted by all of the neighbors. This is not about accepting or not accepting certain people. I just think that we are a community and, ah, I don't understand the motivation to build a new community. I understand the goals and some of the other things, but I just don't understand in this mission statement. I really have to sit down and look at it, that type of, that paragraph.

MS. KERGE: I also received my packet very early this morning and I have spent some time reading it. I will continue reading it because it does discuss some of the things that I've heard within the community. I know that they say that they want to discuss and put to rest some of the, perhaps the misconceptions that are here, or the rumors that they hear. "Potential Objections," that's what it's called. And this is the paper from S.D. and Charles Akos. I also want to continue to read, because I agree with Councilman Lipson that we are a community. We are a community that's always been open to all religions and we have prided ourselves on that. That everybody have an equal opportunity to worship according to the basic tenants of his or her own religion. And there are some very interesting things that are discussed in these papers and I want to continue to read and I'm sure that there will be more questions as we continue to go along. Mayor.

MAYOR MOSCOVITZ: Thank you. I'm sorry I haven't had a chance to read it yet. So I'm not sure just what you're both referring to. Does anyone else have a comment for me.

MR PECK: I look forward to the public hearing. If the size of the audience tonight is any predictor of the public interest in this, I assume, the council chamber will be quite full. I look forward to...

MAYOR MOSCOVITZ: This should raise the price for the seats...

MR. PECK: I look forward to an informative and hopefully a productive meeting.

MAYOR MOSCOVITZ: Mr. Sullivan, (inaudible)

MR. SULLIVAN: Yes, I do, thank you. But Mayor, if you care to comment first.

MAYOR MOSCOVITZ: I haven't read everything here.

MR. SULLIVAN: We're all being very polite here.

MAYOR MOSCOVITZ: Aren't we always?

MR. SULLIVAN: Yes. The second paragraph of the letter of November 2, 2000, from {law firm} to {law Walter Lesnevich} . I'd like to draw your attention please.

MR. LESNEVICH: Which letter?

Mr. Sullivan: Second, November. Which is in our file. {law firm}

MR. LESNEVICH: Second November.

MR. SULLIVAN: From the law firm. See, we already have a law firm involved in this. This is in our packet, I think it was with the fax cover sheet

MAYOR MOSCOVITZ: Oh yea, this one.

MR. SULLIVAN: I would very much like to have your interpretation, Counselor, on the second paragraph please. Specifically where it reads: The Eruv Association appreciates the Boroughs agreement to refrain from causing the Eruv to be removed for 30 days from October 31, 2000, while this matter proceeds before the Borough. Obviously, if the matter is not concluded in 30 days through no fault of either party, the Stand Still Agreement will continue, will continue until the matter is concluded before the Borough. That particular sentence bothers me.

MR. LESNEVICH: Let me answer you.

MR. SULLIVAN: Let me just ask you the question of why it bothers me. Does that mean if we continue, and I'm sure that we have attorneys here who are already present, does that mean that the Eruv will stand if there is litigation.

MR. LESNEVICH: Now, let me answer you. The agreement is contained in the first sentence. The second sentence beginning "Obviously..." is Mr. Shapiro's interpretation. That is not agreed to. That is his interpretation.

MR. SULLIVAN: Thank you.

MR. LESNEVICH: That is not agreed to. That is his interpretation of it. Dick Shapiro is a very good lawyer. He took what we agreed to and made a logical leap. But that's not what has been agreed to. If we don't conclude this within 30 days, what is to be done after that is not solved, is not settled. This agreement, as the Council/Mayor knows we discussed expensively but rapidly, was done so that we don't waste time and money going with the Eruv association going into court getting a temporary injunction. So we got this 30 day agreement, that 30 days encompasses enough time and Dick promised me an application immediately, and the application is dated a few days after the second. And then I looked at the calendar, the public calendar for the Borough, and the public meeting would be the 28th, and so on the 28th, if the Borough votes to allow it to stay, it stays, if it votes to remove it, it's removed.

MR. SULLIVAN: If the Borough agrees to table it, for whatever reason we've been known to table motions before.

MR. LESNEVICH: Well, if we tabled it for two weeks, which is all that you would table it for, I would say that the spirit of the matter says leave it up for those two weeks. But if the Borough votes to take it down, then our agreement is off and whether or not it... taking it down is stopped would be up to a court.

MAYOR MOSCOVITZ: Thank you.

MR. SULLIVAN: Thank you for that interpretation Tom. My other situation is this... I have not had the pleasure of reading the Espy and Charles Akos. I just got in from work. I did have the pleasure of meeting with Mr. Akos. And here's what I have to say. These are very diligent individuals who are very dedicated. And I think that they should be welcomed members of the community to Tenaflly. They are indeed developed individuals and I think that we ought to respect that. What has come to my mind and I'd like for my fellow council members to think about is the following: The Eruv is an illuusery device. We are asked to make the walls of Jerusalem tangible. That is what we're being asked. And if you looked at the ACLU vs. the City of Longbranch. In there they referred to tangible items. Tangibles such as sidewalks. Tangibles such as police forces directing traffic. We're being asked to do something a little bit different. The other thing that I want to bring your attention to is that what if I, as a developed individual asked this Mayor and council, petitioned this Mayor and Council, that we dedicate this town to St. Francis of Assisi. St. Francis of Assisi is known as a Catholic Saint of nature and peace. Now, let's say we dedicate the town and we have a petition and then I ask you to put up green and white streamers. Not a religious symbol. Green and white streamers, ribbons around the town. As they symbolize the freedoms of St. Francis of Assisi. Is that, or is that not putting my thoughts, my ideas ahead of you. Making my religious beliefs ahead of yours. I just ask that as a general question, I don't expect a response, I just want to put that out to you. The other thing that does bother me is that we have new neighbors who come in to Tenaflly, and as new neighbors, we always like to get to know our new neighbors. But new neighbors do not come to us with

attorneys. They do not come to us with outside pressure groups telling us how we should conduct our affairs in this town. That's a thought we also have to give consideration to. The other thing is that we have to give fair consideration to that these are developed doctrine people and we have to pay attention to what they need. I thought about this a lot. As I've struggled with what this comes down to is really what is a good neighbor policy. How do we understand these new neighbors and how do these new neighbors understand us? That's what's before us here today. Further, we actually have an event of trespass here in town. I called Verizon, Bell Atlantic. I spoke to the gentleman who is responsible for giving approval and his claim as well as the claim from the people at Cablevision who, by the way, rent from the utility poles. They have to get permission from the people at Verizon to put their wires up. Is that they produced a proclamation from Mr. Shuber who's freeholder of Bergen County.

MAYOR MOSCOVITZ: He's the Executive.

MS. KERGE: He's the county Executive.

MR. SULLIVAN:: Sorry, sorry. The County Executive. I stand corrected. Which had no basis, really. I understand also this group has come before council, before I was on the council. And they council had said no at that time.

MAYOR MOSCOVITZ: Actually,

MS. KERGE: Yes and no.

MAYOR MOSCOVITZ: No formal proposal was made.

MR. SULLIVAN: I was given to understand...

MAYOR MOSCOVITZ: Council can only accept or approve at a public meeting. This was never done because a formal proposal was never made. No formal presentation was made at a public meeting.

MR. SULLIVAN: I also understand that there were tapes kept at a working meeting.

MAYOR MOSCOVITZ: At a working meeting.

MR. SULLIVAN: At a work session that occurred in the summer of 1999? Was that not correct?

MAYOR MOSCOVITZ: It was a year ago, I don't remember the date. July or August..

MR. SULLIVAN: OK, let's call it July, again before I came on, but I understand that at that time there was a taped meeting. A taped meeting is that perhaps a lot of words were exchanged or a lot of misunderstandings were taped they were the basis of the Tenaflly

Eruv Association going to Mr. Schubert and getting the proclamation. And I'd like to hear those tapes because I'd really like to understand what's behind those tapes.

MAYOR MOSCOVITZ: Sure Bill.

MR. SULLIVAN: I'd like to hear the date. Because, again, I don't know the... I'd like to hear those tapes.

MS. KERGE: I know that it was 1999.

MR. SULLIVAN: I'd like to understand why this group felt that they had to go to Mr. Schubert to get the proclamation and then use that proclamation to obtain permission from Bell Atlantic, Verizon to put up their, I forget what they call it, lepsis, and why, I understand from both speaking to the people at Cable Vision and from people at Verizon they put it up as a community service based on Mr. Schubert's proclamation.

MS. KERGE: I believe Cablevision did that.

MR. SULLIVAN: (unclear) That to me is a bit of a (unclear). I like this word thing under it.

MR. LIPSON: I've hear it once before but I can't remember it.

MR. SULLIVAN: It's my gordians not to unravel a vast different word. So, all those things are kind of circulating my mind, and I want all of those things I want out on the table with the Council also to consider as we go forward.

MR. LIPSON: John, quite honestly I think that most of us have considered a lot of the things that you have said. Basically I think that what a lot of the people here they just didn't receive the last piece of literature that was placed upon our door. I think that we on the council have looked upon this, we've been involved with it, I think from the time you are on the council, we're all aware of the things that you're aware of. We appreciate the hard work, the diligence that you did in calling Verizon and calling Cable Vision. For the most part, I think that for the most part I think that everyone here on the council has done their part in coming to the decision that has been made, and I thank you for pointing out a lot of these things. But I, for one, am pretty well versed on everything that you said, and I understand the meaning from the beginning, and I'll be there at the end. Unless it goes into 2001, which a new council will be there. So, thank you John for your help in solving this.

MR. SULLIVAN: OK

MAYOR MOSCOVITZ: If no one else has any comments, then we'll ask our attorney to prepare a resolution that we ...

MS. KERGE: Excuse me Mayor, I thought we

MAYOR MOSCOVITZ: We are going to discuss it at a public, what?

MS. KERGE: I thought we were going to wait and discuss this in closed session, as far as the legalities were concerned.

MR. LESNEVICH: There's not a discussion as much as I'm going to give you my opinion as to what would happen if there were a law suit on either side. But you have to have something to go forward with. There has to be a resolution to either approve or deny it. So I'll draft it as a resolution approval and you can vote on it either way.

MAYOR MOSCOVITZ: In other words it will go on the agenda and we will have a resolution we will discuss later in closed session Walter's legal things.

MS. KERGE: That's, that's what I thought we were going to discuss later in closed session.

MR. LIPSON: Don't we have the right to say at this point in time whether we even want to have a resolution?

MR. LESNEVICH: No, no, wait a minute. Look. In closed session you're not going to discuss whether you're for or against it.

MS. KERGE: I didn't expect that.

MR. LESNEVICH: You can't do that. I'm just saying that for everybody else. We're just going to have, we're just going to do attorney-client-type discussions. But you do have to have a resolution, Councilman, to say yes or no. The resolution could be against it, it just seems more normal to have a resolution...

Man: I'm doing it just for the education...

MR. LESNEVICH: Yea, good. OK. So we'll have a resolution on it and people will vote one way or another on it. Up or down.

MS. KERGE: No, no, no. Not only that, excuse me, but we have had a meeting yet where we have heard from totally, from all sides of the public in question, and for that reason, otherwise I would see this differently and I would have discussed this with you before, but I came to the realization that we have not yet had a meeting where we've heard from the community as a whole. And it's important that we do that. And in order to do that, we must have a resolution on the agenda. So that people may speak to it. And whether we vote on it then or table it then or vote it up or vote it down or whatever we do, in order to have logical discussion of it from all sides of the question, we must have a resolution. Is that correct?

MR. LESNEVICH: Correct.

MAYOR MOSCOVITZ: That will be scheduled under new business.

MR. LESNEVICH: Yes.

MAYOR MOSCOVITZ: Under new business for next Tuesday. That will be the public meeting that's when anyone who wishes to address this can do so.

MR. LIPSON: And we'll all have the opportunity to read this from Mr. Akos...

MAYOR MOSCOVITZ: And we'll all have a chance to read everything that we now have or that might be coming to us.

MS. KERGE: And I think it will be very important to hear people speak to this. The people who are requesting this, the people of the community, whatever their feelings are, their concerns the greater community of Tenafly. I think it will be important for that and I think that, hopefully we, we only have four Council people here this evening. I hope that we will have the full set on the...

MR. LESNEVICH: You will not. Dick Wilson's going in for major surgery. That's why he's not here. So he will not be here next week. He's going to be hospitalized.

MR. LIPSON: But we will have a quorum?

MR. LESNEVICH: Certainly.

MAYOR MOSCOVITZ: We'll have five.

MR. LIPSON: Actually we won't have one. I have a show that I have to be at on the 28th and 29th so I won't be here for the council session.

MR. LESNEVICH: Well, you could if you wish right now. The Council has every right to put it on for December the 12th. Mr. Wilson will be still, that will be, maybe, I mean he is having major surgery. He might be well enough. Can you make the 12th?

MR. LIPSON: Yea, this is just...

MR. LESNEVICH: Then you might want to kick it over to the 12th so that you have, to make sure that Mr. Lipson is here. It's up to you.

MR. SULLIVAN: We could kick this item to the 12th.

MS. KERGE: Well I certainly don't believe that something of this major importance should be voted on by only two-thirds of the council.

MR. LESNEVICH: If you kick it to the 12th then I go back to Councilman Sullivan's question at the beginning (laughter), but it would seem to me to only be fair to extend the agreement to leave it up until an appropriate number of days. But I think kicking it to the 12th gets Councilman Lipson here and possibly Councilman Wilson. He is having surgery and we won't know, frankly we won't know until after the surgery whether he will be back that fast. We hope so. If it goes well he can be. But we don't know.

MAYOR MOSCOVITZ: Mr. Sullivan?

MR. SULLIVAN: Does it make sense, um, I anticipate that on this particular item there will more than likely be two council sessions because it will attract quite a lot of the public to speak. Does it not make sense to continue with the schedule as we have and have the second hearing on December the 12th?

MR. LESNEVICH: What I suggest is that you schedule it for the 12th and keep the agenda free of other items.

MS. KERGE: Other items...

MR. LESNEVICH: Other items that are time consuming.

MR. SULLIVAN: That could be a problem because I believe that's our last public meeting of the year.

MS. KERGE: Let me ask a question. Could we have it on the agenda for Tuesday evening. Have discussion on Tuesday evening. The Council members could always listen to the tapes of the meeting and be qualified and prepared to vote on the 12th. But have just the vote taking place on the 12th.

MR. LESNEVICH: Well the problem. Well, you can do that, but the problem with that is that you are asking the people who want to be there to come twice.

Group talks over each other

MS. KERGE: But would it have to be open for discussion again?

MR. LESNEVICH: No.

MAYOR MOSCOVITZ: Well we can close the discussion on it and just have the vote the following week.

MR. LESNEVICH: But then the people who are most concerned will not be here.

MAYOR MOSCOVITZ: They have to come again, but we have to come again.

MS. KERGE: We have to come again, they have to come again.

MR. LESNEVICH: You can do that if you wish, legally.

MAYOR MOSCOVITZ: Why not?

MS. KERGE: Legal and that might be the better thing. Especially since we can't devote the whole time on, what's that, the 12th to this.

MR. LESNEVICH: It seems to me that we would be better off having it all on one night. We've never done it the way that you're suggesting. Because the reason is that the people who really care...

MS. KERGE: Well I do remember another case where we had about three nights of meetings and finally the vote. It's been about five years.

MR. LESNEVICH: And that was not one of our finest adventures...

Group laughs and talks over each other

MAYOR MOSCOVITZ: Hardly the model we want to replicate.

MR. SULLIVAN: My only argument, and I just reiterate this, I do anticipate that this will bring out a wide spectrum of the community to speak. I don't think one night, personally, given what I've seen of the Council my first year here, given the mechanics of being part of the Mayor and the Council, it does seem to me that you're going to need, on this particular issue of great focus, two nights, and I would say, just like in the elections and even though I'm Republican, every vote counts. Um, I would open it up to discussions, to public discussions in both meetings, with the vote being on the second Council meeting, being the 12th. Those who speak on the 12th are different...

MAYOR MOSCOVITZ: No one speaks again.

MR. SULLIVAN: No one speaks again.

MS. KERGE: Can you do that? You can't do that. You can't do that. No.

Group talks over each other.

MR. SULLIVAN: These are the Tenaflly citizens and they deserve the right to...

MS. KERGE: If it's open, and anybody can speak

MR. SULLIVAN: Everybody should speak until they hear themselves out. You can't deny someone the right to speak.

MR. SULLIVAN: Even if they've spoken once.

Group: Right.

MR. SULLIVAN: Or a third time. You can't call it a continuation. I wouldn't feel comfortable doing that.

MS. KERGE: If it's a continuation they can still speak again, we can not bridle the voice of the public.

Group: All right.

End of tape.



MAYOR AND COUNCIL  
OF THE  
BOROUGH OF TENAFLY  
BERGEN COUNTY, NEW JERSEY

---

In the Matter of the  
Application of the TENAFLY  
ERUV ASSOCIATION for an Eruv

---

TRANSCRIPT  
OF THE  
PROCEEDINGS

Place: Tenafly Municipal Building  
100 Riveredge Road  
Tenafly, New Jersey 07670

Date: November 28, 2000

B E F O R E :

MAYOR ANN A. MOSCOVITZ  
COUNCILMEMBER KERGE  
COUNCILMEMBER PECK  
COUNCILMEMBER SULLIVAN  
COUNCILMEMBER YEGEN

ALSO PRESENT:

MR. LESNEVICH, Borough Attorney  
CHAIM BOOK, Spokesperson for  
the Tenafly ERUV Association, Applicant

---

Tape Reporters, Inc.  
Emma A. Raines  
P. O. Box 823  
East Orange, New Jersey 07019-0823  
(973) 674-8600

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## Colloquy

4

1 MAYOR MOSCOVITZ: All right. The meeting  
2 will come to order, please.

3 (Inaudible)

4 MAYOR MOSCOVITZ: Just one minute.

5 UNIDENTIFIED: Okay.

6 MAYOR MOSCOVITZ: Uh -- is the microphone  
7 working? Can you all hear me?

8 UNIDENTIFIED: Yes.

9 MAYOR MOSCOVITZ: We've had them -- the  
10 microphones upgraded for this meeting.

11 UNIDENTIFIED: Well, enhanced.

12 MAYOR MOSCOVITZ: Enhanced. Uh -- so, I hope  
13 we won't have any trouble with the -- with the volume  
14 this evening.

15 We'll rise to salute the flag.

16 UNIDENTIFIED: No, we have to read the Open  
17 Public Meetings Act.

18 MAYOR MOSCOVITZ: I'm sorry. I have to -- we  
19 have to -- uh -- read the Open Public Meetings Act  
20 first.

21 (Laughter)

22 MAYOR MOSCOVITZ: It's not that I'm excited  
23 about this tonight.

24 In compliance with the Open Public Meetings  
25 Act, P.L. 1975, C. 231, the notice requirements have

## Colloquy

5

1 been satisfied. Meeting dates for the year are  
2 confirmed and the Annual Meeting and posted on the  
3 public bulletin board in the lobby of the Municipal  
4 Center and published in the Press Journal within the  
5 first 10 days of the new year. All revised or  
6 additional meeting notices are sent via fax to the  
7 Press Journal, The Record, the Suburbanite, and the  
8 Northern Valley News.

9 And, now, we can rise to salute the flag.

10 (Flag Salute)

11 MAYOR MOSCOVITZ: Would you call the roll,  
12 please, Ms. Hatten?

13 MS. HATTEN: Mayor Moscovitz?

14 MAYOR MOSCOVITZ: Here.

15 MS. HATTEN: Mrs. Kerge?

16 MRS. KERGE: Here.

17 MS. HATTEN: For the record, Mr. Lipson is  
18 absent this evening.

19 Dr. Peck?

20 DR. PECK: Here.

21 MS. HATTEN: Mr. Sullivan?

22 MR. SULLIVAN: Present.

23 MS. HATTEN: For the record, Mr. Wilson is  
24 absent this evening.

25 Mr. Yegen?

## Colloquy

6

1 MR. YEGEN: Here.  
 2 MS. HATTEN: Thank you.  
 3 MAYOR MOSCOVITZ: Uh -- I'd like to tell you  
 4 that Mr. Lipson was -- uh -- called out of town on  
 5 business. It was unavoidable. And Mr. Wilson is in  
 6 the hospital. He will be undergoing surgery tomorrow.  
 7 Uh -- what -- as many of you know who  
 8 attended our work session, it was discussed then that  
 9 we would not be having a full Council here this  
 10 evening. And, therefore, we have decided that the  
 11 hearing will be -- uh -- on the Eruv sit -- uh -- uh --  
 12 letter will be -- uh -- continued to Tuesday, December  
 13 12th, which is our next Public Meeting.  
 14 No vote will be taken tonight. Everyone who  
 15 wishes to speak on either side of the issue will be  
 16 heard. Uh -- and then we will continue that hearing to  
 17 -- uh -- the 12th and at that time a vote will be  
 18 taken.  
 19 Whether Mr. Wilson will be able to attend or  
 20 not, we don't know. We hope so.  
 21 Uh -- what -- I would like first to ask for  
 22 the approval of the Minutes -- uh -- of the meeting of  
 23 November 9th. Would someone move that, please.  
 24 MRS. KERGE: Move to approve as written.  
 25 MAYOR MOSCOVITZ: Thank you.

## Colloquy

7

1 A second?  
 2 DR. PECK: Second.  
 3 MAYOR MOSCOVITZ: All in favor?  
 4 (Joint response in the affirmative.)  
 5 MAYOR MOSCOVITZ: Thank you.  
 6 Uh -- what we are going to do so that we feel  
 7 free to allow all the time that you want to take on  
 8 discussions is to move to the consent agenda first.  
 9 That will only take a few minutes and then we will come  
 10 back to the rest of the open -- uh -- remarks on agenda  
 11 items.  
 12 Uh -- so, Dr. Peck, would you please --  
 13 DR. PECK: Yes. Uh --  
 14 MAYOR MOSCOVITZ: -- make a motion first  
 15 about what we're adding to the consent agenda?  
 16 DR. PECK: Uh -- I move that all items listed  
 17 under Item 11 on tonight's agenda, New Business, be  
 18 moved to the consent agenda.  
 19 MR. YEGEN: Second.  
 20 MAYOR MOSCOVITZ: It's been moved and  
 21 seconded. Is there a comment on that?  
 22 Mrs. Kerge?  
 23 MRS. KERGE: Uh -- Mayor, yes. I would like  
 24 to comment on Resolution Number 00-318, which is -- uh  
 25 -- authorization to grant application to save the

## Colloquy

8

1 outdoor sculptures.

2 We have for a long time been working and  
3 looking for a way to save our Roosevelt Memorial  
4 sculpture in Roosevelt Common, and there have been  
5 applications submitted in the past and those  
6 applications have not been submitted. We believe -- I  
7 mean, have not been accepted. We believe that this  
8 year we have the opportunity to receive funding -- uh  
9 -- on the higher level with -- with a grant and we are  
10 making application for that.

11 However, because of the fact that we do not  
12 yet have the complete copy of the application, but are  
13 facing a -- a deadline of November 30th for a postmark  
14 -- and we all know what postmarks mean these days --

15 (Laughter)

16 MRS. KERGE: -- uh -- we need to go ahead and  
17 do this but with the provision that our Borough  
18 Administrator will be reviewing this to be sure that it  
19 includes the items that we want included in it and also  
20 he will be authorized to sign this. And that is part  
21 of this resolution.

22 And I make that announcement for the people  
23 who have concerns about this -- some of you earlier  
24 today. I believe your concerns have been answered.  
25 And it will be subject to review even though we are --

## Colloquy

9

1 uh -- moving to proceed with this. It's being moved  
2 with subject -- being subject to review.

3 That's what I wanted --

4 MAYOR MOSCOVITZ: Thank you.

5 MRS. KERGE: -- to say to the public.

6 MAYOR MOSCOVITZ: Uh -- now -- at this time,  
7 I -- uh --

8 MR. SULLIVAN: Excuse me?

9 MAYOR MOSCOVITZ: Oh, yes, Mr. Sullivan?

10 MR. SULLIVAN: Yes. Um -- I'd like to  
11 comment on -- uh -- Resolution 00-319 Resolution 00-  
12 320. Both have to do with the change -- approval for  
13 Change Orders in the Municipal Center project. I just  
14 want to br -- bring to the Council's and Mayor's  
15 attention, and to the public's attention, that no  
16 licenses involving our contractors, SBN, Redmann  
17 Electric and Arrow Plumbing, with the ex -- uh -- we  
18 are definitely over -- we are over our allowable change  
19 orders in all cases and over the 20 percent limits.

20 This project, now, for -- to go into just the  
21 pha -- the particular phase now for the project has  
22 cost us well over 4.8 million dollars in total since  
23 1994. I just want to make the entire audience aware of  
24 this and aware that we are definitely over our limits  
25 of the 20 percent and we need, as a Council and Mayor,

## Colloquy

10

1 to pay close attention to our expenditures on the  
2 Municipal Center project.

3 Thank you.

4 MAYOR MOSCOVITZ: Uh -- any other Council  
5 people wish to make a comment?

6 (No audible response.)

7 MAYOR MOSCOVITZ: This is the time, then, for  
8 audience remarks only on the consent agenda as -- as  
9 amended.

10 Mrs. Mosely, can you --

11 Do you want to help her with that microphone?

12 MRS. MOSELY: Virginia Mosely --

13 (Inaudible)

14 MRS. MOSELY: I think you've seen a copy --

15 (Inaudible)

16 MRS. MOSELY: I just want the audience to  
17 know it's on --

18 (Inaudible)

19 MRS. MOSELY: -- available to anybody who  
20 wants to ask questions about what I've done --

21 (Inaudible)

22 MRS. MOSELY: -- the other things that  
23 included complicates the history.

24 I also wanted to call attention -- are you  
25 listening -- to a --

## Colloquy

11

1 (Inaudible)

2 MRS. MOSELY: -- by the late David --

3 (Inaudible)

4 MRS. MOSELY: -- wrote. I found it very  
5 helpful to read -- to help in relation to --

6 (Inaudible)

7 MRS. MOSELY: -- for our community. It's  
8 called When Faith Meets Faith. And because David lives  
9 in Tenaflly, I think that people that live in Tenaflly --

10 (Inaudible)

11 MRS. MOSELY: Unfortunately, it's difficult  
12 to buy the book.

13 (Inaudible)

14 MRS. MOSELY: It may be some --

15 (Inaudible)

16 MRS. MOSELY: It might help you --

17 (Inaudible)

18 MAYOR MOSCOVITZ: Thank you, Mrs. Mosely.

19 Does anyone else wish to speak on any of the  
20 items on the Consent Agenda, as amended?

21 (No audible response.)

22 MAYOR MOSCOVITZ: Would you call the roll,  
23 please?

24 MS. HATTEN: No. We have to have someone  
25 move --

## Colloquy

11

1 MR. YEGEN: I move the Consent Agenda.  
 2 MAYOR MOSCOVITZ: Oh.  
 3 DR. PECK: Second.  
 4 MAYOR MOSCOVITZ: It's just been moved and  
 5 seconded.  
 6 MS. HATTEN: You forgot to move and second  
 7 it.  
 8 MAYOR MOSCOVITZ: That's right.  
 9 Uh -- and no comments?  
 10 (No audible response.)  
 11 MAYOR MOSCOVITZ: So, you call the roll.  
 12 MS. HATTEN: All right.  
 13 Mrs. Kerge?  
 14 MRS. KERGE: Yes.  
 15 MS. HATTEN: Dr. Peck?  
 16 DR. PECK: Yes.  
 17 MS. HATTEN: Mr. Sullivan?  
 18 MR. SULLIVAN: Yes.  
 19 MS. HATTEN: Mr. Yegen?  
 20 MR. YEGEN: Yes.  
 21 MS. HATTEN: Thank you.  
 22 MAYOR MOSCOVITZ: Now, are there -- uh -- any  
 23 members of the audience who wishes to speak on an item  
 24 on the agenda this evening?  
 25 Uh -- I believe of -- what I would like to do

## Colloquy

13

1 -- uh -- since, ob -- obviously, the subject of the  
 2 Eruv is top of the agenda here, is to ask is there one  
 3 person who would like first to explain what it is that  
 4 is being requested? Uh -- I think we should have that  
 5 knowledge before us as we discuss it.  
 6 Would you come forward, please, and give us  
 7 your name and address?  
 8 MR. LESNEVICH: Mayor, could the Board  
 9 explain the ground rules, or should I quickly?  
 10 MAYOR MOSCOVITZ: Wait. Our -- our attorney  
 11 has a few things to say.  
 12 MR. LESNEVICH: Yeah. I just want to say to  
 13 you that anyone coming up to speak has to speak into  
 14 the microphone and state their name and address because  
 15 of the tape recording system. We -- that's the reason  
 16 for that.  
 17 And, when you speak -- the Mayor will conduct  
 18 the meeting, but you speak and the Council listens.  
 19 You can't get into a dialogue discussion. Council  
 20 members will not be -- if you ask questions of Council  
 21 members, they will not respond because that's not  
 22 appropriate. This is for you to speak and them to  
 23 listen.  
 24 Thank you.  
 25 MR. BOOK: Thank you very much.

## Colloquy

14

1 Good evening, Mayor.  
 2 Good evening, Ms. Kerge.  
 3 Dr. Peck.  
 4 Mr. Yegen.  
 5 Ms. Hatten.  
 6 Mr. Lesnevich.  
 7 Mr. Sullivan.  
 8 Mr. DiGiacomo.  
 9 And fellow Tenaflly residents.  
 10 My name is Chaim Book. I live at 112  
 11 Highwood Avenue here in Tenaflly.  
 12 My wife, Josefa (phonetic), and my three  
 13 sons, Benjamin, A.J. and Gabriel.  
 14 I'm the spokesperson for the Tenaflly ERUV  
 15 Association, and I'm appearing here this evening in  
 16 support of the ERUV Association's November 7th  
 17 application requesting that the Borough Council not  
 18 remove, or order the removal, of an Eruv.  
 19 Before I begin, I would like you to know that  
 20 we have followed your suggestion at the working session  
 21 last week. And, in order to economize on time and to  
 22 minimize repetition, I prepared a presentation on  
 23 behalf of the -- all of the members of the Association.  
 24 I've also asked Stephanie Dardik, who's a  
 25 member of the Association, a long-time Tenaflly

## Colloquy

15

1 resident, to speak briefly when I finish my remarks on  
 2 how this issue affects her and her family.  
 3 I want to start off by saying that we are all  
 4 very sorry for the way that this whole issue regarding  
 5 the Eruv has evolved. Both the long-time members of  
 6 this community that have been involved in this project,  
 7 as well as those of us who have moved into Tenaflly  
 8 recently, never intended to create any kind of  
 9 controversy.  
 10 If I may take a few moments just to address a  
 11 few personal remarks?  
 12 I'm very happy that my family and I chose to  
 13 move to Tenaflly. We love it here very much. We chose  
 14 to move to Tenaflly because we felt it was the best  
 15 place to raise our family.  
 16 It's a terrific place for kids and families.  
 17 It has so much to offer. It's such a beautiful area,  
 18 such lovely homes.  
 19 It is truly a cohesive community that values  
 20 education, as we do, has diversity that we value with  
 21 people who come from a variety of backgrounds. Yet,  
 22 all have similar values to our own.  
 23 It's a place where people respect each other.  
 24 And that's something that's very important to us. It's  
 25 a part of the values that we try to impart in our

## Colloquy

16

1 children.

2 Our children have participated in activities  
3 in the short time that we've been living here at the  
4 Tenaflly Recreation Center, at the Tenaflly Fire  
5 Department on Safety Day, and at the Tenaflly Nature  
6 Center. I have to say that my children's first  
7 up-close look at a fire engine was at Safety Day at the  
8 Tenaflly Fire Department, and it was really a thrill for  
9 them and it was wonderful for us to witness.

10 They love to play at --

11 (Indiscernible)

12 MR. BOOK: -- Park and --

13 (Inaudible)

14 MR. BOOK: -- Park and we hope someday that  
15 they'll be part of the Peewee Little League teams here,  
16 playing baseball and soccer.

17 We enjoy the local shopping and all the local  
18 amenities. And, all in all, I have to say that we're  
19 really happy with our decision that we moved here. We  
20 think it's a great place. We think that it is all due  
21 to wonderful community, a cohesive community, and to  
22 this Council and to the local government that has  
23 provided so much to us and to the community.

24 I'm here tonight to talk about an Eruv, an  
25 Eruv in Tenaflly. To a certain extent, ladies and

## Colloquy

17

1 gentlemen, there have been some misunderstandings and  
2 some lack of communication on this issue. And that is  
3 truly regrettable.

4 I hope that I can persuade you that no harm was  
5 intended.

6 I'd like to take a few moments to first  
7 explain what is an Eruv. The Jewish Sabbath is from  
8 sunset on Friday to sunset on Saturday. It's a  
9 wonderful period of time for us. It's very enjoyable.  
10 We spend time with our families and with our friends  
11 and with the community at -- at --

12 (Inaudible)

13 MR. BOOK: It's a day of rest. As a day of  
14 rest and as a religious day, Jews, in general, observe  
15 certain rituals. They light Sabbath candles, attend  
16 synagogue with special Sabbath prayers. They have a  
17 family Sabbath meal.

18 As a day of rest, many Jews, including  
19 orthodox Jews, refrain from many of their usual weekday  
20 activities. Those include working, conducting  
21 business, handling money. And among the restrictions  
22 of the day are not to carry or to push objects beyond  
23 the confines of their homes.

24 It sounds crazy. Admittedly. But that is  
25 not what's being judged here right now. This is part

1 of our religion. This is what we believe in. We don't  
2 carry or push objects outside of our home.

3 It is not an easy restriction. It's not  
4 something that -- uh -- a fun restriction. It's a  
5 restriction and it's something we have to deal with.  
6 Luckily, Jewish law stipulates that the prohibition of  
7 carrying on the Sabbath may be lifted with the  
8 establishment of an Eruv.

9 What is an Eruv? An Eruv is an artificial or  
10 natural boundary established with the agreement of any  
11 governmental authority that allows the carrying in the  
12 public domain.

13 You know, governmental authority is usually  
14 granted, or certainly in the United States is granted,  
15 by a ceremonial proclamation. Such a proclamation has  
16 no legal impact from an American legalistic viewpoint.  
17 It simply provides the religious permission which  
18 enables observant Jews to perform secular acts on the  
19 Sabbath.

20 Eruvs are --

21 (Indiscernible)

22 MR. BOOK: They're throughout the world.  
23 They're throughout Bergen County. They're throughout  
24 New Jersey. They're throughout this great country.

25 On a local level, there are Eruvs in Fort

1 Lee, in Englewood, in Fair Lawn. On a state level,  
2 there are Eruvs in Deal, New Jersey, Elizabeth, New  
3 Jersey, Edison, New Jersey. On a national level, there  
4 are Eruvs in Boston, Atlanta, Los Angeles, Chicago,  
5 Baltimore. And I can go on and on. And, even on an  
6 international level, there are Eruvs in London,  
7 Antwerp, Zurich, Sydney, Australia.

8 And the impact of an Eruv is very strong.  
9 The people who are most impacted by the restriction  
10 against carrying and are most benefitted by an Eruv are  
11 the elderly, the disabled, and parents with small  
12 children. Without an Eruv these people are relegated  
13 to their homes. They can't visit their friends on  
14 their day -- on their day off. They can't go to public  
15 parks. They can't go to the synagogue. Why? Because  
16 they can't carry. With an Eruv comes freedom, comes  
17 quality of life.

18 How is an Eruv constructed? An Eruv requires  
19 physical demarcation. In previous times, they would  
20 actually have to rope an area off.

21 Well, today in the year 2000, it's great. We  
22 have telephone wires, cable wires, Internet wires,  
23 electrical wires everywhere. It's so much easier and  
24 so much less intrusive.

25 But even with the existence of those wires

## Colloquy

20

1 that within themselves create a boundary, in order to  
2 form an Eruv there must be the placement of certain  
3 markers. And these markers are called leffees  
4 (phonetic). And they're placed on or near the top of  
5 these utility poles.

6 In the case of Tenaflly, in particular, these  
7 leffees are made out of the same ground wire --

8 (Inaudible)

9 MR. BOOK: -- that is currently approved by  
10 and used by all of the local utilities. This is not a  
11 foreign object that's placed on top of the pole.

12 And the leffees are virtually invisible. If  
13 I showed you a telephone pole or utility pole here in  
14 town and I told you, take a look at this pole, there's  
15 a leffee on top of it, ladies and gentlemen, I will  
16 tell you that it is very difficult to find. I, who  
17 know some of the poles that have leffees, have a hard  
18 time recognizing the leffee on the pole just by looking  
19 at it.

20 I previously distributed photographs of some  
21 of the poles in town and what a leffee looks like. I  
22 have blown up those photographs and I'm more than happy  
23 to share those photographs with you if you would like.

24 May I hand this up?

25 MAYOR MOSCOVITZ: You may. Certainly.

## Colloquy

21

1 MR. BOOK: And, finally, these leffees, they  
2 don't interfere with anything the utility companies do.  
3 The utility companies know that they're up there. They  
4 know what they're -- what they are, and they're able to  
5 work around them.

6 I'd like to spend a few minutes -- as I  
7 alluded to earlier, I feel that there's a certain  
8 misunderstanding and a certain lack of communication.  
9 I'd like to spend a few minutes talking about what --  
10 talking -- talking about what exactly happened in this  
11 case.

12 In June of 1999, several Jewish Tenaflly  
13 residents sought to establish an Eruv in Tenaflly. Two  
14 Tenaflly residents approached the Mayor and discussed  
15 with her the prospect of having her ceremoniously issue  
16 a proclamation required by Jewish law to create the  
17 legal fiction of establish -- of establishing a private  
18 domain. During that conversation, the Mayor said that  
19 she sounded -- that -- that it sounded like an  
20 interesting idea, but, before she could pass judgment  
21 on that, she wanted to consult with the Borough  
22 Council.

23 Because the request that was made at that  
24 time by these Tenaflly residents was simply for a  
25 ceremonial proclamation required under religious law,

1 and not any type of legal permission under local  
2 ordinance or a local state action or local law or -- or  
3 federal law, it was simply a request for a religious  
4 proclamation -- or a ceremonial proclamation -- excuse  
5 me. These -- these men -- these Tenaflly residents did  
6 not file a formal application with the Borough.

7 In July of 1999, the Mayor and Council had  
8 the regularly scheduled work session. And, during that  
9 work session, Mayor Moscovitz raised the issue  
10 regarding the Eruv proclamation. This was not part of  
11 the published agenda. There was no notice to the  
12 people -- to -- to the people who had requested it that  
13 it was going to be discussed that evening, and they did  
14 not attend. However, many people did find out about it  
15 and did attend.

16 And, so, during the course of that -- uh --  
17 work session, a vote was taken and public comment was  
18 permitted. I'm not going to characterize what was said  
19 at that meeting. You certainly have access to the  
20 tape. And I certainly have a transcript if anybody  
21 would like to have a copy of the transcript.

22 But it wasn't until several weeks later that  
23 we found out about the work session and about what had  
24 been discussed. And, after obtaining a tape and  
25 listening to the tape, we drew our own conclusions.

Colloquy

23

1 The one thing that was absolutely clear to  
2 us, after listening to the portion in which Council  
3 members and the Borough Attorney discussed the issue,  
4 was that several people said, and no one was  
5 contradicted, why do we, the Borough Council, need to  
6 grant this proclamation? The Eruv association can go  
7 directly to the utilities and get permission without  
8 our approval. It's crystal clear.

9 I want to stress that because the Council  
10 clearly indicated that its permission was not necessary  
11 -- and there is no local ordinance addressing the issue  
12 -- we acted in good faith in understanding that if we  
13 obtained permission from the utilities, as was  
14 suggested by Council members, and if we obtained --  
15 obtained a religious proclamation in another way, that  
16 there would be no prob -- no problem. If we made a  
17 mistake and we misunderstood, we apologize. What I'm  
18 trying to stress is that there was no nefarious purpose  
19 and there was no -- there was no bad faith here.

20 And, thus, in November of 1999, members of  
21 the ERUV Association approached Bergen County Executive  
22 Pat Schuber and asked if he would ceremoniously grant  
23 the religious proclamation necessary to establish an  
24 Eruv in Tenaflly and some of the surrounding towns,  
25 thereby allowing the ERUV Association to erect an Eruv

1 according to Jewish law.

2 Mr. Schuber --

3 (Indiscernible)

4 MR. BOOK: -- several times. He did not  
5 raise any objection to it. He agreed to do it and he  
6 signed the proclamation on December 15th of 1999.

7 After the holidays, the Association then  
8 approached Bell Atlantic, now known as Verizon, and  
9 requested permission to erect an Eruv on Bell Atlantic  
10 poles. And Bell Atlantic readily agreed to grant  
11 permission.

12 I personally spoke to John Donnelly of Bell  
13 Atlantic and I spoke to in-house legal counsel of Bell  
14 Atlantic, and they sent me a copy of a standard form  
15 license agreement that they had signed dozens of times  
16 with other -- with other people in other towns granting  
17 permission to use utility poles for the purposes of an  
18 Eruv.

19 They asked me -- first of all, they explained  
20 that they were requiring us to obtain insurance, which  
21 we did. They required a million dollars of -- of  
22 insurance coverage. And they asked me for whatever  
23 paperwork I had.

24 They did not ask any questions about what  
25 legal authority there was. They had the legal

1 expertise to make that call. They have an extensive  
2 in-house legal counsel's office and they were able to  
3 make that determination. And, frankly, I had several  
4 conversations and -- and -- and, not once, did anyone  
5 from Bell Atlantic, whether it was Mr. Donnelly,  
6 whether it was anyone in the legal counsel's office,  
7 none of them raised the issue as to, hey, did you get  
8 the Borough of Tenaflly's permission on this? It wasn't  
9 even raised as an issue.

10 If they had said we can't do this until you  
11 have the Borough of Tenaflly's permission, we wouldn't  
12 have had any steps further to take at that point. At  
13 that point, no question about it, we would have been  
14 right back here going through this application process.  
15 But, they never raised it. We could not find any local  
16 ordinance on the issue and, therefore, we felt that we  
17 were acting in a proper way.

18 Shortly thereafter, we entered into the  
19 license agreement with Bell Atlantic and our  
20 understanding was that once we had the license  
21 agreement with Bell Atlantic we fulfilled our legal  
22 obligations. And we were able to use the telephone  
23 poles in establishing an Eruv.

24 We then went out and raised a considerable --  
25 considerable amount of money in order to erect the Eruv

-- in order to buy the materials and get the supervision needed to make sure that it was done properly. And we specifically went to get the most unobtrusive materials possibly to use, which is why we went out and actually got the same ground wire materials that are used by the local utilities.

We had a discussion with someone from Cablevision. We asked them whether they could help us out in putting up the leffees. And they agreed to do so as a community service, as they had done many times before in other towns throughout New Jersey. The Director of Operations for Cablevision agreed to provide the personnel and the trucks to get it done and was very gracious about it.

And the Eruv was completed in September of this year. In September, the Mayor called Rabbi Shane (phonetic), the spiritual leader of --

(Indiscernible)

MR. BOOK: -- Palisades, to raise issues about the Eruv. Rabbi Shane told the Mayor that he was not involved in the project -- which is the case, he's not involved in this project -- but that he would convey the message to the people who were involved. And he then called me and said, you know what, Chaim, you ought to pick up the phone and you ought to talk to

the Mayor about it. She's very concerned about the issue and maybe you could explain the issue to her.

So, I did call the Mayor. I called several times. Unfortunately, we did not have an opportunity to speak.

However, apparently, the Mayor did speak to a number of different people or perhaps other -- others on the Council were able to speak to other people. I don't know.

And the next message that I received was that there were certain Tenaflly residents who were members of the U.J.A., United Jewish Appeal, who were concerned about the issue of the Eruv. And I received a phone call from Joy Kerlin (phonetic), the Executive Director of the Jewish Community Relations Council, which is a part of the U.J.A., and Rabbi Shmuel Goldin, who's the rabbi of Congregation Ahavath Torah in Englewood, who's a member of the Board of the Jewish Community Relations Council. And they asked me to meet with them to explain to them what had happened, what had occurred, and what went about, which I did.

Together with others, we had a meeting and we explained the history of what happened here. And their feeling was at the conclusion of our meeting that rather than my -- my personal attempts to try to

## Colloquy

28

1 contact the Mayor or Council members or any other  
 2 member of the Association's (sic) attempts, that it  
 3 would be more beneficial for Rabbi Goldin and Ms.  
 4 Kerlin, who are long-time members of the Jewish  
 5 Community Relations Council, and, as they expressed it,  
 6 professionals in -- in terms of -- uh -- helping -- uh  
 7 -- bridge communication gaps, they felt it would be  
 8 more beneficial for them to meet with the Mayor first  
 9 and to explain the issue and to set up a future meeting  
 10 for members of the Association to meet with the Mayor  
 11 and any Council members --

(Inaudible)

12  
 13 MR. BOOK: And they set up that meeting. And  
 14 Ms. Kerlin and Rabbi Goldin met with the Mayor and with  
 15 Mr. Lipson, and they had an extensive meeting. And, at  
 16 the end of the meeting, the Mayor explained that a  
 17 principal objection to the acts of the ERUV Association  
 18 was that we had trespassed in the Tenafly Nature Center  
 19 and that if we agreed to remove the materials in the  
 20 Nature Center, the Town would then be amenable to  
 21 exploring options to resolve the dispute.

22 We imme -- upon being told this by Rabbi  
 23 Goldin and Ms. Kerlin, we immediately agreed with them  
 24 that we would do whatever we could to remove those  
 25 materials. And, frankly, I have to tell you I'm not

## Colloquy

29

1 offering you this as an excuse but I had no idea that  
 2 the materials were put up in the Nature Center.

3 As soon as I found out about it, I personally  
 4 was very upset about it and I ordered our own workers  
 5 to go into the Nature Center and take down whatever was  
 6 there because I felt it was not right. By the time  
 7 they got there it was the next morning. They found out  
 8 that everything had already been removed by the Town.

9 That same day, Ms. Kerlin and Rabbi Goldin  
 10 tried to call the Mayor to tell her that we had agreed  
 11 to take down the materials in the Nature Center and we  
 12 were intending to call to try to set up a future  
 13 meeting to discuss the issue further, but,  
 14 unfortunately, there were no -- there were no further  
 15 meetings.

16 And the next action, as far as, you know, --  
 17 uh -- was the Mr. DiGiacomo contacted Cablevision and  
 18 asked the Cablevision to remove the Eruv materials from  
 19 the telephone poles. Cablevision wrote to me, said  
 20 they would begin removing the materials within --  
 21 within three days. Frankly, this was a lot of  
 22 pressure. A three-day deadline is not a long deadline.

23 Considering that we had had so much trouble  
 24 communicating, having simple, direct conversation, we  
 25 felt that it was necessary at this point, considering

1 that we were being told that the materials were being  
2 immediately removed, that we involve legal counsel.

3 And, therefore, I called my friend, Dick  
4 Shapiro, who's an attorney in Newark, and I asked him  
5 if he would represent us and I asked him if he would  
6 intervene on our behalf. And, as a col -- former  
7 colleague of Mr. Lesnevich, Mr. Shapiro and Mr.  
8 Lesnevich discussed the issue and, thankfully, they  
9 were able to reach the compromise that brings us here  
10 today.

11 The Town agreed to instruct Cablevision not  
12 to remove the Eruv materials for 30 days and to allow  
13 the Association to file the application that is before  
14 you this evening.

15 I would like to stress one point. We  
16 understand that the granting of a proclamation, or even  
17 of a resolution, creates certain problems for the  
18 Council and creates certain possible legal  
19 ramifications. And -- and it is not what we are  
20 seeking.

21 We are not seeking a resolution; we are not  
22 seeking a proclamation. We are -- what we are asking  
23 for is -- we are asking you not to act. We are asking  
24 you not to order Cablevision to remove what is already  
25 standing.

1 Why, you ask? Why should you grant this  
2 application and not order the removal of the leffees?  
3 As I explained earlier in my presentation, this is a  
4 very important issue to us. It affects each of us  
5 individually and as family members and as community  
6 members. It's something that affects our quality of  
7 life.

8 It's something that doesn't interfere with  
9 anyone else's rights in this town in any way, shape or  
10 form. There's no aesthetic issue involved. You can't  
11 see that the -- that the leffees are up on the poles.  
12 There have been no additional wires added.

13 There's been no obstruction of any traffic,  
14 or any signs. It doesn't impede the utility companies  
15 in any way. It is very clear that this is something  
16 that is beneficial to certain people and does not  
17 interfere with the rights of any other people and does  
18 not impede anyone in any way, shape or form.

19 Second, there is no cost to the Borough.  
20 We're not asking you to pay for anything. We're not  
21 asking you for any money or any funding, not now, not  
22 ever. We paid for putting it up. We will pay for  
23 maintaining it. We paid for the insurance. We will  
24 continue to pay for the insurance. There's no money  
25 issue involved.

1 Finally, there's no constitutional issue  
2 involved. I've heard a lot about that. This is  
3 governmental involvement with religion. Ladies and  
4 gentlemen, it is very clear to me, it is very clear to  
5 anyone who has actually sat down and read the case law  
6 that this is not prohibitive governmental involvement  
7 with religion.

8 We are not imposing anything religious on the  
9 town. We're not asking for an endorsement of religion.  
10 We're not asking for an endorsement of any religious  
11 practices. What we're asking you to do is not to take  
12 something away which would allow religious people to  
13 perform secular acts on their Sabbath.

14 Specifically on that issue, one looks at the  
15 Long Branch case which was attached to the application.  
16 It sets it out very clearly. Whatever state action,  
17 which would mean the action taken by this Council --  
18 any action taken must have a secular purpose, must have  
19 a principal effect that does not advance religion, and  
20 should not foster ex -- excessive entanglement with  
21 religion.

22 The Court clearly found, number one, there is  
23 a secular purpose in putting up an Eruv, and that  
24 secular purpose is exactly what an Eruv is. An Eruv is  
25 not a religious symbol. An Eruv allows religious

1 people to perform secular acts -- carrying, pushing a  
2 stroller, carrying a walker, carrying a gift to a  
3 friend. There's nothing religious about that.

4 It does not advance religion. You're not  
5 choosing to endorse one form of religion over another.  
6 You're simply providing the ability for religious  
7 people to enjoy their Sabbath. Nothing more. It's not  
8 a religious issue.

9 The fact that we're using our own money to  
10 pay for it is -- is directly impacted by the Long  
11 Branch case. The Long Branch case specifically says  
12 that the fact that you are not paying for it and you're  
13 not being asked to pay for it indicates that it is not  
14 an endorsement of religion.

15 And, finally, the Long Branch case  
16 specifically says that by putting up an Eruv, it does  
17 not impose any religion on the other residents of the  
18 town where residents are not confronted with any  
19 visible religious symbols. And, again, that's  
20 important. You can't see these leffees. It doesn't  
21 impose anything on anyone.

22 In sum, ladies and gentlemen, we really do  
23 feel very badly that anyone feels that their toes were  
24 stepped on, that their feelings were hurt, or that this  
25 created a big hullabaloo. It was not intended that

## Colloquy

34

1 way.

2 What we're asking for is that you not remove  
3 an Eruv which is up in this town and which allows us to  
4 carry and push items on the Sabbath.

5 I'd like to ask Ms. Dardik now to -- to just  
6 spend a couple -- of moments just explaining how  
7 speci -- how an and her family.  
8 And when Ms. Da am certainly  
9 available to ar r respond to -- uh  
10 -- to any comme sh to do that.  
11 MAYOR ou.

12 Your lease?  
13 MS. s Stephanie Dardik  
14  
15 Gottlieb.

16 MS. GOTTLIEB: I live at 133 --

17 MAYOR MOSCOVITZ: Uh -- excuse me.

18 Stephanie Dardik --

19 MS. GOTTLIEB: Gottlieb.

20 MAYOR MOSCOVITZ: Gottlieb.

21 MS. GOTTLIEB: And I live at 133 DeVriese

22 Court.

23 I'd like to -- to just take a brief moment  
24 and tell you a little bit about myself. I'm a musician  
25 and I'm a mother of two beautiful little girls, Zoe

## Colloquy

35

1 (phonetic) and Dossa (phonetic), ages 5 and 3, and I'm  
2 expecting my third child in March. I've also been  
3 living in Tenaflly for 29 years.

4 Since the time that I was a child I had  
5 picnics and fed the ducks in Roosevelt Common. I've  
6 participated in municipal programs. I had written my  
7 bicycle and my skateboard all over town.

8 My family members and myself have always been  
9 members of the Tenaflly Swim Club.

10 Um -- the first time I ever voted was in  
11 Tenaflly and I've continued to vote in Tenaflly since  
12 then.

13 I'm a life member of the Tenaflly Nature  
14 Center and my name is even engraved on the plaque  
15 that's hanging inside the Nature House.

16 Um -- in short, Tenaflly is my home. When my  
17 husband and I got married, we chose to settle and raise  
18 our family in Tenaflly. It was not a difficult decision  
19 for us to make. We have been appreciating Tenaflly and  
20 enjoying it here for a few years now together.

21 But, two and a half children later, we're  
22 faced with this issue of the Eruv and it's become much  
23 larger and, unfortunately, much more disturbing that I  
24 ever could imagine it would be. To me, the issue of  
25 the Eruv is very short and very simple.

## Colloquy

36

1 Having an Eruv here in Tenaflly allows me to  
 2 go to synagogue with my children on Sabbath. They're  
 3 young and, since we don't drive on Sabbath, walking  
 4 necessitates the use of a stroller, which I am  
 5 restricted from doing without an Eruv on the Sabbath.

6 The Eruv allows me to carry a diaper bag,  
 7 juice boxes, and any extra anything that I might need  
 8 for the kids or for myself. It allows us to go out as  
 9 a family together, to share meals and visit with  
 10 friends in town, to go to --

11 (Inaudible)

12 MS. GOTTLIEB: -- or Griffin Park or wherever  
 13 we may choose to go on a lovely afternoon, or just to  
 14 take a walk.

15 Without an Eruv, I'm virtually a prisoner in  
 16 my home. And, to be frank, it's really surprising to  
 17 me that this has been such a huge controversy for  
 18 something that, to me, so -- seems so completely  
 19 unobtrusive as the inclusion of an Eruv in a community.  
 20 This is something that can be found in towns across the  
 21 country and around the world.

22 And everything that's gone on in this town  
 23 has brought me personal grief and pain because of how  
 24 much I love this town. And I'm sorry for the  
 25 divisiveness that it's caused, but I hope that people

## Colloquy

37

1 will understand that this is not something that should  
 2 be a huge issue in this manner.

3 The Eruv is a simple and practical solution.  
 4 I just want to be able to go to synagogue with my  
 5 family. I believe that it's an important part of my  
 6 children's education. It's a part of their identity  
 7 and it's a fundamental desire that is immediately  
 8 addressed with the existence of an Eruv.

9 Now, I want to reiterate how much I love  
 10 Tenaflly. I love its beauty. I love its --

11 (Inaudible)

12 MS. GOTTLIEB: I love its character and its  
 13 history.

14 And I'd like to say how impressed I am by the  
 15 great lengths and expense that the ERUV Association has  
 16 gone to insure that this Eruv is absolutely invisible  
 17 even to those who strain to find it. It does nothing  
 18 to effect the beauty of Tenaflly or inconvenience its  
 19 residents in any way. It's simply enables me to  
 20 observe the Sabbath in a way that I choose to, in a way  
 21 that is comfortable for me and for my family.

22 I just ask that the members of the Council  
 23 and that the greater community of Tenaflly would be  
 24 mindful of this. It is a simple and fundamental thing.  
 25 I believe that when all is said and done, it is -- it

## Colloquy

38

1 is -- the issue is the ability that each one of us  
2 should be able to observe our religious beliefs in a  
3 peaceful manner regardless of who we are or what our  
4 beliefs may be.

5 Thank you.

6 MAYOR MOSCOVITZ: Thank you.

7 Uh, I saw a hand here and then there.

8 Yes, come forward. Give us your name and a

9 -- yes, please.

10 MR. MADINSKI: I hope to take less time than  
11 my predecessors. My name is John Madinski (phonetic),  
12 Dogwood Lane. I'm a resident for 50 years. My  
13 children have been born here, graduated from school.  
14 They live here. My grandchildren live here also.

15 I have two questions. One of a personal  
16 nature, one of a legal nation -- nature. I'm not  
17 versed in the law but I believe that there is something  
18 --

19 (Inaudible)

20 MR. MADINSKI: -- compounded by the -- the  
21 members of the Jewish Council and others --

22 (Inaudible)

23 MR. MADINSKI: -- resolute separation between  
24 church and state. And here we have something that  
25 while is not religious is intended only to favor one

## Colloquy

39

1 particular religious group.

2 The second thing is a purely physical one.  
3 And that is my property has a 300 odd foot border  
4 (phonetic) between Alpine and Tenaflly. I'm not aware  
5 of any trespassing on my property. I'm not aware that  
6 there are any utility lines or anything else that an  
7 Eruv could use to include my property in that and I  
8 would like to respectfully ask that somebody will  
9 answer this --

10 (Inaudible)

11 MR. MADINSKI: The other thing involves the  
12 Knickerbocker Golf Course. There is roughly at least a  
13 third of a mile from one end to the other of the border  
14 between Tenaflly and Bergenfield on the Knickerbocker  
15 Country Club.

16 (Inaudible)

17 MR. MADINSKI: -- I'd like to ask my  
18 predecessors how they will construct this.

19 And in clusing -- in closing, I believe  
20 there's something about the Constitution cannot pay for  
21 the establishment of any one religion. If this is not  
22 a religious thing, I just don't understand why it's so  
23 vital for the religious pursuits of some people to  
24 absolve them from what would appear to be their  
25 religious obligations under normal Judaic law.

## Colloquy

40

1 Thank you.  
 2 MAYOR MOSCOVITZ: Thank you.  
 3 (Applause)  
 4 MS. MELTZER: Adrienne Meltzer --  
 5 MR. BOOK: Okay. Just as to the point of  
 6 order, I -- I just don't know the procedure here. Am I  
 7 supposed to respond?  
 8 MR. LESNEVICH: No, sir. Uh, after -- I -- I  
 9 would suggest you take notes and I'm sure you'll have  
 10 an opportunity to speak again later --  
 11 MR. BOOK: Very good. I'm sorry.  
 12 MR. LESNEVICH: -- and address any issues you  
 13 choose.  
 14 MS. MELTZER: I'm Adrienne Meltzer, 1 Byrne  
 15 Lane.  
 16 In the interests of --  
 17 (Indiscernible)  
 18 MS. MELTZER: -- before I read my prepared  
 19 statement, I'd like to just read the bottom paragraph  
 20 of the proclamation that Mr. Book is referring to from  
 21 William Schuber, the Bergen County Executive.  
 22 It reads:  
 23 "The said Eruv shall not be valid or binding  
 24 for any other purpose and this proclamation creates no  
 25 rights, duties or obligations enforceable in any court,

## Colloquy

41

1 whether in law or in equity. This proclamation shall  
 2 not diminish, increase or effect any other rights  
 3 granted under New Jersey law nor shall it deem to  
 4 authorize any physical construction that would  
 5 otherwise require permission from any local, municipal,  
 6 county or state boards."  
 7 This was at the bottom of the proclamation by  
 8 Mr. Schuber, of which somehow it was neglected to relay  
 9 to Cablevision. Um -- omission is sometimes -- well,  
 10 let's just leave it. It's a great omission, as far as  
 11 I'm concerned.  
 12 My family has also lived in Tenaflly many  
 13 years -- I'd say about 35 years or more. Tenaflly --  
 14 and we love Tenaflly. That goes without saying.  
 15 Tenaflly is a diverse community and values the  
 16 free exercise of religion which takes place here and  
 17 now in this community. The congregants of the --  
 18 (Indiscernible)  
 19 MS. MELTZER: -- Synagogue on the Palisades  
 20 have been practicing orthodox Judaism in Tenaflly  
 21 without an Eruv for many years now. Part of being an  
 22 orthodox Jew is believing that the Torah is absolute  
 23 and is a divine revelation and that the Torah  
 24 determines how our lives are lived.  
 25 Nowhere in the Torah is an Eruv mentioned.

## Colloquy

42

1 The Eruv, is as a matter of fact, an artificial  
2 contrivance to get around orthodox Judaic religious  
3 laws. The fact is that there is the free exercise of  
4 religion in Tenaflly without the Eruv.

5 While reviewing the application put forth by  
6 the Tenaflly ERUV Association, please note that not one  
7 of the legal cases submitted in support of the  
8 application pertain to a community that in -- and this  
9 is including the Long Branch case -- pertain to a  
10 community that had not initially given permission for  
11 an Eruv. Therefore, none of these cases are relevant  
12 or do they have anything to do with tonight's  
13 application. Interestingly enough, though, each  
14 decision read that a municipality may give permission  
15 for an Eruv, not that they must give permission.

16 Our town, our municipality should not enter  
17 into any special relationship, arrangement or  
18 accommodation with any religious group. It sets a  
19 terrible precedent. There is no law that says we have  
20 to and we must choose not to.

21 Thank you.

22 (Applause)

23 MR. VICTORIA: Albert Victoria, 309 Hudson  
24 Avenue, Tenaflly.

25 I have a couple of questions to ask before I

## Colloquy

43

1 proceed. Uh -- if it was a matter of selective  
2 listening by these people of something that they heard  
3 in the tapes or the transcript, how could they go ahead  
4 by a selective listening of someone saying they don't  
5 need our permission. That bothers me.

6 Uh -- where is the synagogue or temple base,  
7 and how many of those people are living in this town?  
8 This is another one of my questions. But -- uh -- this  
9 -- uh -- they're asking us not to view this as a  
10 religious matter in a sense because someone just spoke  
11 for them and tried to raise the red herring of  
12 anti-Semitism. I don't see that here.

13 It's just a group of people who are trying to  
14 circumvent their own religious laws to erect a  
15 contrivance to get around it. As a matter of fact, I  
16 find the town giving very, very preferential treatment  
17 because there was another religious group in this town,  
18 a church, -- uh -- that had a minor infraction and they  
19 were fined hundreds of dollars a day by this  
20 administration because of this minor infraction.

21 Uh -- now, what these people are doing,  
22 they're seeking retroactive approval for an illegal  
23 act. There's no fines being imposed on them. There's  
24 no burden of a hun -- of hundreds of dollars a day for  
25 fines.

## Colloquy

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1 They just want what they want. To circumvent  
2 their own laws.

3 In Union City, I had a --

4 (Inaudible)

5 MR. VICTORIA: -- this, on Deeter (phonetic)  
6 Street and Park Avenue. I thought it would be a really  
7 nice thing to allow the Yeshiva to put up this thing.  
8 It sounded good, and I helped. It was put up.

9 And then the next newer group of people came  
10 in. We did business out of my warehouse on Saturdays.  
11 The new group of people came in and claimed  
12 sacrilegious intrusion on their peaceful, holy lands,  
13 forcing me to close on Saturdays. American Industries  
14 on Palisade Avenue, their Jewish people that worked on  
15 Saturdays were ostracized because they had agreed to  
16 this.

17 It's like a hostile take-over of our  
18 community. I don't think that we should provide it.  
19 It hurts us all. And what do we do when there's  
20 another group of some sort that wants to intrude onto  
21 their holy lands? How do you deal with that? How do  
22 you make exceptions?

23 We've got to stay away from this thing and  
24 stay away from that red herring that they're trying to  
25 raise.

## Colloquy

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1 (Applause)

2 MR. TENZER: Thank you. My name is Marvin  
3 Tenzer. I live at 66 Kent Road. I've lived there for  
4 the last 21 years. I've raised three children in the  
5 town and, until this moment, I've been very happy  
6 living here.

7 Uh -- I've heard people addressing this body  
8 as though it was a court of law on one hand and some  
9 addressing it as though it was a religious court. My  
10 understanding of this body is that it's neither a court  
11 of law nor a religious court.

12 So, the legal arguments will, if necessary,  
13 be fought out where they're fought out and the  
14 religious arguments are probably not for anybody here.

15 The only issue is whether this Eruv is bad  
16 for the town. There's a legislative question here.

17 Uh -- is there a reason why this Eruv is  
18 going to hurt the town? I can't think of any. It  
19 increased diversity. It hurts no one. It improves the  
20 quality of life for many.

21 Uh -- I think that if, in fact, this winds up  
22 in litigation, it'll be a very sad day for Tenafly.  
23 The media attention would be most unfortunate. The  
24 characterization of the town and its residents,  
25 including myself, would cast a very bad light on all of

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us -- uh -- and maybe with some justification.

I urge that the Eruv be approved. And I have heard nothing that would support any -- uh -- resolution which would reject the Eruv.

Thank you.

(Applause)

MR. KURTZ: Good evening, Mayor and Council. I'm Dave Kurtz. I live on Kenwood Road. I'm a member of the ambulance corp. I --

(Indiscernible)

MR. KURTZ: -- sports here. I consider myself fairly active in and around town.

And the question I want to ask is one not of aesthetics or religion, but what is the end result going to be in our town and particularly how many of the folks that move in to an Eruv community send their children to public schools.

I have three children in Long School right now and my children love the school and we're very happy. They grew up in Englewood, so, as somebody said, I won't hold it against you, but -- uh -- I've been living here for 5 years and we're very happy and we're very happy with the public schools.

And it's my understanding, and I may be ill-informed, but it's my understanding that many of

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the folks that do move into the Eruv do not send their children to public schools but send them to religious school. And, so, I don't want to have the town put in position to facilitate the demise of our public school system here nor do I want to have the town in a situation where we're creating a --

(Indiscernible)

MR. KURTZ: -- cultural segregation.

That's all I have to say. Thanks.

(Applause)

MS. WALZER: My name is Esther Walzer. I live at 40 Grandview Terrace.

And I wanted to speak because of Mr. Kurtz' daughter actually is my daughter's big buddy. She is --

(Inaudible)

MS. WALZER: -- in kindergarten. I also have a first grader in --

(Inaudible)

MS. WALZER: -- school.

And my husband and I moved to Tenafly partly because of the excellence of the schools. We --

(Indiscernible)

MS. WALZER: -- to public schools and we also appreciate having the Eruv there. It will be helpful

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1 to us and to our relatives and our friends and I think  
2 it would only improve the quality of life.

3 (Applause)

4 MR. TEITCHER: My name is Norman Teitcher. I  
5 live at 21 South Lyle Avenue, Tenaflly.

6 I'd like to echo the prior statement. I have  
7 two children who go to public school, one in Tenaflly,  
8 one at the Bergen Academy. They have gone to school in  
9 Tenaflly since we moved here 17 years ago.

10 And, interestingly, we learned when we moved  
11 here 17 years ago because of the excellence of the  
12 school system that not everybody goes to school in  
13 Tenaflly, that before there was a Habad House, before  
14 there was an Eruv, we found there was significant  
15 numbers of children who go to Mount Carmel, who go to  
16 Elizabeth Morrow, who go to Horace Mann, who go to many  
17 different schools, that people moved to Tenaflly for  
18 lots of reasons. They moved for the schools; they  
19 moved for the trees; they moved for the housing.

20 And to believe that they cre -- creating an  
21 Eruv we're going to have exclusivity and children would  
22 not going to the school is denying what has existed in  
23 this town and that's people have the freedom to choose.  
24 And having an Eruv does not mean people will not send  
25 their children to public school. They will send their

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1 children to whatever school they believe is  
2 appropriate, fitting, and most beneficial to their  
3 children, and it is just a denial to say that the Eruv  
4 will create any kind of segregation.

5 And, interestingly enough, in terms of the  
6 Town actively supporting another institution, I have  
7 wondered for the 17 years that I've been in this town  
8 why the Town Calendar announces all of the events in  
9 Mount Carmel School and the Mount Carmel School  
10 calendar is announced in the Tenaflly School System  
11 calendar.

12 Now, I don't think there's anything wrong  
13 with it. I think it's fine. But I think if one talks  
14 about the Town actively doing things to enforce one  
15 religion, it's an absurdity. I don't think you're  
16 doing it by announcing events at Mount Carmel.

17 And, by doing nothing and allowing an Eruv to  
18 happen, you are certainly not doing something that's  
19 encouraging anybody to do anything.

20 Thank you.

21 (Applause)

22 MAYOR MOSCOVITZ: I -- I'd just like to say  
23 that I would like each person who wants to speak to  
24 speak once and then we will come back for a second --  
25 uh -- speak to --

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1 MR. EGERT: Thank you. Let me be brief.  
 2 Bruce Egert. I live at 5 Hillcrest Road.  
 3 MAYOR MOSCOVITZ: One second.  
 4 MR. EGERT: And I've lived there for about 14  
 5 years. Both my kids are going to the Tenaflly Public  
 6 School system.  
 7 There was an issue in this country up until  
 8 the mid or late 1980's as to whether or not Christmas  
 9 displays could be made in public squares. And the U.S.  
 10 Supreme Court, I think, correctly ruled that indeed  
 11 they could be made provided that they were paid for by  
 12 private funds. And, of course, our beautiful Town  
 13 Square will be so adorned this year by various  
 14 religious displays.  
 15 I think this is good for the town. I think  
 16 it accommodates people of the Christian faith. I think  
 17 it also accommodates all Americas because it shows that  
 18 we are a religious-based society of -- of great  
 19 diversity.  
 20 Based on that is why I rise to speak out in  
 21 favor of the Eruv. I could indeed say a lot of things  
 22 as to why I'm in favor of it. I would only be  
 23 repeating what a lot of people have said before.  
 24 But, in summary, it is a very, very, very  
 25 minor intrusion. In fact, it's no intrusion of all --

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1 at all, and it does accommodate a specific religious  
 2 minority.  
 3 I'm a Jew. I'm a practicing Jew. I do not  
 4 observe the Sabbath the way a --  
 5 (Indiscernible)  
 6 MR. EGERT: -- does and I don't need an Eruv,  
 7 but I would like to see an Eruv just as I would like to  
 8 see a creche, just as I would like to see a crescent  
 9 moon and the star for our Muslim friends, and just like  
 10 I would like to see every display of religiosity so  
 11 that everyone can feel at home in Tenaflly.  
 12 Thank you very much.  
 13 (Applause)  
 14 MR. WALTMAN: My name is Peter Waltman and I  
 15 live at 140 Deerfield Drive in Tenaflly.  
 16 MAYOR MOSCOVITZ: Peter -- you la --  
 17 MR. WALTMAN: Waltman.  
 18 MAYOR MOSCOVITZ: Waltman. Thank you.  
 19 MR. WALTMAN: I -- uh -- have been a resident  
 20 of Tenaflly since 1970 -- have kids in school, as well.  
 21 And -- uh -- I'm concerned that this decision  
 22 is being made very rapidly. I am not intimately  
 23 involved with town politics but I consider myself aware  
 24 of what's going on. I read the newspaper; I read the  
 25 mail.

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1 And I, unfortunately, came in close contact  
2 with the process of building the Eruv when I found them  
3 erecting it on my property without permission, and I  
4 was very concerned at that point.

5 There was an article in the New York Times  
6 that appeared simultaneously in the magazine section  
7 that people should read for their own edification. And  
8 I do not intend to be well informed also on the --

9 (Inaudible)

10 MR. WALTMAN: -- Eruv, but I'm interested in  
11 preserving the -- uh -- the -- the nature of the town  
12 as it stands. It may be achieved with an Eruv; it may  
13 be without. But, I think that the fact that it was  
14 going to vote tonight or even two weeks is extremely  
15 much, much too fast and I would like to see a lot more  
16 information, a lot more research before any kind of  
17 decision is reached -

18 (Indiscernible)

19 MR. WALTMAN: Thank you.

20 (Applause)

21 MS. RIGNEY: My name is Alice Rigney. I live  
22 at 48 Knoll Road, Tenafly. I'm an old Tenafly  
23 resident.

24 I have one very short question. Many of  
25 these people this evening have said how long they've

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1 lived here and I just want to know how they got along  
2 all these years without it.

3 (Applause)

4 MAYOR MOSCOVITZ: Uh -- anyone who hasn't  
5 spoken yet.

6 MR. WAGNER: Good evening. My name is Kenny  
7 Wagner. I live at 475 Engle Street.

8 UNIDENTIFIED FEMALE: In Tenafly?

9 MR. WAGNER: In Englewood.

10 UNIDENTIFIED MALE: Englewood.

11 UNIDENTIFIED FEMALE: In Englewood?

12 MAYOR MOSCOVITZ: Right.

13 UNIDENTIFIED FEMALE: Englewood?

14 MR. WAGNER: Englewood. But there's freedom  
15 of speech even in Englewood.

16 (Laughter)

17 MR. WAGNER: My wife and I moved to this area  
18 in June, along with out three young children, and we  
19 look forward to raising our children in such a  
20 beautiful area offering wonderful public amenities from  
21 parks to playgrounds to libraries and public schools.

22 By way of background, I graduated from  
23 Yeshiva University in 1982, and for the next 8 years  
24 worked for a variety of non-profit, educational and  
25 community service organizations.

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1 I then attended the Yale School of  
2 Management, received my M.B.A. and went to work for  
3 Bristol Meyers Squibb, where I worked literally around  
4 the world on a variety -- uh -- during a variety of  
5 hostings as a corporate problem solver.

6 About a year and a half ago, I left Bristol  
7 Meyers Squibb in order to start an Internet business  
8 and my wife and I were then able to realize a dream of  
9 ours. We moved to close to family in both Bergen  
10 County and New York City, and we began to look for a  
11 house in this area.

12 That is how I came to speak here tonight on  
13 this issue. And I thank the Council for the  
14 opportunity to address it and to have input into this  
15 important decision.

16 After I walked out of the working session  
17 last Tuesday, I stopped by the bulletin board outside  
18 this hall and noted the sign in both English and Korean  
19 stating that if anybody felt they needed a Korean  
20 interpreter then one would be provided for them. I  
21 assumed that was for traffic court. It's a wonderful  
22 public amenity.

23 What a wonderful statement. What a wonderful  
24 attitude. How different from communities or states  
25 where valid propositions try to make English the only

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1 language in which the government will interact with its  
2 citizens.

3 I believe that that sign demonstrates and --  
4 the appreciation for diversity, respect for pluralism,  
5 and understanding of differing individual needs and  
6 circumstances that is the essential foundation for a  
7 strong and vibrant society. I don't believe that  
8 anyone would interpret that sign as calling for the  
9 mandating of Korean language instruction in the public  
10 schools. It is simply good manners. It is being a  
11 good neighbor. It is being a good citizen. Rather  
12 than being a burden, it impovage -- impoverishes us; it  
13 enriches us as individuals and as a society.

14 It reminds me of my first trip to Ellis  
15 Island. While there, I was amazed that almost a  
16 hundred years ago in times not nearly as --

17 (Indiscernible)

18 MR. WAGNER: -- and respectful as our own,  
19 the United States Government ran a Kosher kitchen for  
20 immigrants mostly from Eastern Europe who observed the  
21 Jewish dietary laws so that they could fully partake of  
22 their first -- of the first meal offered to them in the  
23 golden (phonetic) land.

24 It reminded me of a lunch I attended with  
25 several senators at the U.S. Capital in Washington,

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1 D.C., where I was served a meal from the Kosher kitchen  
2 that is run there, established to meet the needs of  
3 members of Congress, citizens and other visitors.

4 In the course of preparing for this meeting,  
5 I have had the opportunity to meet with members of the  
6 clergy of various denominations that make up the mosaic  
7 of life here in Tenaflly. I have been impressed with  
8 their sincerity, their sympathy, and their unfailing  
9 belief in the value of respecting and protecting  
10 religious practices in our society.

11 But I also had the unfortunate experience of  
12 hearing the remarks at a Council meeting held almost a  
13 year and a half ago that presented a drastically  
14 different picture. Observations that a quote, unquote,  
15 influx of orthodox Jews would hurt the downtown area,  
16 that such Jews only shop in quote, unquote --

17 (Indiscernible)

18 MR. WAGNER: -- Kosher stores, that they  
19 would open stores catered to their needs. Observations  
20 that we've even heard tonight that orthodox Jews would  
21 send their children to yeshivas and thereby hurt the  
22 public schools. One man even went so far as to say  
23 that in imposing their religious practices on others,  
24 the streets would be closed down to prevent people from  
25 driving on Saturdays.

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1 It is very unfortunate that such ignorance  
2 and fear entered into the public discourse, but it is  
3 not really surprising that the unknown leads to  
4 mistrust.

5 I don't think that anyone would say that the  
6 existence of markets that cater to specific ethnic  
7 requirements or tastes detracts from Tenaflly or its  
8 economic vibrancy. I don't think that parents choosing  
9 to send their children to private schools, while  
10 continuing to pay school taxes, hurt the quality of the  
11 public schools. I do not believe that one group  
12 practicing its religious observances thereby imposes  
13 its religious beliefs on others.

14 If, however, I am wrong, if this Council  
15 believes that such practices do, in fact, detract from  
16 the quality of life in Tenaflly that said practices are  
17 to be discouraged it is appropriate that such a  
18 statement be made in a public -- in as public a way as  
19 possible and in as clear a way as possible.

20 It should be clear that Asian food markets  
21 are not welcome, that Catholic schools are unwelcome,  
22 that the annual Good Friday procession in which a cross  
23 is marched through our streets under police escort  
24 requiring the closing of streets and rerouting of  
25 traffic is unwelcome. A large sign should be placed at

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1 the entrance of Tenaflly saying, unwelcome.

2 I believe, however, that this Council has an  
3 opportunity to make a strong statement that  
4 accommodating diversity, that welcoming all members of  
5 our society, that encouraging a rich and vibrant  
6 spiritual life enhances the fabric and the lives of all  
7 our citizens, that accommodating one does not mean  
8 burdening all.

9 I believe that all the examples I cited above  
10 are examples of the rich -- richness and goodness of  
11 our diversity and the strength of our community. While  
12 we may differ in our personal beliefs or practices, we  
13 are united in our common appreciation for the values  
14 that they represent.

15 Let's be clear about the issue that stands  
16 before this Council. No one is asking for an  
17 endorsement of one religion over another. No one is  
18 asking for restricting the rights of anyone to practice  
19 their chosen -- chosen religion as they see fit, or to  
20 restrict the rights of those who choose to practice no  
21 religion. This is simply about accommodating the needs  
22 of one set of members of this community without in any  
23 way harming the needs and rights of others.

24 In point of fact, as Mr. Book pointed out,  
25 the Council is not -- is not being asked to act at all,

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1 not to endorse, not to permit, not to do anything. In  
2 doing so, I simply ask that the Council act in a manner  
3 most consistent with the values expressed by it many  
4 times in the past, that it continue to work to support  
5 the rights of all its citizens, that it act as the good  
6 neighbors that we intend to be.

7 I can tell you now we shop in stores in  
8 downtown Tenaflly. We make use of the parks. We will  
9 vote for the school budget when the --when the time  
10 comes and --and play an active role in civic life.

11 Retention of the Eruv will only serve to  
12 enhance the quality of life in Tenaflly and I hope that  
13 at the conclusion of this matter will free resources  
14 for all of us to pursue the goal of a better quality of  
15 life and a stronger community for all its members.

16 I again thank the -- uh -- Council for the  
17 opportunity to be heard, and I wish you well on your  
18 deliberations.

19 MAYOR MOSCOVITZ: Thank you.

20 (Applause)

21 MAYOR MOSCOVITZ: uh -- someone who hasn't  
22 spoken yet? Thank you.

23 MR. RYAN: Good evening, Mayor and Council.  
24 My name is Steve Ryan.

25 MAYOR MOSCOVITZ: Excuse me?

1 MR. RYAN: Steve Ryan, R-Y-A-N. I live at  
2 139 Tenaflly Road.  
3 And I just want to point out that much --  
4 MAYOR MOSCOVITZ: Yes?  
5 MR. RYAN: -- was said --  
6 MAYOR MOSCOVITZ: Oh.  
7 MR. RYAN: -- about --  
8 MAYOR MOSCOVITZ: That's Tenaflly?  
9 MR. RYAN: Tenaflly. Tenaflly Road in Tenaflly.  
10 MAYOR MOSCOVITZ: Thank you.  
11 MR. RYAN: In the presentation and in the  
12 application, much was said about the restrictions -- uh  
13 -- imposed on the group during the Sabbath. I think  
14 it's important to distinguish that those restrictions  
15 are self-imposed. They're not imposed by the Borough  
16 or the May -- Mayor or Council or any -- any other law.  
17 Um -- and, basically, they're asking to use  
18 -- as I interpret it, they're asking to use public  
19 property to ease those restrictions. And I don't see  
20 that that's necessary. I just don't see why one group,  
21 whether it was a chess club or religion or anything,  
22 would ask to use public property to ease restrictions  
23 that that group places on itself.  
24 I'd also like to expand on some comments  
25 Council -- Councilman Sullivan said in last week's work

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1 session. He just brought up the issue of another group  
2 looking to symbolize -- uh -- something else. He gave  
3 the example of Saint Francis of Assisi. And that's a  
4 fine example, but even if we had a chess club in town  
5 that wanted to also claim the town as its home domain,  
6 would we allow them also to build a structure?  
7 You've been asked to do nothing while one  
8 group builds a structure to signify this borough as  
9 their home domain. I would hope that the borough would  
10 not sit there and do nothing if group after group came  
11 in and built structures to signify this borough is  
12 their home domain.  
13 That has nothing to do with religion. It has  
14 something to do with an individual group. You can't  
15 have a chess club, you can't have Tenaflly --  
16 (Indiscernible)  
17 MR. RYAN: -- basketball building structures.  
18 We can't have any one group being asked to build  
19 structures on public property to call the borough their  
20 domain. Where would we draw the line?  
21 What if another group wanted to build the  
22 same exact structure signifying their domain. Would we  
23 allow two or three or four? Where would be draw the  
24 line?  
25 I think we would do very well for ourselves

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1 in drawing the line right here and say that there's no  
2 reason to use public property, to ease the self-spoken  
3 --imposed restrictions of one group. It's just that I  
4 don't see the reason.

5 Thank you.

6 (Applause)

7 MR. EARL: My name is Evan Earl. I live at  
8 88 Depeister Avenue in Tenaflly. I was born in  
9 Englewood, my wife in Demarest, and we moved to Tenaflly  
10 and we've been here for 50 years.

11 If this is so important to these people to  
12 have an Eruv then I think that it should be put on a  
13 ballot, special election, let the town decide for  
14 themselves whether it should come into play or not.

15 Thank you.

16 (Applause)

17 MAYOR MOSCOVITZ: Someone else who hasn't  
18 spoken yet?

19 Yes.

20 MS. AGUS: Good evening to the Mayor and  
21 members of the Council. My name is Estie Agus and I  
22 live at 7 Elkwood Terrace along with my husband,  
23 Charles, and our three daughters. We live in Tenaflly.

24 First, I would like to thank all of you for  
25 your time that you spent researching this issue. We

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1 really appreciate all the hard work that you've put in  
2 and all the time.

3 It seems that the information overload may  
4 certainly be difficult to digest given the timing  
5 restraints of these hearings. At the very least, I  
6 would like to strip away some of the external issues in  
7 order to focus on the simple reality of the Eruv.

8 Any of the discussions about the effects of  
9 orthodox Jews in Tenaflly are, at best, irrelevance and,  
10 at worst, blatant discrimination. Any of the  
11 discussions evaluating the need for the Eruv among  
12 observant Jews is irrelevant. As Americans, we do not  
13 judge each other's religious practices but, rather, we  
14 are respectful and supportive of one another.

15 Any discussions about the legitimacy of the  
16 Eruv with regard to the legal precedents have clearly  
17 been proven in the American legal system. This is a  
18 religious accommodation and not an infringement on any  
19 other residents of Tenaflly.

20 Let's not turn this into a battle about who's  
21 a better citizen in this town, and who will best  
22 support our schools and our Grand Union, which is my  
23 daughter's favorite hot spot because they carry tons --  
24 tons of Carvel cakes. We have to look beyond all these  
25 hurtful accusations to see the real issues at stake.

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1 The real question here is this. Does this  
2 Council want to prevent me from carrying my daughters  
3 to synagogue, to the park and to visit family and  
4 friends on the Sabbath?

5 The charge that accommodating the need of one  
6 religion -- in this case, an Eruv -- would mean that  
7 the Town would need to do the same for every religious  
8 request it received. Every request, be it religious or  
9 otherwise, must always be considered on its own merits.

10 This is an innocuous religious construct that  
11 has absolutely no bearing on any other resident of this  
12 town. It is really that simple.

13 Thank you, and I look forward to many years  
14 with all of you in Tenaflly.

15 (Applause)

16 MAYOR MOSCOVITZ: No, behind you. No, we're  
17 just going for first time speakers now.

18 MS. STARER: Lori Starer, 20 Homestead Road.  
19 I'll speak to the past speaker. This town --

20 MAYOR MOSCOVITZ: You have to speak in --

21 MS. STARER: This town --

22 MAYOR MOSCOVITZ: -- into the microphone,  
23 please.

24 MS. STARER: -- is not preventing you from  
25 carrying your children to synagogue. You, yourself,

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1 chose to live here.

2 UNIDENTIFIED MALE: Right.

3 MS. STARER: You could choose to live in a  
4 place that accommodates you to be able to circumvent  
5 your religious reasoning. You -- you are the one who  
6 chooses your own situation. It is not the town that is  
7 causing you discomfort.

8 Thank you.

9 (Applause)

10 MAYOR MOSCOVITZ: All right. Did you get the  
11 man in the corner yet? No, the --

12 MS. HATTEN: He spoke already.

13 MAYOR MOSCOVITZ: He spoke.

14 No.

15 MS. HATTEN: That gentleman did.

16 MAYOR MOSCOVITZ: Here. Yes.

17 MS. SCHERL: My name is Jodi Scherl. I'm at  
18 12 Mayflower in --

19 MAYOR MOSCOVITZ: Shawl?

20 MS. SCHERL: Scherl, S-C-H-E-R-L.

21 MAYOR MOSCOVITZ: Oh.

22 MS. SCHERL: I was not intending to speak  
23 tonight, but I'm sitting in the room here, and, yes, we  
24 could have all chosen to live in a more tolerant  
25 community, but we chose Tenaflly. And, frankly, tonight

1 I'm sitting here and I don't even know what era I'm  
2 living in. And I can't keep my mouth shut another  
3 second.

4 So, I don't have much other constructive  
5 things to say, but I'm frightened by what I'm hearing  
6 tonight from much of this room. And I think the  
7 Council here should be likewise concerned about the  
8 kind of community we're actually living in if the  
9 existence of an Eruv is causing such a uproar.

10 Thank you.

11 (Applause)

12 MR. SHAPIRO: My name is Philip Shapiro. I  
13 live on Palmer Avenue in Tenaflly.

14 I didn't know about this issue until 7:30  
15 tonight when my wife mentions she thinks there's  
16 something going on in the town about an Eruv. Why  
17 don't you go and listen to what's going on? So, here I  
18 am.

19 However, I'd like to say that, number one,  
20 I'm a 25-year resident of Tenaflly. The second day I  
21 moved into town my next-door neighbor told me, and I  
22 will repeat the story now. My next-door neighbors are  
23 dead.

24 Welcome to Tenaflly. We're going to be good  
25 neighbors. We belong to Knickerbocker Country Club.

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1 You know. You back up to Knickerbocker Country Club.  
2 However, you're not welcome to join. You could be our  
3 guest at the Knickerbocker Country Club for dinner,  
4 but you all know you're not welcome to join.

5 I said, where I'm not wanted, I'm not wanted,  
6 I don't have a problem. That's not why I moved to  
7 Tenaflly.

8 By the same token, when I attempted to buy a  
9 vacation home in upstate New York in a community that  
10 was primarily Sabbath observing, I was told, you're not  
11 really wanted here. Although you're Jewish, but this  
12 is not your kind of people.

13 However, from a practical side, why not re-  
14 examine a -- uh -- situation where an entire group of  
15 people would be introduced into purchasing homes in  
16 Tenaflly? Now, those of us with gray hair who think of  
17 moving on someday -- and I am not at that point yet --

18 (Laughter)

19 MR. SHAPIRO: -- have been living in --

20 UNIDENTIFIED MALE: Looks gray to me.

21 MR. SHAPIRO: What's that?

22 UNIDENTIFIED MALE: Looks gray to me.

23 MR. SHAPIRO: It is. I'm not --

24 (Laughter)

25 MR. SHAPIRO: I'm not moving on. Oh, yeah,

## Colloquy

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1 I'm gray. The gray is there. Yes.

2 We have been -- uh -- benefitted by this  
3 incredible bull run in the market and in the real  
4 estate market for the past seven or eight years.  
5 However, I've been in the real estate business pretty  
6 much since I was a kid since my family was there.

7 I've lived a cycle. This is a cyclical  
8 business. You can sell a house today. I remember in  
9 1992 houses went begging. Okay? In 1980, houses went  
10 begging. In 1974, when I bought my house, the price  
11 came down, down, down, down, down. I bought the house.

12 Probably half the price, or slightly more  
13 than half the price, that the person thought -- uh --  
14 it was worth certainly more than they put in the house.  
15 This could happen again.

16 If you introduce a -- uh -- the Eruv for this  
17 -- around this town, and I certainly would hope that it  
18 would cover the whole town. It is an unobtrusive wire  
19 that you can't tell was there by looking at it. It  
20 looks like a cable wire or an electric wire or a  
21 telephone wire. You couldn't pick it out of five wires  
22 because you --

23 (Indiscernible)

24 MR. SHAPIRO: -- somebody would pick out the  
25 Eruv from the other wires, you probably couldn't do it.

## Colloquy

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1 So, basically, along those lines, it has no  
2 effect. However, if it will open up the town to  
3 another hundred or two hundred or three hundred  
4 potential home buyers over the next ten years when the  
5 cycle decides to go into the tank in another couple of  
6 years, which it will because it always does. Those of  
7 you who've been in the real estate business know it;  
8 you've lived it. You've lived it certainly and you all  
9 know it.

10 Why not have another group of people out  
11 there who are willing to come in and buy these houses?  
12 Everybody has had a nice run. The value of the  
13 properties have skyrocketed. But, they don't stay  
14 there forever.

15 Now, a few years from now, people die, leave  
16 a sur -- leave a surviving spouse, leave children,  
17 leave heirs. Why shouldn't they get a -- a fair shot  
18 at having a whole other group of people as potential  
19 purchasers for the houses. That's my point.

20 Thank you.

21 (Applause)

22 MAYOR MOSCOVITZ: Uh -- is there anyone else  
23 who hasn't spoken yet who wishes to speak?

24 Yes.

25 MR. ABBOTT: Good evening, Mayor and Council.

1 My name is Ray Abbott. I live on Gordon Avenue in  
2 Tenafly.

3 I don't know how important it is how long  
4 I've been here in this town, but I've been here 103  
5 years. My mother was born here in 1897. When she was  
6 a young girl growing up, she'd run up on the steps of  
7 Demarest Hardware to get away from the gypsies because  
8 they were known to steal young girls.

9 (Laughter)

10 MR. ABBOTT: None of this matters. If you're  
11 here one day or a hundred years. Everybody has the  
12 same --

13 (Inaudible)

14 MR. ABBOTT: And we've always welcomed people  
15 into this town to come and speak and give your opinion.  
16 Whether you're here a day or a week, that doesn't  
17 validate what you say.

18 I would only suggest to the Mayor and Council  
19 that they not set any precedent in making any kind of a  
20 proclamation in any way of a religious theme, for the  
21 simple reason that we don't know what's going to happen  
22 2000 years from now.

23 There's been a lot of diversity in this town  
24 since my mother was born here. And that diversity is  
25 welcomed. But we don't know what's going to happen

1 down the road. There might be some religion that comes  
2 along that has some cockamamie thing they want to do  
3 and they're going to use this as president -- precedent  
4 to try and push their cause. And I would suggest that  
5 the Mayor and Council not get involved in this.

6 Thank you.

7 (Applause)

8 MAYOR MOSCOVITZ: I -- did I hear another  
9 voice before when I asked if there was someone else who  
10 wanted --

11 Please come forward.

12 MS. FRANKEL: My name is Etta Frankel. We  
13 live at 1 Knoll Road and we've lived in Tenafly for  
14 19-plus years.

15 Uh -- I think the Eruv is -- is a good idea.  
16 America was founded on -- uh -- the basis of religious  
17 freedom and the ability -- uh -- to pursue your  
18 religious ideas. And I think Tenafly should take the  
19 high road and continue to make this opportunity  
20 available here.

21 The Eruv is going to harm no one and I think  
22 it will en -- enrich the -- uh -- religious life of the  
23 people here that want to use it.

24 MAYOR MOSCOVITZ: Thank you.

25 (Applause)

## Colloquy

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1 MAYOR MOSCOVITZ: Anyone else who has not  
2 spoken yet?

3 DR. SOHN: I'm Dr. Norman Sohn. I'm a  
4 colorectal surgeon. I live at 197 Maple Street in  
5 Englewood and I've lived there for 29 years.

6 Thank you for the opportunity of letting me  
7 speak.

8 One thing I want to emphasize as a physician  
9 I've cared for many patients in this area. The people  
10 who need the Eruv most are the disabled, the elderly  
11 and the mothers of young children. Those are the ones  
12 who will be hurt the most if this is rejected.

13 Thank you.

14 (Applause)

15 DR. MELTZER: I'm Dr. Murray Meltzer. I live  
16 at 1 Byrne Lane in Tenaflly. I've lived here for 35  
17 years. I've practiced in town and in New York and I'm  
18 very familiar with the concept of an Eruv. I've grown  
19 up in an orthodox community in New York City.

20 I very much resent the implications -- uh --  
21 that voting against this might be -- uh -- voting  
22 against disabled people, that voting against this would  
23 not allow people to carry their children, that voting  
24 against this means that religions are not welcome in  
25 Tenaflly.

## Colloquy

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1 Tenaflly is a town that welcomes people,  
2 welcomes people of all religions. We do not, however,  
3 give special privileges to particular sects or  
4 particular groups of one religion or another religion  
5 to use public land.

6 The concept of an Eruv is to allow people who  
7 have the -- those beliefs to -- uh -- who normally  
8 would be able to carry their children in their home to  
9 extend their own home and their own private property to  
10 include the entire town of Tenaflly. While I think that  
11 is perfectly -- everyone's right to do what they want  
12 within their own home and the property that they own, I  
13 do not think it is proper to borrow a good precedent --  
14 I think it is a terrible precedent -- to say -- to  
15 extend the use of one's own private property to the use  
16 of public property throughout the town.

17 We welcome new neighbors. However, we do not  
18 normally expect new neighbors to come in after they  
19 have been told that a certain regulation is not  
20 permitted in this town and to circumvent that -- that  
21 decision by going ahead and putting up an Eruv despite  
22 the fact that they knew that it wasn't something that  
23 had been approved in this town and to use a subterfuge  
24 to public utilities -- uh -- to -- to imply that it had  
25 been approved by the town when it hadn't -- uh -- in

## Colloquy

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1 order to make the public utilities think that they had  
 2 the approval of the town. That is not the way a new  
 3 neighbor tries to come into town, nor do they usually  
 4 come in threatening lawsuits and litigation.

5 Thank you.

6 (Applause)

7 MR. DARDIK: Good evening, members of the  
 8 Council. My name is Judah Dardik. I live at 130  
 9 DeVriese Court in Tenaflly. I have lived in Tenaflly for  
 10 26 years. I was born and raised here and now I live  
 11 here with my wife and my 4-month old son.

12 I wish simply to dispel -- um -- a couple of  
 13 misconceptions that I've heard here tonight which I  
 14 believe are unfortunate. Um -- in addition to being an  
 15 accountant, I'm also a rabbi and I wish to simply  
 16 explain to the members of the Council and those who are  
 17 here that an Eruv does not involve the extension of  
 18 one's personal home to somehow include the entire town  
 19 --

20 (Inaudible)

21 MR. DARDIK: Um -- I don't wish for the sake  
 22 of town and for all those here who have an interest --  
 23 uh -- to get into a long discourse of Jewish law. I'd  
 24 be happy at any point, if you'd like to discuss it,  
 25 with anyone in the community, with anyone on the

## Colloquy

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1 Council to explain exactly what the details are.

2 Certainly, it is not a circumvention of  
 3 Jewish law. That's also a misconception which can  
 4 easily be explained in its truth. Uh -- but, simply,  
 5 this is not a question of Jews coming into the town to  
 6 somehow take it over and make it part of our living  
 7 rooms.

8 I have lived in this town, as I mentioned,  
 9 all my life and, as far as I understood, this is not a  
 10 referendum on whether to allow other orthodox Jews,  
 11 like me, to come and live in town. That's -- that's  
 12 not an American ideal, certainly not an American  
 13 principle. Rather, it's a question of whether to allow  
 14 this as it's been mentioned until now this unobtrusive  
 15 wire that I suggest that anyone even try to find to  
 16 stand --

17 (Inaudible)

18 MR. DARDIK: -- down that would allow me, in  
 19 my own religious beliefs along with my wife to carry.  
 20 I have survived since -- it'll be 26 years in Tenaflly  
 21 -- without being able to carry. Simply, it was  
 22 inconvenience. And I did not personally have the money  
 23 to be able to undertake such a project or to even  
 24 consider.

25 Uh -- the opportunity's been made available

1 and now has become more pressing for me, myself,  
2 because although I can walk to synagogue, my wife and  
3 my child cannot walk. If my wife chooses to synagogue,  
4 I cannot in order to stay with my child.

5 That is a -- an issue that impacts upon me  
6 personally and has impacted for awhile although its  
7 importance has grown over recent months --

8 (Inaudible)

9 MR. DARDIK: And, so, it would seem to me  
10 that if the opportunity arises for the town to offer me  
11 a convenience which I appreciate, which others  
12 appreciate, which is not at the detriment it would seem  
13 of anyone else, without any questions of who this  
14 invites to the town or not, -- uh --

15 (Inaudible)

16 MR. DARDIK: -- and I would ask the Council  
17 to do so, and I thank you for your time.

18 MAYOR MOSCOVITZ: Thank you.

19 (Applause)

20 MR. STONE: My name is Albert Stone. I live  
21 at 105 Hudson Avenue, Tenaflly. I don't want to upstage  
22 Ray Abbott, but I've lived in Tenaflly 73 years.

23 At the last -- at the last work session of  
24 the Mayor and Council I saw something that I never saw  
25 before, and I've attended a lot of meetings. I saw

Colloquy

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1 over 30 people at that work session armed with lawyers,  
2 taking notes of the proceedings. It was like a threat  
3 of litigation if you don't give them what they want.

4 But before I -- I go on, I want to say that  
5 I'm a Jew and I'm not here by choice but by birth. My  
6 great grandfather came to Tenaflly in 1880 to be a  
7 farmer, a resident and a good neighbor. He was, along  
8 with my grandfather, a founder of Congregation Ahavath  
9 Torah in Englewood.

10 Our family has been here for 120 years  
11 without any religious friction. Now, after all these  
12 years, we have new neighbors who want to create what  
13 they call a community within a community.

14 I -- I don't know how all this will play out  
15 and however it does I'll live with it and I'll be happy  
16 in Tenaflly. But I want to say that the Jews of Europe  
17 were forced to live in communities within communities  
18 from which they tried desperately to escape.

19 I personally disapprove of this --

20 (Inaudible)

21 MR. STONE: -- to manufacture a symbolic wall  
22 to separate people. I do not want to live in someone  
23 else's domain, also known as a ghetto.

24 (Applause)

25 MS. JACOBS: Janice Jacobs, 66 Magnolia

## Colloquy

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1 Avenue. I've heard some very beautiful comments this  
 2 evening from some people that -- on both sides of the  
 3 issue, and my heart goes out to all these in -- all of  
 4 the comments, or many of them. Some of them have been  
 5 very disturbing. I think people may sometimes when  
 6 they backed up on an issue say things that perhaps can  
 7 be misunderstood by the opposing -- uh -- point of  
 8 view.

9 Uh -- I've only lived here 24 years. I have  
 10 raised five children and I have found the most  
 11 important thing about Tenaflly is that it's an open,  
 12 caring community to reach out to anyone that needs  
 13 help. I mean I've seen this all over town. It has  
 14 nothing to do with religion. It's just the community.  
 15 We have a wonderful town here and I think we all agree.

16 Some of the things said tonight might have  
 17 hurt people's feelings. I don't think somehow that it  
 18 was really meant. Maybe in the heat of the moment  
 19 things come out in ways that were not intended.

20 We have a school system that works so hard on  
 21 inclusion of all children. We have 21 languages that  
 22 are spoken in our school system, at least. We pride  
 23 ourselves in that. We take great pride, I mean we  
 24 really go out of our way to acknowledge diversity and  
 25 to learn from it and

## Colloquy

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1 to --

2 (Inaudible)

3 MS. JACOBS: -- from it.

4 Um -- on a personal note, my own feeling is  
 5 that religion is a private matter. I don't think I  
 6 know the religion of most of my friends. You know, by  
 7 friends I mean people that I meet. I -- I consider  
 8 religion private and I don't think it's the Borough's  
 9 part to be involved in any relig -- religion,  
 10 accommodating or otherwise. But that's my own private  
 11 feeling.

12 Thank you.

13 MAYOR MOSCOVITZ: Uh -- is there anyone else  
 14 who hasn't spoken yet who wishes to be heard?

15 All right. We can go to -- oh, all right.  
 16 There's still one. Thank you.

17 MS. POLINSKY: Hi. My name is Yael Polinsky.  
 18 I live at 94 Glenwood Road --

19 MAYOR MOSCOVITZ: Did you --

20 MS. POLINSKY: -- in Englewood.

21 MAYOR MOSCOVITZ: -- get that?

22 MS. HATTEN: No.

23 MAYOR MOSCOVITZ: Uh -- the name, please,  
 24 again.

25 MS. POLINSKY: Yael Polinsky.

## Colloquy

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1 MAYOR MOSCOVITZ: Polinsky.

2 MS. POLINSKY: Uh-huh.

3 MAYOR MOSCOVITZ: Thank you.

4 MS. POLINSKY: It really saddens me to hear a  
5 lot of things I've been hearing tonight. I hear a  
6 group of people who have been living in Tenaflly for  
7 many years -- uh -- who are saying they're welcoming,  
8 they're wonderful neighbors, et cetera. Yet, all I  
9 hear from them is -- or what I'm hearing as I sit here  
10 trembling, not believing what I'm hearing, is  
11 bitterness, hate and anger towards one group of people.  
12 And it really saddens me to see this contradiction and  
13 to hear that this is happening in Bergen County in the  
14 year 2000.

15 Basically, what I've heard is that the people  
16 who are living in Tenaflly do not want orthodox Jews to  
17 be living in their area. Maybe you're -- I'm hearing  
18 excuses for why people don't want an Eruv which many  
19 people -- it's not seen and which is invisible to the  
20 eyes.

21 And for a group of people that say that they  
22 welcome diversity, as well as many other things, and  
23 have lived here very happily without orthodox Jews,  
24 it's upsetting to hear that I don't -- I am an  
25 observant Jew and I don't think that I look different

## Colloquy

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1 from anyone else, and I don't think anyone would point  
2 me out in the City of Tenaflly and say, oh, she's one of  
3 those observant Jews coming to take over our town and  
4 ruin it. And they're going to take over and move in  
5 and obstruct everything.

6 And, whether I do look different or not, the  
7 hate and the bitterness in this room is overwhelming  
8 and I think to anybody that would be sitting here would  
9 not actually be believing what they heard, and I really  
10 hope that this can be resolved in a fair manner, which  
11 would be to allow the Eruv to stand and for -- to allow  
12 people to live in this area peacefully.

13 (Applause)

14 MR. KELLY: My name is William Kelly, -- uh  
15 -- 24 Midwood Road. I've lived in town for 40-plus  
16 years -- uh -- with my wife. My daughters grew up in  
17 town.

18 I kind of resent the idea that this last  
19 young lady puts forth.

20 (Inaudible)

21 MR. KELLY: I said I kind of resent the idea  
22 that this last young lady --

23 MAYOR MOSCOVITZ: If -- if you speak right  
24 into it, this --

25 MR. KELLY: -- put forward -- uh -- that

## Colloquy

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1 there's a palpable hatred and bitterness that's  
2 exhibited. I think there's a disagreement, no question  
3 about that, but I don't equate disagreement with hatred  
4 and bitterness.

5 And another point. There's been a lot of  
6 talk about this Eruv. I still haven't heard exactly  
7 what it encompasses. Is this supposed to encompass the  
8 whole town?

9 UNIDENTIFIED: Yes.

10 MR. KELLY: Yes?

11 UNIDENTIFIED: Yes.

12 MR. KELLY: Thee's going to be a wire running  
13 around the whole town?

14 UNIDENTIFIED: No.

15 MR. LESNEVICH: Please don't -- please don't  
16 get into a dialogue. We've been very good in avoiding  
17 that. I'm sure the spokesperson for the ERUV  
18 Association will address your -- that issue, Bill,  
19 afterwards.

20 MR. KELLY: Yeah. Yeah, I'd be interested in  
21 turning the --

22 (Inaudible)

23 MR. KELLY: Also, how many people in town are  
24 going to be effected by this?

25 (Interruption -- people in audience talking.)

## Colloquy

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1 MR. KELLY: How many people are there --

2 MR. LESNEVICH: Please don't shout out  
3 answers. Please!

4 MR. KELLY: How many people are there in the  
5 orthodox community who will benefit --

6 MAYOR MOSCOVITZ: That's a good question.

7 MR. KELLY: -- from the use of the Eruv --

8 UNIDENTIFIED MALE: Countless (phonetic).

9 MR. KELLY: -- here in Tenaflly.

10 MR. LESNEVICH: Look --

11 Excuse me.

12 MR. KELLY: Here in Tenaflly.

13 MR. LESNEVICH: Excuse me, Mr. Kelly.

14 If you're going to keep doing that, you're  
15 going to be ejected. Please don't do that. One person  
16 is -- there's only one person who's acting that way.  
17 Now, stop it. I'm sure that these questions can be  
18 dealt with by the spokesperson. Please, sir, stop  
19 interjecting your comments.

20 Mr. Kelly, please.

21 MR. KELLY: I -- I've heard comments from  
22 people from Englewood who are in favor of this and I  
23 don't know if the community in Tenaflly needs that kind  
24 of reinforcement or if they form a substantial number  
25 of people. Again, I'd like to find the answer to that

## Colloquy

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1 question.  
 2 Thank you very much.  
 3 MAYOR MOSCOVITZ: Thank you.  
 4 (Applause)  
 5 MAYOR MOSCOVITZ: Any other first-time  
 6 speakers?  
 7 MR. SOHN: Good evening, Mayor and Council.  
 8 My name is Evan Sohn, and I live on 1 -- I live on 117  
 9 Hudson Avenue, both in Englewood and in Tenaflly. --  
 10 (Inaudible)  
 11 MR. SOHN: -- houses in both towns -- both  
 12 cities.  
 13 MS. HATTEN: Could he just say his name  
 14 again, Mayor?  
 15 MR. SOHN: Evan is the first name, E-V-A-N.  
 16 Last name is Sohn, S-O-H-N.  
 17 MS. HATTEN: Thank you.  
 18 MR. SOHN: Just to address the -- uh -- the  
 19 gentleman who just spoke, I want to just describe what  
 20 every Saturday was this past fall, just about every  
 21 Saturday.  
 22 I went to the new synagogue that's now in  
 23 Englewood. Just to let you know, my son actually  
 24 attends Temple Sinai in Tenaflly. And I do hold by an  
 25 Eruv, which means that I can't push a carriage without

## Colloquy

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1 having an Eruv in place.  
 2 Every -- just about every Saturday this fall,  
 3 my son and I went to Davis Johnson Park to play. My  
 4 son met -- he's 17 months old. He was playing with two  
 5 little boys, --  
 6 (Inaudible)  
 7 MR. SOHN: -- boys and really having a great  
 8 time. And I ask you, please, to not take that away  
 9 from me. Thank you.  
 10 (Applause)  
 11 MAYOR MOSCOVITZ: You haven't spoken yet.  
 12 Yes, come forward.  
 13 MR. AGUS: Good evening. My name is Charles  
 14 Agus. I live at 7 Elkwood Terrace.  
 15 I just want to remark very briefly to respond  
 16 to Mr. Kelly's well spoken remarks. I think that --  
 17 (Inaudible)  
 18 MR. AGUS: -- disagreement here -- uh -- that  
 19 we're hearing tonight. I think the disagreement here  
 20 is over whether or not the Town Council should be  
 21 accommodating a particular -- particular group of  
 22 people. And I think what we're hearing is that this  
 23 particular accommodation really does not harm anyone  
 24 and benefits many. So, we ask you, the Town and Mayor  
 25 and the Town Council, to please support our goals here.

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1 Thank you.  
 2 MAYOR MOSCOVITZ: Thank you.  
 3 Any other first-time speaker? No? Then,  
 4 we'll go to people who wish to speak a second time.  
 5 Mr. Victoria.  
 6 MR. VICTORIA: It's unfortunate that --  
 7 MR. LESNEVICH: Sir, I -- just because of the  
 8 tape, please state your name and address.  
 9 MR. VICTORIA: Al Victoria.  
 10 MR. LESNEVICH: Thank you.  
 11 MR. VICTORIA: Hudson Avenue, Tenafly.  
 12 It's unfortunate that there's always --  
 13 (Indiscernible)  
 14 MR. VICTORIA: -- to try to twist words.  
 15 Like the hate is here. There isn't any hate. And --  
 16 uh -- the man who said we're saying to close down  
 17 streets, put up not welcome signs. It's -- words are  
 18 --  
 19 (Indiscernible)  
 20 MR. VICTORIA: Red herring. Anti-Semitism.  
 21 It's such baloney.  
 22 There are so many orthodox Jews in this town.  
 23 It's so full of so many Jews that have lived happily  
 24 here and this is not a problem with this town. To wave  
 25 this flag -- anti-Semitism -- as being done here to

## Colloquy

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1 achieve their own ends and for not all of them that  
 2 live in our town, hostile takeover of people from other  
 3 towns. I resent it.  
 4 Also, the man that spoke about Mount Carmel  
 5 to make it look like we have a proclivity to be kinder  
 6 and nicer to Mount Carmel --  
 7 (Inaudible)  
 8 MR. VICTORIA: I was on the Board of Ed. when  
 9 this all started with the calendar and we did it for  
 10 economy. We combined the town and the school calendar  
 11 and we asked all the schools, and everyone who had any  
 12 information, if they wanted to put onto the calendars  
 13 whatever we could accommodate, we'd accommodate.  
 14 That's going back awhile.  
 15 Apparently, Mount Carmel is still involved  
 16 and still sending their information and still getting  
 17 --  
 18 (Inaudible)  
 19 MR. VICTORIA: And to wave that flag, I  
 20 resent it.  
 21 (Applause)  
 22 MAYOR MOSCOVITZ: Yes. In the back.  
 23 MR. DARDASHTI: Good evening. My name is  
 24 Yeti (phonetic) Dardashti. I've been living --  
 25 MAYOR MOSCOVITZ: Uh -- would you --

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1 MR. LESNEVICH: Would you --  
 2 MAYOR MOSCOVITZ: -- spell that, --  
 3 MR. LESNEVICH: -- spell that, please?  
 4 MAYOR MOSCOVITZ: -- please?  
 5 (Laughter)  
 6 MR. DARDASHTI: I was afraid of that.  
 7 (Laughter)  
 8 MR. DARDASHTI: D-A-R-D-A-S-H-T-I.  
 9 I've been living in Tenaflly for 20 -- more  
 10 than 20 years, and --  
 11 (Indiscernible)  
 12 MR. DARDASHTI: -- spell my name.  
 13 (Laughter)  
 14 MR. SULLIVAN: Oh. I knew it because I dr  
 15 --had your sons.  
 16 (Laughter)  
 17 MS. HATTEN: What's his address?  
 18 MAYOR MOSCOVITZ: And your address, please?  
 19 MR. DARDASHTI: You know I have so many  
 20 answers to so many things that came up but just to let  
 21 --  
 22 MAYOR MOSCOVITZ: Uh -- your street --  
 23 MR. LESNEVICH: Your street address --  
 24 MAYOR MOSCOVITZ: Your street address?  
 25 MR. LESNEVICH: -- for the record.

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1 MR. DARDASHTI: My address is 76 Berkley  
 2 Drive.  
 3 MR. LESNEVICH: Thank you.  
 4 MAYOR MOSCOVITZ: Thank you.  
 5 MR. DARDASHTI: Answering to your comment  
 6 about the gentleman that was talking about Mount  
 7 Carmel. He --  
 8 (Indiscernible)  
 9 MR. DARDASHTI: -- good example of what's  
 10 happening in Tenaflly, not to try and make it that  
 11 they're favoring one group over somebody else. And  
 12 then here he mentioned a lot about welcoming everybody,  
 13 welcoming everybody, but -- uh -- the same way we can  
 14 say that we welcome all the disabled in Tenaflly but we  
 15 don't want to -- uh -- provide any facilities in the  
 16 bathrooms or parking lots or anything for the disabled  
 17 because we didn't make them disabled.  
 18 (Inaudible)  
 19 MR. DARDASHTI: We had an accident and we're  
 20 home, so we have no obligation to provide anything for  
 21 that.  
 22 If -- uh -- the people chose to be here, and  
 23 they chose to be here and they're asking the town not  
 24 something unreasonable, they're some -- they're asking  
 25 for something that they're going to provide all the --

## Colloquy

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1 (Inaudible)  
 2 MR. DARDASHTI: They're going to do it. It's  
 3 not going to bother anybody. It's just going to  
 4 benefit them. And they -- and, you know, you just  
 5 can't say that because Tenaflly didn't ask them to come  
 6 here, so Tenaflly is not obligated to provide anything  
 7 that they need. So, instead of going on and on with  
 8 it, it's late and we got to go home.  
 9 Thank you.  
 10 MAYOR MOSCOVITZ: Anyone else who wishes to  
 11 make a comment now?  
 12 (No audible response.)  
 13 MAYOR MOSCOVITZ: All right. This will be --  
 14 Oh, there you are.  
 15 (Laughter)  
 16 MR. BOOK: I wouldn't --  
 17 (Inaudible)  
 18 MR. BOOK: -- Mayor.  
 19 MAYOR MOSCOVITZ: I was going to say you --  
 20 you'll speak next week. I didn't see you back there.  
 21 Or on the 12th -- on the 12th. Yeah.  
 22 MR. BOOK: I appreciate being given the  
 23 opportunity to respond to -- uh --  
 24 MAYOR MOSCOVITZ: Mr. Book, please give us  
 25 your name into the tape.

## Colloquy

91

1 MR. BOOK: Sure. It's Chaim Book. I live at  
 2 112 Highwood Avenue in Tenaflly.  
 3 I appreciate being given an opportunity to  
 4 respond to -- uh -- some of the comments that we've  
 5 heard in the past couple of hours -- uh -- but before I  
 6 do so because it's your vote and it's ultimately your  
 7 decision I ask you, the Council, whether you have any  
 8 questions or any issues that you would like me to  
 9 address.  
 10 MR. LESNEVICH: That's really not the way  
 11 they're supposed to work it. And that's why they'd  
 12 like to listen to you, not ask questions.  
 13 MR. BOOK: Fair enough. Again, --  
 14 (Inaudible)  
 15 MR. BOOK: Okay. Let me go in order. The  
 16 first comment, first question was regarding the  
 17 Knickerbocker Country Club and -- uh -- and the  
 18 Alpine/Tenaflly border. And I'll -- in -- in the same  
 19 answer to that question, I will also address someone --  
 20 someone else's question as to whether this -- um --  
 21 encircles all of Tenaflly.  
 22 The answer to that is no. It does not  
 23 encompass the Knickerbocker Country Club; it does not  
 24 cross the Alpine border; it does not cover all of  
 25 Tenaflly. It covers parts of Tenaflly and I'd be happy

## Colloquy

92

1 to give more information about that at -- at a more  
2 opportune -- uh -- uh -- time.

3 Um -- it does -- uh -- the Eruv in -- in  
4 setting up the Eruv, it -- it -- it -- we have placed  
5 -- uh -- the leffees, the -- the markers on selected  
6 utility poles in -- uh -- in a portion of Tenaflly.

7 It was also mentioned that somehow Bell  
8 Atlantic was rooked or fooled or not given a complete  
9 story. Um -- I want to respond to that by saying  
10 that's simply not the case. Uh -- I gave Bell Atlantic  
11 a copy of Pat Schuber's proclamation not to tell the --  
12 Bell Atlantic that this was the legal impetus, but  
13 rather because they asked for all of the paperwork.  
14 And included among the paperwork, which was also an  
15 insurance policy and their license agreement and  
16 various other forms that had to be filled out, was the  
17 -- the proclamation. And they were free to read it.  
18 They have a legal department.

19 Um -- I did not try to deceive them. I did  
20 not leave anything out. We had a discussion. Uh --  
21 they didn't -- they didn't -- they did not express a  
22 need for anything further.

23 And -- and, again, if -- if a step was  
24 skipped, we apologize to the Board. There was no  
25 deception, as some people try to maintain.

## Colloquy

93

1 Um -- with regard to -- uh -- that -- uh --  
2 sorry, I'm just going through my notes on what some of  
3 these comments were. With respect to whether this  
4 decision is being asked to be made too hastily, -- uh  
5 -- we are not -- uh -- seeking a hasty decision. If  
6 the Council indeed feels that it needs more time to  
7 consider the issue and to hear more about it or learn  
8 more about it, we have no objection to -- to the  
9 Council taking its time.

10 With regard to the question of how did you  
11 all get along all these years without it? The answer  
12 is that some people managed without it. Not everyone  
13 wa -- who are -- not everyone who's observant today was  
14 observant 20 years ago, 15 years ago. And, today, they  
15 are and now they wish to have an Eruv.

16 With respect to the comment that we're trying  
17 to build some sort of structure, again there's no  
18 structure involved. I believe someone also said  
19 something about wires. There are no wires involved.  
20 The only thing that's involved are the plastic leffees,  
21 the -- the -- the -- which I provided pictures of and  
22 which you know what that is.

23 I have to say I wholeheartedly agreed with  
24 Mr. Abbott's comments. I agree. We -- don't make a  
25 proclamation. We're not looking for a proclamation.

## Colloquy

94

1 We're simply asking you not to order Cablevision to  
 2 take down the leffees.  
 3 With respect to walking into the last week's  
 4 working session armed with lawyers, I have to tell you  
 5 that's just not the case. You know, I don't know where  
 6 that notion came from. But the people who attended  
 7 last week are all private citizens. Some of us are  
 8 lawyers by profession, but we were not in -- there in a  
 9 role as -- uh -- litigators on this case.  
 10 MR. LESNEVICH: Mr. Book, --  
 11 MR. BOOK: Yes?  
 12 MR. LESNEVICH: -- I've been asked -- several  
 13 people -- Council persons have been questioning, can  
 14 you discuss the precise location of the Eruv as  
 15 presently existing. Where -- which streets does it run  
 16 on? Can you draw us a verbal picture?  
 17 MR. BOOK: That would be difficult. I -- I  
 18 will say that it -- it does run along Hudson Street in  
 19 Tenafly and that it does run along parts of Highwood  
 20 Avenue.  
 21 MR. LESNEVICH: Can you --  
 22 MR. BOOK: Part of --  
 23 MR. LESNEVICH: -- create a map?  
 24 MR. BOOK: Sure.  
 25 DR. PECK: Ask him to bring us a map.

## Colloquy

95

1 MR. LESNEVICH: That's what I just said.  
 2 Can you create a town map?  
 3 MR. BOOK: Sure.  
 4 MR. LESNEVICH: Take a town map, --  
 5 MR. BOOK: Absolutely.  
 6 MR. LESNEVICH: -- draw in, and show us where  
 7 it is.  
 8 MR. BOOK: Absolutely.  
 9 MR. LESNEVICH: If you would get that to the  
 10 Town within the next -- uh -- you know, five days, six  
 11 days, seven --  
 12 MR. BOOK: Sure.  
 13 MR. LESNEVICH: -- days. And they would have  
 14 -- then we'll distribute it to the Mayor and Council  
 15 before the -- uh -- public --  
 16 MR. BOOK: Sure.  
 17 MR. LESNEVICH: -- the next public meeting.  
 18 MAYOR MOSCOVITZ: How many members are there  
 19 in the Eruv?  
 20 MR. BOOK: I'd be happy to do that.  
 21 MR. LESNEVICH: And how many members are  
 22 there in the ERUV Association?  
 23 MR. BOOK: Well, we don't keep a formal  
 24 membership --  
 25 MR. LESNEVICH: If you --

## Colloquy

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1 MR. BOOK: -- record.  
 2 MR. LESNEVICH: -- know.  
 3 MR. BOOK: I -- I mean the -- the answer to  
 4 the question is that it should not matter whether there  
 5 are 3 people or 30 people. But, the fact of the matter  
 6 is that it is certainly more than 25. But again I  
 7 don't -- I don't understand why that should be an issue  
 8 one way or another.  
 9 MR. LESNEVICH: It's not an issue. There are  
 10 cur -- there's a curiosity. They'd just like to know,  
 11 if you know, how many people belong to the Association  
 12 and how many live in Tenaflly.  
 13 MR. BOOK: The question is not how many  
 14 people belong to the Association. The question is how  
 15 many people does this impact.  
 16 MR. LESNEVICH: Well, --  
 17 MR. BOOK: And the answer to that is, it is  
 18 many, many people. And --  
 19 MR. LESNEVICH: How many is --  
 20 MR. BOOK: -- the distinction between the  
 21 ERUV Association and Tenaflly residents it affects is  
 22 that there are people who may not have chosen to become  
 23 a member of the Association but were spec -- but who  
 24 have been here this evening in support of the Eruv or  
 25 who have supported the Eruv -- Eruv in other ways.

## Colloquy

97

1 MR. LESNEVICH: Can you estimate how many  
 2 people you believe in Tenaflly it effects?  
 3 MR. BOOK: I would say at least 25 --  
 4 (Inaudible)  
 5 MR. LESNEVICH: Thank you, sir.  
 6 MR. BOOK: And, possibly, many, many more.  
 7 MR. LESNEVICH: There were some questions  
 8 asked. I think there was some question about this  
 9 before. These are just factual issues that we're  
 10 trying to understand. There -- is there a synagogue  
 11 within the Eruv as presently constituted?  
 12 MR. BOOK: Yes.  
 13 MR. LESNEVICH: Which -- which Eruv is --  
 14 MR. BOOK: Well, the --  
 15 (Inaudible)  
 16 MR. BOOK: -- synagogue is -- is within it,  
 17 but any -- but because the Eruv extends from Tenaflly  
 18 directly into Englewood, anyone who is within the Eruv  
 19 in Tenaflly can very easily walk to any of the  
 20 synagogues in Englewood.  
 21 MR. LESNEVICH: Thank you, sir.  
 22 MR. BOOK: And, as a matter of fact, that --  
 23 that goes to the issue as to whether there's a need for  
 24 any further synagogues, which I believe someone raised.  
 25 MR. LESNEVICH: So, it --

## Colloquy

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1 MR. BOOK: And the answer --  
 2 MR. LESNEVICH: -- intersects with --  
 3 MR. BOOK: -- to that is no because certainly  
 4 people who are -- who are impacted have a choice of  
 5 synagogues to go to.  
 6 MR. LESNEVICH: It intersects with the  
 7 Englewood Eruv.  
 8 MR. BOOK: Yeah.  
 9 MR. LESNEVICH: Thank you.  
 10 Do you have anything further, Mr. Book?  
 11 MR. BOOK: Not at this time, but I would like  
 12 to, since this -- I believe that -- uh -- that this is  
 13 still -- uh -- open for December 12th, I'd like to  
 14 reserve some time at that meeting --  
 15 MR. LESNEVICH: Um --  
 16 MAYOR MOSCOVITZ: Mr. --  
 17 MR. BOOK: -- if anything further occurs.  
 18 MR. LESNEVICH: Okay. So, there will be more  
 19 opportunity for public discussion at that meeting.  
 20 MAYOR MOSCOVITZ: I-- I'd like to say, also,  
 21 -- uh -- that the Council members who are not present  
 22 tonight will listen to the tapes of this meeting before  
 23 the following meeting --  
 24 MR. LESNEVICH: Mr. --  
 25 MAYOR MOSCOVITZ: -- before the December 12th

## Colloquy

99

1 meeting, so they will be fully informed of every  
 2 comment that has been made this evening.  
 3 MR. LESNEVICH: Mr. Lipson will. We hope Mr.  
 4 Wilson will be able to.  
 5 MAYOR MOSCOVITZ: Yeah.  
 6 MR. LESNEVICH: That's it. Probably.  
 7 MAYOR MOSCOVITZ: I -- I think I saw another  
 8 hand up.  
 9 MR. LESNEVICH: Someone else?  
 10 MAYOR MOSCOVITZ: Have you finished your  
 11 comments for tonight?  
 12 Yes. Anyone will be free to speak again --  
 13 uh -- on the 12th. Yes.  
 14 MR. POLINSKY: My name is David Polinsky. I  
 15 live at 94 Glenwood Road and I have --  
 16 MS. HATTEN: What? Wait, wait, wait.  
 17 MAYOR MOSCOVITZ: What do -- wait. We didn't  
 18 get that.  
 19 MR. POLINSKY: 94 Glenwood Road in Englewood.  
 20 And I'm just here --  
 21 MAYOR MOSCOVITZ: Did you --  
 22 MR. POLINSKY: -- represent --  
 23 MAYOR MOSCOVITZ: -- get the name?  
 24 MS. HATTEN: No.  
 25 MAYOR MOSCOVITZ: I'm sorry.

## Colloquy

100

1 MS. HATTEN: I'm sorry.  
 2 MAYOR MOSCOVITZ: Excuse me.  
 3 MR. POLINSKY: I am an attorney, believe it  
 4 or not.  
 5 (Laughter)  
 6 MR. POLINSKY: All right. My --  
 7 MS. HATTEN: David Polinsky?  
 8 MR. POLINSKY: -- name is David Polinsky.  
 9 MS. HATTEN: Okay. Address?  
 10 MR. POLINSKY: I live at 94 Glenwood Road and  
 11 I live in Englewood. And I think --  
 12 (Inaudible)  
 13 MR. POLINSKY: -- being an Englewood rep --  
 14 representative in terms of explaining that there's no  
 15 hostile take-over. There are people from Englewood  
 16 here because it effects people in Englewood. That's  
 17 all.  
 18 My son goes to the Tenafly J.C.C. He has  
 19 friends that live in Tenafly. And it would be --  
 20 people in Englewood would then be able to walk into  
 21 Tenafly on the Sabbath, play with their friends'  
 22 children.  
 23 And it's not a hostile take-over. I'm very  
 24 happy in Englewood. I don't plan on buying a house in  
 25 Tenafly. I'm established in Englewood. But it would

## Colloquy

101

1 be convenient for people in Englewood, as well, and it  
 2 would foster greater -- a larger community within  
 3 Bergen County.  
 4 Thank you.  
 5 (Applause)  
 6 MAYOR MOSCOVITZ: I believe that that's all  
 7 the comments for this evening. This will be continued  
 8 on the 12th.  
 9 MR. LESNEVICH: I have nothing for closed  
 10 session, Mayor.  
 11 MAYOR MOSCOVITZ: Does anybody --  
 12 MS. HATTEN: Could we --  
 13 MAYOR MOSCOVITZ: -- have any --  
 14 MS. HATTEN: -- do the correspondence? Would  
 15 that be all right --  
 16 MAYOR MOSCOVITZ: Oh, we have the  
 17 correspondence.  
 18 MS. HATTEN: -- if we have them read for the  
 19 record?  
 20 MR. LESNEVICH: Yes.  
 21 MAYOR MOSCOVITZ: We'll just pause for a  
 22 moment while you leave because we have a few more items  
 23 on our agenda.  
 24 (Pause while audience leaves.)  
 25 MAYOR MOSCOVITZ: Can we continue this

## Colloquy

102

1 meeting inside? No, we're on the tape.  
 2 MS. HATTEN: We're almost -- I've just got to  
 3 do this for the record.  
 4 MAYOR MOSCOVITZ: We just -- oh, everybody  
 5 come close.  
 6 John, Chris, Walter, come over here.  
 7 Could you two come over here, please?  
 8 MR. LESNEVICH: We're going to have a very  
 9 small closed session.  
 10 MAYOR MOSCOVITZ: We're going to do this item  
 11 right here.  
 12 MR. LESNEVICH: And we're also going to have  
 13 a very small closed session. We need a very small  
 14 closed session. Five -- one minute. Mr. Yegen would  
 15 like --  
 16 MAYOR MOSCOVITZ: Okay.  
 17 MR. LESNEVICH: -- a one minute closed  
 18 session.  
 19 MAYOR MOSCOVITZ: All right. First, let's  
 20 just put this on the -- on the agenda.  
 21 MS. HATTEN: Is that personnel or --  
 22 MAYOR MOSCOVITZ: I mean Nancy wants --  
 23 MS. HATTEN: -- legal?  
 24 MAYOR MOSCOVITZ: -- to say this.  
 25 MR. LESNEVICH: Excuse me. I want to ask you

## Colloquy

103

1 if you could please go outside and talk. Believe it or  
 2 not, we're still in session.  
 3 MS. HATTEN: We're still in a meeting.  
 4 UNIDENTIFIED: Someone left it on the seat.  
 5 MR. LESNEVICH: Whoa. Also, the lucky winner  
 6 of a --  
 7 MAYOR MOSCOVITZ: A tape has been found on  
 8 the seat. Somebody lost a tape.  
 9 MR. LESNEVICH: A bank card?  
 10 UNIDENTIFIED MALE: She's lip syncing you.  
 11 MR. LESNEVICH: Who?  
 12 MAYOR MOSCOVITZ: Oh. Oh, it's a --  
 13 MR. LESNEVICH: Patricia Stimson.  
 14 UNIDENTIFIED FEMALE: Oh, that's --  
 15 MAYOR MOSCOVITZ: Oh, that's the reporter.  
 16 Is she still here?  
 17 Give it to -- give it to Nancy. She'll hold  
 18 it for her.  
 19 MR. LESNEVICH: Oh, no, thanks. I got it.  
 20 (Laughter)  
 21 MAYOR MOSCOVITZ: Huh? Nancy will --  
 22 (Laughter)  
 23 MR. LESNEVICH: It's the Suburbanite  
 24 reporter.  
 25 MAYOR MOSCOVITZ: Walter, Nancy can hold it

## Colloquy

104

1 at the desk. She'll come back for it.  
 2 MR. LESNEVICH: I could go shopping for  
 3 awhile. This lady owes us.  
 4 MAYOR MOSCOVITZ: Hold it at the desk.  
 5 MS. HATTEN: Well, we just have to --  
 6 MR. LESNEVICH: This lady owes us.  
 7 MAYOR MOSCOVITZ: Hold it at the desk.  
 8 MR. LESNEVICH: Would you mind, please, going  
 9 out. Please?  
 10 MS. HATTEN: So we get to finish our meeting?  
 11 MR. LESNEVICH: Please. Please. Or -- or  
 12 else be quiet and listen to the rest of the agenda.  
 13 MS. HATTEN: I have three items of  
 14 correspondence for tonight's meeting. The first two  
 15 deal with the swim clubs. They both want an extension  
 16 on their existing lease and you approved that and the  
 17 consent agenda.  
 18 And the third item is the supplemental debt  
 19 statement supplied by the Chief Financial Officer for  
 20 the capital ordinance you introduced this evening.  
 21 Thank you very much.  
 22 MAYOR MOSCOVITZ: Thank you to Ms. Hatten.  
 23 MR. LESNEVICH: Now, ma'am, may I --  
 24 MS. HATTEN: We need the closed --  
 25 MR. LESNEVICH: -- do the closed --

## Colloquy

105

1 MS. HATTEN: -- session.  
 2 MR. LESNEVICH: -- session?  
 3 Resolved in compliance with N.J.S.A. 10:4-12,  
 4 the Mayor and Council of the Borough of Tenafly are  
 5 going to close Executive Session to discuss the  
 6 following matters under legal possible -- um --  
 7 condemnation action. Minutes will be taken of the  
 8 meeting and released to the public at the time this  
 9 matter is resolved. After the closed Executive  
 10 Session, the Mayor and Council will reconvene in the  
 11 Committee Room to adjourn this public meeting. Got  
 12 your interest.  
 13 MAYOR MOSCOVITZ: May I --  
 14 (Inaudible)  
 15 MAYOR MOSCOVITZ: -- have a motion, please?  
 16 (Inaudible)  
 17 MS. HATTEN: -- closed session for one  
 18 minute.  
 19 MR. LESNEVICH: Got your interest.  
 20 MAYOR MOSCOVITZ: Is there a second?  
 21 UNKNOWN COUNCIL MEMBER: Second.  
 22 MAYOR MOSCOVITZ: All in favor.  
 23 (Affirmative reply from members.)  
 24 MAYOR MOSCOVITZ: Thank you. Meeting is  
 25 adjourned.

CERTIFICATION

I, Emma A. Raines, the assigned transcriber, do hereby certify the foregoing transcript of proceedings before the Regular Meeting of the Tenaflly Mayor and Council on November 28, 2000, on tape number 1-0, Side A, index number 0001 to End; tape number 2-0, Side A, index number 0001 to 2085, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate transcript to the best of my knowledge and ability.



Emma A. Raines AOC #408  
Tape Reporters, Inc.

Date: 1-15-01



MAYOR AND COUNCIL  
OF THE  
BOROUGH OF TENAFLY  
BERGEN COUNTY, NEW JERSEY

---

In the Matter of the	:	
	:	
Application of the TENAFLY	:	TRANSCRIPT
	:	OF THE
ERUV ASSOCIATION for an Eruv	:	PROCEEDINGS

---

Place: Tenaflly Municipal Building  
100 Riveredge Road  
Tenaflly, New Jersey 07670

Date: December 12, 2000

B E F O R E :

MAYOR ANN A. MOSCOVITZ  
COUNCILMEMBER KERGE  
COUNCILMEMBER PECK  
COUNCILMEMBER LIPSON  
COUNCILMEMBER SULLIVAN  
COUNCILMEMBER WILSON

ALSO PRESENT:

MR. LESNEVICH, Borough Attorney  
CHAIM BOOK, Spokesperson for  
the Tenaflly ERUV Association, Applicant

---

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1 MAYOR MOSCOVITZ: Good evening, everybody,  
2 and welcome. In compliance with the Open Public  
3 Meetings Act, P.L. 1975, Chapter 231, notice  
4 requirements have been satisfied.

5 Meeting dates for the year are confirmed at  
6 the annual meeting and are posted on the public  
7 bulletin board in the lobby of the Municipal Center and  
8 published within the Press Journal within the first 10  
9 days of the new year. Copies of all revised or  
10 additional meeting notices are sent by a fax to the  
11 Press Journal, The Record, the Suburbanite, and the  
12 Northern Valley News.

13 We also have our agenda posted on the Web on  
14 our Home Page. You can find it there -- uh -- each  
15 week.

16 We will rise and salute the flag.  
17 (Flag Salute)

18 MAYOR MOSCOVITZ: Would you call the roll,  
19 please, Ms. Hatten?

20 MS. HATTEN: Mayor Moscovitz?

21 MAYOR MOSCOVITZ: Here.

22 MS. HATTEN: Mrs. Kerge?

23 MRS. KERGE: Here.

24 MS. HATTEN: Mr. Lipson?

25 MR. LIPSON: Here.

## Colloquy

5

1 MS. HATTEN: Dr. Peck?

2 DR. PECK: Here.

3 MS. HATTEN: Mr. Sullivan?

4 MR. SULLIVAN: Present.

5 MS. HATTEN: Mr. Wilson?

6 MR. WILSON: Here.

7 MS. HATTEN: And, for the record, Mr. Yegen  
8 is absent this evening.

9 MAYOR MOSCOVITZ: Uh -- I'm --  
10 Do I have to move the approval of the  
11 minutes?

12 MS. HATTEN: Uh-huh.

13 MAYOR MOSCOVITZ: I'd like to ask if Council  
14 would like to move the approval of the minutes of  
15 November 28th?

16 MR. LESNEVICH: So moved.

17 DR. PECK: Second.

18 MAYOR MOSCOVITZ: Everybody -- uh -- are  
19 there any corrections or additions? Uh -- as  
20 corrected?

21 MRS. KERGE: As corrected, Mayor. I think  
22 it's important --

23 MAYOR MOSCOVITZ: Right.

24 MRS. KERGE: -- to say that. We mentioned  
25 that --

## Colloquy

6

1 MAYOR MOSCOVITZ: There were one or two --  
 2 MRS. KERGE: -- in the pre-meeting.  
 3 MAYOR MOSCOVITZ: -- corrections.  
 4 MRS. KERGE: And there were some corrections.  
 5 MAYOR MOSCOVITZ: Right.  
 6 And the minutes are available.  
 7 MS. HATTEN: And the motion?  
 8 MAYOR MOSCOVITZ: Uh -- oh. Uh -- all in  
 9 favor?  
 10 (Unanimous Approval)  
 11 MAYOR MOSCOVITZ: All opposed?  
 12 (No audible response.)  
 13 MAYOR MOSCOVITZ: Thank you.  
 14 If you look at the -- uh -- minutes -- at the  
 15 agenda, I --  
 16 There are copies of the agenda in the front  
 17 of the audience?  
 18 You'll see that at 8:30 we're supposed to go  
 19 into a public meeting -- public hearing, so we'll have  
 20 to do the public hearing first. I apologize that we're  
 21 a little late. We had a lot of extra business to  
 22 attend to before this meeting.  
 23 So, -- uh -- I'll call on Mr. Lipson for the  
 24 -- uh -- public hearing.  
 25 MR. LIPSON: Uh -- this is a bond ordinance

## Colloquy

7

1 providing for furnishing and delivery of a new  
 2 telescoping aerial platform fire apparatus for the  
 3 Tenaflu -- Tenaflu Volunteer Fire Department by the  
 4 Borough of Tenaflu in the County of Bergen, New Jersey,  
 5 appropriating \$765,000.00 therefor, and authorizing the  
 6 issuance of \$726,750.00 bonds or notes of the Borough  
 7 to finance part of the cost therefor.  
 8 The foregoing ordinance published herein was  
 9 introduced at a regular meeting of the Mayor and  
 10 Council of the Borough of Tenaflu in the County of  
 11 Bergen held on Tuesday, November 28th, in the year  
 12 2000, and will be further considered for final passage  
 13 after a public hearing of the Regular Meeting of the  
 14 Mayor and Council to be held in the Council Chambers,  
 15 Tenaflu Municipal Center, 100 Riveredge Road, Tenaflu,  
 16 New Jersey, on Tuesday, December 12th, in the year  
 17 2000, at 8:30 p.m. prevailing time, or as soon  
 18 thereafter as the matter can be heard.  
 19 A copy of the ordinance has been posted on  
 20 the bulletin board in the lobby of the Municipal  
 21 Center.  
 22 MAYOR MOSCOVITZ: Uh -- now is the time for  
 23 any public comment on this ordinance. Does anyone here  
 24 wish to comment on this?  
 25 (No audible response.)

1 MAYOR MOSCOVITZ: That's not why you're here  
2 tonight?  
3 (Laughter)  
4 MAYOR MOSCOVITZ: Okay. Would you call the  
5 roll, please, Ms. Hatten?  
6 MS. HATTEN: No. No.  
7 MR. LIPSON: Oh, wait.  
8 MS. HATTEN: We have to recognize Mr. Lipson.  
9 MAYOR MOSCOVITZ: I'm sorry.  
10 Mr. Lipson, would you continue?  
11 MR. LIPSON: Yeah. Well, before -- before I  
12 continue, can I make a comment on -- on this or do I  
13 have to wait until I finish, Mayor?  
14 MAYOR MOSCOVITZ: No, you may. Certainly.  
15 MR. LIPSON: All right. Just so the public  
16 understands, this is a completion that the firemen --  
17 the Fire Department undertook a number of years ago to  
18 replace old trucks. This is the -- this is replacing  
19 the last truck that was purchased in 1970.  
20 So, as it st -- as it is now, -- uh -- all  
21 the trucks in the Borough were -- are actually -- uh --  
22 purchased from '84 onwards, so that we are complete  
23 with out plan. We had a 30-year plan to replace old  
24 trucks that are 30 years old. So, they (phonetic) will  
25 note they'll be no longer any fire trucks being

Colloquy

9

1 purchased in Tenaflly for the next -- uh -- 15 years.  
2 Also, the reason why we're -- we needed a  
3 truck of this size and nature is the fact that the  
4 homes in Tenaflly have gotten to be quite large and we  
5 needed a (sic) aerial ladder so that we can reach some  
6 of the second stories of some of the homes.  
7 BE IT RESOLVED by the Mayor and Council of  
8 the Borough of Tenaflly, in the County of Bergen, New  
9 Jersey, that an ordinance entitled, Bond Ordinance  
10 provided for the furnishing and delivery of a new  
11 telescoping aerial platform fire apparatus for the  
12 Tenaflly Volunteer Fire Department by the Borough of  
13 Tenaflly, in the County of Bergen, New Jersey,  
14 appropriating \$765,000.00 therefore and authorizing the  
15 issuance of \$726,750.00 bonds or notes of the Borough  
16 to finance a part of the cost of the -- thereof.  
17 Pass the second and final reading of -- as is  
18 hereby adopted and notice of same shall be published  
19 according to law. I move this resolution.  
20 MAYOR MOSCOVITZ: Is there a second?  
21 MRS. KERGE: Second.  
22 MAYOR MOSCOVITZ: It's been moved and  
23 seconded.  
24 Comments from the Council members?  
25 Yes, --

## Colloquy

10

1 MR. SULLIVAN: Uh -- yes.  
 2 MAYOR MOSCOVITZ: -- Mr. Sullivan?  
 3 MR. SULLIVAN: Um -- this is an appropriate  
 4 capital ordinance for Councilman Lipson to be reading.  
 5 This will be his last ordinance that he reads to you as  
 6 an elected official for the Borough of Tenaflly. He  
 7 served very well as our fire commissioner -- in fact,  
 8 received the honor from the fire -- Tenaflly Volunteer  
 9 Fire Department as an honorary fireman.  
 10 And what I'd like to say is that many of you  
 11 don't really realize how difficult it is to be a  
 12 Council member nor let alone a Mayor here in the  
 13 Borough of Tenaflly. And I would just like to show a  
 14 little bit of appreciation to Councilman Lipson for all  
 15 of the dedication that he's put in here, the very hard  
 16 work, and the teaching that he has given to me as a  
 17 junior Council member.  
 18 Thank you very much.  
 19 (Inaudible)  
 20 (Applause)  
 21 MR. LIPSON: Thank you. Thank you. And --  
 22 MAYOR MOSCOVITZ: Uh -- thank you.  
 23 MS. HATTEN: Now can I call the roll?  
 24 (Laughter)  
 25 MR. LIPSON: Now, I can't --

## Colloquy

11

1 MAYOR MOSCOVITZ: Call the --  
 2 MR. LIPSON: I'm speechless.  
 3 MAYOR MOSCOVITZ: -- roll, please.  
 4 MR. LIPSON: I won't be able to say anything.  
 5 (Laughter)  
 6 MS. HATTEN: Mrs. Kerge?  
 7 MRS. KERGE: Yes.  
 8 MS. HATTEN: Mr. Lipson?  
 9 MR. LIPSON: Uh, yeah -- I'm speechless.  
 10 Yes.  
 11 (Laughter)  
 12 MS. HATTEN: Dr. Peck?  
 13 DR. PECK: Yes.  
 14 MS. HATTEN: Mr. Sullivan?  
 15 MR. SULLIVAN: Yes.  
 16 MS. HATTEN: Mr. Wilson?  
 17 MR. WILSON: Yes.  
 18 MS. HATTEN: Thank you.  
 19 MAYOR MOSCOVITZ: Thank you, all.  
 20 Uh -- would -- we now go to the --  
 21 We're going to skip the correspondence for  
 22 now?  
 23 MS. HATTEN: Yes. We're going to go to the  
 24 Consent Agenda.  
 25 MAYOR MOSCOVITZ: We're going to do the

## Colloquy

12

1 Consent Agenda and then we'll -- we will separate that  
 2 from the rest of the audience remarks. Then, audience  
 3 remarks will come because we -- this is business that  
 4 we must conclude this evening. It just takes a minute.  
 5 Somebody --

6 (Laughter)

7 MAYOR MOSCOVITZ: Somebody wish to -- uh --  
 8 amend the Consent Agenda?

9 Mr. Sullivan?

10 MR. SULLIVAN: Yes, Madam Mayor. Um -- thank  
 11 you for recognizing me.

12 I'd like to move what we have on new business  
 13 and -- uh -- and move it to our Consent Agenda. Among  
 14 new business we have a number of awards of bids and --  
 15 um -- appointment for our new Municipal Prosecutor, Mr.  
 16 Galina. And I move that we take what is now under new  
 17 business and place it under Consent Agenda.

18 MAYOR MOSCOVITZ: Thank you.

19 MR. SULLIVAN: I so move.

20 MAYOR MOSCOVITZ: Uh -- that's been moved and  
 21 seconded? Do we call the roll on that?

22 MS. HATTEN: Yes. I will call the roll.

23 Mrs. Kerge?

24 MRS. KERGE: Yes.

25 MS. HATTEN: Mr. Lipson?

## Colloquy

13

1 MR. LIPSON: Yes.

2 MS. HATTEN: Dr. Peck?

3 DR. PECK: Yes.

4 MS. HATTEN: Mr. Sullivan?

5 MR. SULLIVAN: Yes.

6 MS. HATTEN: Mr. Wilson?

7 MR. WILSON: Yes.

8 MS. HATTEN: Now, --

9 MAYOR MOSCOVITZ: Thank you.

10 MS. HATTEN: -- Mr. -- Dr. Peck's going to  
 11 move it.

12 MAYOR MOSCOVITZ: Dr. Peck, are you going to  
 13 move the Consent Agenda?

14 DR. PECK: I move the Consent Agenda.

15 MRS. KERGE: I'll second the Consent Agenda.

16 MAYOR MOSCOVITZ: It's been moved and  
 17 seconded.

18 Uh -- would you call the roll, please?

19 MS. HATTEN: Yes.

20 Mrs. Kerge?

21 MRS. KERGE: Yes.

22 MS. HATTEN: Mr. Lipson?

23 MR. LIPSON: Yes.

24 MS. HATTEN: Dr. Peck?

25 DR. PECK: Yes.

## Colloquy

14

1 MS. HATTEN: Mr. Sullivan?

2 MR. SULLIVAN: Yes.

3 MS. HATTEN: Mr. Wilson?

4 MR. WILSON: Yes.

5 MAYOR MOSCOVITZ: I told you it would only  
6 take a minute. Now we can have audience remarks on  
7 items on the agenda for this evening.

8 But, before we continue with that, this is a  
9 continuation of the meeting that we had two weeks ago.  
10 We have just a few requests from you all because there  
11 are so many people here this evening.

12 First, I would ask you, please, if you have a  
13 cell phone to turn it off. Having Jingle Bells in the  
14 middle of this discussion is not appropriate.

15 (Laughter)

16 MAYOR MOSCOVITZ: Second, -- uh -- there was  
17 a lot of applause at our last meeting and I do believe  
18 that applause is also an inap -- inappropriate response  
19 to some of these issues that we're discussing this  
20 evening. I request that -- please, do not applaud.

21 We know that you're here on both sides of the  
22 issue. We respect that. We know how deeply you feel  
23 about the issues. We don't have an applause meter  
24 here. We're not going to judge these issues based upon  
25 the amount or the length of the applause. So, please,

## Colloquy

15

1 please, do not applaud.

2 And don't call out from the back of the room.

3 I was very pleased, really. I thought that  
4 at our last meeting everyone was very respectful of  
5 everyone else in the room, with the exception of just  
6 one person. And I -- I think that speaks very well for  
7 Tenafly and I hope that we will continue with that this  
8 evening. I don't see any reason why it won't -- will  
9 not continue that way.

10 So, no comments, please. When you have a  
11 question, or you have a comment to make, you'll come to  
12 the microphone when you're called upon, and you'll give  
13 us your name and your complete address, please,  
14 including the town in which you reside. That's very  
15 important for us up here to know whether you're from  
16 Tenafly or from another town.

17 Everyone will have an opportunity to be  
18 heard, and you'll be heard until you've said everything  
19 that you wish to say. But, once you have spoken,  
20 please wait until everyone else has spoken for the  
21 first time, and then I'll call upon people who wish to  
22 speak again.

23 Do you have something you want to add to  
24 that?

25 MR. LESNEVICH: No, thank you, Mayor. You

1 took all my lines.  
 2 MAYOR MOSCOVITZ: I took all your lines?  
 3 (Laughter)  
 4 MAYOR MOSCOVITZ: I'm startled (phonetic).  
 5 Okay. I'll ask -- uh -- first, if -- does  
 6 someone representing the ERUV Association wish to make  
 7 an opening statement?  
 8 UNIDENTIFIED MALE: Is the microphone on?  
 9 MAYOR MOSCOVITZ: Good evening, Mr. Book.  
 10 MS. HATTEN: On the side. Just -- no, no.  
 11 MAYOR MOSCOVITZ: On the side. There's a  
 12 little sliding switch on the side.  
 13 MR. BOOK: Good evening.  
 14 Good evening, Mayor.  
 15 MAYOR MOSCOVITZ: Good evening, Mr. Book.  
 16 MR. BOOK: Good evening, Mr. Sullivan.  
 17 Mr. Lipson.  
 18 Good evening, Mr. Wilson.  
 19 Mr. Lesnevich.  
 20 Good evening, Ms. Hatten.  
 21 Good evening, Dr. Peck.  
 22 Good evening, Ms. Kerge.  
 23 Good evening, Mr. DiGiacomo.  
 24 My name is Chaim Book. I reside at 112  
 25 Highwood Avenue, Tenafly, New Jersey. And I'm the

## Colloquy

17

1 spokesperson for the ERUV Association. I will keep my  
 2 opening remarks -- uh -- extremely brief and I will  
 3 reserve my time for closing remarks.  
 4 At the conclusion of the November 28th  
 5 meeting, -- uh -- there were two pieces of information  
 6 that were requested -- uh -- by -- uh -- the Mayor and  
 7 Council from -- uh -- uh -- one was -- uh -- the  
 8 membership of the Association and the second was a map  
 9 of the -- of the Eruv and both were provided to the  
 10 Mayor and Council in my December 7th letter to the  
 11 Mayor and Council.  
 12 And before I proceed with anything further, I  
 13 just wanted to whether there were any other questions  
 14 or any other issues that the Mayor and Council wanted  
 15 me to address.  
 16 MAYOR MOSCOVITZ: Uh -- I -- I think it might  
 17 be interesting for the audience members if you would  
 18 describe to them -- uh -- where the Eruv presently --  
 19 the wires that you've constructed, or the --  
 20 (Indiscernible)  
 21 MAYOR MOSCOVITZ: -- presently exist.  
 22 MR. BOOK: I just wanted to cor -- if I can  
 23 just correct that for a second. There are no wires  
 24 that were --  
 25 MAYOR MOSCOVITZ: No. I --

## Colloquy

18

1 MR. BOOK: -- constructed. It is only  
2 plastic strips on some of the telephone poles.

3 MAYOR MOSCOVITZ: Pronounced layfees  
4 (phonetic)? Is that correct?

5 MR. BOOK: Leffees (phonetic).

6 MAYOR MOSCOVITZ: Leffees. Thank you.

7 MR. BOOK: Uh -- the Eruv extends from --

8 MAYOR MOSCOVITZ: Can everybody hear?

9 UNIDENTIFIED FEMALE: No.

10 MAYOR MOSCOVITZ: In the back?

11 UNIDENTIFIED FEMALE: No. Nothing.

12 MAYOR MOSCOVITZ: Can we increase the volume?

13 MS. HATTEN: No.

14 MAYOR MOSCOVITZ: Is that possible?

15 MS. HATTEN: No.

16 MAYOR MOSCOVITZ: No.

17 MS. HATTEN: He has to speak closer to the  
18 microphone.

19 MAYOR MOSCOVITZ: Okay. You just have to  
20 speak a little closer.

21 MR. BOOK: I -- I will. I apologize.

22 The Eruv extends on the -- um -- west side of  
23 -- of Tenafly -- uh -- from Dean Street -- uh -- and it  
24 goes around -- comes around Tenafly Road, and then  
25 comes back up on the -- um -- on the north border at

## Colloquy

19

1 Hudson Avenue. Uh -- the east border -- uh -- runs  
2 generally from Homestead Road to Highwood Avenue -- um  
3 -- across Berkley Drive and Ridge Road, across East  
4 Clinton to Woodland Street, and the south border would  
5 be the City of Englewood.

6 MAYOR MOSCOVITZ: Thank you.

7 MR. BOOK: You're welcome.

8 Are there any other questions or any other  
9 issues that I need to address for the Mayor and  
10 Council?

11 MAYOR MOSCOVITZ: No. Just -- we'll listen  
12 to you.

13 We are here this evening to listen. This is  
14 a hearing. We're not really here to speak. We want to  
15 listen to everything everyone else has to say.

16 MR. BOOK: Oh. In order to -- uh -- provide  
17 a -- a complete set of information and so that there  
18 are no -- uh -- questions left unanswered, -- uh -- we  
19 have invited someone who is an expert on the subject  
20 the Eruvs. We have invited Rabbi Howard Jachter, who  
21 is a professor of Talmud at the Torah Academy of Bergen  
22 County. He's also a rabbinical judge with Rabbinical  
23 Court in Elizabeth, New Jersey.

24 He's been very involved in the issue of Eruvs  
25 for quite some years and he has, in fact, been involved

## Colloquy

20

1 in the construction of at least 11 Eruvs. And he is --  
 2 was interviewed by The Wall Street Journal this past  
 3 July on the subject.

4 I would also encourage the Mayor and Council,  
 5 if they have any specific questions regarding any  
 6 technical issues -- uh -- regarding Eruvs, or any  
 7 religious issues regarding Eruvs, to feel free to ask  
 8 Rabbi Jachter those questions.

9 And I would like to ask Rabbi Jachter to  
 10 speak at this time.

11 MAYOR MOSCOVITZ: Fine.

12 RABBI JACHTER: Your Honor, Council members,  
 13 -- um -- often, my students ask me -- uh -- why are we  
 14 bothering to study history.

15 MR. LESNEVICH: Excuse me, Rabbi. Would you  
 16 mind stating your full name and your home address or  
 17 your business address, --

18 RABBI JACHTER: Sure.

19 MR. LESNEVICH: -- as you wish, into the  
 20 record?

21 RABBI JACHTER: Sure.

22 MR. LESNEVICH: It's not for us. It's for  
 23 the tape machine.

24 RABBI JACHTER: Okay. Rabbi Howard Jachter,  
 25 and I live in Tannic, 315 Churchill Road, Tannic, New

## Colloquy

21

1 Jersey. And I teach at the Torah Academy of Bergen  
 2 County, also in Tannic, New Jersey, 1600 Queen Anne  
 3 Road.

4 My students -- uh -- often ask me why are we  
 5 studying history. It seems to be facts that are not --  
 6 uh -- relevant to us.

7 So, I tried to answer that. It's very -- in  
 8 order to understand ourselves, we need to understand  
 9 the past. And, in order to see where we will -- where  
 10 we fit in, how we fit into the past, we need to study  
 11 history. And in order to grasp how history will judge  
 12 our actions, we need to study -- uh -- how we study the  
 13 actions of people in the past.

14 So, what I'll try to do -- uh -- tonight is  
 15 to -- uh -- project a little bit about the history of  
 16 the Eruv. And I hope the information will be very,  
 17 very helpful. Uh -- just reading the -- uh -- the --  
 18 (Indiscernible)

19 RABBI JACHTER: -- about reasons to  
 20 disapprove the request to erect an Eruv, I see the need  
 21 for -- uh -- for some -- uh -- updated information. Um  
 22 -- so, if I can start -- uh -- quoting from the flyer  
 23 (phonetic).

24 Because part of being an orthodox Jew is  
 25 believing that the Torah is absolute and of divine

## Colloquy

22

1 revelation and that the Torah -- that's the bible, the  
 2 Old Testament -- determines how our lives are lived.  
 3 The concept of an Eruv was not born in the basic  
 4 religious tenet but at the back, a -- a means of  
 5 circumventing the basic principles of the Torah.

6 This is totally false from -- uh -- from --  
 7 uh -- from beginning to end. Number one, the idea of  
 8 -- uh -- of an Eruv does not appear in the bible. For  
 9 orthodox Jews there are two books that are  
 10 authoritative, not just the bible, but the Talmud.

11 Now, the Talmud devotes much time to  
 12 discussing the laws of Eruv and --

13 (Indiscernible)

14 RABBI JACHTER: -- is devoted to Eruv. It's  
 15 called tractate Arriving. And rabbis are encouraged to  
 16 erect an Eruv or a community is -- is encouraged to --  
 17 uh -- erect an Eruv wherever possible. The Talmud  
 18 reports -- the Talmud was written about 2,000 years ago  
 19 -- that one rabbi criticized another rabbi, why didn't  
 20 you build an Eruv in your area, and he was very, very  
 21 critical.

22 So, this is supposed -- this is something  
 23 that the Talmud is clear that rabbis should be -- that  
 24 the Jewish community should have an Eruv. It's -- uh  
 25 -- it's not a -- uh -- it's certainly not a means of

## Colloquy

23

1 circumventing the basic principles of the Torah. It's  
 2 certainly a -- uh -- principle of the Talmud that  
 3 orthodox Jews consider bonding that a community should  
 4 have Eruvs.

5 And -- uh -- there's been -- uh -- a long  
 6 history of -- uh -- of tolerance and -- and cooperation  
 7 between Jews and Christians over this issue. At least  
 8 for the last -- for 500 years preceding the 1930's when  
 9 in the 1930's Jews were not allowed to have Eruvs in  
 10 their communities anymore -- um -- in -- in Europe.

11 The Christian communities were very welcoming  
 12 of -- uh -- Christian authorities were very, very  
 13 welcoming in having Eruvs. There's documentation of  
 14 this -- um -- in Germany, in Poland, in Russia and  
 15 Romania.

16 And I can state as -- uh -- as fact that for  
 17 anyone who is here who is -- who is of Jewish heritage  
 18 -- of Eastern European Jewish heritage, that their  
 19 grandparents or great grandparents used an Eruv, and  
 20 they benefitted from the Eruv and they benefitted from  
 21 the tolerance and the graciousness of the Christian  
 22 neighbors to allow -- and -- and comm. -- and -- uh --  
 23 community leaders who allowed them to -- uh -- to erect  
 24 and maintain an Eruv for hundreds of years.

25 The responsive (phonetic) literature, meaning

## Colloquy

24

1 literature of rabbis discussing questions of --

2 (Indiscernible)

3 RABBI JACHTER: -- did record that there were  
4 individuals who -- uh -- individuals in the community  
5 who did oppose having -- having an Eruv. They didn't  
6 like that Jews were allowed to do this, and they  
7 sometimes tried to take it down themselves. However,  
8 the -- uh -- Christian authorities took -- uh -- made  
9 it their business to allow the Jews to have their -- to  
10 have their Eruvs and were very accommodating of this,  
11 again as long -- as long as they could, and, so, -- uh  
12 -- until the sit -- the situation of the -- uh --  
13 1930's.

14 Um -- now, a --

15 (Indiscernible)

16 RABBI JACHTER: Uh -- one thing. Also, just  
17 to say, when we make a --

18 (Indiscernible)

19 RABBI JACHTER: -- today, when the rabbi and  
20 the community will make an Eruv today, -- uh -- the  
21 rabbis will -- will consult with -- uh -- the younger  
22 rabbis will consult with the older rabbis. We want to  
23 know what was done, as we would say, --

24 (Inaudible)

25 RABBI JACHTER: -- in the old home, the old

## Colloquy

25

1 country. What did they -- what did they do there? And  
2 we try very hard to make the Eruv today in the style  
3 similar to principles as they -- ad they did in -- uh  
4 -- in the -- uh -- in -- in -- what was done for -- uh  
5 -- hundreds and hundreds of years in Central and  
6 Eastern Europe.

7 This was not very common -- it was not very  
8 common in the United States to have an Eruv until the  
9 -- uh -- to construct it, to establish an Eruv until  
10 the 1970's. And the reason is is because, as I think  
11 we all understand, that a major change occurred in the  
12 United States in the 1960's and the 1970's.

13 Civil right move -- the Civil Rights Movement  
14 made a -- uh -- a major change in this -- uh -- in the  
15 United -- in the United States. It literally  
16 transformed the United States into a country that  
17 celebrates and embraces diversity and does not demand  
18 uniformity.

19 Hence, virtually all communities that have --  
20 uh -- Jewish communities that have -- have set to -- uh  
21 -- to establish an Eruv have met with a welcoming  
22 response. So much so, I'll give you my experience when  
23 I made an Eruv in the community that I grew up in in  
24 the flat lands of Brooklyn, New York. Not only did we  
25 receive permission to make the Eruv but also the -- uh

## Colloquy

26

1 -- the Council -- uh -- asked Con Edison to construct  
2 the Eruv for us free of any charge.

3 When -- uh -- Rabbi -- um --

4 (Indiscernible)

5 RABBI JACHTER: -- of the lu -- of the Jewish  
6 Educational Center in Elizabeth, New Jersey, -- uh --  
7 established the Eruv in his community back in the  
8 1970's his Eruv encompassed seven towns. That was the  
9 -- that was the -- found to be the -- the most  
10 straightforward way to make it. And all said -- all  
11 seven towns were cooperative. Those towns include --  
12 those towns are: Elizabeth, Linden, Roselle, Hillside,  
13 Cranford, Union and Roselle Park. Not a single one of  
14 those communities rais -- raised an issue of -- uh --  
15 of establishing an Eruv in those -- in those towns.

16 Um -- by this point in the United States,  
17 hundreds and hundreds of communities have -- uh -- have  
18 created -- have created and established a --

19 (Indiscernible)

20 RABBI JACHTER: -- without any -- as the  
21 statement says, without any far-reaching implications  
22 that set a dangerous precedent request by other sects  
23 or religious groups as has been mentioned in the  
24 reasons to disapprove the request to enect -- erect an  
25 Eruv.

## Colloquy

27

1 Um -- I find it -- uh -- I think you'll find  
2 it of interest to know that the White House is  
3 encompassed by -- by an Eruv. The Supreme Court of the  
4 United States of American is encompassed by an Eruv.  
5 The -- I -- uh -- I saw a picture of -- uh -- the  
6 United States -- uh -- of -- of the -- when I was  
7 visiting in Washington, D.C., in the Georgetown  
8 Synagogue, which Senator Lieberman is a member of, and  
9 the famous author, Herman Wouk, is a member of that  
10 synagogue. And the rabbi of that synagogue, Rabbi  
11 Freundel (phonetic), -- um -- mentioned -- he -- he  
12 showed me the picture of how he made the Eruv. The  
13 people who helped, cooperated and make the --

14 (Indiscernible)

15 RABBI JACHTER: -- that cooperative helping  
16 him make the Eruv. And in the picture --

17 (Indiscernible)

18 RABBI JACHTER: -- together Rabbi Freundel,  
19 President George Bush, the father, -- um -- and -- uh  
20 -- the -- uh -- and -- uh -- then -- uh -- Washington  
21 Mayor Marian Berry, as well as other officials who were  
22 -- uh -- glad to -- uh -- to help in -- uh -- in  
23 establishing the Eruv for the -- uh -- Jewish community  
24 in -- uh -- in Washington, D.C.

25 Um -- every town in -- uh -- in modern Israel

## Colloquy

28

1 has -- uh -- has an Eruv. It's -- uh -- it's  
 2 interesting that it's paid for by the Israeli  
 3 government, but that's -- uh -- that's Israel. That's  
 4 part -- uh -- that's part of what -- uh -- Israel is  
 5 about.

6 Uh -- one thing that's important to just talk  
 7 about how the Eruv and --

8 (Indiscernible)

9 RABBI JACHTER: -- are made and a little bit  
 10 of about how the Eruv here is made. The Eruv is  
 11 basically -- uh -- uses for the most part existing  
 12 structures. The -- uh -- basically, what it does it  
 13 adds for the most part wire holes -- wire molding,  
 14 black strips of -- uh -- black strips to the poles.  
 15 Black strips are used to cover -- uh -- utility wires  
 16 very often, and -- uh -- that's what the utility  
 17 companies want the -- want the Jewish community to use  
 18 that as well in constructing an Eruv.

19 Now, let me testify the following: Wire  
 20 molding is not a religious item in -- in Jewish law.  
 21 Jews do not consider wire molding holy. Um -- we do  
 22 not consider an Eruv holy. If somebody would -- it is  
 23 not a holy item. It's not a religious item. If  
 24 somebody -- and let me -- and let me try to illustrate  
 25 that point and then I think it's something that -- uh

## Colloquy

29

1 -- that everyone really of all faiths can understand.

2 Uh -- we all understand a --

3 (Indiscernible)

4 RABBI JACHTER: -- is a religious item. If  
 5 somebody would deface a --

6 (Indiscernible)

7 RABBI JACHTER: -- I believe anyone would be  
 8 -- any -- any Jew would find that -- not anyone, but  
 9 any Jew would finally be very upset -- uh -- if someone  
 10 would -- uh -- write on my --

11 (Indiscernible)

12 RABBI JACHTER: -- that's outside of my house  
 13 Harry Loves Sally. I think we find that -- uh -- I  
 14 think we'd find -- I think the Jews would find that --  
 15 we'd find that very offensive.

16 However, on an Eruv if somebody would -- uh  
 17 -- scrawl Harry Loves Sally on the wire molding, no one  
 18 would -- a Jew would not find that offensive very  
 19 simply because the wire molding is not a -- uh -- is --  
 20 is not a religious -- uh -- item.

21 Um -- it's not obvious what it is. In fact,  
 22 most orthodox Jews do not -- would not know -- would  
 23 not know how to make an Eruv, wouldn't see where the  
 24 Eruv is, how it is. A rabbi wouldn't know how it is.  
 25 Unless you knew specifically the parameters how it's

## Colloquy

30

made, it's hard to tell -- to know what -- if a wire molding is on the -- on the poles. Is it up there to cover utility wires or is it there for the Eruv or perhaps even both?

Um -- also, -- uh -- I'd like to -- uh -- specifically the last part -- uh -- or just two more -- or two more points. Something that's I think -- uh -- I think this is just a culture gap here, that I think -- uh -- hopefully I can -- uh -- be successful in -- in closing.

I think people are concerned that an Eruv creates a religious domain out of public property, and that -- uh -- we're making it -- that we're -- that we're trying to take over -- the Jewish community is trying to take over the town to make it into a private domain. I understand that sounds -- you know, outside of Jewish law, that sounds like we're trying to make it into our town by putting up wire molding.

Private domain is a technical term --

(Indiscernible)

RABBI JACHTER: Let me try to illustrate this. This does not mean that we consider it to be owned by the Jewish community, that it belong -- that it belongs to us.

Manhattan was made into a private domain --

## Colloquy

31

(Inaudible)

RABBI JACHTER: -- Jewish standards when the -- uh -- City of New York cre -- uh -- uh -- fixed the sea walls around -- uh -- around -- uh -- around Manhattan Island and also creating a wall. And also the -- the Amtrak trains erected a fence along the Westside Highway from -- uh -- West 96th up to the George Washington Bridge. They -- Amtrak, I can assure you, is not trying to convert Manhattan Island to be owned by the -- uh -- the Jewish community.

To give you a sense of the -- and a -- and a classic example, the Talmud discussed the possibility of the Continental Shelf converts the entire world into a -- into a private domain. You can trust me that the rabbis are not trying to say that we own the world by virtue of the -- uh -- of the existence of the -- uh -- of the Continental Shelf.

So, we're just trying to say this is a -- the technical legal term. It means it's an area which a -- an orthodox Jew would be permitted to -- to carry an item outside of their home on the -- uh -- on the Sabbath.

Let me explain and just take a -- just a minute -- uh -- to explain a little bit about -- uh -- about unorthodox Judaism. A kind of -- unorthodox Jews

## Colloquy

32

1 who -- uh -- have -- uh -- have moved into Tenafly.

2 Uh -- the school that the -- many of these  
3 people will send -- the Torah Academy of Bergen County  
4 where I teach. We preach tolerance. Give you -- I'd  
5 like to give you a con -- two concrete examples.

6 Uh -- two years ago we conducted a -- a  
7 program in which we wanted to present to the students  
8 all views regarding the peace process in Israel. We  
9 invited a member of the political right in Israel. We  
10 member -- we invited a member of -- uh -- of the -- of  
11 the political left in Israel. And we invited a  
12 spokesman for the Palestinian authority. All were  
13 treated with respect and with tolerance.

14 We had an event -- uh -- also two years ago  
15 in which -- uh -- we invited -- uh -- all members of --  
16 uh -- of the various denominations of Judaism to speak  
17 about their views about the Holocaust. Reform,  
18 orthodox, conservative. And there was a -- there was  
19 respect and there was tolerance that was both taught  
20 from the teachers and also well received by the  
21 students.

22 I hope -- uh -- if you have any questions  
23 that I can, you know, that I can be helpful a little  
24 bit on this -- on this issue for you. But I'd just like  
25 to -- uh -- to end with just a -- uh -- what we said at

## Colloquy

33

1 the beginning of that history. That this is not the  
2 first time that a -- uh -- community -- uh -- has -- a  
3 Jewish community has asked from -- uh -- from the local  
4 authorities to -- uh -- to erect an Eruv.

5 And, historically, an Eruv has -- has been a  
6 demonstration on the part of the authority for good  
7 faith, tolerance and multi-culturalism. And as it says  
8 on the lit -- on the -- on the reasons to disapprove  
9 the Eruv, I'd like to turn that around and make it a  
10 reason to approve. It says Tenafly is a diverse,  
11 religious and ethnic community, which -- which would  
12 seem that it celebrates multi-culturalism. What better  
13 way to continue 500 years of a tradition to -- uh -- of  
14 -- of celebrating multi-culturalism of permitting an  
15 Eruv to be erected and by continuing that glorious  
16 tradition of tolerance, respect and multi-culturalism.

17 If -- uh -- there are any questions, I'm  
18 happy to -- uh --

19 MR. LIPSON: We don't ask questions.

20 RABBI JACHTER: Oh.

21 MR. LESNEVICH: Yeah. We don't -- this is  
22 not a time for the Council members to ask questions.

23 Thank you, Rabbi.

24 RABBI JACHTER: Okay.

25 MAYOR MOSCOVITZ: Thank you very much.

## Colloquy

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1 RABBI JACHTER: Thank you.  
 2 MR. LESNEVICH: Another speaker?  
 3 Mayor?  
 4 MAYOR MOSCOVITZ: Um -- Mr. Book, --  
 5 MR. BOOK: What --  
 6 MAYOR MOSCOVITZ: -- we were supposed --  
 7 MR. BOOK: What -- whatever's --  
 8 MAYOR MOSCOVITZ: -- to be --  
 9 MR. BOOK: -- whatever's your pleasure but I  
 10 -- I just have -- there are two -- uh -- ministers who  
 11 are here and they have schedules and I just invite them  
 12 to --  
 13 MAYOR MOSCOVITZ: Uh -- I hope that -- uh --  
 14 you know, everybody here has that. Uh -- I -- I'll  
 15 call on the hands as they go up, but I would really  
 16 request that -- we've heard the history and it was very  
 17 instructive, but I hope that other people will keep  
 18 their comments a good deal shorter because we have a  
 19 lot of people here who wish to speak this evening.  
 20 Um -- I -- I know -- uh -- let me see. I --  
 21 I think that hand went up first, and then we'll come  
 22 down here.  
 23 Is there -- thank you.  
 24 MR. BARZELATTO: Good evening. My name's Tony  
 25 Barzelatto. I live on Day Avenue in Tenaflly.

## Colloquy

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1 MS. HATTEN: What number?  
 2 MR. BARZELATTO: I've lived in Tenaflly for 38  
 3 years.  
 4 MAYOR MOSCOVITZ: Uh -- the address, please?  
 5 MR. BARZELATTO: 65 Day, Mayor.  
 6 MAYOR MOSCOVITZ: Thank you.  
 7 MR. BARZELATTO: Um -- several things come to  
 8 mind for me. Um -- where is the ACLU in this? Why  
 9 haven't they not been fighting this? I'm a member of  
 10 the Tenaflly Lions Club and we were harassed, let's call  
 11 it, for putting up a menorah and a creche in Highland  
 12 (phonetic) Park for several years. And -- um --  
 13 certainly has been a dead issue, but where are they?  
 14 Why are they not speaking their voices in reference to  
 15 this?  
 16 Um -- for many years, I've lived in Tenaflly  
 17 -- as I said, for 38 years, and Tenaflly has been a --  
 18 predominantly a Jewish town. Certainly, they've done a  
 19 wonderful -- good for Tenaflly. And I'm concerned as to  
 20 why we're doing this now only maybe because a few  
 21 members of the orthodox community has moved in and now  
 22 just wants to -- uh -- become an issue.  
 23 I think that if you permit this, you  
 24 certainly will open Pandora's Box. You now will give  
 25 any group any opportunity to hang anything in town.

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1 And it may not be on telephone poles. It could be  
 2 elsewhere. And, certainly, if you approve this, then  
 3 you better start looking at your sign ordinance, such  
 4 as garage sale signs and political signs, and things  
 5 like that that are not allowed to be hung up in the  
 6 Borough of Tenaflly.

7 Um -- one of the things that truly upsets me  
 8 and coming to the last meeting, and certainly I would  
 9 imagine they'll be speaking this evening as well, is  
 10 non-Tenaflly residents speaking. Now, certainly,  
 11 everybody has the opportunity to speak. We have that  
 12 right if you live in this country.

13 But I'm concerned about how other people from  
 14 other towns can come here and tell Tenaflly what they  
 15 should and should not be doing. We do not go to their  
 16 towns and tell them what they should and should not be  
 17 doing. So, I'm not sure if it's really in their best  
 18 interests to be coming here to tell us what to do and  
 19 what not to do.

20 Um -- a wonderful article written in today's  
 21 Record talks certainly about the government issue,  
 22 whether it's separation of state and such like that.  
 23 I'm just -- I'm a little puzzled as they talk about  
 24 it's a matter of accommodation. It's not an  
 25 endorsement of any particular religion is the quote in

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1 the paper.

2 Um -- it is an endorsement of a certain  
 3 religion and, certainly, it is, as I see it, I am  
 4 against it. I'm not against, certainly, any type of  
 5 religion, but I'm against publicizing it on public  
 6 property. Thank you.

7 MAYOR MOSCOVITZ: Thank you.

8 (Applause)

9 MAYOR MOSCOVITZ: Please. No applause,  
 10 please. I know you came in late. You didn't hear that  
 11 we've requested no applause.

12 Uh -- the gentleman against the wall?

13 MR. WYSOCKI: Good evening, Mayor and  
 14 Council. Thank you for your time.

15 My name is David Wysocki. I live at 22  
 16 Glenwood Road in Tenaflly. I'm here to voice my  
 17 opposition to the proposal to erect an Eruv.

18 At the outset, let me tell you that I am a  
 19 proud, practicing Jew. I've been a member of the  
 20 synagogue in this community for the 11 years that I've  
 21 lived here, and, before that, in Queens and in  
 22 Manhattan.

23 I mention all of this to make it clear to the  
 24 Council that this issue is not at all about religious  
 25 freedom. It is not about persecution. A vote against

## Colloquy

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1 it is not a vote -- an anti-Semitic act. This is  
2 politics. This is about property rights. This is  
3 about changing the very nature of what makes our town a  
4 place where more than a score of different  
5 nationalities and creeds co-exist in a vibrant  
6 community.

7 Indeed, all those in -- in support of the  
8 Eruv describe it as a way for Tenaflly to show how  
9 inclusive our town is, how open we are to all  
10 communities and creeds. It just strikes me the irony  
11 of that view.

12 The Eruv is the antithesis of inclusiveness.  
13 It is drawing a line in the sand. It is a strand in  
14 the sky. It is a separation, a demarcation, us from  
15 them, members of the tribe on one side, members of the  
16 community on the other side.

17 Take a look at what exists in some of our  
18 neighboring towns where an Eruv has been erected and --  
19 and the results that have followed. I lived in Teaneck  
20 for seven years and during that period of time I  
21 watched that town migrate from a fairly robust, vibrant  
22 non-homogenous Jewish community, both on the right and  
23 the left. There were all strands and all sects and all  
24 views to one where there is a more orthodox heroge --  
25 homogenous view.

## Colloquy

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1 It got to the point where a neighbor would  
2 not say hello on --

3 (Indiscernible)

4 MR. WYSOCKI: -- responding to --

5 (Inaudible)

6 MR. WYSOCKI: I was not a member of this --

7 (Inaudible)

8 MR. WYSOCKI: His children would not play  
9 with my children simply because we were from different  
10 --

11 (Inaudible)

12 MR. WYSOCKI: That is not the type of  
13 community that I've moved to in Tenaflly, certainly not  
14 the type of community that I would like Tenaflly to  
15 become.

16 What is it that we're supposed to take away  
17 from the fact that supporters of this motion come  
18 before this very Council, and, until otherwise directed  
19 by the Council, are disingenuous about their address  
20 and make it appear to the Council that they're members  
21 of this community until directed otherwise to leave  
22 their full address.

23 What is it that we are supposed to take away  
24 from the fact that supporters of this motion  
25 unilaterally --

## Colloquy

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1 (Inaudible)  
 2 MR. WYSOCKI: -- upon themselves to erect the  
 3 Eruv.  
 4 (Inaudible)  
 5 MR. WYSOCKI: -- don't even talk or follow  
 6 the rules.  
 7 We wish to be in an open and harmonious and  
 8 inclusive --  
 9 (Inaudible)  
 10 MR. WYSOCKI: -- where all parties  
 11 participate in all facets of township life, not merely  
 12 reside here. The beauty of ton -- Tenaflly is not  
 13 merely the fact that are streets are --  
 14 (Inaudible)  
 15 MR. WYSOCKI: -- our homes are graceful and  
 16 we have beautiful, manicured lawns, and stately trees.  
 17 Our grace and beauty rests on the fact that scores of  
 18 nationalities --  
 19 (Inaudible)  
 20 MR. WYSOCKI: -- scores more wish to come  
 21 here. We do not wish to see that put at risk.  
 22 With the Council's energies and efforts, we  
 23 are trying slowly, painfully, --  
 24 (Inaudible)  
 25 MR. WYSOCKI: -- possibly, to revitalize our

## Colloquy

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1 town --  
 2 (Inaudible)  
 3 MR. WYSOCKI: Why should we consider  
 4 segregating a portion of the residential area --  
 5 (Inaudible)  
 6 MR. WYSOCKI: -- to be populated by members  
 7 of the orthodox communities that I think by their own  
 8 admission would acknowledge they would not be shopping  
 9 in many of the towns --  
 10 (Inaudible)  
 11 MR. WYSOCKI: -- that exist here now.  
 12 Why would we put our extension plans of our  
 13 school system at risk? We have endeavored long and  
 14 hard to pass a bond ordinance that is -- that will,  
 15 indeed, provide for the future of our schools  
 16 throughout our town as is customary in many of the  
 17 other communities where you have a large orthodox --  
 18 (Inaudible)  
 19 MR. WYSOCKI: --in -- in order for their  
 20 obser -- observance of their rights as -- as is their  
 21 right. They do not send their children generally to  
 22 public schools. We are trying to develop a school  
 23 system where all members of the community, not just  
 24 through their tax dollars, but through their time,  
 25 their energy, their support, their physical presence in

## Colloquy

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1 the school system as parents as well as their children  
2 gives the vitality and beauty to the school system.

3 (Inaudible)

4 MR. WYSOCKI: -- children in --

5 (Inaudible)

6 MR. WYSOCKI: -- across many different ethnic  
7 groups and many different nationalities. That is the  
8 beauty of our school system. That is something worth  
9 preserving.

10 I do not wish to see this ordinance passed.  
11 It sounds like a small and trivial matter when viewed  
12 in isolation, but it is the beginning of that  
13 proverbial --

14 (Indiscernible)

15 MR. WYSOCKI: -- that I hope the Council sees  
16 not to begin --

17 (Inaudible)

18 MR. WYSOCKI: Thank you very much.

19 MAYOR MOSCOVITZ: Thank you.

20 (Applause)

21 MAYOR MOSCOVITZ: No. Please! Please!  
22 Please! Inappropriate.

23 We'll go to this side of the room now.

24 Yes.

25 No, the gentleman.

## Colloquy

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1 MR. GOLDSTEIN: Good evening. And I beg your  
2 indulgence. I am not a resident of Tenaflly.

3 My name is Charles Shi (phonetic) Goldstein.  
4 My office is in West Orange and I'm here this evening  
5 as the Regional Director of the Anti-Defamation League.

6 Um -- the reason --

7 MS. HATTEN: Address.

8 MAYOR MOSCOVITZ: Uh --

9 MR. GOLDSTEIN: First of all, --

10 MAYOR MOSCOVITZ: Uh --

11 MR. GOLDSTEIN: -- I want to indicate --

12 MAYOR MOSCOVITZ: He gave his office address?

13 MR. GOLDSTEIN: Charles Shi Goldstein,  
14 Anti-Defamation League, 743 Northfield Avenue, West  
15 Orange, New Jersey.

16 MS. HATTEN: Thank you.

17 MR. GOLDSTEIN: There were many prior  
18 comments that were made that I strongly would agree  
19 with. I would not want any religious symbol  
20 permanently placed on public property. If that was  
21 what was occurring here, if that was what was being  
22 proposed, I would vehemently oppose it.

23 The Anti-Defamation League believes that the  
24 reason the United States is the strong democracy it is  
25 is because of separation of church and state. The Uni

## Colloquy

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1 -- the -- uh -- Federal Court, the State of New Jersey,  
2 back in 1987, relying on that principle in the case in  
3 Long Branch made the determination, clearly and  
4 unequivocally, that an Eruv is not a religious symbol.

5 The Court said the boundary markers of an  
6 Eruv nor the Eruv itself have any religious  
7 significance. They are not objects of worship nor do  
8 they play any theological role in the observance of the  
9 Jewish Shabbat (Sabbath).

10 Under Jewish law the Eruv does not alter the  
11 religious observance of the Sabbath. It merely allows  
12 observant Jews to engage in secular activities on the  
13 Sabbath.

14 Furthermore, the Court indicated that  
15 providing equal access to public facilities to people  
16 of all religions and enabling in -- individuals to get  
17 from their chosen place of worship safely are  
18 permissible accommodations by the government. The  
19 government is permitted to fix sidewalks outside  
20 churches, provide police protection, and basic  
21 utilities for mass outdoor religious gatherings,  
22 provide police to direct traffic onto synagogue parking  
23 lots and church parking lots and authorize a house of  
24 worship to install additional --

25 (Inaudible)

## Colloquy

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1 MR. GOLDSTEIN: -- lights on public property.

2 As was alluded to previously, -- uh -- the  
3 United States Supreme Court, the White House, the  
4 Congress all have an Eruv within their area. It  
5 doesn't make it a Jewish area. It is a secular  
6 accommodation for people to engage in secular  
7 activities, not religious activities.

8 In sharp contrast to the statement, and I  
9 think that's part of the problem is that people have  
10 been making the statements --

11 (Inaudible)

12 MR. GOLDSTEIN: -- your August, public --  
13 local publication in the Press Journal indicated,  
14 however, the practice of an Eruv is not without  
15 controversy. Such accommodations are considered a  
16 violation of traditional separation of church and state  
17 doctrine in the U. -- U.S. since they provide favorable  
18 accommodation of one religion over another. That  
19 statement in your local paper is in direct  
20 contradiction to what the Federal Courts have  
21 indicated, in direct contradiction to what the law of  
22 the land is.

23 You know, the most important democratic  
24 decisions are made here. They're not made in  
25 Washington. They're made in Tenafly. And,

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alternately, what the issue about is not just separation of church and state, although that's a crucial issue.

Ultimately, these issues and so many other issues are about power. And the reality is there are a number of people that are opposed to the Eruv and have concerns. And those concerns are emotionally legitimate and have to be recognized and have to be respected.

But the --

(Inaudible)

MR. GOLDSTEIN: -- indicated that the real test -- test of a democracy is how we treat those that are less powerful, how we treat the less popular public decision. And the reason we, as a country have survived for two (sic) years and grown despite that we had a history that was founded in racism, founded in sexism, we've grown beyond that because of our Constitution. However imperfect a document it was, it grew. It grew.

When we, at a local level, say we don't want them moving in, they will take over the town, they will change the character of the town, we know what that is, and it's not why America became strong, and it's not what's going to continue to make us grow.

## Colloquy

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What's going to continue to make us grow is the constant growth of our Constitution, which is an incredible document, which protects an Eruv, which says exactly what it is just passionately stepping back and recognizing it's an accommodation. It allows people who, yes, have a certain way of observance to engage in their secular activities, not delegitimizing any other interpretation of Judaism or any practice of any other religion.

That is why when the Anti-Defamation League, when we got involved in this, the first people we reached out to was not the Jewish community. It was our brothers and sisters in the non-Jewish community to get their input --

(Inaudible)

MR. GOLDSTEIN: -- because that is our traditional partner when we deal with civil rights issues like this. And this is what a civil rights issue is.

And the Anti-Defamation League would be here if there was opposition to a --

(Inaudible)

MR. GOLDSTEIN: -- being opened so there could be an accommodation for Muslims to have access. We would be here if there was a -- uh -- a dispute over

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1 a permit to build a Catholic church, a Methodist  
 2 church, any other house of worship because the First  
 3 Amendment to the Constitution, the thing that this  
 4 country is founded on, is not about who moves into my  
 5 neighborhood, and who I want moving into my  
 6 neighborhood, and who I don't want moving into my  
 7 neighborhood. But, the First Amendment, what the  
 8 bedrock of this country is, what it will always rise  
 9 and fall on, is the government staying out of religion.

10 I would not be here, I would never be here  
 11 advocating the government supporting religion. But the  
 12 reality is the failure to issue a permit because the  
 13 permit has now been required by the Town, in essence,  
 14 is interference with religion to the same degree that  
 15 it's interference with religion or an accommodation to  
 16 religion if you deny construction of a church or a  
 17 synagogue or a mosque.

18 And the reality is it's actually less obvious  
 19 because in this situation it's not even a specific  
 20 religious symbol. It's not a religious symbol. It's  
 21 simply an accommodation to allow young parents with  
 22 their children because of their view of the Torah to  
 23 wheel the baby carriage to the synagogue, to wheel it  
 24 to neighbors. And any discussions regarding its  
 25 exclusionarism I'm sure this August Council that those

## Colloquy

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1 arguments will fall on deaf ears.

2 Um -- thank you for your time and your  
 3 patience. As you know -- I know you've been provided  
 4 with the court case; you've been provided with letters  
 5 from various non-Jewish clergy members, including -- uh  
 6 -- expressions from Chuck Rush -- Reverend Charles  
 7 Rush, who is head of the state-wide Free Exercise of  
 8 Religion Coalition, and he was not able to be here  
 9 because of a personal commitment, but he did authorize  
 10 on his behalf, and on behalf of the Coalition which  
 11 represents Jews, Muslims, Buddhists, Hindus from  
 12 throughout the State of New Jersey and other people of  
 13 faith, that we urge you to act in accordance with the  
 14 court decisions in this area, to act in accordance with  
 15 diversity, to act in accordance with the bedrock of  
 16 democracy, the First Amendment.

17 Thank you.

18 MAYOR MOSCOVITZ: Thank you.

19 MR. ROBERG: Good evening, Mayor and members  
 20 of the Council. I'm Kurt Roberg. I live at 51 Surrey  
 21 Lane in Tenaflly and I've lived here for 36 years.

22 I -- until four weeks ago, I didn't know  
 23 about Eruvs and about what was going on in Tenaflly.  
 24 And this is the first meeting I came to -- I have come  
 25 to and I had no intentions of speaking. But, speak I

1 must, because what I have heard until now I just feel  
2 that I have to speak out.

3 Uh -- I'm Jewish. I'm a Holocaust survivor.  
4 I've lived in New York and -- uh -- and belonged to a  
5 -- uh -- German-Jewish congregation, conservative. And  
6 I'm a member of a -- of a congregation here in Tenaflly.

7 My mother lived in Washington Heights most of  
8 her life and belonged to an orthodox synagogue. This  
9 orthodox synagogue on Shabbat, she found out, that you  
10 could not carry a pocketbook, you could not carry a  
11 handkerchief.

12 There was no Eruv that they knew of and it  
13 didn't matter. If you observed this Shabbat, you  
14 observed it the way it was meant to. You didn't carry  
15 any money. You didn't carry any pocketbook. You  
16 didn't carry a handkerchief. That was -- that meant  
17 you were orthodox. If you did not abide by those laws,  
18 you weren't orthodox.

19 From what I gather, this Eruv issue here is  
20 now is that these orthodox people who are moving into  
21 this area want to be orthodox but they want the  
22 accommodations and the convenience of an Eruv to shed  
23 the things or to -- to do the things that are normally  
24 not allowed.

25 Uh -- I take issue with the gentleman from --

1 who spoke before. It is not an interference with  
2 religion if we do not allow an Eruv. It is maybe an  
3 interference with the accommodations of the people who  
4 want to have their cake and eat it.

5 Uh -- I want to be brief. Uh -- I would  
6 recommend to the Council that you do not permit the  
7 issue of -- of an Eruv. We have many religious groups.  
8 We have many -- uh -- ethnic groups here and if we  
9 start giving exceptions to every one of them, -- uh --  
10 I think the -- uh -- quality of life that we enjoy in  
11 Tenaflly, and the reason why we all are here and have  
12 stayed here for many years, I think it would be -- it  
13 would be tarnished and it would be the beginning of a  
14 radical change, and I don't want to see that change  
15 here.

16 Thank you.

17 MS. ROSENBAUM: I'm Lee Rosenbaum, 100 Essex  
18 Drive, Tenaflly. And I will be very brief.

19 Uh -- whoever tried to create an Eruv on  
20 public property without seeking proper approval did a  
21 terrible job in community relations, and thereby hurt  
22 their own cause by stirring resentments against their  
23 tactics. I do think an apology is in order.

24 That said, I can see no downside to our  
25 town's allowing unobtrusive demarcations that would

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1 greatly improve the quality of life for some of our  
 2 citizens while doing no harm to others. I think any  
 3 attempts to force this would reinforce the already  
 4 existing negative perception of Tenafly as exclusionary  
 5 and even bigoted.

6 We acquired that unfair image as a bi-product  
 7 of our successful and appropriate effort to defend our  
 8 neighborhood schools, a campaign that was ridden not by  
 9 base motives, but by concern for our children and the  
 10 quality of our educ -- of their education. But, now, I  
 11 think we need to turn our efforts, polishing our  
 12 tarnished image, by embracing diversity. Surely, a  
 13 town that brandished orange ribbons tied to almost  
 14 every pole in town for what I think was several years  
 15 can tolerate some unobtrusive markers that facilitate a  
 16 better life for a segment of our community.

17 And I just wanted to respond to one of the  
 18 previous speakers very briefly. Uh -- I think the  
 19 subject of his remarks was that we don't want those  
 20 people who don't go to our stores or our schools, who  
 21 live differently than we do. So, let's do what we can  
 22 to keep them out. I would be embarrassed to live in a  
 23 town that has adopted that stance.

24 (Limited applause.)

25 MR. VICTORIA: Al Victoria, 309 Hudson

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1 Avenue, Tenafly.

2 I guess we'll get past that not-so-veiled  
 3 threat of the speaker a couple of persons ago. This  
 4 was an illegal act to circumvent their own laws.

5 They pretended innocence. They selectively  
 6 listened to authorities. In his discussions with the  
 7 phone companies, he said they didn't ask, so we didn't  
 8 tell. So, he wasn't that innocent as he pretended to  
 9 be.

10 Last time we had this discussion, I pointed  
 11 out why I objected to the Eruv and I should repeat it  
 12 because there are people here that don't know.

13 I had a business that -- we had warehouse  
 14 sales on Saturdays down in Union City. I helped, I  
 15 paid, I contributed to the Eruv by the shul down there  
 16 and then, after a couple of years, individuals would  
 17 come. They'd block my business. They condemned me for  
 18 condemning -- for contaminating their holy ground with  
 19 my business that operated on a Saturday, until the  
 20 carriages were parked on the road, and you couldn't get  
 21 access to it. So, it was a threat to business  
 22 individually. So, I speak from first-hand knowledge of  
 23 it.

24 Last week, when they were advised to note all  
 25 the questions that came up and then respond to them at

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1 the end of the discussions, the gentleman conveniently  
 2 avoided answering the question of who was involved in  
 3 this and whose synagogues? If it were not for the  
 4 attorney that pursued it at the end, we wouldn't have  
 5 known it was a group that wasn't even in town, and they  
 6 had brought in ringers from out of town to represent  
 7 and speak for them. No syn -- no specific synagogue,  
 8 and it was a very small group we learned, only because  
 9 he pursued the question.

10 Above all, the phony attempt to wave that  
 11 anti-Semitic banner that they did, and the girl that  
 12 came up and spoke of hate as a tool and used it here,  
 13 it's just to bring universal contempt upon themselves  
 14 to use those tactics.

15 We're in a community that has never, as a  
 16 community, had any problems of an anti-Jewish nature.  
 17 Perhaps a person or individual involved themselves in  
 18 it, but not as a community.

19 And then there was a person that tried to  
 20 bring in the issue of free speech. Just another tool  
 21 to divert us and make this an anti-Semitic issue, as  
 22 they're trying, as a tool.

23 The person with all that venom that spoke of,  
 24 well, we should put signs up at the border stating  
 25 these people not wanted here. These are contemptible

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1 tactics being employed by people who will stop at  
 2 nothing to impose their wishes. And, again, I remind  
 3 you of the ringers that were brought in to speak on the  
 4 issue last week.

5 This is an issue for a very small, select  
 6 group of people who will slash and burn the very fine  
 7 relationships that have existed in this town just to  
 8 achieve their personal goals at any price. Everyone is  
 9 welcome in this town as a valued member of the  
 10 community, but not when attempting to impose their  
 11 personal will by any means whatsoever, fair or foul or  
 12 illegal.

13 The preferential treatment they have received  
 14 thus far, and what they've done without any fines or  
 15 condemnation, should be appreciated by them, and their  
 16 methods should be ended immediately. Let the issue  
 17 stands on its merit, not on phony contrivances.

18 MR. KAHN: There's going to be a --  
 19 (Inaudible)

20 MR. KAHN: -- wrapped around it.

21 MAYOR MOSCOVITZ: Is that because you're  
 22 going to speak for a very --

23 MR. KAHN: No, --

24 MAYOR MOSCOVITZ: -- long time?

25 MR. KAHN: -- it's not going to be long.

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1 I've just been waiting long.

2 As we've all learned to say in the last week  
3 or so, may it please the Court.

4 (Laughter)

5 MR. KAHN: I -- I didn't know --

6 MR. LESNEVICH: Please, sir, --

7 MAYOR MOSCOVITZ: Your name --

8 MR. LESNEVICH: -- your name --

9 MAYOR MOSCOVITZ: -- and address.

10 MR. LESNEVICH: -- and address.

11 MR. KAHN: I'm sorry. Stephen Kahn on  
12 Westervelt Avenue in Tenaflly.

13 MS. HATTEN: What number?

14 MR. KAHN: I did not know really anything  
15 about the technical law of Eruvs when this began in  
16 Tenaflly. So, I did some research. And I was  
17 uncertain.

18 I learned a great deal and I -- I really  
19 learned the most from a very informative 17-page  
20 article that I found on the Internet written by Rabbi  
21 Schachter -- Rabbi Jachter -- I'm sorry -- who spoke  
22 here tonight. And perhaps I can hand a copy up. I'm  
23 sorry. I didn't make multiple copies. And if  
24 anybody's interested in reading that, if they put Rabbi  
25 Howard Jachter's name on Yahoo, they'll right away get

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1 a -- an Internet hit and they'll find the article right  
2 away.

3 Well, I learned some things and what I  
4 learned troubled me very much. Um -- and I think it  
5 creates some serious problems for Tenaflly and I think  
6 we should talk about them.

7 The first thing that I learned is that under  
8 Jewish law what is a valid Eruv, an effective Eruv, a  
9 Kosher Eruv is really not a very clear thing. It's a  
10 very controversial thing. Um -- Howard -- Rabbi  
11 Jachter said, for instance, the question of where an  
12 Eruv may be constructed has readily been a source of  
13 great friction and tension in recent years.

14 He begins his article -- it's a sector of the  
15 third sentence. I'm sorry. Unfortunately, the  
16 construction of Eruvin (the plural Eruvs) created much  
17 controversy in many communities. And, here, he was  
18 talking about within Jewish communities.

19 And then he -- and then he talks about some  
20 of the areas of disagreement. He illustrates some of  
21 the areas of disagreement. Apparently, in Flatbush,  
22 Brooklyn, there's been a 25 year or a 20 plus year  
23 fight within the Jewish community. Is this Eruv good;  
24 is this Eruv not effective?

25 There's been a controversy in Manhattan? Is

1 this Eruv good; is the Eruv not a good con -- a good  
2 Eruv?

3 The controversies --and -- and I won't bandy  
4 Jewish law with -- with the Rabbi because he -- he'd  
5 wipe the floor up with me right away, --

6 (Laughter)

7 MR. KAHN: -- but -- but it's clear from  
8 reading his very good article that some of the items of  
9 controversy include how doors or gates are constructed  
10 in the Eruv. They include how the vertical pole meets  
11 the wire. Questions of do the wires zig-zag too much;  
12 do the wires sag too much. And the rabbis will argue  
13 about these things, and the members of the community  
14 will argue, is this Eruv good or is Eruv not good?

15 Very interesting. In order for an Eruv to be  
16 effective for some jews, and here I'll quote from the  
17 Rabbi -- or from the Rabbi's article:

18 "One must rent the apartments, homes and  
19 common areas (that is, the streets and the parks) from  
20 every non-Jewish and non-believing Jewish resident  
21 within the area."

22 And you'll find that in his article, which  
23 I've handed up, on the 16th page under a section called  
24 Schirat Rishut. And that -- that's a section heading  
25 there.

1 I'll say that again. For some people -- for  
2 this Eruv to be Je -- Kosher, to be effective, they  
3 have to rent every house.

4 Well, the Jewish law understands that that's  
5 not very practical. So, it says, well, maybe you could  
6 rent every house symbolically, if I understand the  
7 article, from the neighbor. But other -- other people  
8 say, not good enough if you rent it from the Mayor; you  
9 have to rent it from a Police Chief. Other people say,  
10 rent it from the Mayor and the Police Chief, or maybe  
11 from President Bush, which the article talked about in  
12 order to bring the White House within the Eruv.

13 Now, why would we care about this and why am  
14 I telling you about this? Certainly, not to show you  
15 how little I really understand about the technicalities  
16 of Jewish law. But, the controversy is very important  
17 for us. And, by the way, we saw the controversy  
18 illustrated also by a speaker before me who said he  
19 didn't believe in this, to be a good Jew, to be an  
20 orthodox Jew, you shouldn't try to do this at all.

21 Why do we care about controversy within the  
22 Jewish community? Well, if there are different  
23 standards, the town is likely to come and mesh within  
24 this very controversy within the Jewish community.

25 What's going to happen, Council Members and

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1 Mayor, if you approve this and somebody then comes  
2 along and says, uh-uh, the one you prove -- approved of  
3 isn't strict enough for me. The wires are too saggy.  
4 I want you to make a change. This one doesn't work for  
5 me. Uh-huh. I want it to be rented from the Police  
6 Chief and the Mayor. I'm excluded. This Eruv doesn't  
7 work for me. You haven't rented from the Police Chief.

8 (Inaudible)

9 MR. KAHN: All of a sudden, we are plunged  
10 right in the middle of a controversy in Jewish law.  
11 How are we to judge or why would we judge? Well, we  
12 can't judge. The Constitution says we can't judge.

13 This is not a free speech case. This isn't  
14 about orange ribbons, which is political speech. This  
15 is a question about religion and it's a question about  
16 the entanglement, the establishment clause of the  
17 Constitution entangling the state to government with a  
18 church, or with the state.

19 Now, it is true, as the speaker from the  
20 Anti-Defamation League said, that there was a 1987 case  
21 in Federal Court in New Jersey involving Long Branch.  
22 That said an Eruv is not a religious symbol. It's  
23 okay.

24 But, since that case, there's been a 1992  
25 case called the Rav Dan case. It's a case in the New

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1 Jersey Supreme Court. It looks at the New Jersey  
2 Constitution. It involved the Kosher laws, the Kosher  
3 laws which were enforced by the State of New Jersey.

4 The State of New Jersey had a Commission that  
5 enforced the Kosher laws. It made a lot of sense. The  
6 State of New Jersey said, we don't want people to be  
7 defrauded. If they think they're buying Kosher food,  
8 and instead it turns out they're buying Lobster  
9 Thermidor. It makes perfect sense.

10 (Laughter)

11 Well, the problem is -- the problem is that,  
12 just like with the Eruv, what is Kosher and what is --  
13 what is not Kosher is not always so clear cut under  
14 Jewish law and there's controversy.

15 The Rav Dan case struck down the New Jersey  
16 Kosher Enforcement laws after the Long Branch case, and  
17 it struck it down because it said that the state, the  
18 government was being forced to get in between a  
19 controversy within Jewish groups.

20 That's a big part of the problem that will  
21 happen if we put up or permit an Eruv to be established  
22 within this town. It will entangle us in judging  
23 various religious standards. As soon as one person  
24 comes along and says, not good enough for me, the wires  
25 are too darn sagging.

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1 Now, there are other problems for the  
 2 community. This will impose a large financial cost on  
 3 us. Somebody said, where is the ACLU? I know the ACLU  
 4 is looking at this now. The ACLU sued in Long Branch.  
 5 Bring a law suit. We know what law suits cost in this  
 6 town. Right away, let's write the check out for  
 7 \$100,000.00 to defend -- I hope so -- \$200,000.00.  
 8 That's right on --

9 MR. LESNEVICH: Uh -- more like fifty bucks.

10 MR. KAHN: Okay.

11 (Laughter)

12 MR. KAHN: I'll -- I'll make that motion for  
 13 you.

14 (Laughter)

15 MR. KAHN: It's expensive. When you hire  
 16 good legal talent, it's very expensive.

17 (Laughter and Applause)

18 MR. LESNEVICH: That's why the Town gets very  
 19 expensive legal costs.

20 Thank you, Mr. Kahn. I'll go back to Mr.  
 21 Victoria's --

22 (Indiscernible)

23 (Laughter)

24 MR. KAHN: I'll tell you it's a lot easier  
 25 legally, in my view -- of course, we have counsel who

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1 will tell us -- but it's a lot easier, in my view, to  
 2 defend a decision to reject the application than to be  
 3 in Court with the ACLU or a citizens' group defending  
 4 the decision to approve. And it will impose a big  
 5 cost.

6 There's something else I learned about an  
 7 Eruv, too, and I also learned it from Rabbi Jachter's  
 8 article. This isn't a one-time thing. You don't just  
 9 set it up and leave it alone forever and ever. You  
 10 inspect it weekly. According to Rabbi Jachter, some  
 11 rabbis and some religious authorities require it to be  
 12 inspected every week to see if it's still effective.  
 13 I'm sure after a big windstorm like we had today I  
 14 guess you have to go out and inspect it.

15 So, I guess as the utility wires are down and  
 16 the utility companies are putting up the wires again,  
 17 so will the ERUV Association be putting up the Eruv  
 18 again. So, anyone who thinks that we put this up and  
 19 forget it, they're mistaken.

20 And if you look on the Internet you'll find  
 21 that most of these communities that have Eruvs also  
 22 have Eruv associations and they charge dues. They  
 23 charge voluntary dues, but these are associations.  
 24 Some of them are incorporated, some of them are  
 25 not-for-profit charitable organizations. This is an

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1 ongoing project, so don't be misled and think that this  
2 is a one-time deal. Put up a couple black strips,  
3 forget it for a hundred years. That's not how this  
4 works, and I think the Council has to consider that  
5 also.

6 Finally, most importantly, I think this is  
7 bad community relations. And, here, I'm talking about  
8 the majority relations in this very diverse town. And  
9 I -- and I won't talk long on this because many  
10 speakers have already talked about it and I'm sure many  
11 more will.

12 Everyone should practice religion as they  
13 want in this town. This town has become a beautiful  
14 and very diverse town which it probably was not when I  
15 was a little boy, growing up in a neighboring town.  
16 But, now, it is so we can all be very proud of it.

17 I'm afraid that if we introduce this, we will  
18 do nothing but line up all the other groups and  
19 interests who also want to be accommodated and, instead  
20 of this beautiful melting pot that we have become, we  
21 will be a mosaic, but we will be a mosaic --

22 (Indiscernible)

23 MR. KAHN: -- up against one another and  
24 grinding up against one another, and I think that's a  
25 very bad and sad day for Tenaflly. For all the

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1 legalisms, for all the expense, I really believe that  
2 that's the most important reason.

3 Thank you very much for your patience.

4 MAYOR MOSCOVITZ: The guy in the back? The  
5 gentleman with the beard.

6 REV. DONOHUE: Good evening, Mayor,  
7 Councilmen. Uh -- my name is Thomas Donohue. I reside  
8 at 400 Knickerbocker Road.

9 For the past 13 years I've had the privilege  
10 of being the pastor of Trinity Lutheran Church on  
11 Knickerbocker in River Edge. Uh -- I speak in favor of  
12 -- uh -- establishing the Eruv in -- in our community  
13 and for a couple reasons.

14 First, let me say that I am a very happy  
15 resident of Tenaflly. It's a wonderful town and for a  
16 lot of reasons. My children were educated in its  
17 schools. Uh -- you've heard other speakers speak about  
18 its graceful homes, its beautiful streets, its  
19 shopping.

20 But, to me, the greatest -- uh -- asset of  
21 our community is our people because we are a very  
22 diverse community. We have a mosaic of cultures,  
23 races, religious faiths, different viewpoints, -- uh --  
24 and we -- we try to work together as much as we can.

25 We are a diverse community just by who we

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1 are. But we can also be, by our attitudes to one  
2 another a dividing community. And there's nothing  
3 wrong with -- with being a divided community. It's  
4 just part of -- of who we are. We have different  
5 viewpoints. When we cannot resolve our differences,  
6 then we become a very divisive community.

7 I experience Tenaflly as a very welcoming  
8 place, a place where I'm proud to reside and have a  
9 family and have relationships with my neighbors. It's  
10 not an easy thing to be a good neighbor, as I think we  
11 all recognize, because it means that we have to try to  
12 understand acts without full knowledge, maybe not full  
13 appreciation, the different viewpoints of the people  
14 with whom we reside. And part of our being good  
15 neighbors in this community is trying to accommodate as  
16 much as we can the particular -- uh -- beliefs,  
17 practices of our residents.

18 There is an old tradition here -- I'm not too  
19 sure how long it goes back. I know it's been going on  
20 at least as long as I've been a -- a pastor and a  
21 resident here. But, in the early Spring, on Good  
22 Friday, there is -- uh -- something called the Good  
23 Friday Walk. And it begins in the early afternoon at  
24 the Episcopal Church and -- uh -- a large body of  
25 people, anywhere from 100 to 150, I've seen at -- at

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1 some points, they go from church to church, five  
2 churches in all. Usually, we finish up at -- uh --  
3 Trinity Lutheran Church.

4 Now, in order to do that, in order to move,  
5 because people are walking all the way, -- uh -- that  
6 takes a lot of accommodation by the community. And  
7 there have been some years where we have gotten -- uh  
8 -- some police escorts just to move the people around,  
9 about from church to church.

10 So, that is a -- an accommodation to a  
11 variety of religious communities. I think for the Town  
12 to have a policy of not extending the same accom --  
13 accommodation to this -- uh -- orthodox Jewish  
14 community in terms of allowing an Eruv to exist, -- uh  
15 -- to me would be tantamount to saying, we're going to  
16 accommodate this group, but not that group.

17 Um -- when I'm out and about on -- on  
18 Saturday, which is the Jewish Sabbath, making pastoral  
19 calls, doing shopping, whatever, I am always inspired  
20 when I see Jewish families walking to and from  
21 synagogue. I wish I could convince more of the members  
22 of my congregation to walk, but they don't. In fact,  
23 even -- I live only about a hundred yards from my  
24 church and I usually drive over. So, I --

25 (Laughter)

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1 REV. DONOHUE: -- have a long way to go. But  
 2 I'm inspired by that. I think it adds -- it enhances  
 3 -- uh -- who we are a -- as a people.

4 I think to deny the -- the establishment of  
 5 an Eruv, -- uh -- extending that accommodation, if we  
 6 disconnect ourselves to this one group of people, then  
 7 we, as a community, will be diminished.

8 Thank you.

9 MAYOR MOSCOVITZ: Thank you.

10 Uh --

11 MS. DEVILLERS: Good evening, members of the  
 12 Council. My name is Carla --

13 MAYOR MOSCOVITZ: Uh -- could you pull that  
 14 down to -- to your -- speak into it a little better.

15 MS. DEVILLERS: My name is Carla DeVillers.  
 16 I live at --

17 MAYOR MOSCOVITZ: Did you get that?

18 MS. DEVILLERS: -- 30 North Brae Court.

19 MAYOR MOSCOVITZ: Uh, excuse me. We couldn't  
 20 hear your name. Carla --

21 MS. DEVILLERS: Carla DeVillers.

22 MAYOR MOSCOVITZ: DeVillers?

23 MS. DEVILLERS: Yes.

24 MAYOR MOSCOVITZ: And you live --

25 MS. DEVILLERS: 30 North Brae Court --

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1 MAYOR MOSCOVITZ: Thank you.

2 MS. DEVILLERS: -- in town.

3 Uh -- I would just -- just --

4 (Inaudible)

5 MS. DEVILLERS: -- uh -- I'd like to point  
 6 out, and I think Tenafly's a wonderful town. I grew up  
 7 here and I recently moved back here to raise my family.  
 8 My daughter goes to Long School.

9 Um -- I work during the week. And the Sunday  
 10 -- Sunday is not my Sabbath. And in order to do my  
 11 errands, buy -- buy --

12 (Inaudible)

13 MS. DEVILLERS: -- for my daughter, I need to  
 14 go up to Nyack, across state lines -- uh -- on Sundays  
 15 if I want to go shopping. And I think that's an  
 16 accommodation -- uh -- because -- well, at some point  
 17 -- uh -- a group of people decided that stores should  
 18 be closed on Sundays. Uh -- and I think that's  
 19 unfortunate. Or, let's say that I respect that -- uh  
 20 -- but it is an accommodation and that does have an  
 21 ecom -- economic impact on Bergen County. Uh -- the  
 22 people have decided that that's what they wish to have  
 23 and I respect that.

24 An Eruv is also an accommodation. People  
 25 talk about the economic impact of it. Uh -- I think we

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1 should also think of it in -- uh -- in -- in light of  
2 the fact that there are -- they're accommodations to  
3 other groups.

4 Thank you.

5 MAYOR MOSCOVITZ: Thank you.

6 MS. MELTZER: Adrienne Meltzer, 1 Byrne Lane.

7 This application is about permission to build  
8 an Eruv in Tenaflly. The Tenaflly ERUV Associates (sic)  
9 is trying to put themselves in a better legal position  
10 by claiming that this application is for permission for  
11 the Eruv to remain and not to be taken down.

12 The only reason this Eruv is up is because  
13 this group knowingly and flagrantly disobeyed the  
14 municipal law, having failed to gain permission from  
15 the Tenaflly Council. They tried to get away with it.  
16 This is no different than if the A & P went ahead and  
17 built the A & P, then said, sorry, we built it, so,  
18 therefore, it is illegal -- so, therefore, it is legal  
19 and you must live with it. It is existing, so,  
20 therefore, it --

21 (Inaudible)

22 MS. MELTZER: The Town, out of the goodness  
23 of their heart, agreed to hear a formal application for  
24 permission to build an Eruv before requiring the  
25 complete dismantling of the wires and leffees that have

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1 illegally been put up to date.

2 I am Jewish and I am proud of it. I am a  
3 long-time resident and am proud of it. We are a  
4 diverse, religious and diverse ethnic community with  
5 approximately 26 languages spoken throughout. I am  
6 proud of that. And I am proud of the fact that we have  
7 complete freedom of religion in Tenaflly, including an  
8 active orthodox congregation.

9 However, entering into a special relationship  
10 with a religious group or a particular sect is  
11 something we must not do because it sets a danger --  
12 dangerous precedent we will never be able to go back  
13 on.

14 People who support this application have said  
15 that each situation is different and must be judged on  
16 its own merits. I sat on the Board of Adjustment for  
17 many years and that is exactly what we were taught,  
18 also. But, the truth is that it doesn't work that way.  
19 The fact is that if a municipal decision is challenged  
20 in the courts, past decisions of that municipality are  
21 decisive factors in the courts' rulings.

22 To en -- to allow an Eruv in Tenaflly in any  
23 size is to forever commit us to a municipal policy.  
24 This is exactly why the Tenaflly ERUV Associates (sic)  
25 would like to have us, and have the courts think of

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1 this, as an already established Eruv.

2 Tenaflly is a very small community of 2 square  
3 miles and 13,500 people. All the communities mentioned  
4 by the ERUV Association in the past and also this  
5 evening have -- that already have Eruvs are much larger  
6 than Tenaflly.

7 The stated goal of the Tenaflly ERUV  
8 Association is to create a community within a  
9 community. The Eruv, as now planned, would encompass  
10 almost --

11 (Indiscernible)

12 MS. MELTZER: -- and, by request, would cover  
13 all of it. That means that all of Tenaflly would be  
14 considered one particular religion's domain.

15 The City of Long Branch decision mentioned  
16 this evening, and considered by some the most  
17 compelling court decision supporting an Eruv simply  
18 says that an Eruv may be erected on municipal property.  
19 It does not say that it must be -- must be erected.

20 So, very simply, the real question is, do  
21 you, the municipality, choose to enter into a special  
22 relationship with one religious group or any other  
23 group, for that matter. You, the Mayor and Council of  
24 today, told our future, and I -- in your hands.

25 MAYOR MOSCOVITZ: Thank you.

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1 In the back. Way in the back.

2 REV. GIORDANO: Good evening. My name is  
3 Rev. Steve Giordano. I live at 58 James Street,  
4 Bergenfield, New Jersey. Uh -- I am serving as the  
5 President of the Bergen County Council of Churches, as  
6 well as a member of the Interfaith Brotherhood and  
7 Sisterhood Committee.

8 I have a -- sent the Mayor and Council a  
9 letter from those organizations and I just want to  
10 thank you for your consideration and just -- I want to  
11 be very brief -- uh -- because I think there's a lot of  
12 conversation. It's obvious con -- obviously  
13 controversial, but I think it's also a very simple  
14 matter.

15 On of the foundation beliefs within America  
16 is freedom of religion. And the reality is that this  
17 accommodation assists some religious people in the  
18 practice of their religion. And I think it does that  
19 without harming anyone else's practice of either their  
20 religious or their secular life.

21 So, I realize that there are concerns, but I  
22 think the greater good here is the foundation principle  
23 of the freedom of religion.

24 Thank you.

25 MR. HALMAN: Thank you. My name is Douglas

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1 Halman, 18 Kenwood Road, --  
 2 MAYOR MOSCOVITZ: Can you hear in the back?  
 3 MR. HALMAN: -- Tenafly, New Jersey.  
 4 MAYOR MOSCOVITZ: I -- I think you have to  
 5 speak up a little more, --  
 6 MR. HALMAN: 18 --  
 7 MAYOR MOSCOVITZ: -- Dennis.  
 8 MR. HALMAN: -- Kenwood Road, Tenafly, New  
 9 Jersey.  
 10 MAYOR MOSCOVITZ: Uh -- your --  
 11 MR. HALMAN: Douglas --  
 12 MAYOR MOSCOVITZ: Douglas.  
 13 MR. HALMAN: -- Halman.  
 14 MAYOR MOSCOVITZ: Thank you.  
 15 MR. HALMAN: Okay. Thank you for your  
 16 patience. I appreciate everything that you've done --  
 17 been doing up here.  
 18 I just find it -- have to mention one thing  
 19 that the Rabbi had mentioned how this has nothing to do  
 20 with religion, yet every speaker for the Eruv has  
 21 expressed how this is freedom of religion. It works  
 22 one way, but it doesn't work the other way. I find  
 23 that very odd.  
 24 I'd like to make a few more facts. I know a  
 25 lot of them have been repeated already.

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1 The Eruv was twice, informally but twice,  
 2 turned down by this Council. The group knew of this.  
 3 It wa -- it was expressed to the group that the Eruv --  
 4 I'm sorry.  
 5 MAYOR MOSCOVITZ: One time.  
 6 MR. HALMAN: One time. Okay. It was only  
 7 once that it was turned down. However, the group knew  
 8 of this. And, anyway, they went ahead and built it.  
 9 The pretense of saying that they received  
 10 permission from a government official simply satisfies  
 11 their own self-imposed rules. The fact that William  
 12 Schuber never really endorsed the permission of an Eruv  
 13 to be built in Tenafly -- he simply stated a  
 14 proclamation. That was it. A specific proclamation  
 15 that specifically states that this is not an  
 16 authorization to build any Eruv. They must seek local  
 17 approval, which is you good people up here.  
 18 They knew this, but still went ahead and  
 19 built it anyway. By using their own self-imposed  
 20 rules, knowing that they were turned down in the past,  
 21 knowing that they needed proper local authority, they  
 22 went and built it anyway. Now that it's built, they  
 23 petition the Board to leave it up.  
 24 To me, this is -- uh -- a clear example of --  
 25 of unconscionable entrapment that's being done to -- to

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1 my local Board. Doing something behind your back, and  
2 then coming up and saying, please let me leave it  
3 there, it's already up.

4 I -- I beg you to please do not be misled.  
5 This is not an isolated wire like a lot of people have  
6 mentioned, that's only here to help a few mothers and a  
7 few children. As reported by The Bergen Group the Eruv  
8 group plans to build throughout the entire Town of  
9 Tenaflly, covering as much mass as possible. The plan  
10 is to encapsulate the entire town, not just --

11 (Inaudible)

12 MR. HALMAN: -- a small group.

13 With a town less than 2 square miles in size  
14 this issue concerns all Tenaflly residents. The other  
15 Eruvs that they have spoken about were in much larger  
16 communities and were restricted to smaller geographical  
17 areas within that community. It didn't encompass the  
18 entire town.

19 Please do not be mistaken. Do not think that  
20 this is a nothing, which they want you to believe. No  
21 religious concept. Don't worry about it. It's no  
22 issue whatever.

23 As we all know, we do not have to build a  
24 monolith in the center of town to -- um -- to change  
25 the fabric of our community. It doesn't need to be a

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1 commercial building to change the fabric of our  
2 community.

3 The wire has an enormous power. There is an  
4 enormous power. You can see the -- the beliefs on both  
5 sides of why it should and why it shouldn't be. There  
6 is extreme power in -- in -- in this feeling of this  
7 Eruv. It's just as formidable as any issue that would  
8 come before you for somebody or a local official who --  
9 who is a developer who, let's say, tries to circumvent  
10 you and tried to get the authority to build without  
11 proper counsel -- without proper consent. Excuse me.

12 I wonder how quick this group would be to  
13 even consider this petition if this was not a religious  
14 issue which they all believe that, oh, there's no  
15 religious fabric to it.

16 The same way increased housing would change  
17 the fabric of our community, so would allowing a select  
18 group of individuals to encase our entire community.  
19 Freedom of religion exists -- um -- but it doesn't have  
20 to effectively change an entire community. We can all  
21 worship where and when we want.

22 By allowing this petition to go forth, I  
23 think our town will be showing a double standard for  
24 one particular group. You'll be -- you will legally  
25 have to allow others the same consideration. Um -- the

## Colloquy

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1 underlying fact is that we'll be affording a select  
 2 group again of people a benefit that other people will  
 3 legally challenge -- um -- the town for the same  
 4 consideration that they're offering today.

5 I just want to close that it's a sad  
 6 commentary that getting up here one has to first say  
 7 I'm a Jew, I'm a practicing Jew, I appreciate Judaism,  
 8 -- um -- I was bar mitzvahed, Rabbi --

9 (Indiscernible)

10 MR. HALMAN: -- was my -- my rabbi. I -- I  
 11 find that upsetting because -- um -- it should not be a  
 12 Jew against Jew or a person against person. This is a  
 13 -- a legal body of law that you're here to express your  
 14 opinions on. Um -- and it's not a freedom of speech  
 15 law at -- at all. It has to do with what -- um -- what  
 16 has gone about behind the backs of the Board. And I  
 17 believe that it was more than tolerant because if any  
 18 other group performed this kind of circumvention I  
 19 don't think they would get the kind of respect that  
 20 this Board is now putting before them.

21 Thank you.

22 MAYOR MOSCOVITZ: Thank you.

23 MR. CLARK: My name is Nelson Clark. I live  
 24 at 72 Magnolia Ave., in Tenaflly.

25 Mrs. Mayor -- Madam Mayor, Councilmen, I just

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1 want to let you know my upset with what is going on  
 2 here tonight where this Mayor and Council we have  
 3 elected, different religions, different backgrounds,  
 4 done a wonderful job for this town, and we have to  
 5 apologize to the Anti-Defamation League. We have to  
 6 apologize to local ministries who accuse us of --  
 7 Tenaflly not letting everybody in this town practice  
 8 whatever religion they want and do a good job.

9 I think it's a shame that you people are now  
 10 being put on the line to say if you vote against this  
 11 thing that you're Nazis? Ridiculous. These -- this  
 12 town has gone through, and it's desirable for all these  
 13 people that have come here to this town because it is  
 14 an diverse community. Everybody loves this town  
 15 because of it. And to have this little group, a few  
 16 people, try to ruin this community by making it into an  
 17 Eruv-- for what?

18 I -- I hope that your Mayor and your Council  
 19 have the courage -- we all know that you're not  
 20 prejudiced about --

21 (Inaudible)

22 MR. CLARK: -- and do the best for our town.

23 Thank you.

24 MS. WEISS-BLOOM: Hello. My name is Leslie  
 25 Weiss-Bloom, 44 Nelson Place, Tenaflly.

## Colloquy

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1 Good evening, and thank you.  
 2 I just wanted to make one point -- uh -- per  
 3 -- pretty quickly. And that is a certain fundamental  
 4 problem I'm having, and it's getting me a little bit  
 5 frustrated. That's why I have to speak.  
 6 That -- basically, most of the clergy that  
 7 have been up here and the man from the Anti-Defamation  
 8 League and learned rabbis and -- have all said almost  
 9 the same thing, that somehow people that are against  
 10 this Eruv are against freedom of speech and fundamental  
 11 rights and people that practice religion. And I would  
 12 -- I would say that it's actually a polar opposite in  
 13 that, quite simply, those of us that want to live in an  
 14 open community, that don't want to live in a community  
 15 that is in any way marked in any way for any religion  
 16 -- uh -- have the right to do that also, I think.  
 17 This is a free country. This -- you know, we  
 18 can grant an accommodation, but we all have -- and lots  
 19 of people have stated it a lot more eloquently than I  
 20 can -- reasons why maybe we don't want to accom --  
 21 grant this accommodation, and not because of religious  
 22 bias. There are those of us who simply want to have  
 23 the religious freedom not to live in a community that's  
 24 marked. And what about our rights? Fundamental,  
 25 constitutional, or -- you know, howev -- ever you want

## Colloquy

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1 to call it.  
 2 So, clergymen and orthodox Jews, everyone has  
 3 the right to practice their religion. Nobody is -- is  
 4 blocking that in any way. But we just -- we want to,  
 5 you know, live in an open, free community. That's  
 6 quite simple. And I think that's something that is our  
 7 fundamental right without being objectionable to anyone  
 8 else. So, --  
 9 MAYOR MOSCOVITZ: Thank you, Ms. --  
 10 MS. WEISS-BLOOM: -- one more way to think  
 11 about it.  
 12 Thanks.  
 13 MAYOR MOSCOVITZ: Thank you.  
 14 Uh -- first-time speakers?  
 15 REV. WEBER: Mayor, Council, thank you for  
 16 letting me speak. My name is the Reverend Lynn  
 17 Black-Weber. I'm the rector of Church of the  
 18 Atonement, the Episcopal Church in Tenafly.  
 19 Uh -- I admit that I'm a very new resident,  
 20 but my husband's family moved here in 1961 and have  
 21 strong roots here. And my brother's on the Chamber of  
 22 Commerce. So, I feel very connected to this town, even  
 23 though I'm a new resident myself.  
 24 And one of the things that my -- my husband's  
 25 family has always told me about this town is its

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1 diversity and its openness. And I just want to make  
2 one comment. Uh -- so many people have said so many  
3 things.

4 I believe that even putting aside freedom of  
5 religion as an issue, the basic issue for me, and this  
6 comes from my Christian tradition, is one of  
7 hospitality. I think this town has always had, as far  
8 as I can tell, a reputation of being hospitable, of  
9 being welcoming, of -- of being open.

10 And I don't believe, as far as I can tell,  
11 that allowing this Eruv regardless of -- and I won't  
12 judge one way or the other how it was initially put up,  
13 that may have been a mistaken -- uh -- way of doing  
14 things -- but that Eruv in any way forbids my -- uh --  
15 ability to worship, my congregation's ability to  
16 worship. And, most of all, it just says that Tenaflly  
17 is a welcoming, hospitable, open place.

18 I think it's, in some ways, easy to be  
19 inclusive, diverse when we expect everyone to be the  
20 same, when we expect everyone to be a different ethnic  
21 background but go to the same schools and worship in  
22 the same places or shop in the same stores. I think  
23 that it's harder to be truly diverse and truly open --  
24 uh -- when a neighbor or a prospective neighbor is very  
25 different from us and does things in ways that are

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1 different.

2 So, I just want to make a plea to be open and  
3 continue to be hospitable in this community as I have  
4 learned that it has been in the past.

5 Thank you.

6 MS. KLEIN: Good evening. My name is Wendy  
7 Klein. I live at 8 Glenwood Court in Tenaflly.

8 I just want to speak to express my opposition  
9 to the Eruv, and I know that many people have spoken so  
10 eloquently. I just want to reiterate a few points, and  
11 I'll be very brief.

12 This is not a matter of accommodation. It's  
13 a matter of entanglement of the governmental --

14 (Inaudible)

15 MS. KLEIN: I think that at all costs that  
16 should be avoided.

17 Secondly, Tenaflly is under no obligation to  
18 approve the construction of the Eruv. Um -- there is  
19 nothing in this town preventing anybody of any religion  
20 from practicing their religion. Many people have  
21 talked about this as a matter of tolerance. It is not  
22 one of tolerance. We are a very tolerant community.

23 It's the fact that -- um -- orthodox Jews  
24 have found that it's burdensome to observe their  
25 religion is not a fault of the Borough of Tenaflly and

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1 there's nothing to do with a failure to erect an Eruv.  
 2 It is just a matter of their religion, and no one is  
 3 preventing them from practicing their religion.

4 The only other matter that I would address is  
 5 that Tenaflly is a small town. And I think that other  
 6 people have spoken to this already. The construction  
 7 of the Eruv in this town will have a very profound  
 8 effect on -- uh -- both involvement in the community  
 9 and the schools. And I think that's been addressed  
 10 already.

11 Also, one last matter. The fact that it is  
 12 an invisible boundary does not make its religious  
 13 character any less apparent.

14 Thank you.

15 MAYOR MOSCOVITZ: Thank you.

16 Uh -- a first-time speaker?

17 MR. LESNEVICH: Hold on a second. Let's take  
 18 a break. Let's take a recess.

19 MAYOR MOSCOVITZ: We're just going to take a  
 20 2-minute recess. Anybody who wants to stand and  
 21 stretch for 2 minutes? Two of our Council people have  
 22 walked away.

23 (Recess)

24 (Tape machine turned off.)

25 MR. LESNEVICH: Could you all take your

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1 seats, please? We're going to resume. Please take  
 2 your seats.

3 (Pause)

4 MR. LESNEVICH: Councilwoman Kerge, we're  
 5 resuming.

6 (Pause)

7 MAYOR MOSCOVITZ: Please, if everyone will  
 8 take a seat, we'll continue.

9 (Pause)

10 MAYOR MOSCOVITZ: All right. Thank you all.  
 11 We just -- I think everybody needed a little  
 12 break.

13 Please, if we could have some quiet now?

14 MS. DIVAK-MOSS: My name is Sandi -- Sandra  
 15 Divak-Moss, 4 Westervelt Avenue, Tenaflly.

16 I did not come to the -- uh -- last meeting.  
 17 I was out of town. I did read about it in the paper.  
 18 I did not study either American law or Jewish law  
 19 before coming here, nor did I surf the Internet. Um --  
 20 would it were that I had the foresight to prepare  
 21 myself better.

22 So, my remarks are really -- uh -- based on  
 23 -- uh -- well, what I feel to be a body of common sense  
 24 -- uh -- derived over the course of my I won't tell you  
 25 how many years, and also as a member of the Tenaflly

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1 Board of Adjustment, and as the former H.S.A.  
2 Co-President of the Smith School active in civic  
3 affairs here -- uh -- and community affairs.

4 And I just need to say that I can see no  
5 downside to the erection of the Eruv at all. I do see  
6 that the Tenaflly ERUV Association made a grave faux pas  
7 in attempting to erect the Eruv without permission.

8 But, now that, before this body, the request  
9 stands, I would just like to say that I wish you  
10 strength in your deliberations and great care and to  
11 take all the time you need, not to hastily make a  
12 decision.

13 But, personally and with a knowledge of  
14 Tenaflly Land Use Law, I can see no downside.

15 Thank you.

16 MAYOR MOSCOVITZ: Thank you.

17 Uh -- just -- I -- I'd like to just see a  
18 show of hands. How many people are going to wish to  
19 speak, just so we have an idea.

20 Uh -- all right. That doesn't look too bad.

21 (Laughter)

22 MAYOR MOSCOVITZ: I -- just, you know, try --  
23 try not to be too repetitive, if you can, please.

24 Uh -- all right. We'll start back here?

25 MR. LESNEVICH: Yes.

## Colloquy

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1 MR. KOLLITIDES: My name is Ernest  
2 Kollitides. I live at 164 East Clinton Avenue. I've  
3 lived here for about 10 years.

4 I -- I will be very brief, number one,  
5 because many of the things I wanted to say have been  
6 said already; number two, I have a terrible laryngitis  
7 problem, as you can well hear, and I apologize for it  
8 ---- uh -- the -- uh -- echo in my voice, to put it  
9 mild.

10 Uh -- I believe in freedom of religion.  
11 Religion should be practiced in the house of worship  
12 and not homes, not on the poles of the telephone  
13 companies or power companies.

14 I would be as opposed to have green ribbons  
15 put by the Italian community or blue ribbons put by the  
16 Greek community or orange ribbons put by another  
17 community as I am strongly opposed in any single group  
18 of people putting symbols, wires, ribbons, whatever,  
19 that infringe upon the rights of the rest of us.  
20 Freedom for one group must not mean opposition of  
21 things that don't -- that are not acceptable to all the  
22 other groups.

23 Many other good points were made by the  
24 opponents of this whole thing. Therefore, I will not  
25 repeat them.

I almost object being here today because I feel that somebody comes and puts a tent in my backyard and then I have to go to court to get them out of that place. This should have never happened in the first place. And it's an imposition on the rest of us that we have to defend something that should have needed no defense in the first place. I'm strongly opposed to it.

And I thank you for giving me the opportunity.

MAYOR MOSCOVITZ: Thank you.

Uh -- let me go here, first. In the blue.

MR. GOLDEN: Hello. My name is Tom Golden. I live at 232 Riveredge Road in Tenafly, New Jersey. I've been here since 1969.

When I first heard of the Eruv in -- I guess it was in the Suburbanite, I had no idea what it was. And then when I come to find out about it, doing some reading also on the -- uh -- Internet and speaking with several rabbinical friends that I know in the City, Jewish seminaries, and local rabbis to get more information about it so I had some sense of what an Eruv is.

Eruv, E-R-U-V, certainly sounds Hebrew and/or Jewish to me, -- uh -- as opposed to street or

boulevard. And the notion that somehow an Eruv is unrelated in a substantive way to be a Jew, orthodox or otherwise, I don't find any sense in it.

Um -- the concepts of tolerance and good faith and good will and friendship and accommodation, I think I -- I represent them quite strongly, both for my family and the community, and I think that many persons in this town do, but they get raised readily when an issue of this sort comes alive, so it could have the effect of dismaying or incensing many persons who, the inference is, that somehow you're less than tolerant, or less than good-willed, or less than Christian, or less than Judeo-Christian if you have something to say in opposition to an Eruv.

I called up a couple of rabbis just this afternoon in between patients and I asked them about it. And, actually, the two gentlemen that I got on the phone, they're rabbis in local synagogues, both pooh-poohed the enormity that this town was making of it. One said you're making a mountain out of a mole hill.

Then, I thought to myself, there's an image of a wire encompassing an entire community. And if there ever was a mountain-type image, that's one of them. And I think that's possibly one of the concerns that generates the -- uh -- opposition to an Eruv.

## Colloquy

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1 It's just the imagined sense of some kind of physical  
2 entity that encompasses your entire community, or half  
3 the community.

(Indiscernible)

4 MR. GOLDEN: -- Riveredge Road, across  
5 Knickerbocker, or -- I happen to live by the -- it may  
6 well extend.

7 So, when I think about it, and I've spoken  
8 about it with my family in my home, they, too, raise  
9 like where does it go and what is it and where does it  
10 hang and why is it? I think it is, if you will --  
11 could use that image of a mountain out of a mole hill  
12 really a mountainous issue. It publicly is too large  
13 an issue because it really is only a thin wire. It's  
14 the encompassing nature of it all that I think many  
15 persons, including myself, find antithetical to both my  
16 own heritage as a Jew, and not a religious Jew at all,  
17 but certainly a culturally-generated one.

18 And I find the line in the sand that the  
19 gentleman from the ACLU -- ACLU -- or the -- excuse me  
20 -- the Anti-Defamation League, generated was not  
21 unanticipated because in the absence of tolerance and  
22 good will and a Christian motif and good spirit and  
23 accommodation just know that you can be stuck by the  
24 law which isn't necessarily good-willed and  
25

## Colloquy

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1 accommodating and Christian. So, I don't envy the  
2 position of the Council possibly having to face some  
3 kind of legal action regarding -- uh -- the Eruv. And  
4 I understand and support the total opposition to any  
5 such element being introduced into this community, or  
6 frankly any other community, but this is the one I  
7 happen to live in.

8 Thank you.

9 MAYOR MOSCOVITZ: Thank you.

10 MS. BYRNE-RIFKIN: I -- my name is Wendy Rif  
11 -- Wendy Byrne-Rifkin. I live 70D Dumont Street in  
12 Tenaflly. I've lived in this town 35 years. I have two  
13 children in the high school, second generation Tenaflly.

14 I think the thing that upsets me the most is  
15 the way that this was done. It was done sneakily and,  
16 now, people are trying to remedy the situation by  
17 creating a legal net.

18 I'm also of the Jewish faith. I belong to  
19 Temple Sinai. Both my boys have been bar mitzvahed.

20 The thing that impressed me the most about  
21 Tenaflly, as we've said over and over again, is the  
22 religious diversity. I've had numerous Seders at my  
23 house. I've had Korean children. I've had Catholic  
24 children at my house. And I think part of this --  
25 excuse me, I'm getting over a cold -- has come about

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1 with our religious diversity in this town, which I  
2 really think is something very, very special.

3 Any given Jewish holiday you can see people  
4 going in cars to temple. There are people walking to  
5 temple.

6 I think religion is also how you perceive it.  
7 I'm against the Eruv because I think it is an  
8 accommodation and I think it is going to create a  
9 separation.

10 Uh -- basically, you know, what I would just  
11 like to say is I have a lot of pride in this town and I  
12 resent people saying that we say we don't want those  
13 people. I mean it sounds like, you know, we're going  
14 back to the Holocaust era where name slinging went on.

15 I realize you have a very difficult decision.  
16 You know, I know it's going to be very tough for you,  
17 but I would like to see Tenaflly continue being a  
18 religiously diverse town without this inner goings and  
19 all this dissension among people.

20 Thank you very much.

21 MAYOR MOSCOVITZ: Thank you.

22 Uh -- did you want to speak?

23 (No audible response.)

24 MAYOR MOSCOVITZ: Oh, just stretching.

25 (Indiscernible)

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1 DR. MELTZER: My name is Murray Meltzer. I  
2 live at 1 Byrne Lane, Tenaflly. I've resided in Tenaflly  
3 for over 35 years. My -- two of my children live in  
4 Tenaflly. My grandchildren live in Tenaflly.

5 And I'm pleased to say that in attending my  
6 grandchildren's birthday I'm impressed by the -- uh --  
7 the nature of the group that comes, which is a  
8 multi-cultural, multi-racial group. They all get along  
9 very well.

10 The issue here is not one of religious  
11 tolerance in this town. Uh -- over the years, we've  
12 been involved in various affairs in the town, as many  
13 of the people have, different civic controversies,  
14 school boards, school agendas, A & P. These things  
15 generated a lot of controversy, a lot of hate, but in  
16 the end we adhere to the decisions that were made by  
17 the town and by the Council without trying to  
18 circumvent them, without trying to impugn the motives  
19 and the -- uh -- personal beliefs of anyone in the  
20 town. We -- we respected each other.

21 In this case, there was -- uh -- a request  
22 for an Eruv. It was turned down. Nevertheless, the  
23 group went ahead, put up an Eruv surreptitiously and  
24 illegally. Any other group, whether it is religious or  
25 a business or a church, would have -- would have been

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1 forced not only to take it down, to -- to make  
 2 reparations, would -- would have faced fines. There  
 3 have been fines -- uh -- or penalties imposed to  
 4 churches and other religious groups in this town for  
 5 failing to meet the -- the regulations of this town.

6 I'm very familiar with Eruvs, having been  
 7 brought up in -- uh -- Borough Park, Brooklyn, an  
 8 orthodox community. My brother lived in Lawrence, Long  
 9 Island, where there was a major effect by the use of an  
 10 Eruv.

11 I want to also correct that -- uh -- the --  
 12 the implication that -- that an Eruv is something that  
 13 is required and desired by all orthodox. We have had a  
 14 very well-integrated, functioning orthodox community  
 15 within Tenafly for a number of years. The --

16 (Indiscernible)

17 DR. MELTZER: -- Synagogue functions without  
 18 requiring an Eruv.

19 This particular group does not represent the  
 20 --

21 (Indiscernible)

22 DR. MELTZER: -- Synagogue of Tenafly. They  
 23 are a particularly separate, small, separate group.  
 24 Their place of worship, to my understanding, has been  
 25 in Englewood in a private home. Their -- I believe

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1 that they have purchased another private home in  
 2 Englewood to use as their place of worship.

3 And a majority or a good many of their --  
 4 their small group are not members of the Tenafly  
 5 community, which brings me to another point that has  
 6 been mentioned but I -- I have -- I not only resent the  
 7 -- uh -- implication of the -- uh -- idea that we are  
 8 reli -- there is some basis for religious intolerance.  
 9 We are religiously tolerant. And -- and I know the  
 10 clergymen who came up mean well to speak of religious  
 11 tolerance. We all want that and observe it. However,  
 12 the tactics that have been used by this group are such  
 13 that if you are -- if you are against this, it is  
 14 impugned that you are somehow anti-Semitic.

15 I want you to know that a good deal of the  
 16 Jewish community in this town is against this, and even  
 17 rabbis are against this. And rabbis who have voiced  
 18 any opinion against this, and even orthodox rabbis.  
 19 Not every orthodox rabbi -- with all due respect to the  
 20 first rabbi who spoke who was from Teaneck from his  
 21 particular congregation, not every orthodox rabbi  
 22 requires a -- an Eruv. But this group even impugned a  
 23 -- a leading rabbi by calling him anti-Semitic because  
 24 he did not agree with the idea of having an Eruv.

25 I think it is a dangerous precedent to set no

## Colloquy

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1 matter what. We are a very small town. No matter what  
 2 the boundaries that they are asking for at the present  
 3 time, it sets the precedent that you cannot turn down  
 4 if it -- another five families move into an area that  
 5 is not in the Eruv, you will have to extend it. And we  
 6 are not a large town, like Englewood, which is about  
 7 four times our size, or the other areas that were  
 8 mentioned, and it will very negatively -- uh -- effect  
 9 the entire town.

10 Thank you.

11 MAYOR MOSCOVITZ: Thank you.

12 Uh -- wait. You've spoken once. We're going  
 13 for those --

14 Yes.

15 MS. DARDIK-GOTTLIEB: My name -- my name is  
 16 Stephanie Dardik-Gottlieb. I live at 130 DeVriese  
 17 Court in Tenaflly.

18 I spoke two weeks ago briefly about how I  
 19 feel in regard to the Eruv and I just want to clarify a  
 20 misunderstanding that I believe the gentleman has.

21 While there is a -- a new synagogue that is  
 22 on the Englewood side of the Tenaflly border, there are  
 23 numerous families within the heart of Tenaflly, myself  
 24 included being the mother of two young children and  
 25 expecting soon -- uh -- to have another baby who would

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1 just like to be able to push the stroller down to  
 2 synagogue, take the children who are too young to walk  
 3 the distance.

4 It is not an issue of -- of Englewood versus  
 5 Tenaflly or spill over. I believe that people who are  
 6 in Englewood who are expressing an interest in this  
 7 Eruv are doing so because they would like to be able to  
 8 walk across Hudson to their friends who live in Tenaflly  
 9 and share a Sabbath afternoon. Um -- or people who  
 10 live in Tenaflly who'd like to be able to walk to the  
 11 synagogue in Englewood would like to be able to do  
 12 that. And without the use of the Eruv, we can't do --  
 13 without the -- the Eruv we -- we cannot do that.

14 I just wanted to make clear that this is not  
 15 an Englewood issue spilling over into Tenaflly. It is  
 16 something that is also already in the heart of Tenaflly.

17 MAYOR MOSCOVITZ: Thank you.

18 You -- have you spoken?

19 (No audible response.)

20 MAYOR MOSCOVITZ: No.

21 MR. SCHLESINGER: My name is Andrew  
 22 Schlesinger. I live at 13 Laurel Avenue here in  
 23 Tenaflly. I've lived here for about 12 years.

24 I came here with no intentions of speaking,  
 25 but after listening to everybody speak, I felt that I

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1 wanted to say something. And that is if you divorce  
 2 the religious aspects of this request from the request,  
 3 it is a request to erect something that offers special  
 4 compensation to a specific group. And I personally  
 5 would urge the members of the -- the Mayor and the  
 6 Council not to go forward with this.

7 I do believe that it would set a terrible  
 8 precedent that would be almost impossible to undo and  
 9 that it would open the door for any special group to  
 10 make a request and force a legal issue with this town  
 11 that says, what you do for one, you must do for all.  
 12 And I personally would not want to see that happen.

13 Thank you.

14 MAYOR MOSCOVITZ: Uh -- yes.

15 MR. AGUS: Hi. Good evening. My name is  
 16 Charles Agus. I live at 7 Elkwood Terrace in Tenaflly.

17 I just want to say that we've heard a lot in  
 18 opposition tonight to the Eruv and -- uh --  
 19 particularly people -- uh -- opposed to certain  
 20 observant members -- observant Jews in Tenaflly and --  
 21 and maybe just a lack of understanding about what we're  
 22 doing here and about our goal in town. I -- I just  
 23 don't agree with a lot of the perceptions that have  
 24 been expressed tonight.

25 It's a very difficult forum to -- uh -- to

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1 express what we're standing for or why we're here or  
 2 what we believe in. Um -- but, perhaps, -- um -- there  
 3 is an alternative forum. We've had Rabbi Arthur  
 4 Hertzberg, Rabbi Block, the J.C.C. of the Palisades,  
 5 have all offered to -- uh -- provide a -- a forum for  
 6 en -- for education about an Eruv, about our presence  
 7 in town. And I just wanted to throw that out to the  
 8 Mayor and to the Council.

9 To the extent you are interested in waiting  
 10 for any of these individuals to hold any of these types  
 11 of forums, you certainly or I certainly wouldn't be  
 12 opposed -- uh -- to the Mayor and Council delaying the  
 13 vote tonight to really get some better education on  
 14 this -- on this issue.

15 And, finally, on a personal note, I've heard  
 16 many people, I mentioned before, speak against the  
 17 Eruv. Uh -- I would encourage anyone who's here  
 18 tonight -- I'm -- I'm happy to speak with anyone here  
 19 on an individual basis -- uh -- purely -- uh -- from an  
 20 educational perspective because I think that there  
 21 really are a lot of misunderstandings that have taken  
 22 place. So, I encourage anyone -- there are many of you  
 23 who have spoken -- I would encourage anyone to -- uh --  
 24 get -- uh -- me or my wife, Paula, would be happy to  
 25 talk to you about it individually.

## Colloquy

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1 Thank you.  
 2 MAYOR MOSCOVITZ: Thank you.  
 3 Is there -- uh -- first-time speakers,  
 4 please?

5 Uh -- may I see the hands of the people who  
 6 still haven't spoken once?

7 All right. First, and second, and then that  
 8 will be it for the first-time speakers -- we will have  
 9 -- there was one other hand up here -- because it's  
 10 almost 11:00 o'clock and that's kind of the Cinderella  
 11 time. We would like to take our vote by then. And we  
 12 still have more Council business to -- to conduct when  
 13 this is over.

14 So -- you may speak. Yes.

15 MS. PERSKY: Madam Mayor and members of the  
 16 Council, my name is Barbara Herband (phonetic) Persky.  
 17 I live at 7 Orchard Place in Tenaflly.

18 Uh -- I've lived in Tenaflly since August of  
 19 1998. We purchased a home here -- um -- in December of  
 20 1997. Prior to living here, I lived in Teaneck, New  
 21 Jersey, from 1986 on. Um -- so, I have a -- a very  
 22 good first-hand experience of a community where there  
 23 was a very active, orthodox congregation and where  
 24 there is an Eruv, and also, a long-term view of how the  
 25 community evolved.

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1 Um -- I -- I appreciate very much the  
 2 difficulty that the Council has in -- um -- in culling  
 3 out what really are the issues here, whether they are  
 4 the rights of certain individuals to be able to -- uh  
 5 -- have freedom of religion, whether the rights are --  
 6 uh -- for -- uh -- us to live in a diverse town and  
 7 what that means.

8 And I'm not an attorney and I'm not a rabbi.  
 9 I am Jewish. I am -- um -- a reformed Jew. Some  
 10 people would call me a secular Jew. I take opposition  
 11 to that, but I've certainly been called that.

12 I am a member of the congregation in Teaneck.  
 13 I am a first-generation American, a Holocaust survivor,  
 14 a -- a child of a holo -- both parents were Holocaust  
 15 survivors. And I lived in Brownsville as a child and  
 16 -- um -- attended an orthodox synagogue where my  
 17 grandparents were members and -- uh -- they did not  
 18 have the benefit of an Eruv.

19 Um -- what I can say from my own direct  
 20 experience is that something we have to look at is not  
 21 just the issue of the Eruv, but what that issue, pro  
 22 and con, will bring 5, 10 years down the road.

23 I watched a larger town than -- than Tenaflly  
 24 evolve and change from a multi-ethnic culturally-rich  
 25 town to a much more polarized town -- um -- to a town

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1 that had many more -- um -- obstacles to come over as  
 2 the years passed to a town where my own son came back  
 3 telling me he was the only Jewish child in sc -- in his  
 4 class -- his school although we lived in a community  
 5 that was -- that -- a rich Jewish community. Um --  
 6 those are some of the struggles that the Jewish  
 7 community has in terms of their many -- um -- their  
 8 many branches, so to speak.

9 However, -- um -- I think that the Town needs  
 10 to look at a town like Teaneck, even if it isn't  
 11 exactly like our town, and say -- project themselves  
 12 into the future and say, what do we want our town to  
 13 look like in the future? Do we want it to be a town  
 14 that is truly -- um -- multi-ethnic and multi-cultural?  
 15 Do we want it to be a town -- um -- that -- um --  
 16 encompasses but doesn't -- uh -- provide preferential  
 17 treatment to anyone?

18 I also think that should the Eruv -- and I am  
 19 opposed to the Eruv -- should you decide to -- um -- to  
 20 vote for the -- um -- for the erection and the  
 21 maintaining of the Eruv, I don't think that this'll be  
 22 the first -- the last issue relating to this that you  
 23 will face here. I think that as the -- as the Eruv --  
 24 once the Eruv goes up, what will happen is that it  
 25 certainly will attract many more families who are

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1 interested in living in a community with an Eruv and  
 2 there will be other issues for the Council to face like  
 3 si -- similar issues that Teaneck has faced like -- uh  
 4 -- houses of worship being -- um -- being -- um --  
 5 using private homes as houses of worship, -- um --  
 6 trying to erect a hou -- uh -- a house of worship in  
 7 what's pri -- primarily a residential area, and all the  
 8 issues that come up with that.

9 So, I guess what I'm saying is the co -- this  
 10 is not the last the Council will have to deal with  
 11 these issues -- um -- and I think that carefully  
 12 looking at -- um -- the history of -- the first speaker  
 13 spoke about, the history -- we can learn from history.  
 14 We can learn from other experiences in -- uh --  
 15 neighboring communities. And I think that we really  
 16 should take a close look at that.

17 Thank you.

18 MAYOR MOSCOVITZ: Thank you.

19 Uh -- yes. Thank you.

20 MS. BAGS: My name is Charles Agus.

21 MAYOR MOSCOVITZ: Uh -- we can't hear you.  
 22 You have to speak into the microphone, please.

23 MS. BAGS: I said to myself, now, be sure  
 24 it's in the right spot and --

25 MAYOR MOSCOVITZ: A little -- a little

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1 closer, a little louder.

2 MS. BAGS: My name is Irene Bags, --

3 MAYOR MOSCOVITZ: Thank you.

4 MS. BAGS: -- 46 Sherwood Road, Tenaflly.

5 I've been a resident of Sherwood Road for 35 years. I  
6 think that's important because so many other people  
7 here tonight thought it was important to mention it,  
8 also. I've raised four children in this community.  
9 Two of them are still living in Tenaflly.

10 I identify with the gentleman there when he  
11 said he was not a member of the tribe. My child was  
12 the only non-Jew in Smith School in one particular  
13 year. He was excluded from every Jewish birthday  
14 party.

15 So, I know what it's like to feel excluded  
16 from a group. But, this was the way it was. You  
17 accommodated yourself and functioned within your own  
18 framework.

19 I identify with the gentleman over here who  
20 said if you are an orthodox Jew, you practice orthodox  
21 Jewry and you don't try to get around it, through it,  
22 above it, whatever, to accommodate another type of  
23 lifestyle. If you accept the orthodox Jewish  
24 lifestyle, then this is what you accept. I accept  
25 that.

## Colloquy

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1 I respect the opinions of the clergy. These  
2 are very important people in our community, but I think  
3 the clergy are given respect and understanding on a  
4 level that is above the ordinary citizens because they  
5 are on another level dealing with the community, not a  
6 housewife dealing with children on that level.

7 We had a very similar incident in our  
8 neighborhood in the past two weeks. A family moved in  
9 and, without requesting permission from anyone, went  
10 ahead with an addition with the intent to open a  
11 practice, without any formal application to the Town.

12 There was wind gotten of the situation and  
13 all of the neighbors got together to fight the  
14 situation because no one wanted a commercial practice  
15 in a residential neighborhood.

16 The person involved in this said this is what  
17 they have been advised to do, this is the way it was  
18 done. The neighbors convinced her otherwise, and she  
19 has since made application in the appropriate manner  
20 and then withdrew the application.

21 The point of what I am saying is at the  
22 meeting one of the gentlemen there, a lovely man also a  
23 long-time resident, said something that stuck in my  
24 mind that I think is applicable to the situation. I am  
25 also --

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1 (Indiscernible)  
 2 MS. BAGS: I wake up every morning and look  
 3 out my window and there is an orange ribbon flapping  
 4 away on the telephone pole in front of my house. There  
 5 was no mention made of the fact that Sherwood Road was  
 6 a boundary. I don't understand where the boundary is  
 7 if it's on Sherwood Road. But I wake up every morning  
 8 and I see this, and the terminology is, it is a thorn  
 9 in my side to wake up every morning and see this  
 10 flapping in front of my home.  
 11 Excuse me?  
 12 MAYOR MOSCOVITZ: Take it down. I don't know  
 13 what it is.  
 14 (Laughter)  
 15 MS. BAGS: You don't know what what is?  
 16 MAYOR MOSCOVITZ: I don't know what the  
 17 orange ribbon is there for. Take it down.  
 18 (Laughter)  
 19 MR. LESNEVICH: It's not part of the Eruv.  
 20 MAYOR MOSCOVITZ: It's nothing. It's -- I  
 21 don't know why it's there.  
 22 MS. BAGS: I did not want to break the law.  
 23 MR. LESNEVICH: No.  
 24 MAYOR MOSCOVITZ: No.  
 25 MS. BAGS: I did not know who put it there

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1 and what it was for --  
 2 MAYOR MOSCOVITZ: It has -- it doesn't have  
 3 anything to do with the Eruv.  
 4 MS. BAGS: -- until --  
 5 MAYOR MOSCOVITZ: I don't know what it is,  
 6 unless it's left over from a school.  
 7 MS. BAGS: No. It was just --  
 8 MAYOR MOSCOVITZ: Oh. The cable --  
 9 MS. BAGS: -- installed.  
 10 MAYOR MOSCOVITZ: -- company put it up?  
 11 MR. LIPSON: The cable companies put them up  
 12 as markers for various ca -- cable --  
 13 MAYOR MOSCOVITZ: For some repairing --  
 14 MR. LIPSON: Yes.  
 15 MAYOR MOSCOVITZ: -- r something?  
 16 MR. LIPSON: Other repair or --  
 17 MR. LESNEVICH: Take it down.  
 18 MR. LIPSON: -- or --  
 19 (Laughter)  
 20 MAYOR MOSCOVITZ: I don't -- I don't think  
 21 that's part of it.  
 22 Do you know what it is?  
 23 MR. BOOK: No.  
 24 MR. LIPSON: It's --  
 25 MAYOR MOSCOVITZ: No.

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1 MR. LIPSON: -- it's the cable company.  
 2 MAYOR MOSCOVITZ: I don't --  
 3 MR. LIPSON: I've seen them put them up.  
 4 MR. LESNEVICH: It's a cable company repair  
 5 marker.  
 6 MAYOR MOSCOVITZ: Don't let that worry you.  
 7 Don't be upset about the orange ribbon.  
 8 MS. BAGS: Okay. Thank you. There was no  
 9 one to ask without bringing up the other issue.  
 10 (Laughter)  
 11 MR. LESNEVICH: We can take the thorn out of  
 12 her side.  
 13 (Laughter)  
 14 MS. BAGS: What I am saying is I think that  
 15 this kind of wire is a thorn in the side of the  
 16 community of Tenaflly and I think it will become a  
 17 festering wound in the community of Tenaflly.  
 18 MAYOR MOSCOVITZ: Thank you.  
 19 MS. BAGS: Thank you.  
 20 MAYOR MOSCOVITZ: Uh -- I think all the  
 21 first-time speakers have spoken. So, we can go -- uh  
 22 -- but, really, it's 5 past 11:00, so I request  
 23 everybody who speaks -- I only see one hand although I  
 24 expect they'll be another one.  
 25 (Laughter)

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1 MAYOR MOSCOVITZ: So, we just have these two  
 2 speakers.  
 3 And, please, if the two of you could make it  
 4 fairly short?  
 5 MR. LESNEVICH: And not repetitive.  
 6 MAYOR MOSCOVITZ: I don't know what the music  
 7 is that we're hearing.  
 8 MR. SULLIVAN: No, no. It's --  
 9 MR. LIPSON: It's the Fire Department.  
 10 MR. SULLIVAN: -- the Fire Department.  
 11 MAYOR MOSCOVITZ: Oh.  
 12 MR. LIPSON: I shut mine off, Mayor.  
 13 MAYOR MOSCOVITZ: Thank you.  
 14 MR. LIPSON: It's my cell phone.  
 15 MAYOR MOSCOVITZ: Oh, all right.  
 16 Mr. Victoria.  
 17 MR. VICTORIA: I certainly don't want to seem  
 18 fresh or antagonistic or aba -- abrasive or  
 19 disrespectful. I was sitting over there and I was  
 20 looking at the police and I was thinking to myself,  
 21 they're really very hard-hearted guys. There's some  
 22 things that I would love to do. I'd love to race  
 23 around town, full throttle in a snowmobile. So, I'd  
 24 like to put a purple tack on poles and trees around the  
 25 town and give myself certain releases from the law,

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1 from these hard-hearted guys that would stop me from  
2 doing that. Where is the difference?

3 MR. LESNEVICH: Last speaker.

4 MAYOR MOSCOVITZ: Last speaker.

5 MR. BOOK: I will try to keep it brief.

6 MAYOR MOSCOVITZ: Oh, I see that --

7 UNIDENTIFIED: Please!

8 MAYOR MOSCOVITZ: -- bottle of water and --

9 (Laughter)

10 MR. LESNEVICH: Mr. Book, I thought -- don't  
11 get too comfortable there, please.

12 (Laughter)

13 MR. LESNEVICH: Don't settle in.

14 MR. BOOK: I'll be --

15 (Inaudible)

16 MR. LESNEVICH: Oh.

17 MAYOR MOSCOVITZ: Oh.

18 (Laughter)

19 MR. BOOK: Of course, we can all go out for  
20 coffee and --

21 (Inaudible)

22 (Laughter)

23 MR. BOOK: In the interest of not being  
24 repetitive, and not going over what has already -- uh  
25 -- been reviewed once before, on November 28th at the

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1 previous hearing I did give a detailed explanation as  
2 to the -- uh -- uh -- the history of what occurred here  
3 and I will not repeat that. If anyone in the audience  
4 is curious, they certainly can either obtain the tape,  
5 or I'd be happy to talk to them.

6 The impact of the Eruv is on the quality of  
7 life. It's the quality of life for members of the  
8 Jewish community in Tenaflly, particularly for the  
9 elderly and disabled and parents of small children, who  
10 are otherwise relegated to their homes on the Sabbath.  
11 But, with an Eruv, they can carry to the synagogue,  
12 their friends' homes, and enjoy the public parks.

13 I'd like to specifically -- uh -- address one  
14 remarks -- uh -- or it might have been two or three  
15 remarks relating to whether this -- whether the Eruv is  
16 a segregation or a separation. It's obviously from the  
17 map that was provided that this is not designed to  
18 segregate any particular portion of Tenaflly and  
19 designate that as an orthodox neighborhood.

20 But let me go directly to the merits of all  
21 of this. And that is, why should you grant this  
22 application and not order the removal of the leffees,  
23 which are the plastic strips that are on telephone  
24 poles?

25 This is an issue of great importance to our

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1 small Jewish community and, to date, not one legitimate  
2 basis for denial has been articulated. These plastic  
3 strips do not interfere with anyone's aesthetic  
4 pleasures. They don't obstruct any traffic signs.  
5 They don't obstruct traffic.

6 They do not obstruct anything that the  
7 utility companies are doing. The utility companies are  
8 the ones who specifically told us what materials to use  
9 so that it does not interfere with what they do, and  
10 they're aware, by our giving them a list of the  
11 telephone poles, they're aware of what poles they're  
12 on. So, it doesn't interfere with anything that they  
13 do.

14 And, as is plainly obvious from the photos  
15 that have been provided to the Council, and which I  
16 will make available if anyone would like to see them  
17 again, a pole with a leffee, with a plastic holder  
18 looks no different than any other telephone pole.

19 It doesn't cost the Borough anything. We  
20 paid for it. We will maintain it. We will inspect it.  
21 We have provided insurance for it and we will continue  
22 to do so.

23 Nor is there any constitutional issue here,  
24 with all due respect to everyone who's spoken here this  
25 evening.

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1 Approving an Eruv does not prohibit go --  
2 governmental involvement with religion. It is not a  
3 violation of the separation of church and state. It is  
4 not an imposition of anything religious. It's not an  
5 endorsement of any religious practices. It is simply  
6 an accommodation that allows religious people to  
7 perform secular acts on the Sabbath.

8 Now, because the issue of separation of  
9 church and state has bloomed here and has been a source  
10 of discussion, if you would indulge me just for a few  
11 minutes, let's analyze the issue. The establishment  
12 clause of the First Amendment of the Constitution of  
13 the United States of America states:

14 "Congress shall make no law respecting an  
15 establishment of religion."

16 And the second part of that clause is that --  
17 is the free exercise clause which adds our prohibiting  
18 the free -- the free exercise thereof.

19 That First Amendment of the United States  
20 Constitution is applied to state and local governments,  
21 such as this one, by the Fourteenth Amendment of the  
22 Constitution. The landmark case on the issue of the  
23 establishment clause is the Lemon v. Kertzman decision  
24 of the U.S. Supreme Court in 1971. And that Court set  
25 forth a three-part test to analyze if someone -- if a

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-- if a governmental authority does something, will it violate the establishment clause?

And that test is. Does the law have a secular purpose? Does that law have a principal effect which does not advance religion? And does that law foster excessive entanglement with religion? Now, that test has been modified subsequently by a case called D'Agostini versus Feldman.

And, by the way, in case you're wondering why I'm telling you about case law, because law is very relevant to this because people are saying that by doing this, you're vi -- you're violating some type of law, and, therefore, I want to explain to you why this is not a violation.

MR. LESNEVICH: Well, let me just point out that I've discussed this with the Council in closed session. I -- they have all read Long Branch versus -- I mean ACLU --

MR. LIPSON: ACLU versus --

MR. LESNEVICH: -- versus Long Branch,

MR. LIPSON: -- Long Branch.

MR. LESNEVICH: -- which says -- which is the law of the District Court of New Jersey saying that it is not a violation of church and state and that a Council may, if it so chooses, allow an Eruv to be put

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up. We've been over this, I guarantee you, several times, sir.

MR. BOOK: Well, I appreciate that. Thank you.

MR. LESNEVICH: You're welcome.

MR. BOOK: However, I was -- I was also speaking for the benefit of the public, but if you don't feel that that's necessary, that's fine.

MR. LESNEVICH: I -- if -- if the public could have absorbed at 11:15 --

MR. BOOK: Well, and --

MR. LESNEVICH: -- I would be so amazed.

MR. BOOK: -- that would be terrific.

Okay. Then, let me spend just a couple of minutes discussing what possible objections there could be to -- to an Eruv. Number one, as someone here stated this evening, that the Long Branch case is different than the case here because the Long Branch case does not say that a government has to do this, only that if it is done, it's a violation of separation of church and state.

However, clearly, if this Council does nothing and allows the Eruv to stay up, there's no establishment clause violation.

Conversely, though, if this Council does take

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1 the action and denies the application and states that  
 2 the reason for the denial is -- is because of  
 3 separation of church and state, which has been  
 4 demonstrated through the Long Branch case that that is  
 5 not a legitimate argument --

6 MR. LESNEVICH: Mr. Book, seriously, I've  
 7 advised them they can't do that. They all have gone  
 8 over this ten times. They've read and studied. I mean  
 9 we've all had discussions on Long Branch at great  
 10 length. No -- I've told them that's -- that's  
 11 incorrect. Any -- many -- many people may have said  
 12 that tonight, but the Council's been advised that it's  
 13 not a violation of church and state.

14 MR. BOOK: Mr. Les --

15 MR. LESNEVICH: And it --

16 MR. BOOK: -- Mr. Lesnevich, not having ben  
 17 -- the benefit of having heard your discussions with  
 18 the Council, I --

19 MR. LESNEVICH: I understand.

20 MR. BOOK: -- I cannot assume --

21 MR. LESNEVICH: That's why --

22 MR. BOOK: -- what the Council's heard. And  
 23 I appreciate that you've clarified that for me and I  
 24 will move on.

25 MR. LESNEVICH: Thank you, sir.

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1 MR. BOOK: It has also been said that because  
 2 this Eruv was constructed in the wrong way, therefore,  
 3 it must be denied. And I want to address that for a  
 4 moment.

5 First of all, just to correct something,  
 6 there was never an application filed by the ERUV  
 7 Association by anyone affiliated with the ERUV  
 8 Association asking for any approval. And it was never  
 9 -- it was never filed and it was never rejected.

10 We, in good faith, believed that the only  
 11 thing that was required was the approval of the public  
 12 utilities and that that would be sufficient. At the  
 13 previous meeting, I apologize for any offense that was  
 14 taken and acknowledged the fact that 20/20 hindsight --  
 15 the whole matter could have been handled differently.

16 However, the way in which this was handled,  
 17 the way in which the Eruv was constructed is not a  
 18 ground for denying the application. If the application  
 19 is otherwise acceptable and the Eruv and -- and then  
 20 the manner in which -- in which we proceeded does not  
 21 merit the removal of the Eruv. And, therefore, that is  
 22 too harsh a penalty and is not warranted.

23 My next point is that many people have said  
 24 that this would set a bad precedent, that other groups  
 25 would want similar accommodations. Again, my response

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1 on that is, as you have with this particular  
2 application, when you have that particular application,  
3 you will consider it under the merits.

4 It has been said also that the Borough  
5 Council should not be involved in religion. I agree.  
6 That is absolutely right. We're not asking you to be  
7 involved with religion. We don't want you to pay for  
8 this. We don't want you to be involved in the  
9 maintenance. This is purely a -- an accommodation for  
10 a particular group.

11 Finally, I'd like to say that if there is --  
12 if there is a particular reason which the Council feels  
13 -- uh -- that is relevant and that is being considered,  
14 and if -- if some other voice should -- could be heard  
15 on it, I would appreciate the opportunity to be heard.

16 So, I would ask each of you individually to  
17 please consider this under the merits, please consider  
18 this under the law, to put aside any of the emotional  
19 issues that have been raised, put aside any of the --  
20 uh -- particular issues that were -- that were raised  
21 that are not relevant to the merits of this, but rather  
22 to grant this application on the merits because, as was  
23 stated, this does not violate the establishment clause,  
24 it does not violate separation of church and state, and  
25 there's no legitimate basis that has been articulated

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1 by anyone to oppose this application.

2 And I thank you for this opportunity to  
3 speak.

4 MAYOR MOSCOVITZ: Thank you, Mr. Book.

5 Uh -- we said that this was going to be the  
6 last speaker.

7 MR. LESNEVICH: Yeah. It's enough.

8 MAYOR MOSCOVITZ: You had -- you had a  
9 chance.

10 (Inaudible)

11 MAYOR MOSCOVITZ: Somebody else could then  
12 ask and we can't --

13 MR. LESNEVICH: It's 11:00.

14 MAYOR MOSCOVITZ: -- we can't go on and on.  
15 I'm sorry.

16 MR. WILSON: No, it's over. Come on.

17 MR. LESNEVICH: Let's --

18 MR. WILSON: Enough.

19 MR. LESNEVICH: Now, what we're going to do  
20 -- we're onto the -- the old business of this.

21 MAYOR MOSCOVITZ: Are we going to do this  
22 now?

23 MR. LESNEVICH: Yeah. Go right into it.

24 MAYOR MOSCOVITZ: Okay.

25 MR. LESNEVICH: That's the next thing. We've

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1 done the public. You --

2 MAYOR MOSCOVITZ: Do you want to explain  
3 this?

4 MR. LESNEVICH: Yeah. This is not -- for --  
5 just as a brief explanation, this is not a court. We  
6 don't take it under advisement or go back and  
7 deliberate and write an opinion.

8 We have an application before the Mayor and  
9 Council for the maintenance of an Eruv within Tenaflly.

10 MAYOR MOSCOVITZ: The erection.

11 MR. LESNEVICH: The erection of one. The  
12 question now is up to the Council.

13 Do you want me to go on?

14 MAYOR MOSCOVITZ: No.

15 I -- I would just ask if there is any Council  
16 member who at this time wishes to make a motion to esta  
17 -- permit the establishment of an Eruv in the Borough  
18 of Tenaflly?

19 (No audible response.)

20 MAYOR MOSCOVITZ: There being no motion to  
21 establish, is there a member of the Council who wishes  
22 to make a motion to deny the application to establish  
23 an Eruv in the Borough of Tenaflly?

24 Mrs. Kerge.

25 MRS. KERGE: Mayor, I want to say that I have

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1 spent a lot of time studying this, listening to this,  
2 listening to residents of Tenaflly, both here and both  
3 out of here, calls that have come into me where I've  
4 listened to people in Tenaflly. I've been very  
5 attentive at all the meetings we've had here, and, yes,  
6 at the meeting that occurred last year in 1999 when the  
7 question was brought to us informally.

8 I do what I am about to do on the basis of  
9 the fact that I believe I am doing what is best for  
10 Tenaflly based on the things that I have just said.

11 Therefore, I will move to deny the  
12 application to construct or to dedicate or to maintain  
13 an Eruv in the Borough of Tenaflly.

14 MAYOR MOSCOVITZ: Thank you.

15 Do I hear a second?

16 DR. PECK: Second.

17 MAYOR MOSCOVITZ: A motion has been made and  
18 seconded. Is there any discussion, any comments, by  
19 any member of the Council?

20 Mr. Sullivan?

21 MR. SULLIVAN: Yes, if I may, please.

22 Um -- first of all, I think it's incumbent  
23 upon the Mayor and Council that we have been here late  
24 hours, also to thank the people of Tenaflly for coming  
25 out here and really trying to grapple with a very

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difficult issue. It's an emotional issue and it's not an easy vote obviously for members of the Mayor and Council to make.

I think what we're being asked here is really two facts. One is the acknowledgment that the Borough will allow a non-conductive, non-electrical objects be hung or to be affixed to utility poles not owned by the Town but on the Town's right of way.

I'm also willing to presume at this time that the Tenafly ERUV Association has proper insurance, documenting its potential liability as given to us by Bell Atlantic -- uh -- Verizon. I also have to state that it does appear that the Association does want to administer it.

The second point is that we have to consider tonight and the summaries, does the Borough permit one religion to create a domain in our town? Are we seeding a part of our town? And by approving the Eruv, are we violating in any form either the state or the constitution's religious preference guidelines.

What I'd like to say is there are arguments for having an Eruv. I sincerely believe there -- there are good arguments. And one of them is that there is a legitimate secular governmental interest in facilitating the free movement of all residents. And I

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would like to think that the Eruv provides its facilitation, albeit to a small group of residents. It is my view that this accommodation is no different -- my personal view is not different than that of having a handicap ramp available to citizens in our town to facilitate their movement around the streets.

I am, however, troubled -- and this may be a cultural issue, and I'll be the first to raise my hand. I will be willing to meet with anyone at the J.C.C. or any rabbi in Teaneck, Tenafly, to understand this issue. Is that I don't understand the concept of domain. This troubles me. I believe in -- I studied Latin and I'm afraid I didn't study Hebrew, but permit me for my poor Hebrew, there's something called --

(Indiscernible)

MR. SULLIVAN: And that is the concept of domain within the household. And that converts into a larger domain, a large private domain, which can encircle the town, known as --

(Indiscernible)

MR. SULLIVAN: This concept of a domain worries me. No speaker here tonight and no Council members have brought out the fact yet how do you opt out of this domain? How do you administer that opting out? If I don't want to be a member of this domain,

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1 how do I opt out?

2 If -- if any residents here, and there are  
3 many residents who spoke against, if they are encircled  
4 within the Eruv, how do they opt out? I don't know.

5 There is a precedent (phonetic) in the town.  
6 There has been a prece -- actually, let me back up. To  
7 the best of my knowledge, and this can be confirmed,  
8 there is no ordinance, no resolution that says that you  
9 cannot hang something from a utility pole, to the best  
10 of my knowledge. And please correct me if I'm wrong.  
11 There's no ordinance. However, there is precedent.

12 MAYOR MOSCOVITZ: There is an ordinance.

13 MR. SULLIVAN: Uh -- there is -- okay. All  
14 right. I stand corrected.

15 (Laughter)

16 MR. SULLIVAN: There has been precedent  
17 (phonetic). I would just awhile back ago we had a  
18 dispute with the City of Englewood in which members of  
19 the town put orange ribbons around utility poles and  
20 trees and they were asked to remove them from the town.  
21 So, we do have precedents (phonetic) for removal. We  
22 did have that dispute.

23 I guess, really, in -- in -- in summary,  
24 we're -- we have to look at Tenaflly as an ecumenical  
25 town. This town is open to all religions and by

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1 effectively saying yes or no tonight we're not saying  
2 that we don't a particular group or we do want a  
3 particular group. We are trying to accommodate all  
4 religions in this town.

5 And, again, I go back to the issue of how do  
6 you opt out of this domain.

7 That's all I have to say.

8 MAYOR MOSCOVITZ: Thank you.

9 MR. LESNEVICH: The -- uh -- for the public's  
10 benefit, the or -- the ordinance we're referring to is  
11 Borough of Tenaflly Ordinance Number 691, an ordinance  
12 regulating streets, roads, sewers, sidewalks, public  
13 places, et cetera, and in Article 8.7, it says no  
14 person shall place any sign or advertisement or any  
15 other matter upon any pole, tree, curb or sidewalk or  
16 --

17 (Indiscernible)

18 MR. LESNEVICH: -- any public street or  
19 public place excepting such as may be authorized by  
20 this or any other ordinance of the Borough. Article 8,  
21 Number 1, Use of the Streets --

22 (Indiscernible)

23 MR. LESNEVICH: Is there any more discussion?

24 MAYOR MOSCOVITZ: Uh -- does anyone else on  
25 the Council wish to make a comment?

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(No audible response.)

MAYOR MOSCOVITZ: Would you call the roll, please, Ms. Hatten?

MS. HATTEN: Mrs. Kerge?

MRS. KERGE: Yes.

MS. HATTEN: Mr. Lipson?

MR. LIPSON: Yes.

MS. HATTEN: Dr. Peck?

DR. PECK: Yes.

MS. HATTEN: Mr. Sullivan?

MR. SULLIVAN: Yes.

MS. HATTEN: Mr. Wilson?

MR. WILSON: Yes.

MS. HATTEN: All right. Motion carries to deny.

MAYOR MOSCOVITZ: The motion to deny carries. I do want to thank everybody who has come down, who's expressed your opinion on both sides of the issue. Uh -- you've been listened to very attentively. And we've come to our conclusions.

We'll give you a minute or two to leave, but we have some -- we have a meeting to continue, so I'll ask you to please leave quickly and quietly. Thank you.

(Pause)

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MAYOR MOSCOVITZ: I would like to ask that those of you who haven't left yet to please -- uh -- walk out and have -- have your conversations in the hall. We would like to continue our meeting. I mean you're welcome to stay and listen, if you want.

(Pause)

MAYOR MOSCOVITZ: All right. We'll continue with our meeting, please.

MS. HATTEN: The items of correspondence, A through F, all dealt with the -- the Eruv application. Item G is the Bergen County Board of Taxation has ordered a revaluation in 2002 to be effective in 2003. That's the correspondence I have tonight, Mayor.

MAYOR MOSCOVITZ: Thank you very much.

Now, what else do we have to do?

MS. HATTEN: Committee --

MAYOR MOSCOVITZ: Committee --

MS. HATTEN: -- reports.

MAYOR MOSCOVITZ: -- reports?

MRS. KERGE: Oh, committees.

MAYOR MOSCOVITZ: Yeah. Committee reports.

There being no committee reports --

MS. HATTEN: Are we leaving the committee reports for the recess meeting --

MAYOR MOSCOVITZ: For the --

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1 MS. HATTEN: -- on January --  
 2 MRS. KERGE: Yes, we are.  
 3 MR. LIPSON: It's a good idea.  
 4 MR. SULLIVAN: I like that.  
 5 MR. LIPSON: It's a really good idea.  
 6 (Laughter)  
 7 DR. PECK: That's a good thing.  
 8 MS. HATTEN: And is there a motion to --  
 9 MAYOR MOSCOVITZ: Are there any audience  
 10 remarks for items not on the agenda tonight?  
 11 (No audible response.)  
 12 MAYOR MOSCOVITZ: No! Isn't that something?  
 13 MS. HATTEN: Motion to recess.  
 14 MR. LIPSON: Could -- could a Councilman just  
 15 on -- on -- uh --  
 16 MAYOR MOSCOVITZ: Excuse me?  
 17 MR. LIPSON: Could a Councilman say something  
 18 that's not on the agenda?  
 19 MS. HATTEN: Yes. That's under new business.  
 20 MR. LIPSON: Yes. This evening I handed you  
 21 all out a -- a measuring of how you measure the  
 22 diameter of a tree and figure out the -- the age of a  
 23 tree. That's extremely applicable to our tree  
 24 ordinance pertaining to landmark trees, and  
 25 specifically to 259 Engle Street. And I really would

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1 encourage all Council members, including the Mayor, to  
 2 take a walk up there and, if necessary, Mr. Butel  
 3 (phonetic) would be more than happy to escort you  
 4 through the property and to point out the trees in  
 5 question.  
 6 MAYOR MOSCOVITZ: Did you give him a copy of  
 7 that?  
 8 MR. LIPSON: Uh -- actually, Mr. Butel was  
 9 kind enough to -- to research that for me.  
 10 MAYOR MOSCOVITZ: Oh.  
 11 MR. LIPSON: Ah-hah.  
 12 MAYOR MOSCOVITZ: Good.  
 13 (Laughter)  
 14 MAYOR MOSCOVITZ: All right.  
 15 MR. LIPSON: See, I --  
 16 MAYOR MOSCOVITZ: Thank --  
 17 MR. LIPSON: I do -- I do work in the --  
 18 (Inaudible)  
 19 MAYOR MOSCOVITZ: Thank you very much.  
 20 MR. LIPSON: Thank you very much, Council  
 21 members.  
 22 MAYOR MOSCOVITZ: Um -- yes, Mrs. Kerge?  
 23 MRS. KERGE: May I just make a re -- a  
 24 statement?  
 25 MAYOR MOSCOVITZ: Anything you want.

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1 (Laughter)  
 2 MRS. KERGE: This -- this is the last full  
 3 meeting of -- of the year and --  
 4 MAYOR MOSCOVITZ: No.  
 5 MR. LIPSON: Yes, it is.  
 6 MRS. KERGE: Yes, it is.  
 7 MAYOR MOSCOVITZ: Oh, the other's only a half  
 8 meeting. Right. Okay.  
 9 MRS. KERGE: Well, it's -- it's --  
 10 (Indiscernible)  
 11 MRS. KERGE: That's next year. That's 2001.  
 12 DR. PECK: After January 1st is next year.  
 13 MRS. KERGE: This is the last full meeting  
 14 when we -- when we will have our fellow Councilperson,  
 15 Mr. Lipson, participating. And I know it's very late,  
 16 but in the past, at the time of these meetings we used  
 17 to take a little time as a Mayor and Council to sit  
 18 down and wish each other well in situations of this  
 19 sort, away from this dais somewhere, away from this  
 20 room somewhere.  
 21 MAYOR MOSCOVITZ: Are you suggesting that we  
 22 adjourn to the Clinton Inn?  
 23 MRS. KERGE: I am.  
 24 (Laughter)  
 25 MS. HATTEN: We're recessing.

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1 MRS. KERGE: We're recessing to the Clinton  
 2 Inn.  
 3 (Laughter)  
 4 MAYOR MOSCOVITZ: We'll recess to the --  
 5 MR. LESNEVICH: Sure.  
 6 (Laughter)  
 7 MRS. KERGE: If Mr. Lipson can join us, of  
 8 course.  
 9 MAYOR MOSCOVITZ: Okay?  
 10 MR. LIPSON: I can go. I got permission.  
 11 MS. HATTEN: Was that -- that was a motion to  
 12 recess is what that was.  
 13 (Laughter)  
 14 MRS. KERGE: It really is.  
 15 MAYOR MOSCOVITZ: All in favor?  
 16 (Laughter)  
 17 MRS. KERGE: But a little announcement along  
 18 with it.  
 19 (Laughter)  
 20 MAYOR MOSCOVITZ: Is there a second?  
 21 DR. PECK: Second. I second everything.  
 22 MAYOR MOSCOVITZ: All in favor?  
 23 (Council responds affirmatively.)  
 24 MAYOR MOSCOVITZ: Thank you.  
 25 (Tape machine turned off.)

CERTIFICATION

I, Emma A. Raines, the assigned transcriber, do hereby certify the foregoing transcript of proceedings before the Regular Meeting of the Tenaflly Mayor and Council on December 12, 2000, on tape number 1, index number 0001 to End; tape number 2, index number 0001 to End; and tape number 3, index number 0001 to 0357, and is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate transcript to the best of my knowledge and ability.



Emma A. Raines AOC #408  
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Date: 1-15-01



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL NO. 00-cv-6051

TENAFLY ERUV ASSOCIATION, INC., :  
et al, :

Plaintiffs, :

v. :

TRANSCRIPT OF PROCEEDINGS  
- Evidentiary Hearing -

THE BOROUGH OF TENAFLY, :  
ANN MOSCOVITZ, individually and :  
in her official capacity as Mayor: :  
of the Borough of Tenafly, et al, :  
:

Defendants. :

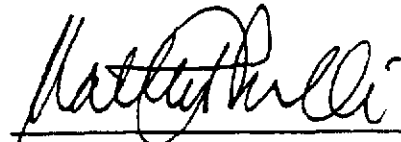
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Newark, New Jersey  
April 30, 2001

B E F O R E:

THE HONORABLE WILLIAM G. BASSLER,  
UNITED STATES DISTRICT JUDGE

Pursuant to Section 753 Title 28 United States Code, the  
following transcript is certified to be an accurate record as  
taken stenographically in the above entitled proceedings.



WALTER J. PERELLI, CSR, CRR  
Official Court Reporter

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## I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JOSEPH DiGIACOMO				
By Mr. Lesnevich	16		56	
By Mr. Sugarman		24		60
RICHARD V. WILSON				
By Mr. Lesnevich	62		83	
By Mr. Shapiro		63		83
ARTHUR PECK				
By Mr. Lesnevich	89		108	
By Mr. Shapiro		91		110

## E X H I B I T S

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1 THE COURT: Counsel, good morning.

2 MR. SHAPIRO: Good morning, your Honor.

3 MR. LESNEVICH: Good morning.

4 THE COURT: Could we start with appearances, please?

5 MR. SHAPIRO: Yes, your Honor. For the Plaintiff,  
6 Richard Shapiro from the firm of Hellring, Lindeman, Goldstein  
7 & Siegal, and Robert Sugarman and Esther Ilan from the law firm  
8 Weil, Gotshal & Manges.

9 MR. LESNEVICH: Walter Lesnevich, Borough Attorney of  
10 the Borough of Tenafly. Your Honor, with me is Bruce Rosen who  
11 is a member of the court, and Noah Feldman, who we have asked  
12 that you admit pro hac for this case.

13 THE COURT: There's no objection to that, is there?

14 MR. SHAPIRO: No, your Honor, there's no objection.

15 THE COURT: Mr. Feldman, that's perfectly fine. We're  
16 delighted to have you. There are some requirements. You'll  
17 need to perhaps go down to the magistrate's chambers, Judge  
18 Arleo. There's a form that has to be completed, there's a  
19 mandatory fee that gets sent over to the State of New Jersey  
20 and so on. All right?

21 MR. FELDMAN: Yes, your Honor.

22 THE COURT: But subject to that, that's perfectly  
23 fine.

24 MR. FELDMAN: Thank you, your Honor.

25 THE COURT: All right. What do we want to do?

1 MR. SHAPIRO: There were some housekeeping matters  
2 your Honor asked us to attend to. Let me address a few of  
3 them, and anyone can chime if they so desire.

4 One of them was the Plaintiffs were to notify the town  
5 of the witnesses by Friday that he we intended to call. We  
6 have done that. We may amend it.

7 Secondly was the definition --

8 THE COURT: Yes.

9 MR. SHAPIRO: We were hopeful to have it here this  
10 morning. It's being checked with one other source, we'll have  
11 it here by two.

12 Number three, your Honor asked about the geographics  
13 relating to the eruv. I have a map that Mr. Lesnevich has  
14 given to me as well as the pole numbers that are affected. I  
15 can give them to your Honor. They haven't been marked or  
16 anything, and it's the only map that we have. It's the one  
17 that was actually used at the hearing. If you want, if your  
18 Honor wanted to review it before it's actually presented,  
19 that's fine.

20 THE COURT: So we can wait, that's fine.

21 MR. SHAPIRO: But we have it.

22 THE COURT: Good.

23 MR. SHAPIRO: In terms of other document issues, we  
24 have basically agreed between ourselves that anything that was  
25 annexed to a document, to an affidavit as a document such as a

1 Borough ordinance or a piece of correspondence or other similar  
2 things, we have agreed as to authenticity so there's not going  
3 to be any issue about that. In addition, your Honor, on Friday  
4 we spent a considerable amount of time -- I don't know that  
5 we're done yet -- but looking through available Borough records  
6 which the Borough was kind enough to let us remove and there's  
7 not going to be any issue over the authenticity of those  
8 documents.

9 Mr. Lesnevich has indicated to me a witness order that  
10 he proposes.

11 THE COURT: Okay, good.

12 MR. SHAPIRO: I know you have one issue.

13 Is there anything that I left out?

14 Excuse me. I'm sorry, your Honor.

15 THE COURT: That's fine.

16 MR. SHAPIRO: Walter?

17 MR. LESNEVICH: No. I think that covers it.

18 I'm very interested in the definitions though, I think  
19 that may take some discussion.

20 THE COURT: Well, I was hoping that we could arrive at  
21 an agreed upon definition --

22 MR. LESNEVICH: Exactly.

23 THE COURT: -- so that we don't have to get into an  
24 issue over that.

25 MR. SHAPIRO: Judge, what we'll --

1 THE COURT: If we can't, I'll have to work it out.

2 MR. LESNEVICH: Your Honor, Professor Feldman --  
3 where is that book -- actually there's so much written on it,  
4 "The Contemporary Eruv." We have books on it and I'm sure they  
5 have more books on it, so we would like to narrow it down.

6 THE COURT: The reason I asked counsel to agree to it  
7 was so that I wouldn't have to read books about it.

8 MR. LESNEVICH: We have one in Hebrew on it, your  
9 Honor.

10 THE COURT: Now you're really pushing it.

11 MR. LESNEVICH: But I'm sure we'll hack out an  
12 agreement as soon as we get to talk about it.

13 THE COURT: That's what I'm looking for, something we  
14 can all agree on.

15 MR. LESNEVICH: Good.

16 MR. SHAPIRO: Judge, what we were trying to do was to  
17 try to use the Smith -- the four corners of it and just try to  
18 fix whatever was there. I don't know, if it can be, fine.

19 THE COURT: It may not be adequate. But all right.

20 MR. SHAPIRO: Anything else?

21 MR. LESNEVICH: No, sir.

22 THE COURT: Mr. Sugarman.

23 MR. SUGARMAN: Your Honor, there's one issue that I  
24 wanted to raise and put in motion. The Borough has objected to  
25 the production of some of the minutes of at least one meeting

8

1 of the Council on the grounds of privilege; and I have no doubt  
2 that there is some privileged material in the transcript tape  
3 of that meeting. I would also think, however, that there may  
4 be some non-privileged material in there. For example, the  
5 members of the Council who, except for Mr. Sullivan, didn't put  
6 their rationale on the record may well have debated and  
7 discussed the issue, not from a legal standpoint but from the  
8 standpoint of the arguments pro and con and where they were  
9 going to come out. And I would submit that those discussions  
10 would not be privileged, and --

11 THE COURT: Which meeting is that?

12 MR. SUGARMAN: I think there was one in closed session  
13 on November 21st. There was first on that date an open  
14 session, and we have the transcript of that. And then the  
15 Council adjourned in closed session and had further  
16 discussions, and we don't have the transcript of that. And I  
17 think there may well be other meetings -- I'll have to look at  
18 the privilege log -- there are a whole host of meetings after  
19 the decision was made.

20 We're not asking for those because I suspect that was  
21 a discussion of this litigation, and the vote had already been  
22 taken. But what I think we are entitled to is any minutes of  
23 transcripts, tapes of any discussions that took place prior to  
24 the vote in which members of the Council articulated their  
25 thoughts, rationale and the like.

1 THE COURT: But it was a closed session?

2 MR. SUGARMAN: Yes.

3 MR. LESNEVICH: If I can address that --

4 THE COURT: Sure.

5 MR. LESNEVICH: -- your Honor?

6 The first meeting in which this was discussed was  
7 public, and we have that transcript. The meeting -- two  
8 meeting at which there was public discussion, we have the  
9 transcript. There was no closed session in between the  
10 discussion and the vote. The only one that I think could be  
11 possible is the November 21 closed session, but I know there  
12 was no discussion of the rationale at that time. However, that  
13 exists on a tape, and I can have that processed, that limited  
14 event processed rapidly into a transcript which I'll review and  
15 then submit to the Court to see if there is anything there that  
16 is discoverable. I don't think there can be any other meeting  
17 involved though. Because every -- the discussions were right  
18 then, and there was the vote. There was no discussion after  
19 the public hearing, and then the lawsuit ensued and everything  
20 after that is specifically discussing with me, co-counsel, the  
21 litigation.

22 THE COURT: So it's only one transcript?

23 MR. LESNEVICH: It may -- if my memory serves -- and I  
24 may be wrong -- it was a three-minute meeting. I don't  
25 remember anything of substance. But I will get that right

1 away.

2 Any other date? I don't think so.

3 THE COURT: If the objection is that it's privileged,  
4 I'd like to have the benefit of whatever legal position you  
5 have in support of that.

6 MR. LESNEVICH: Yes, sir.

7 THE COURT: With the opportunity for Mr. Sugarman to  
8 respond.

9 MR. LESNEVICH: I have a feeling -- my gut feeling  
10 right now is that I'm going to see this and it's only going to  
11 say, "Well, what happens next, Walt"?

12 I don't know, we'll see. And that's it.

13 THE COURT: Okay.

14 MR. LESNEVICH: It may not be worth fighting over.  
15 But I'll find out. I'll get the --

16 THE COURT: But it's only that meeting that we're  
17 talking about?

18 MR. LESNEVICH: Correct?

19 MR. SHAPIRO: Do you have the log with you?

20 MR. SUGARMAN: I'll have to check the privilege log.  
21 That's the one I remember, your Honor.

22 MR. LESNEVICH: No, because there's nothing -- right  
23 after this, the meeting are the hearings.

24 MR. SHAPIRO: Right.

25 MR. LESNEVICH: And when the hearings end, two days

11

1 later the lawsuit commences. There are no meetings in between.

2 MR. SHAPIRO: The only thing we're interested in, just  
3 so we're clear about this, it would be any closed sessions  
4 prior to the vote. Anything after the vote it's clearly part  
5 of this lawsuit, privileged.

6 THE COURT: Sure.

7 MR. LESNEVICH: I'll look into that.

8 THE COURT: Thank you. That's fine.

9 Is there anything else?

10 MR. SUGARMAN: He no, your Honor.

11 MR. LESNEVICH: No, sir. We're ready, our witnesses  
12 will be here at 2 o'clock.

13 THE COURT: 2 o'clock?

14 MR. LESNEVICH: And I have plenty to fill as much time  
15 that we have.

16 THE COURT: All right. So we'll see everybody back  
17 here at two.

18 MR. SUGARMAN: Thank you.

19 THE COURT: Thank you.

20 (At 10:15 a.m., a recess is taken.)

21 A F T E R N O O N S E S S I O N

22 (At 2:10 p.m., the proceedings resume.)

23 THE COURT: In the matter of the Tenafly Eruv  
24 Association, could I have appearances please?

25 MR. SHAPIRO: Yes. Your Honor, on behalf of the

12

1 Plaintiff, good afternoon, your Honor. Richard Shapiro, from  
2 the firm of Hellring, Lindeman, Goldstein & Siegal, together  
3 with Robert Sugarman, Harris Yale, Craig Lowenthal and Esther  
4 Ilan, from the law firm of Weil, Gotshal & Manges.

5 Your Honor, also I apologize that neither Mr.  
6 Lowenthal nor Ms. Ilan are admitted to this court, and during  
7 the break I asked Mr. Lesnevich if he had any objection if I  
8 move their admission pro hac vice. They are both admitted to  
9 the highest court in the State of New York. Mr. Lesnevich said  
10 he does not object.

11 THE COURT: That's fine. Counsel, I put the burden on  
12 you to comply with the local rule. There is a form that has to  
13 be completed and there's a fee that has to be paid. Just take  
14 care of that. That's perfectly fine.

15 MR. YALE: Thank you.

16 MR. LOWENTHAL: Thank you, your Honor.

17 MR. SHAPIRO: Thank you.

18 MR. LESNEVICH: Good afternoon, your Honor. Walter  
19 Lesnevich, Borough attorney, of the Borough of Tenafly. With  
20 my are my co-counsel, Noah Feldman from the Massachusetts Bar  
21 who your Honor has admitted pro hac vice.

22 THE COURT: Yes.

23 MR. LESNEVICH: And Bruce Rosen from of the New Jersey  
24 Bar.

25 THE COURT: Very good.

1 I'm all set.

2 MR. LESNEVICH: Your Honor, we have reached --

3 THE COURT: Unless you want to do opening statements.

4 MR. LESNEVICH: We have reached an impasse on the  
5 definition of the eruv. We have two proposed definitions; they  
6 have theirs, we have ours. Each believes theirs is  
7 appropriate. Ours is more, we believe, expansive,  
8 encompassing, but we have not been able to reach agreement as  
9 to which of these two statements is absolutely correct.

10 THE COURT: Why don't you submit them to me at the end  
11 of the case with the citations for the source.

12 MR. SUGARMAN: Your Honor, if I may just explain.  
13 What we tried to do is take the definition in Smith and correct  
14 what we believe were misstatements. We added one paragraph  
15 that describes it in context of this case, and that's what we  
16 submit to your Honor.

17 THE COURT: All right. Just give me a short memo with  
18 the sources for urging me to accept that definition. It may  
19 well be that terms of the definition is not critical here.

20 MR. LESNEVICH: Okay. We shall do so at the end.

21 THE COURT: All right.

22 MR. LESNEVICH: Does your Honor want to us give an  
23 opening statement on this?

24 THE COURT: I invite you to. You don't have to if you  
25 don't want to. I don't think it's necessary.

1 MR. LESNEVICH: After all the briefs and affidavits.

2 THE COURT: I'm familiar with the briefs.

3 MR. SUGARMAN: Well, your Honor --

4 THE COURT: I'm certainly going have closing argument.

5 MR. SUGARMAN: I don't think it's necessary to make an  
6 opening statement. I did, however, want to refer just briefly  
7 to the standard that is laid down in the Brown case which  
8 governs the religious discrimination part of our argument.

9 THE COURT: That's the McCaffey case?

10 MR. SUGARMAN: That's right, Brown against McCaffey.  
11 And I raise it because in conference the other day, the term  
12 "religious animus" was used. And the language of the court  
13 that we rely on is as follows: "Because government actions  
14 intentionally discriminate against religious exercise a  
15 fortiori serve no legitimate purpose," then it goes on.

16 So he we believe that the test that's at issue here is  
17 intentional discrimination. We think that there will be  
18 demonstrated religious animus. But to the extent that there's  
19 a connotation to that, we don't believe it's necessary. I just  
20 wanted to put that on the record.

21 MR. FELDMAN: Your Honor, two points, please. First,  
22 we respectfully submit that there's not a real difference  
23 between the language of "intentional discrimination" and the  
24 language of "animus." In fact, I'm not certain there could be  
25 a distinction between those two things. Second, the language

1 in Brown specifically speaks of intentional discrimination  
2 against a religious practice, which obviously calls into  
3 question the matter of whether there is a religious practice at  
4 issue here.

5 MR. SUGARMAN: I think it says, "religious exercise."

6 THE COURT: I can read the case, gentlemen.

7 MR. SUGARMAN: Thank you.

8 MR. LESNEVICH: Your Honor, Mr. Shapiro and I have  
9 agreed on two documents which we believe should be marked as a  
10 Joint Exhibit. The first one being a map of the Borough of  
11 Tenafly outlining in yellow --

12 THE COURT: Excuse me one second.

13 (The Court and the Deputy Clerk confer off the  
14 record.)

15 THE COURT: You're marking that as a Joint Exhibit?

16 MR. LESNEVICH: Yes, and that will be Joint Exhibit 1.

17 And Joint Exhibit 2 is a list of the telephone pole  
18 numbers to which the wires of the eruv are attached.

19 THE COURT: Okay. Okay. Thank you.

20 MR. LESNEVICH: And with that, your Honor, the first  
21 witness Tenafly will call is its Borough Administrator, Joseph  
22 DiGiacomo.

23 THE COURT: Thank you.

24 MR. LESNEVICH: Mr. DiGiacomo, please.

25 THE COURT: Good afternoon, Mr. DiGiacomo.

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1 MR. DiGIACOMO: Good afternoon, your Honor.

2 THE COURT: We're going to ask you, please to take an  
3 oath or an affirmation.

4  
5 J O S E P H D i G I A C O M O, called as a witness, having  
6 been first duly sworn, is examined and testifies as  
7 follows:

8  
9 THE DEPUTY CLERK: Please be seated. Just move that  
10 chair a little closer to the microphone and adjust it.

11 Please state your name, spelling it for the record.

12 THE WITNESS: Joseph DiGiacomo. D-i-G-i-a-c-o-m-o.

13 DIRECT EXAMINATION

14 BY MR. LESNEVICH:

15 Q Mr. DiGiacomo, would you tell the Court fairly briefly your  
16 background; educational and professional?

17 A I have a baccalaureate degree from William Paterson  
18 University; a Masters Degree in Public Administration from Penn  
19 State University. I've been employed in local government in  
20 New Jersey for approximately 27 years, six of which were in the  
21 city administration with the City of Trenton; approximately 15  
22 years as the Township Manager in the Township of Cedar Grove in  
23 Essex County; and the balance of the time was here in -- with  
24 the Borough of Tenaflly s the Borough Administrator.

25 Q Borough Administrator of Tenaflly is a non political

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1 appointment. Is that correct, sir?

2 A That's correct.

3 Q And how long have you been in Tenaflly?

4 A Since August of 1997.

5 Q As Borough Administrator, are you familiar on a daily basis  
6 with the ordinances of the Borough?

7 A Yes, I am.

8 Q And are you familiar not with just the ordinances, but the  
9 actual practices of the Borough in enforcing the ordinances?

10 A Yes, I am.

11 Q What is the Borough's policy, if any, regarding the use of  
12 telephone poles in town for speech or signs or that sort of  
13 item?

14 A The Borough uses -- regulates the use of the public  
15 right-of-way for private purpose as well as the utility poles  
16 by local ordinance.

17 Q Do we, does the Borough permit the telephone poles to be  
18 used, in effect, as free speech forum?

19 A No, we do not.

20 Q Does the Borough permit signs to be posted on the telephone  
21 poles for anything?

22 A No, we do not.

23 Q You have a garage sale ordinance. Correct?

24 A Yes, we do.

25 Q Are garage sale signs allowed on the telephone poles?

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1 A No, they are not.

2 Q And not only by the ordinance, but in daily life, does the  
3 Borough permit this, signs to be put up?

4 A No, we do not.

5 Q Have you had occasion to cause the police department to  
6 remove signs that are put up?

7 A Yes, the police department as well as our code enforcement  
8 officer.

9 Q Do you know whether the Borough has a policy on the use of  
10 the Borough's land for religious use?

11 A We don't have an ordinance regulating it at the present  
12 time.

13 Q You're familiar with Huyler Park?

14 A Yes.

15 Q And isn't it a fact that at the December holiday season  
16 there's a creche, Menorah, Christmas tree, et cetera, placed on  
17 that by the Lion's Club?

18 A Yes, there is.

19 Q How does that come about with the Borough? Are you  
20 familiar with that? Do they seek permission?

21 A There is permission sought through letters or application  
22 to our borough clerk and police department.

23 Q And what is the length of time that the permission is for?

24 A It's for a very brief temporary period. I believe the  
25 longest period may be two to three weeks.

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1 Q In your time at Tenafly, have there been any religious  
2 groups seeking the use of the Borough land for any purpose?

3 A Other than the present case, no, not that I'm aware of.

4 THE COURT: Can I go back? I missed something. What  
5 was the point of the "Highland Park" reference?

6 MR. LESNEVICH: Huyler Park is a land owned by the  
7 Borough. Each year the Lion's Club has a history of requesting  
8 permission to put up a creche, and the Lubavitch community,  
9 puts -- a synagogue puts up a Menorah for a limited period of  
10 time.

11 THE COURT: This is a name of a park in the town?

12 MR. LESNEVICH: Yes. It's not where the government --

13 Q Mr. DiGiacomo, where is the Huyler Park area in proximity  
14 to the Borough Hall? Are they adjacent or is there a  
15 difference?

16 A No, Huyler Park is located in our central shopping district  
17 in the downtown. It's probably five or six blocks from Borough  
18 Hall.

19 Q Speaking of the shopping district, during the December  
20 holiday season are decorations placed around the shopping  
21 district?

22 A Yes, there are.

23 Q Who does that?

24 A Our local Chamber of Commerce erects decorations on the  
25 public service utility poles.

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1 Q Do you know whether these declarations have any religious  
2 significance to them?

3 A No, the time I've been in Tenaflly they were basically a  
4 holiday, seasonal decoration of the lantern with garland.

5 Q To your knowledge, has Tenaflly approved anything permanent  
6 being put on its right-of-way?

7 Are you familiar with Metricom?

8 A Yes, I am.

9 Q And very briefly, what is the Metricom matter?

10 A The Mayor and Council received a petition or application  
11 from a firm called Metricom that had worked out an arrangement  
12 to lease certain public service utility poles from the utility  
13 company. And an application was submitted to the governing  
14 body to allow the use of the public right-of-way to erect their  
15 transmission antennae on I believe 11 utility poles throughout  
16 the Borough.

17 Q And is the Borough paid a substantial amount of money for  
18 that permission?

19 A Not a substantial amount, I believe --

20 Q How much --

21 A I believe it's approximately \$1500.

22 Q What about a recent event with the Board of Education,  
23 fiberoptic cable, would you describe that for the Court?

24 A The Board of Education will be connecting all of the public  
25 schools in Tenaflly with fiberoptics cables. Once again, they

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1 have worked out an arrangement with I believe it's Verizon  
2 utility company to string the lines on designated poles  
3 throughout the Borough, and they have only recently I believe  
4 in the last two weeks submitted an application to the Mayor and  
5 Council for approval to use the public right-of-way for that  
6 purpose.

7 Q Other than Metricom and the fiberoptics and the Board of  
8 Education, are you familiar with any other permanent placement  
9 on the Borough's right-of-way?

10 A There are applications that are submitted from time to time  
11 by private homeowners seeking approval from the Mayor and  
12 Council to erect a wall on the public right-of-way. Some of  
13 them are approved and some of them are denied.

14 Q Anything else that's of a permanent nature?

15 A That's all I'm aware of.

16 Q Does the Borough have a policy for allowing its parks to be  
17 used for certain secular purposes?

18 A We have a permit requirement, yes.

19 Q Does this apply, for example, to weddings?

20 A Yes, it does.

21 Q And recently there was a permit for a Jenna's Rainbow. Is  
22 that correct?

23 A Yes, that was a not-for-profit group, and they wanted to  
24 use the public park for a fund-raising afternoon, and they  
25 submitted an application to the Mayor and Council for a permit

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1 for that purpose.

2 Q And these are temporary. Is that correct?

3 A That's correct.

4 Q Does the Borough have a policy regarding contractors'  
5 signs; that is, signs that contractors who are working on homes  
6 put up in front of the homes to advertise the company working  
7 at that house?

8 A Generally we allow them while the work is going on but not  
9 remain there permanently as an advertisement.

10 Q Have there been occasions recently where the signs have  
11 been removed and confiscated?

12 A Yes, there have.

13 Q Because they were on the Borough's right-of-way?

14 A That's correct.

15 Q Are you familiar with the incident at the Clinton Inn with  
16 the landscaper's sign?

17 A Yes, I am.

18 Q That was a sign on the right-of-way and the Borough  
19 confiscated it. Correct?

20 MR. SUGARMAN: Objection.

21 MR. LESNEVICH: I'm leading. I'm sorry.

22 MR. SUGARMAN: Thank you.

23 Q Tell us about that incident. Excuse me.

24 A The landscape company that performed the work at the  
25 Clinton Inn, which is the large hotel in the center of town,

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1 erected a sign advertising that they were the company that  
2 maintained the landscaping. Our code enforcement officer was  
3 directed to have the sign removed, and it was confiscated.

4 Q I want to draw your attention to this matter and Cable  
5 Television. At one point in time were you directed to call  
6 Cable TV concerning the erection of the eruv wires?

7 A Yes, I was.

8 Q Who did you speak to, if you recall?

9 A I spoke to the -- I believe it's the director of community  
10 relations.

11 Q And what did you tell Cable Television through that person?

12 A I inquired whether they were aware of the use of public  
13 utility poles for the erection of the eruv.

14 Q Mr. DiGiacomo, did you ever threaten Cable TV with revoking  
15 their franchise if they didn't immediately take down the eruv?

16 A Absolutely not.

17 Q Would that make any sense in your knowledge of cable law in  
18 New Jersey?

19 MR. SUGARMAN: Objection.

20 THE COURT: I'll permit it.

21 Q Please go ahead.

22 A Well, firstly, I wouldn't have the authority to withhold  
23 their franchise; and secondly, there's a very definitive  
24 process before the Board of Public Utility for either granting  
25 or denying a cable franchise. I've been involved in two

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1 renewal processes, and even the Mayor and Council would not  
2 have that authority.

3 Q And when was the last time Tenaflly happened to renew Cable  
4 Television's franchise?

5 A I believe it was 1998.

6 Q For how long?

7 A For a 10-year period.

8 MR. LESNEVICH: I have nothing further, your Honor.  
9 Thank you.

10 CROSS-EXAMINATION

11 BY MR. SUGARMAN:

12 Q Good afternoon, Mr. DiGiacomo.

13 A Good afternoon.

14 Q Does the Borough have a borough clerk?

15 A Yes.

16 Q And her name is Nancy Hatten?

17 A That's correct.

18 Q And does she work for you?

19 A No, she reports to the Mayor and Council.

20 Q How are applications under the Borough ordinances generally  
21 made, if you know?

22 A I believe initially it might be a telephone inquiry, and  
23 the applicant is then asked to put their request in writing to  
24 the borough clerk for submission to the Mayor and Council.

25 Q Is it the borough clerk whose responsibility it is to

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1 receive and keep all of this documentation?

2 A That's my understanding, yes.

3 Q And would that documentation include both applications  
4 which are granted and applications which are denied?

5 A Yes, it should, yes.

6 Q And where physically are those applications kept?

7 A The borough clerk is the custodian of municipal records,  
8 and she maintains those in her office, as well as a vault in  
9 her office.

10 Q So there are no off-site warehouses or archives, it's  
11 basically all in her office in Borough Hall?

12 A Under normal circumstances, yes, but about a year ago we  
13 had a municipal fire and some of our archival records are  
14 currently stored off-site because they're being restored by a  
15 private company.

16 Q You said in your direct examination that some of these  
17 requests are granted and some are denied. Do you have any  
18 personal knowledge of any request for the use of Borough  
19 property that has been denied?

20 A There have been requests very recently. As a matter of  
21 fact, I think at the last public meeting for a request to erect  
22 a banner on the public right-of-way, and that was turned down.  
23 So there have from time to time been denials.

24 Q Is there any paperwork that you know of memorializing that?

25 A I believe the borough clerk sends a personal letter really

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1 kind of confirming the action of the Mayor and Council at the  
2 public meeting.

3 Q And those would be in the files of the borough clerk?

4 A Yes.

5 Q You said before that once each year the Lion's Club and  
6 Lubavitch put up a Menorah and a creche in Huyler Park, is it?

7 A That is correct.

8 Q And that is a public park owned by the Borough of Tenafly?

9 A Yes, it is.

10 THE COURT: How is that spelled?

11 THE WITNESS: H-u-y-l-e-r.

12 THE COURT: Thanks.

13 Q And the occasion for that is the Christmas, Hanukkah  
14 holidays. Is that correct?

15 A That's correct.

16 Q And that at some point in the past led to a threat of  
17 lawsuit by the ACLU. Correct?

18 A Yes. Yes, it did.

19 Q And the Borough is now attempting to enact an ordinance  
20 which will require certain applications for that use. Is that  
21 correct?

22 A Our Borough attorney has been asked to draft an ordinance,  
23 yes.

24 Q But as of now there is no ordinance that you know of that  
25 governs the placement of the creche and the Menorah in Huyler

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1 Park. Is that right?

2 A That's correct.

3 Q Now, you also said that holiday decorations are placed on  
4 utility poles at the holiday season by the local Chamber of  
5 Commerce. Correct?

6 A That's correct.

7 Q And again, the holidays that we're talking about are  
8 Christmas and Hanukkah. Is that right?

9 A It's that holiday season, correct.

10 Q And how did you describe the decorations? A lantern  
11 with --

12 A It's a garland scroll with a lantern and I believe a red  
13 bow. A white lantern with a single light in the center of it,  
14 and a red bow.

15 Q And that to you does not at all signify a Christmas  
16 decoration?

17 A No, it does not.

18 THE COURT: Could I just stop for a minute.

19 I think attached to one of the affidavits is a  
20 picture.

21 MR. SUGARMAN: Yes.

22 THE COURT: Maybe we could have this witness just look  
23 at that and see whether that's what we're talking about.

24 MR. SUGARMAN: May I approach the witness?

25 THE COURT: Sure. You don't have to ask me, that's

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1 fine.

2 MR. SUGARMAN: Thank you.

3 Q Mr. DiGiacomo, I'm going to show you what's been marked as  
4 Exhibit B to the Affidavit of Jay Nelkin. It is a black and  
5 white copy. I ask you whether that is a fair representation of  
6 the decoration that is affixed to the utility pole we've just  
7 been talking about?

8 A Yes, it is.

9 Q Thank you.

10 The banner that you just mentioned before, that was  
11 verbally denied. Correct?

12 A The request is read into the record at a public meeting,  
13 and then the Mayor and Council by motion usually at that  
14 meeting either approve it or deny it.

15 Q And didn't the Borough ask the applicant to modify the size  
16 and possibly the location, which was then done, and it was then  
17 approved?

18 A Not the banner that I'm referring to. I'd have to know  
19 more details about the one that you're referring to.

20 Q There are in addition certain directional signs in the  
21 right-of-way of the Borough. Correct?

22 A Yes, that's correct.

23 Q And some of those directional signs are placed in the  
24 Borough right-of-way by religious institutions. Correct?

25 A That's my understanding, yes.

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1 Q And they give directions to churches?

2 A Yes.

3 Q And some of them have the times of church services listed?

4 A Yes.

5 Q And some of them have religious symbols actually on the  
6 signs?

7 A Yes.

8 Q There's no provision in the Borough ordinances allowing  
9 these signs, is there?

10 A Not that I'm aware of.

11 Q But the Borough hasn't sought to have them removed. Is  
12 that correct?

13 A That's correct.

14 Q And they serve the purpose of providing motorists with  
15 directions to these religious institutions. Correct?

16 A I assume so.

17 Q There is also every year a Good Friday community walk. Is  
18 that right?

19 A Yes.

20 Q And that is a walk that is co-sponsored by five of the  
21 churches in Tenafly, and it proceeds from one, to the other, to  
22 the other, to the over, and there's worship service in each.  
23 Isn't that right?

24 A That's correct.

25 Q And the procession is led by a person who is carrying a

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1 cross. Is that right?

2 A That's correct.

3 Q And the police of the town coordinate with the people who  
4 arrange the march in order that it take place appropriately.  
5 Is that right?

6 A I don't really have any personal knowledge on the  
7 coordination.

8 Q There is also a foot race that is sponsored by the Jewish  
9 Community Center on the Palisades every year. Is that correct?

10 A That's correct.

11 Q And as well, that is on the Borough right-of-way?

12 A Public streets, yes.

13 Q And the police department cooperates with the JCC in  
14 staging that want?

15 A The JCC submits a request for the foot march, the foot race  
16 each year -- I believe they just had in the past week --  
17 and we assign police for traffic control.

18 Q I thought you said that you weren't aware of any  
19 applications for the use of public property by churches in  
20 Tenafly. Did I hear that correctly?

21 A Yes, I believe that's what I said.

22 Q Oh. Isn't there a Presbyterian Church of Tenafly picnic  
23 that is scheduled for May 20th on Roosevelt Commons?

24 A Not that I'm aware of.

25 Q What is Roosevelt Commons?

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1 A Roosevelt Commons is a large public area between the  
2 Municipal Building and the Middle School owned by the Board of  
3 Education. Part of the Common is owned by the Borough of  
4 Tenaflly and part of it is owned by the Board of Education.

5 Q I would like to mark as Plaintiffs' Exhibit 1 a series of  
6 documents that were produced by the Borough and reviewed by my  
7 colleagues on Friday, and they represent various applications  
8 by certain groups to use public property in Tenaflly.

9 MR. SUGARMAN: I would offer this in evidence if  
10 there's no objection, your Honor.

11 THE COURT: I think Mr. Lesnevich is looking at it.

12 MR. LESNEVICH: Your Honor, it seems to me, rather  
13 than go through all of these individually, we could stipulate,  
14 perhaps, Mr. Sugarman, that these are all open access parks and  
15 these are all of the temporary nature. There's nothing here  
16 permanent?

17 MR. SUGARMAN: I'd just like to offer this in  
18 evidence, and then if Mr. Lesnevich wants to make argument  
19 about it, that's fine.

20 THE COURT: Why don't we do it this way, just so we  
21 can establish the ground rules moving forward. This afternoon  
22 maybe counsel can review what other documents are being  
23 proposed so that we can at least agree on their authenticity.

24 MR. LESNEVICH: That I agree to.

25 THE COURT: I'm going to let them in. If there's an

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1 objection later on as to admissibility, I'll deal with it. If  
2 it's a question of relevancy, we can handle that at the closing  
3 argument. I understand the purpose they're being offered, but  
4 I also understand essentially the objection is, why is it  
5 relevant to this issue.

6 But to move it along, we don't have a jury, unless  
7 there's a problem, let's do it that way.

8 MR. LESNEVICH: Yes, sir.

9 THE COURT: Do you have those numbers?

10 MR. SUGARMAN: They're just Plaintiffs' Exhibit 1.

11 THE COURT: It's a package of a number of --

12 MR. SUGARMAN: It is a package of permit applications  
13 and actions.

14 THE COURT: All right. Can we -- I don't want to stop  
15 now, but going forward, let's get a folder and mark that so we  
16 can all agree as to what's in the folder, because otherwise I  
17 have no idea what's in that package.

18 MR. SUGARMAN: I had given Mr. Lesnevich a copy.  
19 Maybe at a break --

20 THE COURT: The problem is, on appeal we'll have P-1  
21 but we don't know what P-1 consists of, so there could be 25  
22 documents there.

23 MR. SUGARMAN: Right. Maybe what we can do on a break  
24 is sub-number them within the package.

25 THE COURT: That would be fine.

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1 MR. SUGARMAN: And just so there's no  
2 misunderstanding, I believe that every document I'm going to  
3 mark and offer is -- was received by us from the Borough's  
4 files, so that I don't think there -- and I think it's already  
5 been stipulated that there's no objection on authenticity.

6 THE COURT: He's not objecting to authenticity.

7 All right. This is P-1?

8 MR. SUGARMAN: Yes, your Honor.

9 (Plaintiffs' Exhibit 1 is received in evidence.)

10 BY MR. SUGARMAN:

11 Q Mr. DiGiacomo, would you turn to the second page after the  
12 cover page of exhibit, Plaintiffs' Exhibit 1, and that is, is  
13 it not, the permit application form that is used in the Borough  
14 of Tenaflly?

15 A This looks to me to be the Board of Education's application  
16 form for the use of its facilities. I do not believe this is  
17 the Borough of Tenaflly's application form.

18 Q And is the Board of Education public property in town,  
19 Borough of Tenaflly?

20 A Yes, Board-owned property, yes.

21 THE COURT: But it's not owned by the municipality I  
22 don't think. It's owned by the Board of Education, I assume.

23 THE WITNESS: Yes. The Board has its own separate and  
24 distinct application process for the use of its facilities, and  
25 this sheet that we're referring to, I believe, is a portion of

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1 their application form.

2 Q Okay. Look at the next sheet. And that is a hold harmless  
3 agreement between the Borough of Tenaflly and the Presbyterian  
4 Church of Tenaflly?

5 A That's correct.

6 Q And that is for the use of Roosevelt Commons on Sunday, May  
7 20th, or June 3rd for a church picnic. Correct?

8 A I'm not sure if it's for the use of the whole Common, or it  
9 looks to me like the baseball field only because that's what's  
10 circled.

11 Q And that's part of the Common?

12 A It's located within the Common, yes.

13 Q Okay. And then coming down about four more documents there  
14 is the application for the Jenna's Rainbow Foundation which you  
15 talked about in your testimony. Is that correct?

16 Did you find that, Mr. DiGiacomo?

17 A Yes, I did.

18 Q All right. Going back to the Presbyterian Church  
19 application, there's a document that's headed "Tenaflly  
20 Recreation Commission Facility, Permit Application."

21 A Yes.

22 Q Now, is the Tenaflly Recreation Commission an element of the  
23 Borough of Tenaflly?

24 A Yes, it is.

25 Q So the Presbyterian Church at Tenaflly was applying to the

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1 Tenaflly Recreation Commission of the Borough of Tenaflly for the  
2 use of the baseball field on Roosevelt Common. Isn't that  
3 right?

4 A That's the way it appears, yes.

5 Q All right. Thank you.

6 (Documents are returned to Mr. Sugarman by the  
7 witness.)

8 Q There is also an annual Little League parade through the  
9 streets of the Borough of Tenaflly. Correct?

10 A That's correct.

11 Q And are there any applications that are filed for that?

12 A A request is submitted to the Mayor and Council for  
13 approval to use certain roadways.

14 Q And these routinely have been granted I assume?

15 A I believe the one for this year was just recently approved,  
16 yes.

17 Q And there are also from time to time block parties in the  
18 public right-of-way in Tenaflly. Is that right?

19 A That's correct.

20 Q And for those block parties, streets are actually closed  
21 off. Isn't that right?

22 A That's correct.

23 Q And are there any applications for those?

24 A It's usually done by letter to the clerk or the Mayor and  
25 Council, it's reviewed by the police and fire department and

DiGiacomo - cross - Sugarman

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1 then the Mayor and Council will approve it or not at a public  
2 meeting.

3 Q In Tenaflly there is published each year a Tenaflly School  
4 Borough Calendar. Correct?

5 A That's published by the Board of Education, that's correct.

6 MR. SUGARMAN: I'd like to mark as Plaintiffs' Exhibit  
7 2 a copy of the 2001 School Borough Calendar for Tenaflly, and  
8 offer it in evidence.

9 MR. LESNEVICH: Your Honor, I'd like to object to the  
10 relevancy. It's not published by the Borough of Tenaflly, it's  
11 published by a separate governmental body. The government of  
12 Tenaflly has no control over, no interaction with --

13 THE COURT: The Board of Education?

14 MR. LESNEVICH: -- the Board of Education We have no  
15 right to tell them what to do and vice versa.

16 MR. SUGARMAN: Your Honor, I'm going ask some  
17 questions from it which I think will establish the relevance of  
18 it.

19 THE COURT: Well why don't ask you some questions and  
20 then we'll go from there.

21 MR. SUGARMAN: Fine.

22 Q Now, Mr. DiGiacomo, are you familiar with how the  
23 information that is included in this calendar is provided to  
24 whoever it is who publishes it?

25 A No, I'm not.

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1 Q Are you aware that there are certain entries in this  
2 calendar that reflect Borough events?

3 A Yes, I am.

4 Q And you don't know how the publisher of this calendar is  
5 notified of the Borough events?

6 A No, I don't have personal knowledge, no, I don't.

7 Q And among the Borough events that are noted are the Borough  
8 Council meetings. Is that correct?

9 A That's correct.

10 Q And among the other events that are listed, are events in  
11 which various functions take place on Borough property.

12 Correct?

13 A Correct.

14 Q And one of those functions is a visit with Santa. Is that  
15 right?

16 A Yes, that's correct.

17 Q And that is listed for 2000 on December 19th. Correct?

18 A That's correct.

19 Q And correct me if I'm wrong, the visit with Santa takes  
20 place in Borough Hall. Correct?

21 A No, the Municipal Center, that's correct.

22 Q The municipal?

23 A Center.

24 Q Center. And one of the Borough firemen sits in the Mayor's  
25 chair dressed up as Santa Claus. Right?

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1 A I don't know which chair it is, but one of the firemen does  
2 dress up like Santa Claus.

3 Q And sits in a chair?

4 A A chair, yes.

5 Q In Borough Hall?

6 A I believe this year it was in the fire department.

7 Q The fire department.

8 Another event that is listed in the calendar is a --  
9 well, let me go back to -- the entry says, 2:00 to 4:30 p.m.,  
10 recreation visit with Santa.

11 What is the meaning of "recreation" is that the  
12 Borough recreation --

13 A It's sponsored by the Recreation Commission.

14 Q Of the Borough of Tenafly?

15 A That's correct.

16 Q And then if you look at April 8th, Sunday, April 8th, 1:00  
17 p.m. to 3:00 p.m., it says, "Recreation Egg Hunt." And am I  
18 correct that the Recreation egg hunt is an Easter egg hunt that  
19 is sponsored by the Recreation Department of the Borough of  
20 Tenafly?

21 A Yes, that's correct.

22 Q And where does that take place?

23 A I believe it takes place at the Commons, Roosevelt Commons,  
24 but I'm not sure.

25 Q And that's a park that's owned by the Borough of Tenafly?

DiGiacomo - cross - Sugarman

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1 A Yes, that's correct.

2 Q Would you look at Saturday, November 4th.

3 THE COURT: What month? Oh, you said November 4th?

4 MR. SUGARMAN: November 4th, yes.

5 THE COURT: Sorry.

6 Q There's an entry that says, 10:00 a.m. to 2:00 p.m.,  
7 Tenafly Japanese Community Bazaar.

8 Where is that held?

9 A I don't know.

10 Q If I were to suggest that it's in the open arcade outside  
11 the library, would that refresh your recollection?

12 A No, I don't know.

13 Q Is there an open arcade outside the library?

14 A Yes.

15 Q And is that Borough property?

16 A Yes.

17 Q September 18, 2000, there's an entry, 7 p.m., "Cub Scout  
18 leader meeting."

19 Do you know where that takes place?

20 A No, I don't.

21 Q Or took place?

22 And September 13th at 7:30 p.m., "Girl Scout leader's  
23 meeting." Do you know where that took place?

24 A No, I don't.

25 MR. SUGARMAN: I offer Plaintiffs' Exhibit 2 in

DiGiacomo - cross - Sugarman

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1 evidence, your Honor.

2 MR. LESNEVICH: I object.

3 THE COURT: The difficulty is it's not a Borough  
4 document, it's a Board of Education document, so I think the  
5 objection is well taken, I'll sustain it. In any event, the  
6 information you wanted to bring to my attention I have, so...

7 Counsel, I apologize for the heat in here. They were  
8 working on the roof over the weekend, they shut the air  
9 conditioning off. It was like the desert in here this morning,  
10 and it's turned on but it will take a day or so to get it up to  
11 speed. I apologize. If anybody feels like they're going to  
12 faint, we'll stop.

13 MR. SUGARMAN: Your Honor, I'm now going to mark a  
14 series of documents which came out of the files of the Borough,  
15 which document various grants of the use of the right-of-way  
16 for light fixtures, sprinkler systems, signs, fences, and the  
17 like.

18 THE COURT: Okay.

19 MR. SUGARMAN: So I'll first mark and offer as  
20 Plaintiffs' Exhibit 3 an agreement dated sometime in 1997 --  
21 and it's difficult to read the handwriting -- between the  
22 Borough of Tenafly and Jonathan and Judith Furer.

23 BY MR. SUGARMAN:

24 Q Would you turn to the second page --

25 THE COURT: Mr. Lesnevich, any objection?

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1 MR. LESNEVICH: No, your Honor. It is what it  
2 purports to be.

3 THE COURT: Right. P-3 in evidence.

4 (Plaintiffs' Exhibit 3 is received in evidence.)

5 MR. SUGARMAN: Thank you, your Honor.

6 Q On the second page there appear the signatures of the Mayor  
7 and the Borough Clerk. Is that correct?

8 A That's correct.

9 Q And this document indicates that in consideration of one  
10 dollar, the property owners were permitted to retain the two  
11 4.5 inches high and 2.5 inch square columns with 24-inch light  
12 fixtures which are located in the Borough's right-of-way.

13 Correct?

14 A That's correct.

15 MR. SUGARMAN: Your Honor, how would you like to keep  
16 track of the marking of the exhibits?

17 THE COURT: We'll work out at the end of the day how  
18 we'll do it for tomorrow, but for now let's just go ahead. P-4  
19 is next?

20 MR. SUGARMAN: Yes, your Honor. Plaintiff Exhibit 4  
21 is a resolution of the Borough of Tenafly May 8, 1990, having  
22 to do with Alex and Kadra Zarwi, Z-a-r-w-i, and their  
23 application to permit installation of a sprinkler system within  
24 the sideyard area under Ordinance Number 691.

25 THE COURT: Mr. Lesnevich.

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1 MR. LESNEVICH: No objection, your Honor.

2 THE COURT: In evidence.

3 (Plaintiffs' Exhibit 4 is received in evidence.)

4 MR. SUGARMAN: I'd like to offer as Plaintiffs'  
5 Exhibit 5 a package of papers which document the approval --  
6 your Honor, I think this may be the same one as before, the  
7 Zarwi request, so I'll pass that one.

8 I'll move to Plaintiffs' Exhibit 5, an agreement dated  
9 April 23rd, 1991 between the Borough of Tenaflly and Donald Wein  
10 and Sarah Wein. I offer that in evidence.

11 MR. LESNEVICH: No objection, your Honor.

12 THE COURT: In evidence.

13 (Plaintiffs' Exhibit 5 is received in evidence.)

14 BY MR. SUGARMAN:

15 Q And this, Mr. DiGiacomo, represents an agreement for the  
16 consideration of one dollar to allow the property owner to  
17 construct a sprinkler within the sidewalk area under Borough  
18 Ordinance 691. Correct?

19 A That's correct.

20 MR. SUGARMAN: I'd like to mark and offer as Exhibit  
21 6, a Resolution of the Borough of Tenaflly adopted at a regular  
22 meeting on April 24, 1990 having to do with the grant to Alpex  
23 Wheel Company, permission to install a sprinkler system within  
24 the sidewalk area defined in Ordinance 691.

25 MR. LESNEVICH: Your Honor, I have no objection and

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1 the Borough would happily stipulate that from time to time  
2 permission was given for the installation of sprinkler systems  
3 upon application by homeowners.

4 (Plaintiffs' Exhibit 6 is received in evidence.)

5 MR. SUGARMAN: Would the Borough also stipulate that  
6 there are no -- there's no documentation of any denial of any  
7 application in the files of the Borough as we examined them?

8 MR. LESNEVICH: Absolutely.

9 MR. SUGARMAN: On Friday?

10 MR. LESNEVICH: Absolutely, that denial would not be  
11 there, would not be put in this form. That's correct.

12 MR. SUGARMAN: Well, whether it's in this form or not,  
13 we did not see nor were we given any record of any denial,  
14 whether in this form or any other form. And I would ask that  
15 unless we be given those and we were advised by the Town Clerk  
16 that there weren't any in the 14 years in which she has been  
17 there, that the Borough stipulation extend to no denials.

18 MR. LESNEVICH: On sprinkler systems, right to my  
19 knowledge -- I'm sure the borough clerk is correct. We  
20 would --

21 MR. SUGARMAN: Or sign applications or fence  
22 applications, or stonewall applications?

23 MR. LESNEVICH: Sign applications? Certainly not,  
24 that's an entirely different story than sprinklers.

25 THE COURT: We're up to sprinklers, Mr. Sugarman.

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1 MR. SUGARMAN: Right.

2 THE COURT: The stipulation is, there's never been a  
3 denial of an application for a sprinkler to be installed by a  
4 private individual in the public right-of-way.

5 MR. SUGARMAN: All right.

6 BY MR. SUGARMAN:

7 Q The last of the sprinkler applications is applications  
8 Exhibit -- Plaintiffs' Exhibit 7, agreement --

9 THE COURT: Do we need that since we have the  
10 stipulation? We have 14 years of no denials stipulated to, I  
11 think.

12 MR. SUGARMAN: Fine, your Honor.

13 THE COURT: He didn't stipulate to the number but  
14 there's never been a denial.

15 MR. SUGARMAN: All right.

16 I'd like to mark as Plaintiffs' Exhibit 7 an agreement  
17 dated April 7, 1995 between the Borough of Tenafly and Fulvio  
18 Tramontina, doing business as, The Villa Cortina.

19 MR. LESNEVICH: I have no objection, your Honor.

20 THE COURT: 7 in evidence.

21 (Plaintiffs' Exhibit 7 is received in evidence.)

22 BY MR. SUGARMAN:

23 Your Honor, this is only sign document that we found  
24 in the files and I would ask for a similar stipulation, that  
25 there were no denials of sign applications.

DiGiacomo - cross - Sugarman

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1 MR. LESNEVICH: No, sir, I can't stipulate to that.

2 There have been many. More denials than approvals in my  
3 experience. But certainly there are denials.

4 THE COURT: No stipulation.

5 MR. SUGARMAN: Then, your Honor, I request the  
6 production of documents which we asked for which we haven't  
7 seen which evidence the denials.

8 MR. LESNEVICH: If there are such documents, you will  
9 obtain them but they are not normally produced -- not normally  
10 recorded in the format that the grant is given. The grant is  
11 something that you give to the person. When the Borough denies  
12 it, it would just be in the minutes of the meeting. And I can  
13 search for that, but the borough clerk would not have that in  
14 her records.

15 BY MR. SUGARMAN:

16 Q Does the borough clerk keep in her records, Mr. DiGiacomo,  
17 the minutes of Borough Council meetings?

18 A Yes, I believe so.

19 MR. SUGARMAN: Your Honor, I would like to mark and  
20 offer as Plaintiffs' Exhibit 8, a letter dated July 18, 1996 to  
21 Mayor Moscovitz from Robert and Janet Rancan; and as  
22 Plaintiffs' Exhibit 9, the response to that letter dated August  
23 16, 1996.

24 I offer it in evidence, your Honor.

25 MR. LESNEVICH: No objection, your Honor.

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1 THE COURT: That's 8 and 9?

2 MR. SUGARMAN: 8 and 9, yes, your Honor.

3 THE COURT: In evidence.

4 (Plaintiffs' Exhibits 8 and 9 are received in  
5 evidence.)

6 MR. SUGARMAN: And as Plaintiffs' Exhibit 10, a letter  
7 dated August 13, 1997 from Nancy Hatten, the Municipal Clerk,  
8 to George and -- George Katsiaunis and Dorothy Myridakis.

9 MR. LESNEVICH: No objection, your Honor.

10 THE COURT: Thank you.

11 (Plaintiffs' Exhibit 10 is received in evidence.)

12 MR. SUGARMAN: For the record, your Honor, this is an  
13 approval to install a fence in the Borough right-of-way.

14 Your Honor, I'd like to mark as Plaintiffs' Exhibit 11  
15 an agreement dated the 20th of November, 1990 between the  
16 Borough of Tenaflly and Arnold and Myra Gans which grants  
17 permission to reconstruct a dry stonewall within the  
18 right-of-way of the Borough under Ordinance 691, and there's a  
19 consideration of one dollar.

20 MR. LESNEVICH: No objection, your Honor.

21 THE COURT: Very well.

22 (Plaintiffs' Exhibit 11 is received in evidence.)

23 MR. SUGARMAN: I'd like to mark as Plaintiffs' Exhibit  
24 12, an agreement dated October 20th, 1994 between the Borough  
25 of Tenaflly and Mr. Biema --

DiGiacomo - cross - Sugarman

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1 MR. LESNEVICH: Excuse me. While I have no objection,  
2 I'm a little confused as to why these are being offered now  
3 with Mr. DiGiacomo sitting on the stand.

4 THE COURT: Well the thought came to me, too.

5 Do we need to keep the public official here at the  
6 public expense if we don't need him?

7 MR. SUGARMAN: I can move -- there are a couple more  
8 documents. I can do them, because I suspect there won't be any  
9 objection to them at another time.

10 But I would like to --

11 THE COURT: Why don't we finish up with this witness,  
12 if we can.

13 MR. SUGARMAN: I'll move to another area, your Honor.

14 THE COURT: Thanks.

15 BY MR. SUGARMAN:

16 Q You testified in your direct examination about an agreement  
17 with Metricom. Correct?

18 A That's correct.

19 Q And I believe you said that the agreement with Metricom  
20 permitted Metricom to place certain devices on utility poles.  
21 Is that what you said?

22 A I believe it's actually on the utility light fixture  
23 itself.

24 Q So it's the light poles and not the utility poles, which --

25 A The arm and the light fixture.

DiGiacomo - cross - Sugarman

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1 Q Right. But there's a difference between the light fixture  
2 poles and the utility poles on which Verizon puts its wires and  
3 the lechis that we've been talking about are placed. Is that  
4 right?

5 A I think in some cases it's the same pole.

6 Q The same pole has the light --

7 A No, some cases.

8 Q -- the streetlight and the telephone wires?

9 A Yes.

10 Q And in either case, the pole that we're talking about is  
11 not owned by the Borough. Is that right?

12 A That's correct.

13 Q But it resides on the Borough right-of-way. Correct?

14 A That's correct.

15 THE COURT: Just tell me again, what actually is  
16 getting placed on the pole by this outfit?

17 THE WITNESS: I believe it's an electronic transmitter  
18 that's placed on top of the light fixture or arm that would  
19 then allow people to dial up directly into the Internet.

20 THE COURT: I see.

21 THE WITNESS: And they're spaced strategically around  
22 the municipality.

23 Q All right. You've testified, Mr. DiGiacomo, about the  
24 garage sale ordinance. Do you recall that?

25 A Yes.

DiGiacomo - cross - Sugarman

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1 Q And you said that the garage sale ordinance was vigorously  
2 enforced?

3 A Yes.

4 Q And in your affidavit submitted in this case, you said that  
5 the sign that was photographed by Mr. Nelkin is no longer in  
6 place. Is that right?

7 A I believe it was that sign, yes.

8 Q Was that sign, to your knowledge, put up in compliance with  
9 the Borough ordinance?

10 A No, the ordinance does not permit signs on utility poles.

11 Q And do you have any idea how long that sign was allowed to  
12 remain --

13 A No, I don't.

14 Q -- up before Mr. Nelkin took a picture of it?

15 A No, I don't.

16 Q Mr. Nelkin also took some pictures of some house numbers on  
17 utility poles. Do you recall that?

18 A Yes, I do.

19 Q And in your affidavit you say that the Borough does not  
20 permit house numbers on telephone poles. Is that right?

21 A That's right, we have an ordinance regulating house  
22 numbers.

23 Q And that when you find them, you advise homeowners they  
24 must remove them. Correct?

25 A That's correct.

DiGiacomo - cross - Sugarman

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1 Q It's also correct that the Borough did not find the numbers  
2 on the telephone pole that Mr. Nelkin photographed?

3 A That's correct. I raised with Mr. Lesnevich the fact that  
4 from the photograph we could not tell if, in fact, those  
5 locations were even located in Tenafly. And if you would give  
6 us the address we would direct the homeowners to remove them.

7 Q Was any action taken to send anybody out to check?

8 A I did ask the police chief, that during normal patrols to  
9 have the police department aware and to try to search out these  
10 particular poles with numbers.

11 Q But, to your knowledge, they weren't found and they weren't  
12 taken down?

13 A To my knowledge, they were not found.

14 Q Now, you were asked some questions about discussions that  
15 you had with people at Cablevision. And I'd like to show you a  
16 letter that was marked and submitted as Exhibit C to the  
17 Affidavit of Chaim Book submitted in connection with this  
18 proceeding.

19 MR. SUGARMAN: For the record, your Honor, that's a  
20 letter dated October 23rd, 2000 from Jim Gaffney, Director of  
21 Operations at Cablevision, to Chaim Book.

22 Q And this indicates, Mr. DiGiacomo, does it not, that you  
23 got a copy of this letter?

24 A That's correct.

25 Q And indeed you did get a copy of this letter. Correct?

DiGiacomo - cross - Sugarman

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1 A Yes, I did.

2 Q Now, in the next to last paragraph Mr. Gaffney writes,  
3 quote:

4 We regret the position in which we find ourselves and  
5 hope you understand that Cablevision cannot afford to  
6 jeopardize its relationship with the Borough or its franchise  
7 to provide telecommunication services within the Borough.

8 You saw that when you read this letter?

9 A Yes, I did.

10 Q And you concluded, did you not, that Mr. Gaffney obviously  
11 was concerned about the position that Cablevision found itself  
12 in. That's what he said, right?

13 A I didn't make any conclusions.

14 Q Well, you did see that he expressed some concern about the  
15 position in which "we find ourselves." Right?

16 A Yes.

17 Q And he was also concerned about jeopardizing Cablevision's  
18 relationship with the Borough or its franchise to provide  
19 telecommunication services within the Borough?

20 MR. LESNEVICH: Your Honor, I'm going to object to  
21 this. What's going on in Mr. Gaffney's mind, I don't know how  
22 Mr. DiGiacomo could know what Mr. Gaffney was thinking.

23 THE COURT: I was wondering when you were going to do  
24 that. I'm going to sustain the objection.

25 How can he testify what Gaffney's mental processes

DiGiacomo - cross - Sugarman

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1 were?

2 Q Did you take any objection, Mr. DiGiacomo, when you read of  
3 the -- read the expression that "Cablevision cannot afford to  
4 jeopardize its relationship with the Borough or its franchise  
5 to provide telecommunication services"?

6 A No, other than providing copies of the letter to the Mayor  
7 and Council.

8 Q Do you have any idea how it was that Mr. Gaffney came to --

9 MR. LESNEVICH: Objection.

10 Q -- have these concerns?

11 MR. SUGARMAN: I'm asking him whether he knows how Mr.  
12 Gaffney --

13 THE COURT: It's asking -- does he know how Gaffney  
14 knew about it?

15 MR. SUGARMAN: How Gaffney --

16 THE COURT: Came about writing this?

17 MR. SUGARMAN: Came about writing and expressing these  
18 concerns. .

19 A No, I don't.

20 Q The Council voted on December 12th, 2000 to deny the  
21 application of the Eruv Association to leave the eruv up.  
22 Isn't that correct?

23 A I don't recall the exact date, but they did take a vote,  
24 yes.

25 Q All right. Do you recall that the next day Mr. Lesnevich,

DiGiacomo - cross - Sugarman

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1 the Borough attorney, wrote a letter to Cablevision informing  
2 Cablevision of that action?

3 A No, I don't believe that's correct. I believe I e-mailed  
4 Mr. Gaffney a notice with a copy of Mr. Lesnevich's letter  
5 telling him not to take any action. I don't know if Mr.  
6 Lesnevich wrote directly.

7 Q I think we may be confusing our time frames, and I don't  
8 want to do that. I'm talking not -- you're talking about the  
9 earlier time period when Cablevision had initially been  
10 directed to take the --

11 A Yes, you're correct, you're correct. I stand corrected.

12 Q -- to take them down, and you e-mailed them to say, don't  
13 do it, and the reason for that was there was an agreement that  
14 was reached between Mr. Shapiro and Mr. Lesnevich to provide  
15 time for a formal application to be made?

16 A And I attached that to Mr. Lesnevich's letter to you, I  
17 believe, so the cable company would have it.

18 Q Okay. But now I'm moving forward --

19 A Right.

20 Q -- to the final action that the Borough took after the  
21 application had been submitted and the Borough Council voted to  
22 deny it. And my question is: Are you aware that the next day  
23 Mr. Lesnevich wrote a letter to Cablevision, to Mr. Gaffney at  
24 Cablevision, informing him of the vote and returning to its  
25 original request to remove any items placed for the eruv? And

DiGiacomo - cross - Sugarman

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1 let me show you a copy of that item.

2 MR. SUGARMAN: I would like to mark this as  
3 Plaintiffs' Exhibit --

4 (Mr. Sugarman confers with Ms. Forbes off the record.)

5 MR. LESNEVICH: This would be 13. 12?

6 THE COURT: I lost 12. What is that, Mr. Lesneovich?

7 MR. LESNEVICH: Biema parking space. B-i-e-m-a,  
8 parking space, ordinance, October 20, '94.

9 MR. SUGARMAN: Thank you.

10 MR. SHAPIRO: So this is 13.

11 MR. SUGARMAN: So this would be 13.

12 THE COURT: I'm sorry. It's an application, 12?

13 MR. LESNEVICH: Yes, sir. The Biema, B-i-e-m-a,  
14 application for a parking space.

15 THE COURT: Did I get a copy of that?

16 MR. SHAPIRO: Judge, I think we put it aside and we  
17 were going to move forward. We were going to finish it at the  
18 end.

19 THE COURT: Oh, yeah, yeah.

20 BY MR. SUGARMAN:

21 Q Did you see a copy of Plaintiffs' Exhibit 13 at or about  
22 the time it was sent?

23 A I don't recall seeing a copy, no.

24 Q Do you recall having any understanding as to when  
25 Cablevision was going to start removing the rubber strips that

DiGiacomo - cross - Sugarman

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1 we've referred to as lechis, after the Borough Council vote on  
2 December 12th?

3 A I recall the Mayor and Council directing the attorney to  
4 contact them, but I don't recall when that was to take effect.

5 Q Do you recall being told that because it was holiday  
6 season, Cablevision was terribly busy with other things and was  
7 going to get to the removal of the lechis after the 1st of  
8 January?

9 A No, I have no recollection on that.

10 Q Going back for a minute to the letter that Mr. Gaffney  
11 wrote to Mr. Book, which is the Book Affidavit, Exhibit C, did  
12 you call Mr. Gaffney or anybody at Cablevision to tell him or  
13 them that they didn't have to be concerned about Cablevision's  
14 relationship to the town or its franchise?

15 A No.

16 MR. SUGARMAN: Could I have a minute, your Honor?

17 (There is a pause Mr. Sugarman.)

18 Q Mr. DiGiacomo, who at Cablevision did you personally speak  
19 to during the fall and up to January 1 of 2000?

20 A I spoke to their director of community relations, I believe  
21 is her title, and her name actually escapes me at the moment.

22 Q Did you ever talk to Mr. Gaffney?

23 A No, I don't believe so.

24 Q Do you know whether anyone else from the Borough talked to  
25 anyone at Cablevision?

DiGiacomo - cross - Sugarman

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1 A No, I would not know that.

2 Q So your only knowledge is -- how many conversations did you  
3 have with the Cablevision person that you've identified?

4 A One that I can recall. There may have been a second one.  
5 In both cases it was the individual to whom I then wrote the  
6 letter which I believe you have.

7 Q Would it be Marie Parenta?

8 A Maureen Parenta.

9 Q Maureen Parenta?

10 A That's correct.

11 MR. SUGARMAN: I have no further questions, your  
12 Honor.

13 MR. LESNEVICH: Your Honor, I have a few, please.

14 REDIRECT EXAMINATION

15 BY MR. LESNEVICH:

16 Q The directional signs with several churches, are they on  
17 county property, County of Bergen property, to your knowledge?

18 A Some of the signs depicted in the photographs appear to be  
19 county right-of-way property.

20 Q As opposed to the Borough's right-of-way?

21 A Correct.

22 THE COURT: Can I just stop you. You say that because  
23 they're county roads?

24 THE WITNESS: Yes, your Honor.

25 Q The Good Friday walk, what's the duration of that event,

DiGiacomo - redirect - Lesnevich

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1 time-wise?

2 A I don't know.

3 Q Is it less than a day?

4 A Oh, yes.

5 Q The Jewish Community Center's Rubin Run, is that less than  
6 a day?

7 A It's only several hours.

8 Q What is the purpose of the police being there, the Tenafly  
9 police being there for both of these events?

10 A To ensure the public safety.

11 Q The block parties that are -- that have been approved, that  
12 you saw the approvals for, are they of a limited duration?

13 A Yes, usually one afternoon over a weekend.

14 Q And the Presbyterian Church application, part of P-1, I  
15 draw your attention to the documents. Can you tell the Court  
16 what hours are being permitted?

17 A 1:30 to 5:30 p.m. on Sunday, May 20th; and Sunday June 3rd.

18 Q In all of these applications, do you know of any event that  
19 is permitted to be of permanent duration?

20 A Not in a public park or right-of-way, no.

21 Q These events such as the block parties, the visits by  
22 Santa, the egg hunt, are they all open to anyone who seeks to  
23 go?

24 A Would you repeat that?

25 Q Are they open to anyone who wishes to go to them?

DiGiacomo - redirect - Lesnevich

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1 A Visit to Santa and the egg hunt?

2 Q Yes.

3 A Yes, they are.

4 Q There's total public access to these events. Is that  
5 correct?

6 A That's correct.

7 Q By the way, what is Jenna's Rainbow? Is that a religious  
8 group?

9 A No, I believe it's a family of a young child who was  
10 inflicted with a disease and, frankly, I don't know if she's  
11 still living, but they use the event to raise funds and make  
12 people aware of the illness.

13 MR. LESNEVICH: I have nothing further. Thank you,  
14 sir.

15 THE COURT: I have a couple of questions.

16 MR. SUGARMAN: Just one, your Honor.

17 THE COURT: Can you -- would you give Mr. DiGiacomo a  
18 copy of Mr. Nelkin's Affidavit with the pictures of the signs,  
19 the church signs, directional signs.

20 MR. SUGARMAN: I'm sorry, your Honor.

21 THE COURT: Can you go to the section of the affidavit  
22 which I've marked as "1," which has the Presbyterian Church  
23 sign in it. And the Episcopalian Church, it says "At Next  
24 Light." Just take a look at that. Can you tell by looking at  
25 that, is that a county road or a municipal road?

DiGiacomo - redirect - Lesnevich

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1 THE WITNESS: Your Honor, I can't tell by looking at  
2 the photographs.

3 THE COURT: Okay. Would you turn to the next one,  
4 which I've marked as "2" which has the Presbyterian Church in  
5 it, sign "Two Blocks." Can you tell whether that's a municipal  
6 road or county road?

7 THE WITNESS: I can't tell from that photograph,  
8 although I may be able to tell from the original only  
9 because --

10 THE COURT: I don't have an original but I have one  
11 that's better than yours.

12 THE WITNESS: No, I can't tell.

13 THE COURT: You can't tell, all right.

14 Turn to the next page, which is 3. Directional sign I  
15 guess, church, directional sign. Is that a county or municipal  
16 road?

17 THE WITNESS: I can't tell, your Honor.

18 THE COURT: Can't tell. How about the next one, 4?

19 THE WITNESS: That's a county road.

20 THE COURT: Do you remember that? Do you remember the  
21 name of it?

22 THE WITNESS: Yeah, I've drawn that conclusion because  
23 it appears to be directing traffic to 9W and to the east and  
24 Bergenfield to the west, and it appears to be the intersection  
25 of Engle and East Clinton Avenue, both of which are I believe

DiGiacomo - redirect - Lesnevich

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1 county roads.

2 THE COURT: Okay. How about the next one, 5, it says,  
3 "GREEK ORTHODOX CHURCH ONE MILE."

4 A I can't identify that location.

5 THE COURT: Okay.

6 RECROSS-EXAMINATION

7 BY MR. SUGARMAN:

8 Q Mr. DiGiacomo, are you positive that the sign that you  
9 identified is on county road, or are you just making that  
10 assumption?

11 A I'm not positive.

12 Q Let me show you your affidavit. I think that's the second  
13 one you submitted. It's dated April 23rd, 2001, and direct  
14 your attention to paragraph 6, and that's the paragraph, is it  
15 not, in which you deal with the directional signs that the  
16 Court has just been asking you about. Correct?

17 A Correct.

18 Q You don't say in that paragraph that any of those signs are  
19 on county roads. Correct?

20 A That's correct.

21 MR. SUGARMAN: I have no further questions, your  
22 Honor.

23 MR. LESNEVICH: Nothing further, your Honor.

24 THE COURT: Mr. DiGiacomo, thanks.

25 THE WITNESS: Thank you.

1 THE COURT: You can step down.

2 (Witness excused.)

3 THE COURT: Counsel, do you want to take a break here?

4 MR. LESNEVICH: Yes.

5 MR. SUGARMAN: Thank you, your Honor.

6 (A recess is taken.)

7 (Proceedings resume.)

8 THE COURT: Okay.

9 MR. LESNEVICH: Your Honor, we call Councilman Richard  
10 Wilson.

11 THE COURT: Yes, sir.

12 Good afternoon, Mr. Wilson.

13 MR. WILSON: Good afternoon, your Honor

14

15 R I C H A R D V. W I L S O N, called as a witness, having  
16 been first duly sworn, is examined and testifies as  
17 follows:

18

19 THE DEPUTY CLERK: Please be seated. Just move that  
20 chair a little closer to the microphone.

21 THE WITNESS: Yes.

22 May I lower this a little?

23 THE DEPUTY CLERK: Yes. Please state your name  
24 spelling it for the record.

25 THE WITNESS: Richard V. Wilson. W-i-l-s-o-n.

Wilson - direct - Lesnevich

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DIRECT EXAMINATION

BY MR. LESNEVICH:

Q Good afternoon, Mr. Wilson.

Tell us briefly your profession, what you do for a living and your career.

A I am a -- in the last 25 years, have been a commercial investment real estate broker.

Q What has been your involvement in the civic government of Tenafly?

A Well, of course more recently I've spent the last five years on the Council. I'm currently in my sixth year and final year of my current term. Before that I was very involved in school matters and very involved in civic affairs with respect to the Democratic Party in Tenafly.

Q Councilman Wilson, did you vote on the application to erect an eruv in Tenafly?

A Yes, I did.

Q And what was your vote?

A I voted "no."

Q In voting "no," was your vote affected in any way by any animosity or prejudice against Orthodox Judaism or the proponents of Orthodox Judaism?

A Certainly not.

Q Do you yourself have any animosity or prejudice against Orthodox Jews?

Wilson - direct - Lesnevich

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1 A I believe none.

2 Q Thank you.

3 I have no further questions, your Honor.

4 MR. SHAPIRO: Judge, may we have one minute?

5 CROSS-EXAMINATION

6 BY MR. SHAPIRO:

7 Q Good afternoon, Mr. Wilson. My name is Richard Shapiro,  
8 and I represent the Plaintiffs, together with the other lawyers  
9 that you see.

10 Picking up on Mr. Lesnevich's questioning. You  
11 exercised your vote on December 12th of 2000 in connection with  
12 the application not to take down the eruv. Is that true?

13 A That is true, sir.

14 Q And how long prior to December 12th, 2000 was that  
15 application pending?

16 A I believe for a month, maybe two months.

17 Q And during that month or two months, did you have occasion  
18 to consider any written materials submitted in connection with  
19 the application?

20 A I believe there were many letters written to the Council  
21 and to the Mayor, which we all saw as they were circulated  
22 amongst us.

23 Q Any other materials?

24 A Well, except for the formality of filing the application  
25 itself by the Eruv Association.

Wilson - cross - Shapiro

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1 Q And during the period from the filing of the application to  
2 the time that you exercised your vote, did you have any  
3 conversations with any individuals on the Borough Council  
4 concerning the application?

5 A There were some discussions amongst us.

6 Q And with whom specifically did you have conversations?

7 A Well, I can't say specifically which councilman; a number  
8 of them.

9 Q Well, let me ask you the question this way.

10 A Because it was --

11 Q Did you speak to Ann Moscovitz about the application?

12 A Yes, I did.

13 Q Did you speak to Councilman Peck about the application?

14 A I don't believe I did.

15 Q Did you speak to Councilman Sullivan about the application?

16 A No.

17 Q Did you speak to Councilwoman Kerge about the application?

18 A I might have.

19 Q Do you recall it one way or another?

20 A No, I do not.

21 Q Do you recall speaking with any individual residents of the  
22 Borough of Tenafly concerning the application?

23 A Other than my wife, no.

24 Q Other than your wife, no other residents of Tenafly?

25 A No. I'll tell you why, sir. Because I was very

Wilson - cross - Shapiro

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1 preoccupied with a very serious medical condition.

2 Q Okay.

3 A In fact, I was in the hospital when -- the first hearing,  
4 and that's why I was not there. And so my preoccupations at  
5 that point were quite personal and precluded any real  
6 concentration on this subject.

7 Q Now you know, of course, that during the period that the  
8 application was pending, the eruv was actually up. You know  
9 that, right?

10 A I became aware of that only in early December, late  
11 November, somewhere along there.

12 Q And since the time you became aware of it in November or  
13 December, have you actually seen any part of the strips, or any  
14 of the strips that have been put on the telephone -- on the  
15 utility poles?

16 A No, I have not.

17 Q You haven't looked?

18 A No.

19 Q While the eruv has been up, has it interfered with your  
20 daily living in any way?

21 A Not at all.

22 Q Has it interfered -- I understand that you are an elder in  
23 your church?

24 A That's correct, sir.

25 Q Are you currently an elder in your church?

Wilson - cross - Shapiro

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1 A I'm past elder. I was elder some years ago.

2 Q Okay. Has the fact that the eruv has been up interfere in  
3 any way with the practice of your religion?

4 A No, it has not.

5 Q Have any of your constituents reported to you as a council  
6 person that the fact that the eruv has been up for a period of  
7 time has in some way interfered with their practice of their  
8 religion?

9 A No. They haven't spoken to me directly. I simply heard  
10 the testimony in the hearing on the 12th.

11 Q Okay. Since then, has anyone said that the eruv has  
12 interfered with their daily lives in any way?

13 A Only a reiteration by a number of people --

14 Q I'm sorry, I didn't hear that.

15 A May I finish?

16 Q I'm sorry, I didn't hear it, Mr. Wilson.

17 A I said, only a reiteration by a number of people who  
18 testified who for the most part were members of the Jewish  
19 faith and reiterated their statements made in public to me.  
20 There was one other party who felt that, you know, didn't  
21 agree. We had testimony on both sides from the Jewish  
22 community, and this one particular party I can recall did speak  
23 to me.

24 Q Subsequently?

25 A Yes.

Wilson - cross - Shapiro

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1 Q Since the eruv has been up, and specifically, you know,  
2 after -- strike that. Since the eruv has been up, has it in  
3 any way caused -- been detrimental to the town? Has it caused  
4 a specific detriment to the town that you can point to or  
5 testify about?

6 A No, because the question is still an open question. So I  
7 can't perceive of any particular -- other than the controversy  
8 it has generated.

9 Q I understand that. Aside from this lawsuit, has the fact  
10 that the eruv is up in the town itself caused any specific  
11 detriment? We realize that this lawsuit is pending as to  
12 whether or not it should remain.

13 A Well, we've had the instance of vandalism and so forth that  
14 caused the police to be on special guard to prevent that.

15 Q Right.

16 A That's the only direct, you know, specific consequence of  
17 what is still considered a temporary installation.

18 Q Now, you submitted an affidavit in this case. Correct?

19 A That's correct.

20 Q Did you prepare it?

21 A Pardon?

22 Q Did you prepare the affidavit?

23 A Yes, I did.

24 Q Let me give you a copy. I think everyone has it, except  
25 you, perhaps.

Wilson - cross - Shapiro

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1 A Yeah.

2 Q Just take a look at it for a minute and make sure that's  
3 the one that you signed.

4 A Sure.

5 Q Is that your signature that appears on the last page, Mr.  
6 Wilson?

7 A That is, indeed.

8 Q And that is the affidavit that was prepared and submitted  
9 in connection with this case?

10 A That's correct.

11 Q Okay. And if you would -- I direct your attention to  
12 paragraph 5, on page 2.

13 A Yes.

14 Q What is the symbol of restriction of religious freedom  
15 referred to in that paragraph?

16 A Well, it implies, according to my Jewish brethren, as they  
17 speak to me from time to time, that this area is basically  
18 designated or restricted for the use of the Orthodox  
19 community's religious Sabbath. And indeed the irony of it is,  
20 to violate their own Sabbath enables them to walk up and down  
21 the street, and on the Sabbath where they ordinarily could not  
22 do that, to the best of my knowledge. And so therefore it has  
23 a very restricted religious symbolatry, mostly to our fellow  
24 Jewish citizens who are not Orthodox in this particular sect.  
25 So that's the basis for my conclusion.

Wilson - cross - Shapiro

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1 Q So the eruv is a restrictive area, is that what you have  
2 been told?

3 A Eruv implies a restriction to these people.

4 Q It implies a restriction to these people?

5 A Yes. It's a symbol.

6 Q And what is the restriction, as you understand it, Mr.  
7 Wilson?

8 A Well, it communicates to them, from what I understand and  
9 what's been said in public and followed up in prior -- that it  
10 implies to them that they are somehow not true -- truly Jewish  
11 people. It reminds them of that.

12 Q The eruv does that?

13 A Yeah, the eruv itself, it's symbolatry used by the one  
14 particular Orthodox Jewish sect. And who are -- and in an  
15 overview of things they are basically fundamentalists in the  
16 religious stream, you know.

17 Q A religious extreme.

18 So the fact that an eruv --

19 A I said "in a religious stream."

20 Q Excuse me?

21 A Variations within the panoply of the American religions,  
22 Judaeo-Christian religions.

23 Q As you put it in paragraph 4, Mr. Wilson, it would create a  
24 ghetto, isn't that so?

25 A Yes.

Wilson - cross - Shapiro :

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1 Q And that was in part the reason why you exercised your vote  
2 as you express it in your affidavit. Correct?

3 A That is correct.

4 Q Now, during the course of the public hearings that  
5 transcended two evenings, you were present at one and not at  
6 another. Is that true?

7 A I was not present at the first evening, I was in the  
8 hospital.

9 Q Right. You were present at the second?

10 A Yes.

11 Q And exercised your vote?

12 A Yes.

13 Q Okay. But you did read the transcript of the first  
14 hearing --

15 A I looked at it.

16 Q Right?

17 A Yes.

18 Q Now, before you exercised your vote, did you ask a single  
19 question of any of the many witnesses who testified at the  
20 hearing?

21 A No.

22 Q Is that because you completely understood the positions of  
23 the parties?

24 A That's part of it. They were very clear.

25 Q You completely understood the positions of the parties?

Wilson - cross - Shapiro

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1 A They were very clear.

2 THE COURT: Mr. Shapiro --

3 A Also we felt that if we engaged in dialogue with the people  
4 who were at the hearing, the hearings would extend  
5 indefinitely, so we listened.

6 THE COURT: I just want to remind you, let the witness  
7 finish.

8 MR. SHAPIRO: Yes. I apologize.

9 A So it was clear enough. The people's positions were very  
10 clear on both sides. They were quite articulate.

11 Q Mr. Wilson, they were quite articulate and you understood  
12 the positions.. Is that correct?

13 A I certainly did.

14 Q Okay. Let me ask you this question: On December 12 before  
15 you exercised your vote, did you understand from the  
16 perspective of those people who were requesting permission to  
17 leave the eruv up, what an eruv was?

18 MR. LESNEVICH: Your Honor, at this point I'm going to  
19 interpose an objection. I think it's fundamental to this  
20 questioning of these witnesses. The issue is unconstitutional  
21 animus. We're now going into a question as to whether a  
22 legislative fully understood the issue. I don't know if that's  
23 permitted under our law, whether you can go into whether the  
24 voting legislator understood properly all of the facts. I  
25 would submit it's not.

Wilson - cross - Shapiro

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1 THE COURT: Yeah, I think it's a problem to get into  
2 exactly whether he understood precisely the theological  
3 significance to the Orthodox and what this meant in light of  
4 the case law.

5 MR. SHAPIRO: Well, Judge --

6 THE COURT: So I'm not going to close you down on what  
7 is certainly permissible, but I think this is not permissible  
8 so I'm going to sustain the objection.

9 MR. SHAPIRO: That's fine. But let me just say that  
10 we certainly do not agree with Mr. Lesnevich's characterization  
11 of what this hearing is all about. This isn't only about  
12 religious animus, and as Mr. Sugarman began this afternoon,  
13 we --

14 THE COURT: It is about -- I'm sorry.

15 MR. SHAPIRO: Okay.

16 Q In any event, Mr. Wilson, you didn't ask a single question,  
17 did you?

18 A That's correct.

19 Q As a matter of fact, between the end of the -- all of the  
20 testimony on the 12th and when the Council exercised the vote,  
21 you didn't even take a break, did you? The Council did not  
22 take a break between the last witness, the closing statement,  
23 and taking of the vote?

24 A I don't believe we did. I don't recall taking a break.

25 Q And you know, of course, that on December 12th when the

Wilson - cross - Shapiro

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1 vote was exercised, there were no reasons given at all, were  
2 there, for the vote?

3 A No reasons at all, by who?

4 Q By the Council.

5 A I believe one councilman did express himself.

6 Q You didn't?

7 A I did not.

8 Q Nor did anybody else?

9 A That's not correct, sir.

10 Q That voted.

11 A Mr. Sullivan exercised --

12 Q Right, with the exception of Mr. Sullivan.

13 A Yeah.

14 Q And it was only after this litigation began that you put to  
15 print what you claim to be your reasons for your vote. True?

16 A That's correct.

17 Q I'm going to be referring to the Nelkin Affidavit, Exhibit

18 A --

19 THE COURT: I'm sorry, whose affidavit?

20 MR. SHAPIRO: The Nelkin Affidavit, Exhibit A, the  
21 first two pictures. I think your Honor numbered them for your  
22 purposes 1 and 2.

23 THE COURT: I did, right.

24 Q Mr. Wilson, I'm going to show you -- I have to apologize, I  
25 don't have another copy of this so I'm going to stand here for

Wilson - cross - Shapiro

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1 a minute.

2 A Sure.

3 Q I'm going to show you a picture that was attached to an  
4 affidavit in this case, and it depicts a sign that says  
5 "PRESBYTERIAN CHURCH."

6 A Yes.

7 Q Is that the church that you are an elder of?

8 A That's correct.

9 Q Okay. Is that -- and does the picture that appears  
10 following it, which I think the Judge has numbered number 2,  
11 also depict a sign?

12 A May I look at it?

13 Q Sure. I'm sorry. Sorry I don't have the colored pictures,  
14 but...

15 A Yeah.

16 Q That's your church. Isn't that right?

17 A Yeah.

18 Q And these signs that I've just referred to are up all year  
19 long. Right?

20 A That's correct.

21 Q Permanent?

22 A On the church property.

23 THE COURT: You have to let him answer, Mr. Shapiro.

24 MR. SHAPIRO: I'm sorry, Judge.

25 A On the church property. That one, the large one to the

Wilson - cross - Shapiro

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1 rear is on church property.

2 Q Is the other one on the public right-of-way, if you know?

3 THE COURT: Time out. "The other one"?

4 "The other one"; nobody will know which one we're  
5 talking about.

6 MR. SHAPIRO: I'm sorry, Judge, you're right. I  
7 apologize.

8 THE COURT: This one is colored, Mr. Wilson, it might  
9 be more helpful, which I've labeled as "1." Do you know --

10 THE WITNESS: Your Honor, I'm not completely sure,  
11 because I can't tell from just looking at the backdrop. I know  
12 there's a church sign on Engle Street which is a county road,  
13 but I'm not sure that's the sign as I sit in front of you.

14 THE COURT: How about number 2?

15 THE WITNESS: This one I can determine because I  
16 recognize the driveway leading down from it is the church  
17 driveway, the rear driveway of the church.

18 THE COURT: So the sign is on church property?

19 THE WITNESS: That's correct, sir.

20 THE COURT: All right.

21 BY MR. SHAPIRO:

22 Q Mr. Wilson, did you know at the time you exercised your  
23 vote that there were eruvs in various places in the United  
24 States and other countries?

25 MR. LESNEVICH: Your Honor, again, I object. We

Wilson - cross - Shapiro

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1 waived the legislative privilege for a limited purpose. But to  
2 inquire as to the level of knowledge --

3 THE COURT: It has to do with relevancy. One word.

4 I sustain the objection. It's not relevant.

5 Q Do you consider Washington, D.C. to be a ghetto?

6 A Pardon?

7 Q Do you consider Washington, DC to be a ghetto?

8 MR. LESNEVICH: Same objection, your Honor.

9 THE COURT: Sustained.

10 MR. SHAPIRO: Well, Judge --

11 THE COURT: I just made a ruling. Whether you like it  
12 or not that's the ruling. I don't want to argue about it.

13 Q Let me ask you the question this way: In your view, Mr.  
14 Wilson, any place there's an eruv would be a ghetto?

15 MR. LESNEVICH: Objection, your Honor.

16 THE COURT: You can ask that in terms of what he meant  
17 in Tenaflly by the use of the expression rather than argue with  
18 him about what happens -- what he thinks about it in  
19 Washington, DC.

20 It's the way the question is phrased. You can  
21 certainly explore that. Anyway, I sustain the objection to  
22 that question.

23 Q When you used the term in your affidavit --

24 A Yes.

25 Q -- and you were referring to, in paragraph -- do you have

Wilson - cross - Shapiro

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1 it still in front of you, sir? I'm sorry.

2 A Yes, I do.

3 Q If you refer to paragraph 4.

4 A Four.

5 Q You are referring generally to eruvs as ghettos, are you  
6 not, sir?

7 A Yes.

8 Q Again, referring to paragraph 5 of your affidavit, can you  
9 explain to me what great risk Tenaflly would be at if it  
10 permitted Orthodox Jews to be able to push baby carriages, for  
11 example, on their Sabbath?

12 MR. LESNEVICH: Objection, your Honor.

13 THE COURT: I'll sustain the objection to the form of  
14 the question. I'll certainly permit you to explore what he  
15 meant by that paragraph.

16 MR. SHAPIRO: Right.

17 A I'm sorry, I'm not sure I understand the question.

18 Q I have to ask another question.

19 THE COURT: We're going to do it over again.

20 Q Did you mean to include within the statements in paragraph  
21 5 that Tenaflly would be at great risk by dint of the activities  
22 that were brought to your attention that would be permitted if  
23 the eruv were up?

24 A It's not --

25 Q Such as --

Wilson - cross - Shapiro

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1 A Yeah.

2 Q -- the pushing of carriages?

3 A It's not the --

4 Q Handicapped?

5 A It's not the activities unto themselves and the physical  
6 nature of those activities, it is the establishment of an  
7 entire neighborhood that allows this to take place. And from  
8 my understanding, and partly stimulated by the Rabbi's history  
9 lesson which I refer to in earlier paragraphs, and we all know,  
10 if you know your Medieval history, what evolved over the years  
11 and why it took place in the Middle Ages. And we find it in  
12 modern times that when you create a neighborhood by virtue of  
13 defining that neighborhood through the use of this religious  
14 symbol, however its physical characteristics may be, there is a  
15 tendency over the years to then have only people of that  
16 particular Orthodox Jewish faith to live in that neighborhood.  
17 And that's been the history of what happened in different --  
18 other than Washington, DC that I'm aware of. Okay?

19 Q And that's your understanding?

20 A That's my understanding of what happens. Has happened.

21 Q And that was part of what motivated your vote?

22 A Yes.

23 Q Do you understand that to the extent that the Orthodox Jews  
24 affected by the eruv would make certain decisions based upon  
25 the yes or the no vote concerning --

Wilson - cross - Shapiro

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1 A I wasn't sure at the time.

2 Q You were not sure?

3 A No, I didn't know what reaction or what action they would  
4 take one way or the other.

5 Q Did you know at the time that to the extent that these  
6 people that you've referred to in your answer felt it necessary  
7 to have an eruv in order to be able to, as I said, push baby  
8 carriages or go to the park or carry, that that would -- that  
9 your vote would affect whether or not they would move to  
10 Tenafly or continue to remain in Tenafly as residents?

11 A Well, it's a problematic question. You can't answer that  
12 for certain. You're talking about how things would evolve in  
13 the future and you're not totally sure.

14 From their explanations these secular activities are  
15 prohibited by their own religious beliefs. It seems rather  
16 inconsistent to me. They're not forced to be Orthodox Jews of  
17 that particular sect. No one -- strictly a voluntary decision.

18 Q But did you understand that at least from the perspective  
19 of those Orthodox Jews who believed that an eruv was necessary  
20 in order to do those secular things that we've been discussing,  
21 that if they did not have an eruv, that that would affect their  
22 decisions as to being residents of Tenafly?

23 A I'm not totally sure how they would react to my decision  
24 and --

25 Q Did you take that into account when you exercised your

Wilson - cross - Shapiro

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1 vote?

2 A Pardon?

3 Q Did you take that into account when you exercised your  
4 vote?

5 A Yes. One never knows how people will react. They might  
6 change their sect. Who knows?

7 Q Moving on to a different answer, or different area, Mr.  
8 Wilson, I just want to go back to one thing. In terms of the  
9 information that you considered --

10 A Yes.

11 Q -- have we covered the information? It was letters that  
12 were submitted to the Mayor and Council, you reviewed the  
13 transcript, you were present at the second hearing. Anything  
14 else?

15 A That's pretty much it.

16 Q Okay. I guess my question is this: Did you do any  
17 independent research?

18 A None.

19 Q Well, if you refer to paragraph 4 of your affidavit --

20 A Four.

21 Q -- did that information come from materials that were  
22 presented to you, or did you obtain that information?

23 A My own.

24 Q From a third party?

25 A My own knowledge of history.

Wilson - cross - Shapiro

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1 Q Your own knowledge of history?

2 A Yes, sir. It's from past readings, many years ago.

3 Q So you read about eruvs in the past?

4 A Sure.

5 Q Okay. And I guess one other area to just make sure that I  
6 cover the landscape here. Did you personally contact any  
7 officials of municipalities in the United States generally, New  
8 Jersey in particular, where eruvs were up to determine what if  
9 any impact the eruv had in those municipalities --

10 MR. LESNEVICH: Objection to --

11 Q -- prior to --

12 MR. LESNEVICH: I'm sorry.

13 Q -- prior to exercising the vote?

14 MR. LESNEVICH: Objection as to relevancy.

15 THE COURT: Overruled.

16 A No, I did not.

17 Q To your knowledge, did any other Council person or the  
18 Mayor contact, again, any municipalities in the United States  
19 generally, or New Jersey in particular, to determine whether --  
20 in places where there was an eruv, to determine what if any  
21 impact the eruv had in those communities?

22 A My own knowledge.

23 Q Prior to the exercise of the vote in Tenafly?

24 A The only councilman that I was aware of that did any of  
25 that research, you know, beyond Tenafly, was Councilman

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1 Sullivan.

2 Q And did he share that with you?

3 A He shared that in a meeting with us, yes.

4 Q Okay. And do you recall specifically what if any  
5 municipality he was in touch with?

6 A Well, I know he was checking with some towns and cities out  
7 on the West Coast, as I recall.

8 MR. SHAPIRO: Your Honor, may I have a moment?

9 THE COURT: Sure.

10 MR. SHAPIRO: Thanks.

11 (there is a pause for Mr. Shapiro.)

12 Q One other area, Mr. Wilson. In paragraph 9 --

13 A Nine.

14 Q -- of your affidavit on page 3 -- do you have it in front  
15 of you?

16 A Yes, I do.

17 Q Okay. You say that an eruv in Tenafly would be divisive  
18 and detrimental to the town.

19 A Yes.

20 Q True?

21 A Yes.

22 Q And is it for the reasons that you've testified today  
23 about?

24 A That's correct.

25 Q Since the eruv has been up though, has there been anything

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1 specific other than what you mentioned during your testimony?

2 A No, because it's considered temporary, subject to further  
3 review by the courts.

4 Q I see.

5 A And people understand that now.

6 MR. SHAPIRO: Judge, I have nothing further at this  
7 time.

8 MR. LESNEVICH: Very briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. LESNEVICH:

11 Q Mr. Wilson, by your vote, did you intend to prevent  
12 Orthodox Jews from living in Tenaflly?

13 A Not at all.

14 Q To your knowledge, are there numerous Orthodox Jews living  
15 in Tenaflly?

16 A Oh, yes.

17 Q For past years?

18 A Oh, yes, many years.

19 Q Thank you.

20 MR. LESNEVICH: I have nothing further.

21 MR. SHAPIRO: Just one quick area.

22 RECROSS EXAMINATION

23 BY MR. SHAPIRO:

24 Q But you did understand, Mr. Wilson, that by the exercise of  
25 your vote in denying the application to keep the eruv up, that

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1 those Orthodox Jews that felt it necessary to have an eruv in  
2 order to carry, and push carriages, et cetera, would be  
3 affected and would make their residential decisions based upon  
4 that vote. Correct?

5 A Well, there's one other factor, which has to do with the  
6 religious symbol being approved to sit on a public  
7 right-of-way, which is against Council policy. We have never  
8 done that before.

9 Q You've never done what before?

10 A Approved a religious symbol of a permanent nature. And the  
11 key word is "permanent," in the public right-of-way. That's  
12 the other part of the consideration.

13 Q That was the other part of your consideration?

14 A Absolutely.

15 Q But you understood that that would have an impact upon  
16 those Orthodox Jews that felt an eruv was necessary?

17 A It depends on their individual reactions and decisions.  
18 They could carry on and continue and uphold their own Sabbath,  
19 they always have that choice, and to not engage in secular  
20 activities on the Sabbath. They have that choice. And they  
21 always did and they always will. That's what I understood.

22 Q Well, let me be clear about this. Are you making the  
23 decision as to what Orthodox Jews can and cannot do?

24 A No, I'm just saying we can't allow a religious symbol in  
25 the public right-of-way. They can then decide whatever they

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1 wish to do, including remain in their sect, within their group.

2 Q But let me deal with my question.

3 A Yeah.

4 Q Let's just take me, for example, just an example. Suppose  
5 I am an Orthodox Jew who believes that it is necessary for me  
6 to have an eruv in order for me to leave my house and go to  
7 your house pushing a baby carriage. Now, if the eruv is not in  
8 Tenaflly, my question to you, sir, is: Did you understand when  
9 you exercised the vote, that that would affect my decision as  
10 to whether to remain in Tenaflly as a resident or to move to  
11 Tenaflly in the first place as a resident?

12 A It depends on their individual decision as to whether or  
13 not they would then follow strictly their own religious beliefs  
14 and conduct themselves accordingly on the Sabbath.

15 Q But you're not -- I think we're going at cross-purposes  
16 here. I'm asking you to accept for purposes of my argument  
17 that I need an eruv in order to push my kid's baby carriage to  
18 your house.

19 A On the Sabbath.

20 Q On the Sabbath. And if it's not there, I'm not going to  
21 come and visit you on Saturday afternoon.

22 A That's correct.

23 Q And if it's not there, I may not be able to go to the  
24 temple that my religious services are in with my kid.

25 A That's correct.

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1 Q And if it's not there, I may not be able to enjoy the park  
2 that's not so very far from my house with my children.

3 A You may have to follow -- that's right, sir. You may have  
4 to follow the tenets of your own religion, that's correct.

5 Q But that is my belief.

6 A Well, fine. You certainly have that right. I would never  
7 take that away.

8 Q But you understand you --

9 A I don't have the authority to take that away.

10 Q I didn't mean to interrupt.

11 A Well, I'm responding.

12 Q Well, go ahead, why don't you finish your answer.

13 A I did.

14 Q Okay. What I'm saying though, sir, is, did you understand  
15 by -- when you exercised your vote, that if you voted "no" as  
16 you did, that was going to affect my decision to either remain  
17 in Tenaflly in the first place, or to move to Tenaflly if I was  
18 considering moving to the town?

19 A It's not necessarily what would happen. I've answered this  
20 about five times now.

21 Q I guess I don't understand.

22 A It's not necessarily an automatic decision that they would  
23 not move into Tenaflly. I'm sorry, I did not understand it that  
24 way. The final decision rests with the individual.

25 Q And his religious beliefs?

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1 A Yes, sir.

2 MR. SHAPIRO: Thank you.

3 MR. LESNEVICH: Nothing further.

4 Your Honor, I'd like to call my next witness, if I  
5 may?

6 THE COURT: Yeah, just let me ask Mr. Wilson a couple  
7 of questions.

8 THE WITNESS: Yes, sure.

9 THE COURT: Do you have your affidavit there in front  
10 of you?

11 THE WITNESS: Yes, I do, sir.

12 THE COURT: I think I know what you mean, but I just  
13 want to be sure.

14 In paragraph 5 you say: In my opinion, the community  
15 of Tenafly would be at great risk and would encourage the  
16 creation of what has become in recent history a symbol of the  
17 restriction of religious freedom if an eruv is erected.

18 THE WITNESS: Yes.

19 THE COURT: Just tell me what you meant by that.

20 THE WITNESS: Because the outlining of this religious  
21 symbol in a given neighborhood, and again as I said, from my  
22 understanding, from my Jewish brethren who are not Orthodox, as  
23 they understand it, it would -- it is a symbol that they  
24 recognize as considering them certainly less Jewish and not the  
25 right type of Jewish person. And that was expressed publicly

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1 at the hearing, very eloquently, and it was said to me  
2 privately by the same people simply repeating what they said in  
3 public.

4 And I understood that and took that into  
5 consideration. And I also from my own knowledge of some  
6 neighboring communities, you wind up many years, over many  
7 years with everyone in the particular neighborhood being of a  
8 given Orthodox sect. And that, your Honor, generally is  
9 considered the definition of a "ghetto" in ordinary English  
10 language.

11 THE COURT: Okay. Thank you.

12 THE WITNESS: Therefore, precludes the diversity that  
13 we enjoy in our town, which includes already a number of  
14 Orthodox Jews from this very sect. They're certainly not  
15 precluded from coming in. We welcome them, like everybody  
16 else.

17 THE COURT: Paragraph 9.

18 THE WITNESS: Nine.

19 THE COURT: Having heard all the evidence, I think  
20 that an eruv in Tenafly would be divisive and detrimental to  
21 the town.

22 Tell me again why you think it would be divisive and  
23 detrimental.

24 THE WITNESS: Well, it would occur more between the  
25 Reformed Jewish people, Secular Jewish people as the term is

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1 more commonly expressed, and other Orthodox Jewish people who  
2 are not members of the sect. We have an outstanding example in  
3 the Lubavitch community. Those are the people that put up the  
4 Menorah every year, and I've attend their services, and they're  
5 wonderful neighbors, and they don't believe the eruv is  
6 necessary for the practice of their Orthodox beliefs. And  
7 that's where the divisiveness would occur I believe first and  
8 foremost.

9 Christians themselves are much less affected.

10 THE COURT: Okay, thanks.

11 All right.

12 MR. LESNEVICH: Thank you, your Honor.

13 Next I'd call Dr. Arthur Peck.

14 THE COURT: Mr. Wilson, thank you. You may step down.

15 THE WITNESS: Right.

16 (Witness excused.)

17  
18 A R T H U R P E C K , called as a witness, having been first  
19 duly sworn, is examined and testifies as follows:

20  
21 THE COURT REPORTER: Please be seated. would you  
22 please state your full name and spell it for the record.

23 THE WITNESS: My name is Arthur Peck. P-e-c-k.

24 DIRECT EXAMINATION

25 BY MR. LESNEVICH:

Peck - direct - Lesnevich

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1 Q Good afternoon, Dr. Peck. Would you state briefly your  
2 professional background?

3 A I'm now retired. For 42 years I was a practicing  
4 psychiatrist.

5 Q And what was your highest position?

6 A I was an Associate Clinical Professor at the Mt. Sinai  
7 School of Medicine.

8 Q What has been your civic background in the Borough of  
9 Tenafly?

10 A I served three years on the Tenafly School Board, and I'm  
11 now into my second year on the Tenafly Borough Council.

12 Q Did you attend both meetings at which the public spoke  
13 concerning the eruv application?

14 A I did.

15 Q Did you vote on the eruv application?

16 A I did.

17 Q What was your vote?

18 A "No."

19 Q Did any animosity toward Orthodox Jews or Orthodox Judaism  
20 affect your vote?

21 A No.

22 Q Do you have such animosity?

23 A No.

24 MR. LESNEVICH: I have no further questions, your  
25 Honor. Thank you.

Peck - direct - Lesnevich

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CROSS EXAMINATION

1

2

BY MR. SHAPIRO:

3

Q Good afternoon, Dr. Peck.

4

A Good afternoon, Mr. Sugarman.

5

Q No, I'm Mr. Shapiro.

6

A I beg your pardon.

7

Q I was just going tell you that.

8

Directing your attention to December 12th of 2000, you  
did exercise your vote on that evening. Right?

10

A Yes.

11

Q And that was after hearing from a number of community  
persons on two separate evenings. Right?

13

A Many, many people.

14

Q Right. And between hearing the last person and the vote  
being called, the Council didn't take any break to consider any  
matters, did they?

17

A No.

18

Q And on the evening of December 12th when the vote was  
taken, the Council gave no reasons for its "no" vote. Is that  
right?

21

A That's correct.

22

Q So the first time that you provided any reasons at all was  
in connection with this litigation. Correct?

24

A That's correct.

25

Q And your reasons are set forth in an affidavit?

Peck - direct - Lesnevich

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1 A That's correct.

2 Q Did you prepare the affidavit?

3 A I did.

4 Q You don't have it, do you, by any chance?

5 A I do.

6 Q Oh, you do have it. Oh, great. Okay.

7 Your affidavit dated March 5th, '01?

8 A That's correct.

9 Q Okay. Four pages?

10 A That's correct.

11 Q Okay. On page 2, paragraph 3, one of the reasons given, as  
12 I understand the paragraph, is the eruv would be a permanent  
13 installation.

14 Is that true?

15 A That's correct.

16 Q Okay. Have you been in the courtroom during the prior  
17 testimony this afternoon?

18 A I'm sorry?

19 Q Have you been in the courtroom listening to the testimony  
20 this afternoon?

21 A Yes.

22 Q Did you hear the testimony relating to the signage that  
23 appears at various places?

24 A I did.

25 Q Are you familiar with any of those signs?

Peck - direct - Lesnevich

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1 A Yes.

2 Q And are they permanent as far as you know?

3 A As far as I know.

4 Q Okay. Again, let me just point them out to you if you  
5 haven't seen them before just to make sure. I'm referring to  
6 the Jay Nelkin Affidavit, and in particular, Exhibit A. And I  
7 apologize for the black and white.

8 A Okay.

9 Q Let me just -- we can just go through them. 1.

10 A That 1 is two small for me to read.

11 Q Number 3?

12 A Yes.

13 Q Okay. We're at number 4 now?

14 A Yes.

15 Q Okay. That one you see?

16 A Yes.

17 Q Number 5?

18 A Yes.

19 Q Okay. Have you seen these or similar signs in your travels  
20 throughout Tenaflly being a resident there?

21 A Of course.

22 Q Turning to paragraph 4 of your affidavit, you state that,  
23 again, one of the reasons why you exercised your vote "no" was  
24 because it appears that it's -- and I quote -- this appears to  
25 be, to me, to violate the constitutional separation of church

Peck - direct - Lesnevich

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1 and state. Right?

2 A Yes.

3 Q Did you understand when you exercised your -- well, let me  
4 ask you this question. It's my understanding that the Borough  
5 Council was provided with various written materials, and among  
6 those written materials were you provided with the case of ACLU  
7 versus Long Branch?

8 A Yes.

9 Q And you read it?

10 A Yes.

11 Q And when you were present on December 12th, did you  
12 understand that there was dialogue involving whether or not  
13 this was church/state matter? Do you remember that?

14 A Yes.

15 Q And do you remember that your -- the Borough Council  
16 stating very clearly that it was not?

17 A I don't recall that.

18 Q Okay. Referring to paragraph 2 of your affidavit, another  
19 reason that you give is that the eruv was put up without  
20 permission and knowledge --

21 A Yes.

22 Q -- of the Council.

23 A Yes.

24 Q Were you present at the various work sessions and meetings  
25 where the issue of whether or not there was approval of the

Peck - direct - Lesnevich

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1 Borough was discussed?

2 A Yes.

3 Q And could you tell the Court when you became aware that  
4 there was a need for an application to the Borough?

5 A I believe from the very first time I heard about the whole  
6 issue.

7 Q And from whom did you get that information?

8 A I believe Mr. DiGiacomo, our Borough Administrator.

9 Q He told you that in order to put this eruv up; what?

10 A To put anything on anything that is on the Borough  
11 right-of-way, that we had an ordinance requiring an application  
12 to the Borough, a hearing, and then a vote by Mayor and  
13 Council.

14 Q And can you place in point of time when that information  
15 was provided to you?

16 A I'm afraid not.

17 Q Was it before the application was submitted by the Eruv  
18 Association?

19 A I'm not sure.

20 Q So it could have been before, it could have been  
21 afterwards?

22 A I beg your pardon?

23 Q It could have been before or afterwards?

24 A It could have been. As I said, since I'm not sure, it  
25 could have been before or after.

Peck - direct - Lesnevich

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1 MR. SHAPIRO: Your Honor, if I could have a moment.

2 14? 15?

3 14.

4 THE COURT: 14.

5 (Plaintiffs' Exhibit 14 is marked for identification.)

6 Q I'm going to show you a document we've marked Plaintiffs'  
7 Exhibit 14. Now, for the record, it's a three-page document,  
8 the first -- four-page document. The first page is a fax cover  
9 sheet dated November 2, 2000. Could you just look through it  
10 quickly. And I'm going to -- I just want to determine that you  
11 have seen it before today.

12 A Yes.

13 Q You have?

14 Okay. And was this given to you as part of the eruv  
15 process?

16 A Yes.

17 Q Okay.

18 MR. SHAPIRO: I'm going to move it into evidence. Do  
19 you have an objection?

20 MR. LESNEVICH: Yes.

21 Judge, this letter which Mr. Shapiro and I discussed  
22 at the time says, quote, top of paragraph 2 "The Eruv  
23 Association --

24 THE COURT: Mr. Lesnevich, excuse me just a second.  
25 Can we discuss this -- let's just get through the witness

Peck - direct - Lesnevich

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1 first, okay?

2 MR. LESNEVICH: Yes, sir.

3 THE COURT: So we don't keep Dr. Peck here, and then  
4 we'll go from there.

5 MR. SHAPIRO: Okay.

6 THE COURT: Right? Unless you need it for further  
7 inquiry of the doctor.

8 MR. SHAPIRO: Well I need to inquire of it because it  
9 makes specific reference to --

10 THE COURT: But it's not his letter, isn't that right?

11 MR. SHAPIRO: No, but he read it, Judge.

12 THE COURT: Well, so what?

13 MR. SHAPIRO: And then there was a specific work  
14 session hearing in which this letter was discussed.

15 THE COURT: Well you can ask him about that. You can  
16 ask him about the workshop session.

17 MR. SHAPIRO: But this letter was discussed at the  
18 workshop session.

19 THE COURT: You can ask him about the discussion of  
20 the letter at the workshop session.

21 MR. SHAPIRO: Okay.

22 Q Was there a discussion of this letter at the workshop  
23 session?

24 A There may have been.

25 Q Do you recall it?

Peck - direct - Lesnevich

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1 A No.

2 Q Do you recall there being any discussion at the work  
3 session on November 21 with reference to the fact that the  
4 Borough did or did not have an ordinance covering this matter?

5 A Well, that came up repeatedly.

6 Q Repeatedly?

7 A Repeatedly. I don't know about at that session, but the  
8 idea that the Borough had an ordinance covering the use of our  
9 right-of-way came up at many sessions, and I don't recall  
10 whether it came up specifically at any one session in  
11 connection with your letter -- with this letter.

12 THE COURT: Let me ask Dr. Peck, maybe I can get to it  
13 a little more quickly.

14 Do you recall whether the discussions were something  
15 to the effect: We have an ordinance which requires anybody who  
16 wants to use the right-of-way to come to us for permission?

17 THE WITNESS: Yes.

18 THE COURT: The debate wasn't, gee, we don't know  
19 whether we have one or don't have one?

20 THE WITNESS: No, it was presented as a fact.

21 THE COURT: And one of the issues that was being  
22 discussed I think -- and you can correct me if I'm wrong -- was  
23 the Eruv Association had not applied for permission to put the  
24 eruv up?

25 THE WITNESS: That's correct.

Peck - direct - Lesnevich

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1 MR. SHAPIRO: The issue becomes one of timing, Judge.

2 THE COURT: Okay.

3 BY MR. SHAPIRO:

4 Q You don't remember when the issue came up, do you?

5 A I can't give you a calendar date if that's what you want.

6 Q Can you give me a year date?

7 A Excuse me?

8 Q A year.

9 A Oh, yeah, it came out in the year 2000.

10 Q In the year 2000?

11 A Yeah.

12 Q Okay.

13 MR. SHAPIRO: Your Honor, I'm going to be referring,  
14 just to refresh his recollection, to my Certification dated  
15 April 6, 2000, Exhibit Number C, which is a transcript of the  
16 proceedings on December 12, page number 116, line numbers 6  
17 through 12 -- 13. And I want to show you this. I don't know  
18 whether you have or haven't read this transcript.

19 MR. LESNEVICH: This is page 16?

20 MR. SHAPIRO: Yes, I'm sorry, Walter. Page 100 -- I  
21 apologize to you. Page 116, line 6 through 13.

22 A All right.

23 Q Here. This is the --

24 A Yeah.

25 Q Let me just show you the front of the page. This is the

Peck - direct - Lesnevich

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1 transcript.

2 A Oh.

3 Q This is the transcript of the proceedings on December 12th.

4 THE COURT: It's just being shown to you whether it  
5 refreshes your recollection.

6 A I'm sure I saw it sometime in the past.

7 Q Could you just read the material that's been highlighted?

8 THE COURT: To yourself.

9 Q Yeah.

10 A Between the two yellow stickers?

11 Q Yes, please.

12 A Okay.

13 (There is a pause for the witness.)

14 A Okay.

15 Q Do you have a recollection of those words being spoken on  
16 the evening of December 12th by Mr. Lesnevich?

17 A I'm sorry, even reading this -- and I don't deny it was  
18 said of course -- I don't have a clear recollection.

19 Q Okay. But assuming that it was said, your vote was still  
20 engendered by your belief that this was, as you put it into  
21 paragraph 4 of your affidavit, a violation of constitutional  
22 separation of church and state. Right?

23 A In part.

24 Q In part. It was part of your vote, part of the reason for  
25 your vote?

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1 A Yes.

2 MR. SHAPIRO: May I have a moment,  
3 your Honor?

4 (There is a pause for Mr. Shapiro.)

5 Q Let me refer back to, do you have P-14 still in front of  
6 you?

7 A Sorry?

8 Q Your letter.

9 A My letter? The letter you wrote?

10 Q No, this letter.

11 It's been marked for identification. If you would  
12 just read to yourself the last paragraph on page 2, and I'm  
13 going to have a question for you.

14 A I'm sorry, the last paragraph on page 2 of your letter?

15 Q Page 2 of the letter. Not of the fax, the signature page  
16 of the letter.

17 A Okay.

18 Q The next to last paragraph. I'm sorry.

19 A Okay, I've got it.

20 Q Yeah.

21 (There is a pause for the witness.)

22 A All right. I've read it.

23 Q Okay. You've read it to yourself?

24 A Yes.

25 Q Do you have a recollection that you at any time during the

Peck - direct - Lesnevich

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1 pendency of this application raised with anyone a question as  
2 to whether the Borough had a specific ordinance governing the  
3 application?

4 A No.

5 Q Okay. During the course of the public hearings on the  
6 application, did you ask any of the speakers or the applicant  
7 any questions at all --

8 A No.

9 Q -- with reference to the application?

10 A I did not.

11 Q Did you have any questions in your mind?

12 A I did not.

13 Q No questions?

14 A I did not.

15 Q Did you say at the hearing, as you say in your affidavit,  
16 that you didn't want to hear from people from Englewood?

17 A I said that it was my understanding, and I think it's right  
18 here in the thing, that people who don't live in Tenafly to me  
19 are not my responsibility in the same way as those who do.

20 Q Well, did you say that at the public hearings?

21 A I may have. I may have. I'm not sure.

22 Excuse me. If you're referring to the two public  
23 meetings in question about the eruv application, I did not  
24 speak during either of those, so in view of that I could not  
25 have asked that question.

Peck - direct - Lesnevich

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1 Q You did ask that question --

2 A Right.

3 Q -- during two public hearings. That was my question.

4 A Well then no, I did not ask that question.

5 Q Prior to exercising your vote, aside from the information  
6 which was conveyed to the Mayor and Council either by letter  
7 from people in favor of it or people opposed to it or the  
8 application itself, did you consider any other documentary  
9 information?

10 A No.

11 Q Aside from the testimony or the presentations that you  
12 heard on November -- the date in November and December 12,  
13 which were the two public hearing dates, did you speak to any  
14 other individuals prior to exercising your vote?

15 A About my vote?

16 Q Yes.

17 A No.

18 Q About the eruv?

19 A The eruv was the constant subject of discussion in Tenaflly  
20 and has been for months, and still is.

21 Q So is your answer "yes"?

22 THE COURT: And will be.

23 A My answer is, unless I was even deafer than I really am, I  
24 would to have such conversations, yes.

25 (Laughter.)

Peck - direct - Lesnevich

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1 Q Now, in paragraph 5, one of the reasons you expressed for  
2 exercising your vote was the fact that there was Orthodox  
3 synagogue in Tenaflly and there had never been a prior eruv?

4 A Correct.

5 Q Did you understand that at least with respect to the  
6 applicants, that they believed it was necessary for the  
7 practice of their religion and in particular to push carriages  
8 and to carry and the other things we've discussed here today,  
9 that they believed it was necessary for an eruv?

10 A Yes, I understood that.

11 Q And did you understand that as a result of your vote, that  
12 that would have an impact upon those Orthodox families in  
13 Tenaflly who believed that an eruv was necessary, and also on  
14 those Orthodox Jewish folks who were considering moving to  
15 Tenaflly who believed an eruv was necessary?

16 THE COURT: Sounds like a compound question to me.

17 MR. SHAPIRO: Yes, Judge, it is.

18 Q We'll take them one at a time, Dr. Peck.

19 A Thank you.

20 Q Did you understand that in exercising your vote, that it  
21 would have an impact on those Orthodox Jews who believed an  
22 eruv was necessary in order to carry, push carriages, who were  
23 residents of Tenaflly?

24 A Those who were residents of Tenaflly it seemed to me were  
25 already practicing their religion without an eruv.

Peck - direct - Lesnevich

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1 Q Okay. Did you understand that without an eruv they were  
2 unable to carry, push carriages, et cetera?

3 A What I meant to say was, they knew this when they became  
4 residents of Tenaflly, they remained residents of Tenaflly  
5 without it. On that basis, it does not -- did not and does not  
6 seem to me as if my vote was going to impact on an existing  
7 situation.

8 Q Meaning existing residents?

9 A Yes, those residents of Tenaflly.

10 Q So is it your testimony that your "no" vote, you believe  
11 your "no" vote will have no impact upon those Orthodox Jews who  
12 believe an eruv is necessary to the extent that they are  
13 residents of Tenaflly?

14 A My problem is with your use of the term "impact." If you  
15 mean, would it have any effect; the effect would be that they  
16 would continue to be residents of Tenaflly without the benefits  
17 that an eruv would give them.

18 Q Did you consider that they might move out of Tenaflly?

19 A No, I didn't.

20 Q Okay.

21 A Precisely because they moved in without it and were living  
22 there without it.

23 Q But had applied for it. Right?

24 A Excuse me?

25 Q Had applied for it?

Peck - direct - Lesnevich

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1 A I'm sorry.

2 Q Had applied for it? I'm sorry.

3 A Well, I don't know how long they were there before they  
4 applied for it, but they were there for sometime.

5 Q Okay. Let me turn the question then to this: Did you, in  
6 exercising your vote, did you consider that the vote would have  
7 an impact upon those Orthodox Jews who believed an eruv was  
8 necessary who were not residents of Tenaflly but who were  
9 considering Tenaflly as a place to live?

10 A Yes, I did think so. But as you've said, many people have  
11 said here today, there were many, many communities, including  
12 neighboring communities of Tenaflly, where an eruv already  
13 exists, so it did not seem to me that this, to use your phrase,  
14 impact, would be necessarily severe.

15 Q You mean they could live in Englewood but they wouldn't  
16 live in Tenaflly, is that what you mean to say?

17 A Yes.

18 Q I see.. Okay.

19 A And live --

20 THE COURT: Mr. Shapiro, if we're going to be much  
21 longer, we have to do it tomorrow. If you're almost finished,  
22 we can wrap it up.

23 MR. SHAPIRO: Judge, I think if we wait another few  
24 minutes I could finish it.

25 MR. LESNEVICH: I would appreciate it, because Dr.

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1 Peck has, if possible, a professional obligation tomorrow.

2 THE WITNESS: Thank you.

3 THE COURT: All right.

4 MR. SHAPIRO: I'm going to be referring to the  
5 November 20th transcript.

6 MR. SUGARMAN: 28th.

7 MR. SHAPIRO: 28th, right?

8 MR. SUGARMAN: 28th.

9 MR. SHAPIRO: Page 36. Lines 1 through -- wait a  
10 minute. It's page 36, lines 1 through 10.

11 MR. ROSEN: I'm sorry. What page?

12 MR. SHAPIRO: Page 36.

13 THE COURT: What date?

14 MR. SHAPIRO: November 28th.

15 BY MR. SHAPIRO:

16 Q Have you read it?

17 A Yes.

18 Q Do you recall that --

19 A Oh, yes.

20 Q -- being said?

21 So that you were aware that there were residents of  
22 Tenafly who appeared and said that "this is going to have an  
23 affect on me"?

24 A Yes, I was.

25 Q Okay. And they also were requesting that since it was

Peck - direct - Lesnevich

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1 going to have an effect on them, that the Council not remove  
2 it?

3 A That's correct.

4 Q Thank you.

5 Dr. Peck, I want to try to segregate the many  
6 conversations that you had about this in Tenafly. And when I  
7 say "segregate," I mean segregate from before you voted and  
8 after you voted. Because as you've said, your testimony is  
9 it's been a subject of discussion.

10 My question is limited to the period before you  
11 exercised your vote, and my question specifically is this:  
12 Aside from what was considered by you and the other council  
13 members at the two hearings and the written materials that are  
14 in the file, the Borough file, can you share with me and with  
15 the Court any other conversations with third parties which may  
16 have influenced your vote?

17 A No, I can't, because none of them influenced my vote. I  
18 listened to people and I listened to their comments as a  
19 councilman upon any issue that comes before the Council. I  
20 emphasize the word "listen." It doesn't mean that I accepted  
21 their reasoning. I listened to it, period.

22 MR. SHAPIRO: I have nothing further.

23 REDIRECT EXAMINATION

24 BY MR. LESNEVICH:

25 Q Dr. Peck, by your vote did you mean to discourage Orthodox

Peck - redirect - Lesnevich

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1 people from relocating to Tenafly?

2 A No.

3 Q We were talking about, you've been asked, did you ask a  
4 question.

5 Do you recall prior to both meetings whether the Mayor  
6 and Council adopted a policy requesting the Council members to  
7 only ask questions through the Borough attorney?

8 A Yes.

9 Q And did you agree and abide by that policy?

10 A I did.

11 Q What was the purpose of that policy?

12 A To expedite the public hearing, or as it turned out, the  
13 two public hearings.

14 Q You have the colored pictures of the signs next to you?

15 A No, they've been removed.

16 MR. LESNEVICH: May I?

17 Q Here we go.

18 Do you know, just looking through these, do you  
19 recognize whether any are on county roads, to your personal  
20 knowledge?

21 A It's number 4 I believe is on East Clinton Avenue, there's  
22 directions both ways.

23 Q And what does the sign say?

24 A It says Route 9 -- well, a green sign says "ROUTE 9W,  
25 BERGENFIELD, CRESSKILL, DEMAREST."

Peck - redirect - Lesnevich

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Below that --

Q Do you know of your own personal knowledge that that is a county road?

A I'm almost certain.

Q Thank you, sir.

MR. LESNEVICH: I have no further questions.

I'll take that back from you.

MR. SHAPIRO: I just have a couple, your Honor.

RECROSS-EXAMINATION

BY MR. SHAPIRO:

Q Dr. Peck, did you submit any questions to Mr. Lesnevich to ask?

A I'm sorry. A little louder, please.

Q Oh, I apologize to you. I know you said it earlier.

Did you submit during the two public hearings any questions to Mr. Lesnevich to ask of any of the witnesses or the applicant?

A None.

Q To your knowledge, did the Mayor or any other Council person submit any questions in writing or orally to Mr. Lesnevich to ask any witness or the applicants?

A Orally, I'm sure no. In writing, it could have been.

Though we sit on a dais, I was on the left flank, whatever that means, and I couldn't see where Mr. Lesnevich was on the right side of the Mayor. So I don't know whether --

Peck - recross - Shapiro

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1 Q You don't --

2 A -- he received written questions.

3 Q Orally nothing?

4 A Orally, I don't recall any.

5 Q Thank you.

6 MR. SHAPIRO: Thank you, Dr. Peck.

7 THE WITNESS: Thank you.

8 MR. LESNEVICH: Your Honor. That concludes us for  
9 this evening, unless --

10 MR. SHAPIRO: Could we have a second?

11 THE COURT: All right?

12 MR. SHAPIRO: Nothing further.

13 THE COURT: Dr. Peck, thank you very much.

14 THE WITNESS: Thank you.

15 THE COURT: You may step down.

16 THE WITNESS: All right.

17 (Witness excused.)

18 THE COURT: Counsel, it's five after five.

19 MR. LESNEVICH: I would like to conclude, your Honor.

20 THE COURT: Okay. We will resume tomorrow at 10  
21 o'clock?

22 MR. LESNEVICH: Yes, sir.

23 THE COURT: Number one, sometime before the hearing is  
24 over I'd like to have nailed down where the church signs are  
25 located. That shouldn't be a terribly difficult --

1 MR. LESNEVICH: We're working on it right now.

2 THE COURT: -- thing to do.

3 MR. SHAPIRO: No.

4 THE COURT: In the county, on private property or on  
5 the municipal right-of-way.

6 Number two, it behooves all of us to really focus on  
7 the correct constitutional standard: Public property, number  
8 one, that raises a whole different issue. Number two, public  
9 forum, non-public forum. I think we can probably agree it's a  
10 non-public forum. Can we do that? Because the analysis is  
11 different.

12 MR. LESNEVICH: We agree with that, your Honor.

13 MR. SUGARMAN: I would like to take that under  
14 advisement and advise you.

15 THE COURT: That's okay. It's got to be addressed  
16 before the hearing is over and it's got to be resolved. The  
17 constitutional standard, of course, is critical for us to get  
18 that resolved, and so I'd like you to continue to think about  
19 that.

20 There's a case that I don't believe anybody cited but  
21 which in my own independent research I wanted to share with  
22 you. It's a decision by Judge Kanne from the Seventh Circuit,  
23 Grossbaum vs. Indianapolis-Marion County Building Authority,  
24 100 F. 3d 1287 (1996). Like all of these cases, none of them  
25 are completely on point. But some of the analysis is helpful I

1 think to all of us in wending our way through this. And when  
2 you read it, you'll see why.

3 Okay. The other thing is -- I guess that's it.  
4 Anything else for now?

5 MR. SUGARMAN: No, your Honor.

6 THE COURT: Good. See you tomorrow 10 o'clock.

7 (At 5:08 p.m., an adjournment is taken to Tuesday, May  
8 1, 2001, at 10:00 a.m.)

9 \* \* \*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL NO. 00-cv-6051

TENAFLY ERUV ASSOCIATION, INC., :  
et al, :

Plaintiffs, :

v. :

TRANSCRIPT OF PROCEEDINGS  
- Evidentiary Hearing -

THE BOROUGH OF TENAFLY, :  
ANN MOSCOVITZ, individually and :  
in her official capacity as Mayor :  
of the Borough of Tenaflly, et al, :

Defendants. :

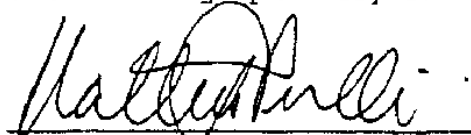
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Newark, New Jersey  
May 1, 2001

B E F O R E:

THE HONORABLE WILLIAM G. BASSLER,  
UNITED STATES DISTRICT JUDGE

Pursuant to Section 753 Title 28 United States Code, the  
following transcript is certified to be an accurate record as  
taken stenographically in the above entitled proceedings.



WALTER J. PERELLI, CSR, CRR  
Official Court Reporter



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A 322

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
CHARLES M. LIPSON				
By Mr. Lesnevich	6		38	
By Mr. Shapiro		8		
MARTHA B. KERGE				
By Mr. Lesnevich	40		66	
By Mr. Sugarman		42		
ANN A. MOSCOVITZ				
By Mr. Lesnevich	68		106	
By Mr. Sugarman		71		
CHARLES AGUS				
By Mr. Sugarman	114		123	
By Mr. Lesnevich		116		
SHMUEL GOLDIN				
By Mr. Yale	125			
By Mr. Lesnevich		130		
By Mr. Feldman		132		

E X H I B I T S

<u>EXHIBIT</u>	<u>FOR IDENT.</u>	<u>IN EVID.</u>
P-15	A letter	22
P-16	Letter to Mayor and Council from Mr. and Mrs. Agus	38
P-14	Letter from Mr. Shapiro to Mr. Lesnevich	48
P-17	Letter from Rabbi Goldin and Ms. Kurland to Mayor Moscovitz	85

1 (Proceedings resume.)

2 THE COURT: Counsel, good morning.

3 MR. LESNEVICH: Good morning, your Honor.

4 MR. SHAPIRO: Good morning, your Honor.

5 MR. SUGARMAN: Good morning, your Honor.

6 MR. LESNEVICH: Your Honor, I was delayed because I  
7 finally got a hold of Councilman Sullivan from California. He  
8 cannot get here until Monday. I don't know whether the Court  
9 is inclined to indulge that. He can be here any day next week  
10 at any time except Wednesday. I have three witnesses today  
11 which will complete my witnesses.

12 The only other thing I will have is that Joseph  
13 DiGiacomo, the Borough Administrator, is touring the signs, the  
14 church signs, preparing an affidavit as to exact location.

15 THE COURT: Right.

16 MR. LESNEVICH: And then I would like to present  
17 Councilman Sullivan at a time convenient to the Court next  
18 week. But that's where I am at.

19 THE COURT: Let me just check.

20 MR. LESNEVICH: Your Honor, I have no particular need  
21 to call Councilman Sullivan having gone through, by the time  
22 we're done, four of the five voting members. I think it's just  
23 going to be redundant, and given where we are in the case I'm  
24 happy to not call him unless my adversaries or the Court wishes  
25 me to.

1 THE COURT: What's your pleasure?

2 MR. SUGARMAN: Your Honor, I believe we do want the  
3 councilman here.

4 MR. LESNEVICH: Okay.

5 THE COURT: How about Tuesday afternoon?

6 MR. LESNEVICH: Yes, sir. What time?

7 THE COURT: 2 o'clock.

8 MR. LESNEVICH: Very good, sir. Thank you.

9 THE COURT: Tuesday at two.

10 Mr. Lesnevich, any time you're ready.

11 MR. LESNEVICH: Thank you, sir.

12 I'll call Councilman Charles Lipson.

13 THE COURT: Very good.

14 Yeah, up here to the witness stand. Thanks. We'll  
15 ask you to take either an oath or an affirmation, please.

16 How are you this morning?

17 Could I have just have everybody seated while the oath  
18 is being administered, please.

19

20 C H A R L E S M. L I P S O N, called as a witness, having  
21 been first duly sworn, is examined and testifies as  
22 follows:

23

24 THE DEPUTY CLERK: Please be seated. Just move that  
25 chair a little closer to the microphone.

Lipson - direct - Lesnevich

6

Please state your name, spelling it for the record.

THE WITNESS: Charges, C-h-a-r-l-e-s, M, like in  
Martin; Lipson, L-i-p-s-o-n.

DIRECT EXAMINATION

BY MR. LESNEVICH:

Q Mr. Lipson, tell us briefly your professional, business  
background.

A Originally I'm a salesman. I was a salesman in the garment  
business for 20 some odd years. I now currently sell  
playgrounds to municipalities and day-cares and schools.

Q And what is your civic background in the Borough of  
Tenaflly? What are some of the things you've been involved in?

A Well, since I moved to Tenaflly in 1972 I've been involved  
in various youth sports as a coach. I was in Little League, I  
was on the board of directors of Little League. I was also the  
vice president of Tenaflly Little League, the Tenakill Swim Club  
which I'm a member of, which is the municipal pool. I served  
as president for two three-year terms. I was also voted at  
that time Trustee of the Year, and I was given an award by  
Bergen County for swim clubs.

Q And did you become a council member at some point in time  
in Tenaflly?

A Yes, I did.

Q When were you on the Council?

A I was sworn in in January of '97.

Lipson - direct - Lesnevich

7

1 Q During the course of your time on the Council, did you have  
2 occasion to vote on the Tenaflly Eruv Association, Incorporated  
3 application?

4 A Yes, I have.

5 Q And what was your vote?

6 A My vote was a "no."

7 Q Did any prejudice or bias against Orthodox Jews or Orthodox  
8 Judaism, did that play any role in your vote?

9 A Absolutely not.

10 Q Do you have such a prejudice?

11 A Absolutely not.

12 Q There came a point in time, did there not, when the Mayor,  
13 Mayor Moscovitz, asked you to join with her and meet with  
14 certain members of the Eruv Association. Is that correct?

15 A I don't know if the Eruv Association as much as I believe  
16 we met with Rabbi Shain and Ms. Kurland. I don't know if -- I  
17 think it's Joyce Kurland, and that's who I met with the Mayor.

18 Q Do you know why the Mayor picked you to join with her for  
19 the meeting?

20 A I believe it's because two reasons: Number one, the Mayor  
21 is a Democrat and I'm a Republican, and the fact that we both  
22 are Jewish. I felt -- I think she might have felt -- I can't  
23 say what she felt but I believe that's the reason.

24 Q Isn't it a fact that you belong to the same temple as the  
25 Mayor does?

Lipson - direct - Lesnevich

8

1 A Yes, we both belong to the same synagogue. It's Temple  
2 Sinai in Tenafly.

3 Q Thank you.

4 MR. LESNEVICH: I have nothing further.

5 RE CROSS EXAMINATION

6 BY MR. SHAPIRO:

7 Q Good morning, Mr. Lipson. My name is Dick Shapiro, and I'm  
8 one of the attorneys for the plaintiffs.

9 A Good morning.

10 Q Mr. Lipson, prior to exercising your vote -- strike that.  
11 The vote was taken on December 12th, 2000. Correct?

12 A Correct.

13 Q And the matter was considered over some substantial period  
14 of months before that. True?

15 A True.

16 Q And there were two public hearings held by the Borough,  
17 both of which you attended?

18 A No, one I didn't attend, and one I did attend. The first  
19 one I believe I didn't attend --

20 Q Excuse me.

21 A -- but when I came back from a trip, I sat and I listened  
22 to the tapes of that meeting so, in effect, I knew what  
23 transpired at that time.

24 Q Okay. So you were not present at --

25 A At the first one.

Lipson - cross - Shapiro

9

1 Q At the first one?

2 A But I was present for the second one.

3 Q And you did listen to the tape of the first proceeding?

4 A I listened to almost three hours of tape, yes.

5 Q In addition to listening to the tapes -- and that was  
6 November 28th?

7 A I'm not sure of the date.

8 Q Okay.

9 A But I'm sure you know the date.

10 Q In addition to listening to the tape of the first hearing  
11 and being present at the second hearing, did you consider any  
12 other information that was presented?

13 A Explain what you mean by "other information."

14 Q Okay. At the hearings there were a series of people who  
15 were permitted to speak.

16 A Correct.

17 Q Either for or against. True?

18 A Correct.

19 Q In addition to listening to the speakers, did you consider  
20 any documentary evidence in the sense, were there any documents  
21 presented to you personally or to the Council generally in  
22 support or in opposition to the eruv?

23 A I don't remember of any particular document I looked at.  
24 Although I do know at the work session I was -- the Council was  
25 given a letter by I believe somebody in the Eruv Association

Lipson - cross - Shapiro

10

1 explaining their position about why they wanted to establish an  
2 eruv.

3 Q Okay. Aside from whatever information was presented at the  
4 public hearings or was presented to you together with the rest  
5 of the Council in support or in opposition to the eruv, did you  
6 consider any other information?

7 A I -- yeah, I went into the Internet and I looked up what an  
8 eruv was just so I have a clear distinction of what an eruv  
9 was. I knew of an eruv, I am Jewish, I lived in -- both in  
10 Brooklyn and Teaneck before I moved to Tenafly, and I knew of  
11 an eruv, but I didn't know exactly the laws regarding it and  
12 what it was. So I gave myself a little bit of an information  
13 about what an eruv is.

14 Q So you went to some site on the Internet?

15 A Correct.

16 Q Any other information that you considered?

17 A Just what I heard at the meetings, the public meetings.

18 Q Okay. Did you share any of the information that you were  
19 able to retrieve from the Internet with any of the other  
20 Council persons or the Mayor?

21 A I might have mentioned some things about the eruv at a work  
22 session, but I'm not sure.

23 Q And could you -- do you recall or can you state for the  
24 record the sources that --

25 A No.

Lipson - cross - Shapiro

11

1 Q -- you retrieved from the Internet?

2 A No, I just -- I'm a novice on the inter -- on the  
3 computers. I went into a site that said eruv, and I just -- I  
4 read what was in that site. I didn't go further into it.

5 Q Okay.

6 A And I don't remember the site.

7 Q In addition to whatever you may have done that you  
8 testified about in securing information, did any of the other  
9 Council persons or the Mayor share with you any information  
10 that they had -- were able to obtain relating to the matter?

11 A Explain what you mean by that.

12 Q Yes. For example, just as you have said that you searched  
13 the Internet, were there other members of the --

14 A Yes.

15 Q -- Council or the Mayor who said that they had either gone  
16 to periodicals or bibliographies or other towns or spoken with  
17 other people?

18 A Yes.

19 Q Okay. Could you share with us who on the Council said that  
20 they had done that; what they did; and what they provided to  
21 you?

22 A Okay. The person who told me -- who had done that is  
23 Councilman Sullivan, and he showed me some paper -- some  
24 documents that he got from the Internet. I believe one was a  
25 document regarding a court case in Palo Alto regarding the

Lipson - cross - Shapiro

12

1 Internet -- regarding an eruv; and another was basically an  
2 article on the eruv. And again, I don't know where that came  
3 from as well.

4 Q Do you remember the author?

5 A No.

6 Q Okay. Was it a document he actually provided to you, a  
7 copy to look at or read, or --

8 A Well, it was -- it was a document -- the document on -- I  
9 believe the document on the Palo Alto case, he what they call  
10 downloaded off of it, so I saw that. And I'm not too sure  
11 about the second article.

12 Q The article?

13 A Yeah. The second piece of information.

14 Q Okay. In addition to the comments that you heard at the  
15 public hearing from the various people who spoke prior to your  
16 exercising your vote, did you have conversations with any other  
17 members of the community relating to the matter?

18 A I had conversations with my rabbi.

19 Q Your rabbi is --

20 A Rabbi Block.

21 Q Rabbi Block, okay.

22 Anyone else you can recall?

23 A Other than council people, no.

24 Q Now, you submitted an affidavit in connection with this  
25 matter. True?

Lipson - cross - Shapiro

13

1 A Correct.

2 Q And did you prepare the affidavit?

3 A I wrote the affidavit.

4 Q You wrote the affidavit?

5 A Right.

6 Q Okay. Now I've been asking you about the sources of  
7 information that you considered and which you've included in  
8 your testimony about what you considered as well as the two  
9 public meetings. During the course of the meeting that you did  
10 attend, which would be on the 12th of December, did you ask any  
11 questions of any of the speakers or of the applicants for the  
12 eruv?

13 A I don't believe I did.

14 Q And at the conclusion of the proceedings; that is, after  
15 all of the members of the public had occasion to speak and the  
16 applicants made their final presentation, is it not a fact that  
17 the Council did not take any break to consider the application  
18 at all, you simply were asked to cast your vote, and you did?

19 A I believe so.

20 Q And it is further true, is it not, Mr. Lipson, that in your  
21 case you did not express on the record on the evening of  
22 December 12th the reason why you cast your "no" vote. True?

23 A Correct.

24 Q So that the first time that you have expressed any reasons  
25 for your vote is as it is reflected in your affidavit submitted

Lipson - cross - Shapiro

14

1 in this case. True?

2 A Correct.

3 Q You don't happen to have a copy of your affidavit, do you?

4 A Not in front of me, no.

5 Q I'm going to give you a copy. If you could look at it to  
6 make sure that it is the one that you prepared and signed.

7 A Yes, it is.

8 Q It is? Okay.

9 Keep it in front of you, I'm going to ask you some  
10 questions about it.

11 If you could look at paragraph 3, could you explain to  
12 me what the difference between an Orthodox Jew is and an  
13 ultra-Orthodox Jew is as you used that term in paragraph 3?

14 A I -- I can't tell you the difference, no.

15 Q Well, what was the purpose of your using the term  
16 "ultra-Orthodox" when you said that the eruv application came  
17 from an organization associated with an ultra-Orthodox  
18 community?

19 A What did I think of when I said that?

20 I used the term ultra-Orthodox because I probably had  
21 read that term. I don't remember where, but I probably had  
22 read that term.

23 Q That's the reason -- that's the reason why you used the  
24 term?

25 A Yeah, exactly, that's the reason.

Lipson - cross - Shapiro

15

1 Q In paragraph -- referring to page 2, paragraph 4, are you  
2 with me? Okay.

3 It is true that you mentioned in some context that you  
4 were aware of the fact that after the establishment of eruvs in  
5 Teaneck, many small houses of worship were established  
6 throughout the town on quiet residential streets, some within  
7 ten blocks of one another. True?

8 A That statement I made, true.

9 Q You made that statement?

10 A Correct.

11 Q And was there a purpose in your making that statement?

12 A It's a statement of fact. I grew up in Teaneck.

13 Q Okay.

14 A And when I first moved into Teaneck, actually when my uncle  
15 first moved into Teaneck there was no established temple in  
16 Teaneck. And a group of Jewish men and woman got together and  
17 established the temple. When I moved out of Teaneck, my family  
18 moved out of Teaneck I guess in 19 -- I came back from the  
19 service -- probably about 1968, there were I believe at the  
20 time three temples in Teaneck. Now if you drive through the  
21 town of Teaneck, you find -- you see many temples. So that was  
22 an observation I made going back into Teaneck as to what I saw.

23 Q Can you relate to the Court when you made this statement,  
24 and to whom?

25 A I guess what I -- if I'm reading this, it was a response to

Lipson - cross - Shapiro

16

1 an affidavit or a statement that we had received from the  
2 Tenaflly Eruv Association or somebody talking about things that  
3 were said in a work session. And I believe what this is, this  
4 is my answer in response to that piece of paper.

5 Q Okay. Let me see if I can clarify.

6 A All right.

7 Q Is it correct to state that you made these statements to  
8 other council people at a work session?

9 A Correct.

10 Q And when you say that you mentioned it as a fact, what were  
11 you attempting to convey to the council people as it related to  
12 their consideration of the eruv application?

13 A I did not offer that as a -- I did not offer that as a  
14 consideration of the Tenaflly Eruv Association, I just related  
15 it to -- at a work session. I don't know -- I don't know if  
16 you had testimony about work sessions or not. A work session  
17 is something that we on Council do to exchange information  
18 amongst the council people and to work towards coming to a  
19 decision so that when we come out on Council in front of the  
20 population of the town of Tenaflly, that we more or less come to  
21 some sort of initial understanding.

22 Q Well, in your mind at the time that you communicated that  
23 fact, was it relevant as to whether or not there would be  
24 additional houses of worship in Tenaflly?

25 A It -- I had no knowledge whether there would be additional

Lipson - cross - Shapiro

17

1 houses of -- but this was not in context of Tenaflly, this was  
2 in context with what I observed in Teaneck.

3 Q I understand that. But as I understand your testimony, you  
4 were relating it in the context of the eruv application. True?

5 A Correct.

6 Q So that you were communicating a fact that you wanted your  
7 co-council members to consider in considering the application.  
8 Right? And that fact was, in Teaneck where there are eruv --  
9 where there is an eruv, that many small houses of worship were  
10 established throughout the town on quiet residential streets,  
11 some within ten blocks of one another. That was a fact that  
12 you wanted your council people to consider in evaluating the  
13 eruv application. True?

14 A It was a fact that I stated at a work session. I have no  
15 knowledge whether my fellow councilmen took that as a  
16 relationship to the eruv -- Tenaflly Eruv Association's  
17 application in Tenaflly. I have no knowledge of that. I can't,  
18 you know, speak to that.

19 Q Just so we're clear about this, this fact was mentioned as  
20 it related to the application. Right?

21 A This fact was mentioned to -- as a response to a question  
22 of another councilman. He asked me a question about additional  
23 houses of worship. And I had mentioned that in Teaneck where I  
24 grew up, that there were -- that houses of worship had --you  
25 know, exactly what I said in the statement.

Lipson - cross - Shapiro

18

1 Q Okay. Okay, now I think I understand it.

2 So you didn't volunteer it, it was the result of a  
3 question --

4 A Of a question.

5 Q -- from another council person?

6 A Right.

7 Q Do you remember who the council person was?

8 A I believe it was Council Member Wilson.

9 Q Wilson?

10 A Because he sat to my left.

11 Q And is it fair to say, or is it your recollection that what  
12 Councilman Wilson was asking was, you know, in essence, if we  
13 favorably consider the application for an eruv, is there a  
14 possibility that it will have more houses of worship such as  
15 they do in other places?

16 A I have no idea of the reason why Councilman Wilson asked me  
17 that question. You would have to ask Councilman Wilson why he  
18 asked me that question.

19 Q No, no, I understand that. I'm not asking the reason for  
20 the question --

21 A Yeah, but you did, you're asking me about -- what -- why  
22 Councilman Wilson asked me that question.

23 Q No, no, sir.

24 A Okay.

25 Q Let me be clear about that. Okay? I don't want to fight

Lipson - cross - Shapiro

19

1 with you.

2 A No, this is not a fight. This is just --

3 Q If you don't understand my question --

4 A Got you.

5 Q -- it's just fair to say you don't understand it.

6 A Okay.

7 Q And we'll go back and do it again?

8 A Go back. Got you.

9 Q I'm not asking the reason why he asked the question, I'm  
10 trying to find out what the question was, if you recall it, in  
11 substance?

12 A No.

13 Q You can't?

14 A Not in substance, no.

15 Q Okay. But in any event, your answer was as you have  
16 testified and put in your affidavit?

17 A Correct.

18 Q Now, Mr. Lesnevich asked you some questions about a meeting  
19 that you attendd with the Mayor, a person named Joy Kurland and  
20 a rabbi?

21 A Correct.

22 Q Just so that the record is clear on who the rabbi was, I  
23 believe your testimony was'that it was Rabbi Shain?

24 A No.

25 Q Well, I believe that's what you said.

Lipson - cross - Shapiro

20

1 A Well, I --

2 Q And I want to try to ask a question here.

3 A Okay.

4 Q Is it correct to state that the rabbi who was present was  
5 Rabbi Goldin?

6 A Correct.

7 Q So it was Rabbi Goldin and Joy Kurland. And do you know  
8 who Joy Kurland is or was?

9 A She handed me her card. It was Director of Community  
10 Relations, and I -- I'm not -- I think it's -- I'm not sure,  
11 the National Jewish Foundation is it, or is it another -- I'm  
12 not sure.

13 Q Okay. But she was affiliated with some Jewish  
14 organization. True?

15 A Correct.

16 Q And, Mr. Lipson, is it fair to say that at some point  
17 during the course of the conversation because of comments that  
18 were made by the Mayor, the Rabbi got up and attempted -- and  
19 was going to leave the meeting?

20 A Correct.

21 Q And as you put in your affidavit at paragraph 7, the reason  
22 that he got up and was going to leave was because he could see  
23 that some of the Mayor's comments were offensive. True?

24 A Correct.

25 Q At paragraph 9, Mr. Lipson, you used the term "community

Lipson - cross - Shapiro

21

1 within a community." You see that?

2 What did you mean by that?

3 A I was quoting from a piece of paper that we got from the  
4 Tenafly Eruv Association at a work session where whoever wrote  
5 that paper -- I'm not sure who wrote that paper -- it told --  
6 in their application said what they want to do is they want to  
7 create a community within a community of like-minded people.

8 Q Excuse me. What?

9 A In their paper they said they wanted to create a community  
10 within a community.

11 Q Right.

12 A Of people with the same interests, or like-minded people,  
13 something to that effect. I don't have it in front of me, it  
14 was a couple of months ago. But if you show it to me or --  
15 I'll be able to point it out.

16 MR. SHAPIRO: Judge, may I have one moment?

17 (There is a pause for Mr. Shapiro.)

18 MR. SHAPIRO: 15, Judge?

19 MS. FORBES: Yes, 15.

20 THE COURT: Yeah.

21 Q Mr. Lipson, I'm going to show you a document marked  
22 Plaintiffs Exhibit 15 and ask if you can identify it?

23 A This is the statement -- the letter I was referring to in  
24 the last statement.

25 Q Okay. So this is the document from which you get your

Lipson - cross - Shapiro

22

1 "community within a community" --

2 A Correct.

3 Q -- comment?

4 A Correct.

5 Q Okay.

6 MR. SHAPIRO: Judge, I'd like to move this into  
7 evidence.

8 MR. LESNEVICH: No objection, your Honor.

9 THE COURT: Very well.

10 (Plaintiffs' Exhibit 15 is received in evidence.)

11 Q Since the eruv has been up, Mr. Lipson, have you seen any  
12 part of it?

13 A No.

14 Q Do you know what it even looks like?

15 A Yes, I do.

16 Q You do? What does it look like?

17 A What I -- it looks like, on poles, all right, there --  
18 because I was given a picture of the -- of what the -- what's  
19 the markings on the poles, and I believe it was a strip of  
20 wire. A strip.

21 Q Yeah.

22 A With, it looks like it was black and there was some white  
23 off the wire that was hanging on the telephone pole.

24 Q So it's a black strip, not unlike the wires --

25 A Correct.

Lipson - cross - Shapiro

23

1 Q -- that the telephone company or the power company puts up?

2 A Right.

3 Q And, to your knowledge, since the eruv has been up, has  
4 there been any disruptive activity in the community relating to  
5 the eruv itself, with the exception there's been some testimony  
6 about some vandalism.

7 THE COURT: I missed the word. What kind of activity?

8 MR. SHAPIRO: Disruptive.

9 (Mr. Yale and Ms. Ilan enter the courtroom.)

10 A The only thing is what I read in the paper regarding that  
11 there was some vandalism.

12 Q In your affidavit you used the term in paragraph 10 that  
13 the establishment of the eruv, actually the main reason you  
14 voted against it was because it will be disruptive. True?

15 A Correct.

16 Q And why is that?

17 A Why is --

18 Q Why do you believe it will be disruptive? What facts do  
19 you have to substantiate that?

20 A Because it will establish a separation within the town of  
21 Tenafly; people who are within the eruv and people who are not  
22 in the eruv. And I believe that would be disruptive because  
23 Tenafly is an all inclusive town, and it is one big town, and  
24 we don't have lines dividing A and B.

25 Q Well let me ask you this question, Mr. Lipson: You

Lipson - cross - Shapiro

24

1 personally are not in favor of the eruv. Right?

2 A I voted against -- I --

3 Q Right?

4 A I voted against the eruv, that's not to my -- whether I'm  
5 in favor or not in favor. I voted against the eruv because of  
6 the way it was put up, without coming to the town for  
7 permission. My responsibility as a Councilman, that's what I  
8 voted against. I voted against not the eruv, I voted against  
9 leaving the eruv up or taking it down, and that was the  
10 question before Council.

11 Q So you voted --

12 A I voted on the question.

13 Q No, I understand that.

14 A I voted on the question.

15 Q Okay.

16 A Okay?

17 Q The question was whether you should take it down?

18 A Right..

19 Q And you voted you should take it down?

20 A Correct.

21 Q And the reason was, the reason was because the Eruv  
22 Association didn't come to the town first?

23 A Because they never applied for a permit to put it up.

24 Q Right. Is that anywhere in your affidavit?

25 A That was never asked of me. I responded to questions that

Lipson - cross - Shapiro

25

1 were asked of me. But if I -- it may not be in my affidavit,  
2 but that's a statement of fact.

3 Q That's one of the reasons for your vote?

4 A That's one of the reasons for my vote. That is the reason  
5 for my vote.

6 Q But it's not your affidavit, we can agree on that?

7 A I --

8 Q We can agree it's not your affidavit?

9 A Yes.

10 Q Okay. Let me go back to my line of questioning and let me  
11 see if I can do it this way.

12 I take it you do not need to have an eruv in order to  
13 carry keys on Shabbes. True?

14 A Correct.

15 Q Okay. And when you drive -- do you know what the  
16 parameters of the eruv are, by the way?

17 A If you -- I know it doesn't include all sections of town,  
18 but I know that the total -- no, I do not but --

19 Q Okay, that's fair. Let us assume -- so you don't know  
20 where the eruv is and where the eruv isn't --

21 A Correct.

22 Q -- as you sit here in this courtroom today?

23 A Correct.

24 Q So that if you were to drive from without the eruv to  
25 within the eruv, you would never know it. True?

Lipson - cross - Shapiro

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1 A I would never know it, correct.

2 Q You would never know it?

3 A Right.

4 Q Well, to the best of your knowledge, would anyone other  
5 than an Orthodox Jewish person to whom eruv is important --

6 A I have no idea of that.

7 Q Okay. And we can agree that the eruv itself is simply  
8 black plastic put on telephones that do not in any way convey a  
9 religious motif, for example?

10 A Those are -- those are your words.

11 Q Okay.

12 A You asked me what -- what the eruv is. That is what I  
13 described to you --

14 Q Yeah.

15 A -- when I saw it.

16 Q Yeah.

17 A The rest, I have no opinion on.

18 Q We can agree all they are is black strips on the telephone  
19 pole?

20 A Right. That's what we can agree on.

21 Q If I drove through Tenaflly and didn't know that an eruv was  
22 there and I looked at the telephone pole where the black strip  
23 was, I wouldn't even necessarily know it was an eruv strip -- a  
24 lechi. True?

25 A Correct.

Lipson - cross - Shapiro

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1 Q And you do understand that the purpose that certain  
2 Orthodox Jews believe an eruv is necessary is in order to  
3 permit them to carry and push carriages, and for handicapped  
4 people to move on Shabbes to and from --

5 A Correct.

6 Q -- their temples or other places off of -- in the town?

7 A Correct, correct.

8 Q You do not consider those activities to be disruptive, do  
9 you; the pushing of a baby carriage?

10 A No.

11 Q The carrying of a set of keys?

12 A No.

13 Q The going to and from temple?

14 A No.

15 MR. SHAPIRO: May I have a moment, Judge?

16 (There is a pause for Mr. Shapiro.)

17 Q I want to turn back to your comment about your belief that  
18 the eruv would be disruptive.

19 Let me ask you this question: If the eruv encompassed  
20 the entire community of Tenafly rather than a portion of it as  
21 it does now, would your opinion change?

22 A It might change, yeah.

23 Q Okay.

24 Mr. Lipson, you know that as a result of your vote,  
25 those Orthodox Jews who believe that in order for them to do

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1 the things that we just discussed on Shabbes, an eruv is  
2 necessary, that will have an impact upon whether they continue  
3 to reside in Tenaflly. You understand that?

4 A Correct.

5 Q And you also understand that as a result of your vote,  
6 those Orthodox Jews who are considering -- who believe an eruv  
7 is necessary -- who are considering Tenaflly as a place to live,  
8 that your vote will have an impact upon whether they move to  
9 Tenaflly?

10 A Yes. But that's not what I voted on. I didn't vote on all  
11 those maybes and ifs. I voted on the fact that the Tenaflly  
12 Eruv Association put up an eruv in the town without coming  
13 before the Mayor and Council to ask for permission.

14 All these other things are things that may and may  
15 please not. But it's not -- I don't believe that's what we're  
16 in court about.

17 We're in court about the fact that I voted "no"  
18 about -- to -- I voted to take -- you know, have them remove  
19 the eruv because they didn't come to the town for permission.  
20 All these other factors may or may not enter into what they  
21 will do in the future, but I don't think that's what I'm -- I  
22 don't feel that's what I'm in court about.

23 Q Well, okay. But your affidavit does say that the main  
24 reason you voted against -- you exercised your vote was because  
25 you believed that the existence of the eruv would be

A 548  
Lipson - cross - Shapiro

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1 disruptive?

2 A Correct. And when you asked me to explain it I explained  
3 the reason -- my statement. You did ask me to explain it.

4 Q Whatever I asked you, I asked you; whatever your answers  
5 are, your answers are.

6 A Okay.

7 Q And I take it we can agree that your subsidiary, I guess a  
8 subsidiary reason is this business about, that the Eruv  
9 Association not coming to the town to ask for permission?

10 A Correct.

11 Q And that's neither on the record on the 12th, nor in your  
12 affidavit here?

13 A It's on my vote. My vote is part of the record, public  
14 record. I voted against the eruv.

15 Q Yes, you voted certainly. You voted.

16 A Okay, my -- this affidavit, all right, was in direct  
17 response to a piece of paper that was given to me that -- and I  
18 was explaining certain facts --

19 Q Okay.

20 A -- that were in that paper that I was -- what I was -- what  
21 I felt I was explaining my position on certain things.

22 Q If you move to paragraph 12, Mr. Lipson, is it fair to say  
23 that as I think you do in this paragraph, that in voting  
24 against the eruv, you were doing it because Tenafly is the way  
25 you want it to be now?

Lipson - cross - Shapiro

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1 A Correct.

2 Q And that I suppose that means that you do not want to have  
3 those Orthodox Jews who believe an eruv is necessary --

4 A Absolutely not.

5 Q -- to be able to -- if I can just finish the question?

6 A Go ahead.

7 Q Thank you. I take it what that means is that you do not  
8 want those Orthodox Jews who believe an eruv is necessary to be  
9 able to push a baby carriage or do the other things we  
10 discussed, going to temple or to the park or wherever, you  
11 don't want that to happen?

12 A That's not what I -- no, I don't -- that is not what I -- I  
13 don't want -- say it again so I answer the right way.

14 Q Okay. Let's go all the way back.

15 A Go ahead.

16 Q Let's go back to your affidavit. Okay?

17 A I'm there. Right.

18 Q This affidavit says that Tenafly is the way it is and the  
19 way I want it to be.

20 A Correct.

21 Q And it says that in voting against the eruv, that was one  
22 of the reasons why you did it. Right?

23 A Correct.

24 Q Well, Tenafly currently does not have -- currently, in your  
25 view, does not have a proper eruv. Isn't that right? And you

Lipson - cross - Shapiro

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1 voted to take it down?

2 A I don't know what a proper eruv is, so I don't know --

3 Q I'll strike the "proper." You voted to take it down?

4 A Correct.

5 Q You do not want Tenaflly to have an eruv. True?

6 A No, it's not true.

7 Q It's not true?

8 A But it's also not true that I want it. I want it or I  
9 don't want it. I don't know what I want or I don't want right  
10 now as we sit here. We're asking -- you're asking me -- am I  
11 correct in what your questions are -- about my vote that day  
12 and what I thought of that day.

13 Q Yes.

14 A Correct. Okay. That's what we're talking about, that day.

15 What may happen a year or two years in the future is  
16 not what we're talking about.

17 Q Well, your vote, if your vote would have caused the eruv to  
18 come down, you understood that. True?

19 A Correct.

20 Q And it would have -- and I suppose in using your words --  
21 brought Tenaflly back to the way it was. True?

22 A The way it was before the eruv was up, correct.

23 Q Yes. And if the eruv is down --

24 A Correct.

25 Q -- those Orthodox Jews who believe an eruv is necessary --

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1 A No.

2 Q Please let me finish the question.

3 A All right.

4 Q Okay?

5 A Go ahead.

6 Q Okay. And if the eruv is down, those Orthodox Jews who  
7 believe it's necessary to do the things that we've been  
8 discussing would not be able to do those things. True?

9 A No.

10 Q No, they wouldn't?

11 A I -- no, if the eruv was down --

12 Q Yes.

13 A -- then they would have to come back before the Council to  
14 apply for the proper permits to let the eruv be put up. It has  
15 nothing to do -- all -- my vote was on whether to leave the  
16 eruv up or take it down. That's what my vote was. That was my  
17 vote. If that's -- that's a matter of record what my vote was.

18 What you're asking me is something that may happen in  
19 the future. I can't tell you what the future is. I can tell  
20 you what happened to me that day, what caused me to vote that  
21 day, what may -- what led me to say these words in that context  
22 at that time. If I -- I'm not -- currently I'm not on the  
23 Council.

24 Q Right.

25 A But if I was on -- and I'm up to -- I'm running again, so

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1 this issue may come before me again. All I voted for was to  
2 take the eruv down so that the people -- that the Tenaflly Eruv  
3 Association would apply to the town in the proper manner, like  
4 any other person that would apply for a permit to put it up.

5 Q All right. Let's deal with that because I think we're  
6 going around in a circle here.

7 The Tenaflly Eruv -- you were present at all of the  
8 work session meetings going back as far as July of 1999. True?

9 A You'd have to look -- I don't -- I would say yes.

10 Q Do you specifically recall that there was one in July of  
11 1999 --

12 A Yes.

13 Q -- at which there was some discussion --

14 A Yes.

15 Q -- about this?

16 A Yes.

17 Q All right. And do you recall that what precipitated the  
18 public proceedings in November and December of 2000 was an  
19 application by the Eruv Association?

20 A What precipitated the -- no. What precipitated the  
21 November, December -- those discussions was the fact that the  
22 eruv was put up, and they petitioned us to not take it down.

23 Q Right.

24 A They never -- they never came before the town for a permit.

25 Q And didn't you understand as part of the public proceedings

Lipson - cross - Shapiro

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1 that up until a certain point in time, no one believed on  
2 either side, the town side or the Eruv Association side, that a  
3 permit was necessary from the town?

4 A I have no knowledge of that.

5 Q You have no knowledge of that?

6 A No, that -- I don't know what was in the eruv -- what was  
7 in the Tenafly Eruv Association.

8 I do know that anything -- anything put up on public  
9 property -- on town property has to come before the town.

10 Q Mr. Lipson, you were not present on November 28th but you  
11 said you did listen to the proceedings.

12 A Correct.

13 Q And did you read all the paperwork that was submitted by  
14 the Tenafly Eruv Association?

15 A Yes, I did.

16 Q Do you recall either in the paperwork that was submitted or  
17 in the public proceedings either on November 28th or December  
18 12th specific discussion about the fact that as far as the  
19 Tenafly Eruv Association was concerned, and the town up to a  
20 certain point in time, they didn't believe that any application  
21 was necessary? That because the Eruv Association had a  
22 proclamation from Bergen County --

23 THE COURT: Can we stop for a minute?

24 THE WITNESS: Yeah.

25 THE COURT: One of the problems in this dialogue is

Lipson - cross - Shapiro

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1 that there are too many questions at one time. So let's do one  
2 at a time. You're, in effect, testifying and then asking him  
3 to respond.

4 MR. SHAPIRO: Judge, it's cross.

5 THE COURT: That's one of the reasons why the  
6 examination here isn't -- is taking the turn it's taking. So  
7 do one question at a time.

8 Q Do you remember that in the materials submitted and in the  
9 public statements there was discussion about this very subject;  
10 that is, whether an application to the town was necessary?

11 A I'm not sure.

12 THE COURT: Let me jump in here for a minute.

13 THE WITNESS: Sure.

14 THE COURT: Do you have Plaintiffs' Exhibit 15 there  
15 in front of you?

16 THE WITNESS: Correct.

17 THE COURT: Can you tell me when, approximately when  
18 you first saw this document?

19 THE WITNESS: If it was dated November 20th, it was  
20 probably at a work session that day. It was before us at  
21 the -- at our work session.

22 THE COURT: At a work session?

23 THE WITNESS: At our work session.

24 THE COURT: All right. Thanks.

25 MR. SHAPIRO: Judge, just to follow up on your

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1 question, I didn't do it but I'm going to at the end of the  
2 testimony, mark -- there's a whole document here that was  
3 attached to it, and I couldn't find it.

4 THE COURT: Fine.

5 MR. SHAPIRO: And it's dated November 20th.

6 BY MR. SHAPIRO:

7 Q Okay. Mr. Lipson, I guess the question is basically this,  
8 following up on your testimony: I take it in your mind the  
9 application was not for permission to put one up, it was for  
10 permission not to take it down?

11 A Correct.

12 Q Was there any additional information that you would have  
13 deemed necessary to consider the application had it been deemed  
14 an application to put it up that you didn't get?

15 A Explain the question. I'm not following you.

16 Q Yes. In addition to whatever information you had before  
17 you --

18 A Right..

19 Q -- before you exercised your vote --

20 A Correct.

21 Q Would you have required in your mind, required any  
22 additional information prior to exercising your vote had it  
23 been an application to put one up?

24 A I would have gone through the same process as I did before,  
25 regardless -- I would have tried to do whatever little bit of

Lipson - cross - Shapiro

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research I did about an eruv. And so if that's the answer to your question then, that's what it is.

Q Well, is it fair to say that you still would have considered, if the configuration had been the same as it currently is, you would have considered it to be disruptive?

A The configuration of what?

Q The eruv.

A Of the eruv?

If the eruv -- I don't know -- I don't know how to answer that question. I really don't.

Q All right.

MR. SHAPIRO: I do want to mark this, Judge, before I forget.

MR. LESNEVICH: Your Honor, on 15 going into evidence, I merely wish to know who the author of this document is.

MR. SHAPIRO: You'll see that it's attached to 16, Walter. It was attached. It was just pulled off.

MR. LESNEVICH: I see, I see.

So the authors are Rabbi Block and Rabbi -- no, by Esther and Charles Agus?

MR. SHAPIRO: Yes.

MR. SHAPIRO: Yes.

BY MR. SHAPIRO:

Q I want to just show you what we marked P-16 and ask if you can identify that.

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1 MR. SHAPIRO: Walter, do you have any objection?

2 MR. LESNEVICH: No objection.

3 MR. SHAPIRO: Judge, I'll move it in.

4 THE COURT: P-16?

5 MR. SHAPIRO: Yeah. It's a letter dated November 20  
6 to the Mayor and Council from Esther and Charles Agus, and  
7 it's --

8 THE COURT: It's one, two, three -- four documents.

9 MR. SHAPIRO: -- a five-page document.

10 THE COURT: Okay.

11 (Plaintiffs' Exhibit 16 is received in evidence.)

12 THE WITNESS: I remember seeing this.

13 MR. SHAPIRO: Judge, I have nothing further on cross.

14 Thank you, Mr. Lipson.

15 THE WITNESS: Okay.

16 REDIRECT EXAMINATION

17 BY MR. LESNEVICH:

18 Q Mr. Lipson, you mentioned before something about a rental  
19 proclamation. Was there a rental proclamation brought to your  
20 attention during the application for the eruv?

21 A There was -- I understand -- there was one that I believe  
22 the county executive issued a proclamation, I don't know  
23 whether it was a rental thing, but it was a proclamation to  
24 establish an eruv within the boundaries of Tenafly, and it  
25 included all of Tenafly I believe. I don't have it in front of

Lipson - redirect - Lesnevich

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1 me to -- to tell you exactly. But on the bottom of it there  
2 was a disclaimer saying that if anything that was in this  
3 proclamation that was against local municipal law, it was null  
4 and void.

5 Q You mentioned that you're not on the Council now but you're  
6 running again?

7 A Correct.

8 Q And I take it then that you'll be going out to the  
9 electorate of Tenafly and be required to explain your vote on  
10 the eruv to them. Correct?

11 A Correct.

12 Q And whether you're re-elected or not will to some degree  
13 depend on whether the citizens of Tenafly agree with you?

14 A Correct.

15 Q If you're reelected and you come back on the Council  
16 January 2002 and there's another application made for an eruv,  
17 do you know how you'll vote then?

18 A No.

19 MR. SHAPIRO: Judge.

20 MR. LESNEVICH: Thank you.

21 MR. LESNEVICH: I have nothing further. Thank you.

22 THE COURT: Thanks very much, Mr. Lipson.

23 THE WITNESS: Okay. Should I leave this here?

24 THE COURT: Yeah, you can leave it there.

25 THE WITNESS: Okay.

1 (Witness excused.)

2 MR. LESNEVICH: Your Honor, can we take a short  
3 recess?

4 THE COURT: Sure.

5 MR. LESNEVICH: Thank you.

6 (A recess is taken.)

7 (Proceedings resume.)

8 THE COURT: We'll go to 1 o'clock. Okay.

9 MR. LESNEVICH: I'll call Councilwoman Kerge.

10 THE COURT: Good morning. Hi. We're going to ask you  
11 to come up to the witness stand, please.

12 MS. KERGE: Thank you.

13 THE COURT: And take either an oath or an affirmation.

14

15 M A R T H A B. K E R G E, called as a witness, having been  
16 first duly sworn, is examined and testifies as follows:

17

18 THE DEPUTY CLERK: Please be seated. Just turn that  
19 microphone around. Please state your name, spelling it for the  
20 record.

21 THE WITNESS: Martha, M-a-r-t-h-a; the initial B; and  
22 the last name, Kerge, K-e-r-g-e.

23 DIRECT EXAMINATION

24 BY MR. LESNEVICH:

25 Q Ms. Kerge, would you tell us briefly your professional

Kerge - direct - Lesnevich

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1 background?

2 A Yes, sir. I am a former teacher of English and journalism,  
3 and I now own, and have for quite a number of years, a long  
4 time, long-established family real estate company in Tenaflly  
5 and Cresskill.

6 Q And would you tell us your civic background in Tenaflly?

7 A I started my work on the Council in 1990 and served until  
8 the end of 1995. That was six years. I started my -- I was  
9 elected again and sworn in again in January of 1998 and I'm  
10 still there. I have now started my fourth term. They're not  
11 consecutive terms, but I've started my fourth term.

12 Q You've been on the Council longer than anyone?

13 A I think so.

14 Q During the course of your service in the Council, did you  
15 vote on an application by the Tenaflly Eruv Association,  
16 Incorporated to erect an eruv in Tenaflly?

17 A I did vote on that.

18 Q And what was your vote?

19 A I voted to deny the application.

20 Q Did any prejudice against Orthodox Jews or Orthodox Judaism  
21 affect or influence your vote in any way?

22 A Absolutely not.

23 Q Do you have such a prejudice?

24 A I do not.

25 Q Thank you.

Kerge - cross - Sugarman

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CROSS-EXAMINATION

BY MR. SUGARMAN:

Q Good morning, Ms. Kerge. I'm Bob Sugarman. I'm one of the lawyers for the Plaintiffs in this case.

A Good morning.

Q You submitted an affidavit in this proceeding. Is that correct?

A I did.

Q Do you happen to have a copy of it?

A I do not.

(A document is handed to the witness.)

A Thank you.

Q Is what I've just handed you a copy of the affidavit that you submitted?

A It is.

Q In the second paragraph there's a reference to a work session on July 9, 1999. That's a work session of the Council. Is that right?

A Yes, it is.

Q And you note that the revised agenda for that meeting included the eruv as a discussion item. Correct?

A It did.

Q That was a meeting at which there was a significant attendance of people who were not on the Council. Correct?

A That's right.

Kerge - cross - Sugarman

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1 Q And isn't it true that you called some people to tell them  
2 that this was on the agenda, and suggested that they come?

3 A That is not true. I did not know it was on the revised  
4 agenda. In fact, my statement when I walked into the meeting  
5 that evening, I was very concerned that we were placing items  
6 on agendas without those items being sent to the Mayor and  
7 Council beforehand.

8 I had been called and told by someone that they  
9 believed there was a new item on the agenda, whereby I said no,  
10 there cannot be because we don't have it before us.

11 I walked in, I saw the revised agenda and I questioned  
12 it. I did not call people to come to the meeting.

13 Q Who called you?

14 A I believe the person who called me was Adrienne Meltzer who  
15 had spent some time with -- at Borough Hall that afternoon.

16 Q Who is Adrienne Meltzer?

17 A Adrienne Meltzer a long time resident of Tenafly. She also  
18 happens to be associated with my company at this time. She --  
19 and she's very active in Borough affairs, former member of the  
20 Board of Adjustment in Tenafly.

21 Q And she and her husband were opposed to the eruv from day  
22 one. Isn't that correct?

23 A They are opposed to the eruv.

24 Q And they were even at the July 9, 1999 meeting. Correct?

25 A I believe Dr. Meltzer spoke at that meeting. I don't

Kerge - cross - Sugarman

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1 remember if Mrs. Meltzer was there.

2 Q Now, at that meeting, you report in paragraph 3, that you  
3 asked a question as to whether the eruv proponents could deal  
4 directly with Cablevision and not have to obtain the Council's  
5 permission. Correct?

6 A I did ask that question.

7 Q And you asked it because it wasn't clear that at the time  
8 that --

9 A It was a question, yes, sir.

10 Q It wasn't clear that the Eruv Association needed the  
11 Borough's permission. That's correct, isn't it, at that time?

12 A I suppose. It was a question in my mind.

13 Q All right. So you didn't know one way or the other in July  
14 of 1999 whether there was any need for the Association to apply  
15 to the Borough?

16 A I believed they needed to apply to the Borough. I did not  
17 understand how Cablevision could give the permission, but I  
18 thought perhaps there was something I did not understand.

19 Q Well, you said it wasn't clear to me that the cable wires  
20 are on Borough property and therefore doesn't require the  
21 permission.

22 There was a question. Isn't that fair to say?

23 A There was a question. It's fair to say there was a  
24 question.

25 Q There was a question.

Kerge - cross - Sugarman

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1 And isn't it also fair to say that the question of  
2 whether there was any ordinance that required the Association  
3 to submit an application remained unclear even -- to some, even  
4 on the date of the vote on December 12th, 2000?

5 A To people on the Council?

6 Q Yes.

7 A I can only speak for myself. I knew when we cast the vote  
8 that the application had to be made.

9 Q Okay. But in the middle of the meeting, isn't it true that  
10 Councilman Sullivan, and indeed at the end of the meeting  
11 before he voted, isn't it true that Councilman Sullivan said he  
12 wasn't aware of any ordinance or resolution that dealt with  
13 putting matters on utility poles?

14 A I don't remember. I honestly don't remember.

15 Q Let me see if I can refresh your recollection by reading  
16 from the transcript of the meeting of 12/12.

17 MR. SUGARMAN: It's Exhibit C to the Declaration of  
18 Mr. Shapiro.

19 Q And Mr. Sullivan --

20 MR. LESNEVICH: Your Honor, could have I have a moment  
21 to get a copy?

22 MR. SUGARMAN: Sure.

23 (Counsel confer off the record.)

24 Q Mr. Sullivan says -- let me back up.

25 (Reading) To the best my knowledge, and this can be

Kerge - cross - Sugarman

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1 confirmed, there is no ordinance, no resolution that says that  
2 you cannot hang something from a utility pole. To the best my  
3 knowledge -- and please correct me if I'm wrong -- there's no  
4 ordinance. However, there is precedent.

5 And then Mayor Moscovitz said, "There is an  
6 ordinance."

7 And Mr. Sullivan said, "Okay. All right. I stand  
8 corrected."

9 So certainly in Mr. Sullivan's mind, as he was  
10 explaining his vote before he cast it, he still had some  
11 question as to whether there was an ordinance?

12 THE COURT: Excuse me. There's an objection.

13 MR. LESNEVICH: Your Honor, I'd object as to what was  
14 in Councilman Sullivan's mind.

15 THE COURT: There's an objection to the form of the  
16 question, and I'll sustain it.

17 BY MR. SUGARMAN:

18 Q Now, back up in time, a month before that. There was a  
19 working session -- well, three weeks before. There was a work  
20 session on the Council on November 21st, 2000. Correct?

21 A Perhaps.

22 Q Okay.

23 A I don't have the dates.

24 Q All right. And that was the working session at which the  
25 vision statement that you refer to in your affidavit was

Kerge - cross - Sugarman

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1 submitted to the Council. I'll get to that later.

2 Also submitted to the Council --

3 THE COURT: I'm sorry. Was there an answer to the  
4 question?

5 MR. SUGARMAN: Excuse me?

6 THE COURT: Was that a question? And did I hear an  
7 answer from the witness?

8 MR. SUGARMAN: I think the witness nodded.

9 THE COURT: Well, we can't do it that way.

10 Do you understand what the question was?

11 THE WITNESS: There was a vision statement submitted.  
12 I'm not sure of the date.

13 MR. SUGARMAN: Okay.

14 Q And also submitted to the Mayor and the Council and  
15 discussed at that work session was a letter that Mr. Shapiro  
16 wrote to Mr. Lesnevich. Do you recall that?

17 A Refresh my memory.

18 Q All right. I'm going to show you what's been marked as  
19 Plaintiffs' Exhibit 14 and ask you whether that document was  
20 copied to the Mayor and the Council at some time after it was  
21 received on or about November 2nd. And I'll point out on the  
22 first page of the upper right-hand corner there's a notation.

23 A This obviously was distributed. I do see parts of it that  
24 I recognize. I'm sure the whole thing was distributed. That's  
25 it.

Kerge - cross - Sugarman

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1 MR. SUGARMAN: I offer it in evidence, your Honor.

2 MR. LESNEVICH: May I see the letter, please, sir?

3 Oh, no objection.

4 THE COURT: That's 17 in evidence.

5 MR. SUGARMAN: That's 14, your Honor. It was marked  
6 yesterday for identification but not submitted.

7 THE COURT: Oh, right. I'm sorry. 14.

8 (Plaintiffs' Exhibit 14 is received in evidence.)

9 Q Now, Ms. Kerge, let me direct your attention to  
10 page 2 of the letter which is the third page of the document,  
11 and particularly to the last -- the next to last paragraph in  
12 which Mr. Shapiro writes, quote:

13 I also appreciate your advice -- this is a letter to  
14 Mr. Lesnevich -- your advice that the Borough has no specific  
15 ordinance covering this matter or any particular format for the  
16 Eruv Association to follow in submitting its request. A  
17 written request by the Eruv Association will be promptly  
18 submitted..

19 Did you or did anyone else, to your knowledge, at the  
20 working session of November 21st take any issue with the  
21 statement that was in -- that I just read to you?

22 A I don't remember.

23 Q Would you turn to page 2 of your affidavit and look at  
24 paragraph 6. And in that paragraph you talk about speaking to  
25 many people, receiving many phone calls and much

Kerge - cross - Sugarman

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1 correspondence, attending the lengthy hearings and hearing from  
2 many people with strong feelings on both sides.

3 You took all of that into account when you cast your  
4 vote. Isn't that correct?

5 A I did.

6 Q And indeed at the Council session on the 12th you said that  
7 you had taken all of that -- listened carefully, read carefully  
8 and taken all of that into consideration when you cast your  
9 vote. Correct?

10 A Yes.

11 Q Now, in paragraph 7 you say four lines from the bottom, "It  
12 is my further understanding that Orthodox congregations can and  
13 do practice their religion freely without the accommodation of  
14 an eruv." Right?

15 A Yes.

16 Q Don't you also have an understanding that the Plaintiffs in  
17 this case believe that without an eruv they can't freely  
18 practice their religion?

19 I'm asking you what you think they believe?

20 A I think they obviously would like to have an eruv. I don't  
21 think that an eruv -- it is my observation that an eruv is not  
22 necessary to practice, to freely practice the religion but  
23 rather it is an accommodation --

24 Q I didn't --

25 A -- to that.

Kerge - cross - Sugarman

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1 Q But I'm asking you what your understanding is and was of  
2 what the Plaintiffs in this case thought, the Tenafly Eruv  
3 Association.

4 Isn't it true that it's your understanding that they  
5 believed -- putting aside whether you accept it or not -- they  
6 believed that the eruv was needed for them to freely practice  
7 their religion? Isn't that true?

8 A I can't answer yes to that because I believe it is my  
9 observation that they are practicing their religion now.

10 Q Did you hear the testimony at one of the hearings from  
11 Stephanie Gottlieb?

12 A I was at both hearings.

13 Q And you heard Stephanie Gottlieb's testimony?

14 A I'm sure I did, yes.

15 Q And you heard her testify that without an eruv, she can't  
16 go to synagogue because she's got small children?

17 A I heard her say that.

18 Q And do you have an understanding that that is her good  
19 faith belief?

20 A I heard what she said. Do I have an understanding that she  
21 could never practice her religion because of that? No.

22 MR. LESNEVICH: Your Honor, I'm going to object to the  
23 questions as to her belief.

24 MR. SUGARMAN: No, I'm asking --

25 THE COURT: Well, that was the question. There's an

Kerge - cross - Sugarman

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1 objection. The answer has already come out. But in the  
2 future, let's stay away I think --

3 Q I'm asking this witness -- Ms. Kerge, I'm asking you  
4 whether you have any doubt as to whether Mrs. Gottlieb believes  
5 that she --

6 THE COURT: Well, that's the objection.

7 THE WITNESS: I can't --

8 THE COURT: Hold it. When that gentleman over there  
9 stands, that means there's an objection.

10 THE WITNESS: Okay. Okay.

11 THE COURT: The flag is --

12 MR. LESNEVICH: She's not used to listening to me,  
13 your Honor. She'll listen to you though.

14 (Laughed.)

15 THE COURT: There's an objection to the form of the  
16 question, getting into the validity of the beliefs. And I  
17 believe there's substantial amount of case law on that subject,  
18 so I'm going to sustain the objection.

19 MR. SUGARMAN: All right. I'll move on.

20 Q I mentioned before a vision statement that you actually  
21 mention in paragraph 9 of your affidavit, so why don't you go  
22 to that, and let me put before you what's been marked and  
23 admitted as Plaintiffs' Exhibit 16.

24 A Thank you.

25 Q And the question is: Is the vision statement to which you

Kerge - cross - Sugarman

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1 refer in paragraph 9 one of the pages of that document?

2 I think there's a question. The question is: Is the  
3 vision statement that you mentioned in your affidavit a part of  
4 the document I've just put before you?

5 A I'm sorry. I didn't understand. Yes, it is. Yes.

6 Q Would you turn to that, please.

7 Now, in paragraph 9 of your affidavit you said in the  
8 last sentence, "The concept of building a community within a  
9 community poses serious questions for Tenaflly."

10 Now the community that you were talking about was the  
11 Orthodox Jewish community that was seeking to put up the eruv.  
12 Correct?

13 A Yes.

14 Q And that, to you, posed serious questions for Tenaflly?

15 A Yes.

16 Q Now, there is a Catholic community in Tenaflly. Correct?

17 A There is a Catholic church in Tenaflly.

18 Q And would you consider the people who attend that church or  
19 the residents of Tenaflly to be the "Catholic community" of  
20 Tenaflly?

21 A They're members of the church.

22 Q Is there a Korean community in Tenaflly?

23 A There are Korean people living in Tenaflly.

24 Q But you don't consider -- do you consider them the "Korean  
25 community" of Tenaflly?

Kerge - cross - Sugarman

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1 A No.

2 Q There is right now a Jewish community in Tenaflly. Correct?

3 A There are Jewish people living in Tenaflly, and there are  
4 two synagogues.

5 Q But you don't consider there to be a Jewish community in  
6 Tenaflly?

7 A Tenaflly is a community, a small community. We are not  
8 comprised -- at least I would like to think that we are not  
9 comprised of a lot of small communities within the community.  
10 We are geographically a small community and we're a community  
11 that's small enough or large enough to be as involved or as  
12 uninvolved as one might want within the community. That's my  
13 concept of "community" in Tenaflly.

14 Q Okay. Now, looking at the vision statement, Ms. Kerge.

15 A Yes.

16 Q And it's the vision statement that gave you the concern  
17 about this community within a community. Correct?

18 A Yes.

19 Q All right. In the second Roman numbered paragraph, it's  
20 headed "Motivation for Building a New Community."

21 A Yes.

22 Q And it lists the interests of the people who are interested  
23 in building this community. And one is, growing spiritually.  
24 Does that raise any serious questions for you?

25 A Growing spiritually?

Kerge - cross - Sugarman

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1 Q Right.

2 A No.

3 Q Then it says, they want to take an active role in communal  
4 no affairs, charitable projects and Bible study. Does that  
5 raise any serious questions for Tenaflly?

6 A I would like you to define "communal affairs."

7 Q Well, you read this document, did you not?

8 A I did.

9 Q And what was your understanding of what "communal affairs"  
10 meant as you read it?

11 A I'm not sure that I can answer yes to that question or no  
12 to that question because of that particular phrase.

13 Q What was it in the phrase that gave you some pause as to  
14 whether you thought that could be a problem?

15 A The concept of the community, the larger community versus  
16 the small community.

17 Q So you didn't think that meant an active role in communal  
18 affairs, meaning the total Tenaflly community?

19 A I don't know, I'm not sure.

20 Q Okay. Then it says, maintaining a spiritual and respectful  
21 place for prayer. Did that raise any serious questions for  
22 Tenaflly?

23 A No.

24 Q Or maximizing each person's potential with respect to Bible  
25 study. Did that raise any serious questions for Tenaflly?

Kerge - cross - Sugarman

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1 A No.

2 Q Or transmitting proper values to future generations. Did  
3 that raise any serious questions for Tenaflly?

4 A No, I don't think so.

5 Q And then it goes on to say, sharing our values with and  
6 learning from Jews of other denominations as well as the  
7 surrounding non Jewish community.

8 Did that raise any serious questions for Tenaflly in  
9 your mind?

10 A No.

11 Q Under the third section it says, goals. And in the middle  
12 one of the goals was, "organizing political events or forming  
13 connections to people of other backgrounds."

14 Did either of those raise any serious questions for  
15 Tenaflly in your mind?

16 A I'm reading that paragraph.

17 Q Sure.

18 A I can't answer no to that paragraph because there are too  
19 many variables within the paragraph, and I think it goes back  
20 to the concept of the communal affairs. I won't answer that  
21 question with a no. I'll have to say I don't know.

22 Q Okay. So that goes back to this community within a  
23 community problem that you had. All right.

24 Would you turn to the second page of Plaintiffs'  
25 Exhibit 16, and that is a number of responses to potential

Kerge - cross - Sugarman

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1 objections to the eruv. And I take it you read that when you  
2 read the whole document. Correct?

3 A Yes.

4 Q And the second paragraph is a response to the objection  
5 that, quote, it creates an atmosphere of a community within a  
6 community. And the response goes on to say, "...among other  
7 things, that we want a community that celebrates its diversity  
8 and respect for all religions and nationalities."

9 Did that raise in your mind any serious questions for  
10 Tenafly?

11 A I'm sorry, which sentence were you reading?

12 Q The second sentence.

13 A "We want a community that celebrates its diversity"? And  
14 does that raise any doubts?

15 Q Or any serious questions, in your words.

16 A No.

17 Q And, "We want to raise our children in a town that stands  
18 for tolerance and high standards in its educational system."

19 Does that raise any serious questions?

20 A No.

21 Q And "We would never want Tenafly to be known as a town that  
22 excluded a certain group." Did that raise any serious  
23 questions?

24 A No.

25 Q And it ends up, "Rather, we want Tenafly to continue in the

Kerge - cross - Sugarman

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1 tradition of inclusiveness and support for each individual and  
2 religious belief." Did that raise any serious questions?

3 A Absolutely note.

4 Q Now, in paragraph 10 of your affidavit, in the middle,  
5 you're talking about the choice of a person as to whether to  
6 buy or rent a home in a community. Correct?

7 A Yes.

8 Q And you say, "Every person makes the choice based on his  
9 own needs as well as the area, the community, neighborhood, et  
10 cetera."

11 Didn't you understand that Observant Jews who felt the  
12 need for an eruv would choose not to live in Tenaflly if that  
13 need wasn't met?

14 A I can't answer that because we do have Observant Jews  
15 living in Tenaflly without an eruv, and I believe Mr. Agus in  
16 one of the papers he gave us called to our attention the fact  
17 that the Orthodox community in Englewood has survived for many  
18 years, did survive for many years without the accommodation of  
19 an eruv. The eruv was only established there in the 1980s, I  
20 believe.

21 Q Yes, but I don't think you answered my question, and let me  
22 ask it again. You're talking about the needs of people  
23 which -- which influence their decision to buy houses.  
24 Correct?

25 A Yes.

Kerge - cross - Sugarman

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1 Q And you're a real estate person, and you know full well  
2 that people buy houses because they fill their needs. Right?

3 A Absolutely.

4 Q And that's what you said.

5 A Absolutely.

6 Q So the question is: Didn't you know that by denying the  
7 eruv, you would be denying one need that certain Orthodox Jews  
8 felt for the community in which they lived?

9 A No, not necessarily, because they were in that community  
10 already. They came to the community without an eruv.

11 Q Did you consider whether people who didn't live in the  
12 community but were considering buying houses in the community  
13 and were Orthodox Jews who felt the need for an eruv, did you  
14 consider whether those people would choose not to buy in  
15 Tenafly if there wasn't an eruv?

16 A Mr. Sugarman, I don't know what feeling the need for an  
17 eruv is. I know that there are Orthodox Jews, I know that  
18 there is an accommodation of an eruv that's available if  
19 municipalities choose to grant the request. I do not  
20 understand or do not know what the deeper belief is about  
21 absolutely having to have an eruv.

22 I am non Jewish, I am Presbyterian. I -- as I say, I  
23 think in my last paragraph of my affidavit, I say that I honor  
24 and respect all religions; and I do. And I do not know that  
25 denying the eruv will prohibit Orthodox Jews from choosing to

Ms. Kerge - cross - Sugarman

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1 live in Tenafly.

2 Q Let me ask it a different way.

3 You do know that certain Orthodox Jews believe that  
4 without an eruv they can't do certain things that they would  
5 like to do on the Sabbath. Correct?

6 A That they would like to do?

7 Q Yes, right.

8 A On the Sabbath?

9 Is it necessary?

10 I'm looking at the word "necessity."

11 Q All right. But whether it's necessary or not, let's just  
12 take it in my -- you do know -- that there are certain Orthodox  
13 Jews -- and I'll use the word -- in their minds who need --  
14 because that's the word you use -- who need an eruv to freely  
15 practice their religion. There are certain Orthodox Jews --

16 A You're telling me?

17 Q -- who believe that --

18 A You are telling me that?

19 Q You don't know that?

20 A I know what I've heard in all testimony that was given  
21 before us.

22 Q All right. And there was testimony by Ms. Gottlieb and  
23 others that she needs the eruv in order to go to synagogue on  
24 Sabbath. Right?

25 A That's what she said.

Kerge - cross - Sugarman

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1 Q And so isn't it a fact that you knew full well that without  
2 an eruv, other Orthodox Jews who didn't live in Tenafly and who  
3 similarly needed, as Mrs. Got Gottlieb did, an eruv to go to  
4 synagogue with their children on Sabbath would not move to  
5 Tenafly if there wasn't an eruv?

6 A I can't answer that affirmatively, absolutely not.

7 Q Now, going to paragraph 11, Ms. Kerge, you talk about the  
8 history of strictness regarding the Borough's right-of-way.  
9 And you say, "In most cases, the Borough doesn't permit any  
10 encroachment, whether planting, fences, driveways, signs, et  
11 cetera."

12 Isn't it a fact, Ms. Kerge, that the Borough regularly  
13 permits homeowners to put sprinkler systems in the  
14 right-of-way?

15 A I know that the Borough has permitted sprinkler systems in  
16 the right-of-way with proper documentation when homeowners have  
17 come to the Borough because that's the connection that has to  
18 be made there for whatever reason.

19 Q Okay. So in those cases the Borough does permit an  
20 encroachment?

21 A In those situations --

22 Q Right?

23 A -- the Borough has permitted.

24 Q And the Borough has also permitted an encroachment for the  
25 building of a stonewall. Correct?

Kerge - cross - Sugarman

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1 A Are you speaking specifically?

2 Q Yes.

3 A Which stonewall are we talking about?

4 Q I'm speaking specifically of a stonewall that was built by  
5 Arnold and Myra Gans in 1990.

6 A Perhaps. I was there in 1990.

7 Q You were there, but in fairness, you were absent from the  
8 meeting.

9 A Okay. Thank you.

10 Q But you also know that the Borough has permitted fences to  
11 be built on the Borough right-of-way?

12 A I do know that there have been cases -- there also have  
13 been cases, I believe there have been cases of denial. I won't  
14 say that for sure, but I know that the Borough is very strict  
15 about objects that are placed in its Borough right-of-way, and  
16 those objects, if they are to continue, must be documented and  
17 must receive permission.

18 Q Well, but you also know that once documented and once  
19 received permission, the Borough almost as a matter of course  
20 allows homeowners to put their sprinkler systems or fences or  
21 stonewalls into the right-of-way. Isn't that right?

22 A I won't answer yes to that; no, I won't.

23 Q Can you tell me as you sit there any instance in your  
24 tenure in which such a request was denied?

25 A I cannot tell you specifically, so I won't try.

Kerge - cross - Sugarman

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1 Q Now, going to paragraph 12 you raise the question in the  
2 middle, "How does one opt out of the eruv boundary?"

3 And then you say, "I believe that this accommodation  
4 would affect the rights of those who do not want to live within  
5 the eruv."

6 Ms. Kerge, is there any right that you had before the  
7 eruv went up that you don't have now that it is up?

8 A I personally?

9 Q Yes.

10 A I think the -- I believe -- it is my observation that the  
11 eruv is symbolic in its meaning, and that symbolism might not  
12 apply to me but might apply either positively or negatively to  
13 the rest of the people in Tenafly.

14 MR. SUGARMAN: I move to strike that as nonresponsive  
15 and I would like to ask the question again.

16 MR. LESNEVICH: Your Honor, how is that nonresponsive?

17 MR. SUGARMAN: Because the question I asked is: Is  
18 there any right -- picking up on Ms. Kerge's affidavit -- that  
19 she had before the eruv went up which has been affected, also  
20 using the words of her affidavit. And I don't think I got the  
21 answer to that question.

22 MR. LESNEVICH: Well, when you're dealing --

23 THE WITNESS: But we're --

24 MR. LESNEVICH: Wait a minute.

25 THE COURT: Let me straighten this out.

Kerge - cross - Sugarman

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1 MR. LESNEVICH: When you're dealing in this kind of  
2 nebulous discussion of feelings and rights, I think you have to  
3 accept any response as to what the person is trying to say.

4 THE COURT: I don't know that you want that answer  
5 stricken, but if you want it stricken, I'll strike it.

6 He's entitled to have the answer to the question that  
7 he's asked, which I thought was a very interesting answer.

8 THE WITNESS: That was my answer, your Honor.

9 THE COURT: Anyway, I'll strike it and go ahead.

10 MR. SUGARMAN: If you thought it was interesting I'll  
11 leave it, then I'll ask the question that I asked and ask the  
12 witness to answer.

13 THE COURT: The record will reflect that the answer is  
14 not stricken.

15 MR. SUGARMAN: Fine.

16 BY MR. SUGARMAN:

17 Q Is there any right that you had personally before the eruv  
18 was put up that you don't have now that it is up?

19 A I don't know.

20 Q Is there anything that you personally can't do today  
21 because the eruv is up that you could have done, or could do  
22 before the eruv was put up?

23 A I don't know.

24 Q You don't know whether -- so you don't know whether the  
25 eruv has any affect on your individual rights. Is that what

Kerge - cross - Sugarman

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1 you're saying?

2 A As far as activity is concerned, you're asking in the "do  
3 syndrome"; I don't know.

4 Q Well, the eruv has been up for six or seven months.  
5 Correct?

6 A I know.

7 Q In that time frame, is there anything that you felt you  
8 couldn't do that you could have done before the eruv went up?

9 A In that time frame?

10 Q Yes.

11 A No.

12 Q Do you know the boundaries of the eruv?

13 A I'm not sure I do.

14 Q All right. So you wouldn't know when you drove into it and  
15 when you drove out of it. Right?

16 A I know some of the areas that exist within the eruv. Do I  
17 know when I'm driving out of it? Not necessarily. Not unless  
18 I get out and look.

19 Q And when you say "not unless you get out and look," what  
20 would you look for?

21 A Well, I would look for the black strips, that's one thing.  
22 I would not necessarily look for the thin wire, but I could  
23 look for the thin wire. But my understanding is that there are  
24 segments of town that are dependent upon the dedicated lines of  
25 some of the utility companies, so --

Kerge - cross - Sugarman

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1 Q Well, the thin wire you're referring to is the horizontal  
2 wire that goes from pole to pole? Isn't it true that all of  
3 those wires are utility wires?

4 A I don't know.

5 Q And then you're talking about the strips that go up and  
6 down the pole, you'd look for the strips that go vertically up  
7 and down the pole?

8 A I know that there are strips, yes.

9 Q All right. When you looked at one of those strips, could  
10 you tell --

11 A I don't --

12 Q Wait. Let me finish the question.

13 Could you tell whether it was a strip that was there  
14 because of the eruv --

15 A I --

16 Q -- or a strip that was there because Verizon was running a  
17 wire up the pole?

18 A I don't know.

19 Q You couldn't tell that?

20 A Probably not.

21 MR. SUGARMAN: Could I have a minute, your Honor?

22 (There is a pause nor Mr. Sugarman.)

23 Q In the many discussions that you had before you voted, did  
24 you have any discussions with any of the proponents of the  
25 eruv?

Kerge - cross - Sugarman

66

1 A I had discussions with people who were of the Orthodox  
2 community.

3 Q I'm not sure that answers my question.

4 A I'm not sure it does either.

5 Q Did you have, for example -- you got this letter from  
6 Esther and Charles Agus. Correct?

7 A I did speak with Mr. Agus on the phone.

8 Q And did you ask him what he meant by "communal affairs"  
9 which you seem to have some question about?

10 A I'm not sure at what point I had my discussion with Mr.  
11 Esty over the phone, whether --

12 Q Mr. Agus?

13 A Agus. Agus, right.

14 Q Okay.

15 A Whether it was before or after I received this.

16 Q Let me put the question another way. When you saw the  
17 vision statement and the submission, did you raise a question  
18 with anyone as to what "communal affairs" meant as it was  
19 stated in the vision statement?

20 A I'm not sure I did.

21 Q You have no recollection of --

22 A No.

23 MR. SUGARMAN: I have nothing further, your Honor.

24 REDIRECT EXAMINATION

25 BY MR. LESNEVICH:

Kerge - redirect - Lesnevich

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1 Q Very briefly. When you voted on the eruv, was it your  
2 intent to stop people from -- anybody, including Orthodox Jews,  
3 from seeking to purchase a home in Tenaflly?

4 A Absolutely not.

5 Q As a realtor, would you ever discourage from someone  
6 wanting to buy a home in Tenaflly?

7 A For a lot of reasons, absolutely not.

8 Q Thank you.

9 MR. LESNEVICH: Nothing further.

10 THE COURT: I'm sorry, I'm not sure how you pronounce  
11 your last name.

12 THE WITNESS: Kerge, K-e-r-g-e.

13 THE COURT: Ms. Kerge, as I sit here this afternoon  
14 I'm still not sure why you denied the application.

15 THE WITNESS: I voted to deny the application because  
16 I believed that the eruv was not necessary for Tenaflly for  
17 people to worship. I believed that Tenaflly is a diverse  
18 community; an inclusive community and that people can worship  
19 freely. I saw the eruv as a special accommodation, going  
20 beyond the traditional Orthodox worship.

21 THE COURT: All right. Thank you.

22 Anything else?

23 MR. LESNEVICH: No, your Honor.

24 MR. SUGARMAN: No, your Honor.

25 THE COURT: Ms. Kerge, thanks very much. You can step

1 down.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 MR. LESNEVICH: Your Honor, may I take a short break  
5 to the men's room?

6 THE COURT: Well if you take a short break it will  
7 take us to lunch.

8 MR. LESNEVICH: Oh. Shall we just break for lunch now  
9 and come back --

10 THE COURT: Actually, we won't. We'll break 1  
11 o'clock.

12 Yeah, we can break now.

13 MR. SHAPIRO: I thought you said you were breaking at  
14 1 o'clock.

15 THE COURT: I did. Right.

16 (A recess is taken.)

17 (Proceedings resume.)

18 MR. LESNEVICH: Your Honor, I'll call to the stand Ann  
19 Moscovitz, please.

20 THE COURT: Good afternoon.

21

22 A N N A. M O S C O V I T Z , called as a witness, having  
23 been first duly sworn, is examined and testifies as  
24 follows:  
25

Moscovitz - direct - Lesnevich

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1 THE DEPUTY CLERK: Please be seated.

2 Just move the chair a little closer to the microphone  
3 and you can adjust that microphone.

4 THE WITNESS: Yes. Is this all right?

5 THE DEPUTY CLERK: Yes.

6 Please state your name, spelling both first and last  
7 for the record, please.

8 THE WITNESS: Ann A. Moscovitz. A-n-n; A.  
9 M-o-s-c-o-v-i-t-z.

10 DIRECT EXAMINATION

11 BY MR. LESNEVICH:

12 Q Would you tell us, Mayor Moscovitz, about your civic  
13 background in Tenafly; what you did before you got involved  
14 with the government?

15 A I was always involved in Tenafly from my years with the  
16 HSA. I should start as cookie chairman for the Girl Scouts.

17 Q What was the major project you did before --

18 A Directly before I was Centennial Chairperson for the town.

19 Q And when were you elected Mayor?

20 A In -- I took office in '96, 1996.

21 Q And you were the first what in Tenafly?

22 A Well, the first female Mayor, the first Jewish Mayor, and  
23 there's some question about whether or not I was the first  
24 Democratic Mayor, but I think so.

25 Q What is the form of government in Tenafly? What is the

Moscovitz - direct - Lesnevich

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1 Mayor's role in our form of government?

2 A We have what's called the weak mayor form of government,  
3 weak mayor administrator form of government.

4 Q When, on what occasion does the mayor vote?

5 A Only in case of a tie and not on bonding issues.

6 Q In the six years you've been Mayor, how often have you  
7 voted?

8 A I think twice.

9 Q You mentioned in passing that you were Jewish. What temple  
10 do you belong to?

11 A Temple Sinai.

12 Q What area of Judaism is that?

13 A That's Reformed.

14 Q Are there any Orthodox Jewish persons in your family or in  
15 your lineage?

16 A My grandparents were Orthodox, and I have a grandson who is  
17 practicing Orthodox Judaism.

18 Q Did you influence or seek to influence the vote of the  
19 Council members on the Eruv application?

20 A No.

21 Q Do you have any personal animosity toward Orthodox Jews or  
22 Orthodox Judaism?

23 A Absolutely not.

24 Q Mayor, in your opinion in the government, what is the key  
25 issue we're dealing with here?

Moscovitz - direct - Lesnevich

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1 A For me, the key issue is a constitutional one, a legal one,  
2 and that is that municipal property is not to be used for any  
3 private or religious purpose of a permanent nature.

4 Q Thank you, Mayor.

5 MR. LESNEVICH: No further questions.

6 CROSS-EXAMINATION

7 BY MR. SUGARMAN:

8 Q Mayor Moscovitz, I'm Bob Sugarman. I represent Plaintiffs  
9 here.

10 You said that you didn't seek to influence any of the  
11 members of the Council. You will concede, however, that you  
12 were outspoken in the period of time before the vote was taken.  
13 Isn't that correct?

14 A What do you mean, "outspoken"?

15 Q You didn't hesitate to make your views known on various  
16 subjects.

17 A During work sessions we always exchange our views so that  
18 we can inform each other.

19 Q And in discussions that you also had with others outside  
20 the work sessions. Correct?

21 A Before the vote, I -- I suppose the eruv was discussed. I  
22 don't think that I had any particular view about it other than  
23 the fact that I felt very strongly that it did not belong on  
24 municipal property.

25 Q The first work session at which the eruv was discussed was

Moscovitz - cross - Sugarman

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1 in July of 1999. . Correct?

2 A I suppose that's the date. It was in July, yes.

3 Q And at that time you were quite supportive of the eruv.

4 Isn't that right?

5 A At that time I expressed the opinions that were given to  
6 me -- that were presented to me by the two gentlemen who came  
7 seeking permission for an eruv. I could see nothing wrong with  
8 it at that time, and I felt that it was a good thing to do.

9 Q And you expressed that in the discussion that you had at  
10 the working session of the Council in July of 1999?

11 A I think that what I expressed -- or perhaps I expressed  
12 that.

13 Q Well, you said in words or substance that it's nothing that  
14 can be seen by anybody.

15 A Right.

16 Q There's nothing significant about it. Right?

17 A That was my view at the time.

18 Q And anybody not looking for it wouldn't even know it was  
19 there?

20 A That's still true.

21 Q And it's not an obvious thing, but allows these people to  
22 bring their children to temple. That was what you expressed in  
23 July of 1999. Correct?

24 A Yes.

25 Q Yes.

Moscovitz - cross - Sugarman

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1 And at that time you also said that you would be very  
2 upset if this Council did not permit such a simple request?

3 A If you heard that on the tape, I said it. I don't  
4 remember.

5 Q This was working session of the Council. Correct?

6 A That's right.

7 Q And you were surprised, were you not, that there were so  
8 many people who attended?

9 A Yes, I was very surprised.

10 Q And that you wondered about that, as to why that was. Is  
11 that right?

12 A Yes.

13 Q Did you later find out that it was because the word got out  
14 that there was going to be a discussion of the eruv?

15 A Yes.

16 Q And did you also find out that it was Ms. Kerge, among  
17 others, who made phone calls --

18 A No.

19 Q -- transmitting that information?

20 A I didn't know that. I didn't know who spread the word.

21 Q And to this day you don't?

22 A Well, I just heard the testimony of Mrs. Kerge, but I did  
23 not know. Our agenda is posted on the bulletin board.

24 Q Right.

25 A So anybody could have seen it.

Moscovitz - cross - Sugarman

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1 Q So other than what Ms. Kerge said about Mrs. Meltzer, you  
2 don't have any information about who it was that --

3 A It may have been more than one person. I really don't  
4 know.

5 Q Now, at that time you didn't believe that the permission of  
6 the Council was needed to put these --

7 A Oh, yes, I did. I told the gentlemen who came before me  
8 that they need permission.

9 Q In July of 1999?

10 A I presented this to the Mayor and Council because I was  
11 approached by Mr. Agus and Mr. Osen, they had made an  
12 appointment to come and see me. They didn't say they  
13 represented the Tenaflly Eruv Association, I don't think there  
14 was such an association at the time. And they came to see me  
15 in my office, and they told me what an eruv was, why they  
16 wanted it, presented all the good reasons that they have used,  
17 and said that they wanted to give me a dollar or another -- or  
18 another small gift in exchange for permission to rent the  
19 streets of Tenaflly as an extension of their homes.

20 Q All right. But I'm talking about the permission of the  
21 Borough to put the wires --

22 A And I told them --

23 Q Let me finish.

24 A -- that I couldn't do it -- I'm still answering your first  
25 question.

Moscovitz - cross - Sugarman

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1 Q Well, don't --

2 A I didn't get to finish the answer.

3 THE COURT: Let's start over again.

4 Q Didn't you say at the July '99 meeting of the Council, they  
5 can do it anyway. Anybody can do it tomorrow?

6 A No.

7 Q Talking about the -- whether anyone can put anything on the  
8 poles of the Borough, do you recall a number of years ago there  
9 was an issue about regionalization of the schools?

10 A Yes.

11 Q And do you recall that engendered a significant amount of  
12 discussion and controversy?

13 A Yes.

14 Q And do you recall also that supporters of the high school  
15 put orange ribbons on the utility poles?

16 A I recall.

17 Q And those orange ribbons stayed there for a lengthy period  
18 of time. Correct?

19 A Those were there during that particular issue. They were  
20 temporary.

21 Q And --

22 A And they were not -- they did not get a permit for it.

23 Q So nobody came to the Council?

24 A No.

25 Q And the Council didn't say okay, and they were put up and

Moscovitz - cross - Sugarman

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1 the Council didn't do anything to take them down. Correct?

2 A That's correct.

3 Q Now you at some point in September met with Rabbi Goldin  
4 and Ms. Kurland. Correct?

5 A That's correct.

6 Q And at that meeting you expressed some concern about the  
7 symbolic rental of the town. Isn't that right?

8 A I had expressed that originally to the first people who  
9 came to see me, and in the work session, and again, yes.

10 Q But I'm talking about this meeting. Why don't you please  
11 try to focus on my questions.

12 At this meeting --

13 A Yes.

14 Q -- you expressed that concern?

15 A Yes.

16 Q And Rabbi Goldin explained that the eruv proclamation is  
17 not intended to have any legal effect under civil law. Isn't  
18 that right?

19 A What I recall the Rabbi said was a bit different from that.  
20 He said, we don't need your permission.

21 Q Rabbi Goldin said that?

22 A Yes. That the county executive's permission was sufficient  
23 for their purposes.

24 Q You don't remember him explaining to you that the eruv  
25 proclamation was not intended to have any legal effect under

Moscovitz - cross - Sugarman

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1 civil law? This is Rabbi Goldin in September.

2 A Yes, he said it was sufficient for their purposes, meaning  
3 their religious purposes.

4 Q Right.

5 A It has no effect in civil law.

6 Q So you acknowledge that it has no effect on civil law?

7 A Absolutely it has none.

8 Pat Schuber said that himself at the bottom of the  
9 proclamation.

10 Q The proclamation itself says that. So there's no question  
11 in your mind that --

12 A There was no permission, no local permission given for the  
13 eruv, that's right.

14 Q There was no -- that the proclamation had no affect on  
15 anybody's rights under civil law. Is that right?

16 A That's absolutely right.

17 Q Okay. Now, you then, after discussing the subject of the  
18 proclamation, you said you didn't want them -- Rabbi Goldin --  
19 you didn't want them moving in?

20 A You are giving the answer without the question.

21 Q Did you say to Rabbi Goldin --

22 A I quoted --

23 Q -- you didn't want them moving in?

24 A I quoted the people who had come to our meeting. He asked  
25 me what the people who came to the workshop had said.

Moscovitz - cross - Sugarman

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1 That was my response to that question. It was not my  
2 opinion. It has never been my opinion.

3 Q Okay. So what you said to Rabbi Goldin is the people at  
4 the meeting said that they didn't want them moving in?

5 A That's right.

6 Q And by "them," you referred to Orthodox Jews?

7 A That's right.

8 Q And Rabbi Goldin submitted an affidavit in this case.  
9 Correct? Is that right? Rabbi Goldin submitted an affidavit  
10 in this case?

11 A Yes.

12 Q And you in your affidavit, you commented on your meeting  
13 with Rabbi Goldin. Correct?

14 A Yes.

15 Q Is that, Mayor Moscovitz, the affidavit that you submitted  
16 in this case?

17 A Yes.

18 Q Okay. And would you turn to paragraph 16.

19 A Yes.

20 Q And in the fourth sentence you said, I quote, "I did have a  
21 meeting with Rabbi Goldin." And then the rest of the paragraph  
22 talks about that meeting. Correct?

23 A Yes.

24 Q All right. In the Rabbi's affidavit he says, quote, "The  
25 Mayor then said that she didn't want them moving in."

Moscovitz - cross - Sugarman

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1 Now I ask you to look at your affidavit and ask you  
2 whether in your affidavit in paragraph 16 you contested or took  
3 issue with that statement?

4 A I don't see that I did.

5 Q Now --

6 A Well, would you repeat that, please?

7 Q My question is whether in your affidavit you took issue  
8 with, or denied that you said to Rabbi Goldin that his words,  
9 "she didn't want them moving in"?

10 A I didn't address those specific words here in the  
11 affidavit, but that is what I was referring to when I said that  
12 the comments I made were twisted.

13 Q And they were twisted because he attributed that to you as  
14 opposed to --

15 A Exactly.

16 Q -- others that had --

17 A That's right.

18 Q -- expressed those concerns?

19 A He didn't use the question that I was answering but  
20 attributed those statements to me and those sentiments to me.  
21 They are not mine.

22 Q You were also interviewed by a reporter for a publication  
23 called the Jewish Voice in December of 2000. Correct? Susan  
24 Rosenbluth?

25 A Yes.

Moscovitz - cross - Sugarman

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1 Q And that article reports that you had told a number of  
2 people, quote, We just can't have all these Orthodox Jews  
3 moving into town, closed quote.

4 Did you see that report in that article?

5 A I saw it and I will never speak to that reporter again.

6 Q Did you write any letter to Ms. Rosenbluth?

7 A I had -- oh, I'm sorry.

8 Q Did you write any letter to Ms. Rosenbluth taking issue  
9 with her statement, or the statement in the article?

10 A I don't think I wrote her a letter. I don't know. Did I?  
11 I don't -- I don't recall.

12 Q I'm asking. I don't have the answer.

13 A I don't recall writing a letter.

14 Q In your discussion with Rabbi Goldin, you told him that you  
15 feared that Orthodox Jews might throw stones at cars that were  
16 operating on --

17 A No, I did not say that.

18 Q You did not say that?

19 A I quoted what some people had said. He asked me whether I  
20 thought that would happen in Tenafly.

21 I said absolutely not, and then I related that,  
22 however, it had happened to my daughter on horseback in the  
23 Catskills.

24 Q All right. And you related that to him because you thought  
25 it was relevant to the discussion about the eruv in Tenafly.

Moscovitz - cross - Sugarman

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1 Isn't that right?

2 A No, because he brought it up -- because he asked me what  
3 people had said at the meeting.

4 Q Okay. And so --

5 A And I reported what people had said at the meeting. And he  
6 followed it up with the question about whether it would happen  
7 in Tenafly. And I said no, of course not.

8 Q But you then volunteered that it had happened to your  
9 daughter in the Catskills. Correct?

10 A No. Well, it was around that time -- and now I'm not sure  
11 of the exact order in which these statements were made, but it  
12 was around that time that Rabbi Goldin was very upset, thought  
13 that these sentiments were coming from me, and left the room.  
14 And I persuaded him to return saying that we weren't going to  
15 resolve anything if he left. And he agreed, and he came back.

16 And he said, why could you even say anything like  
17 that, et cetera?

18 And in response to that, I said, no, I didn't think it  
19 would happen in Tenafly. It has happened, however, to my  
20 daughter in the Catskills. It was simply an aside.

21 Q Now, you also expressed to Rabbi Goldin your concern that  
22 an influx of Orthodox Jews would jeopardize the acceptance and  
23 the progress that the Jewish population of the Borough had  
24 achieved.

25 A I believe --

Moscovitz - cross - Sugarman

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1 Q Isn't that right?

2 A I believe I said that having an eruv might do that. Not  
3 having Orthodox. We have a wonderful Orthodox community in  
4 Tenafly.

5 Q Well, and the reason that an eruv would do that is because  
6 more Orthodox Jews would be attracted to Tenafly?

7 A No.

8 Q Well, explain why if there is --

9 A Because I thought people would --

10 Q Let me finish the question.

11 A I'm sorry.

12 Q Explain why, since there's an Orthodox Jewish community in  
13 Tenafly, the existence of an eruv would jeopardize the  
14 acceptance and the progress that the Jewish population had  
15 achieved.

16 A Actually, what I was concerned about was the fact that it  
17 would appear as if I as a Jewish Mayor were giving preference  
18 to my co-religionists by constructing something on municipal  
19 property, a permanent structure on municipal property. I  
20 didn't want to do something that would have that appearance,  
21 and I wouldn't want to do something that would have that  
22 effect. And I felt that it would be wrong to have a religious,  
23 permanent religious symbol on municipal property.

24 Q In answer to Mr. Lesnevich's question, you said under the  
25 weak system of government in Tenafly you don't vote. Is that

Moscovitz - cross - Sugarman

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1 correct?

2 A That's correct.

3 Q So you would not have needed to and indeed you didn't vote  
4 on the proposal. Correct?

5 A I didn't think it was the right thing to have it there  
6 whether I would vote on it or not. If I were not even on the  
7 Council I wouldn't think it would be the right thing to do.

8 Q All right. But I thought you said that you wouldn't want  
9 people to think that you as the Jewish Mayor --

10 A That also.

11 Q -- did a favor for other Jews. Well, isn't it a fact that  
12 nobody could think that, because you don't vote?

13 A No, that isn't a fact. People will think that anyway.  
14 Just as I am the center of this controversy and that everybody  
15 is pointing a finger at me and calling me the "Jewish Mayor" of  
16 Tenafly.

17 Q Now you said that you called Rabbi Goldin back and said, if  
18 we don't have a discussion we never can seek to resolve this.

19 A Exactly.

20 Q And then a discussion did ensue --

21 A Yes.

22 Q -- about a way to resolve it. Correct?

23 A That's correct.

24 Q And the Rabbi and you discussed a compromise which would  
25 stipulate that the eruv would be limited to the public utility

Moscovitz - cross - Sugarman

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1 poles --

2 A No.

3 Q -- and not any other public property?

4 A No.

5 Q No?

6 What was the compromise, if there was one?

7 A The Rabbi said to me, if your objection is creating this  
8 eruv on municipal property, would it be all right if we created  
9 the eruv without using municipal property?

10 And I said, of course. We have no control over that.

11 Q So -- and as far as you're concerned, that municipal  
12 property would have included the utility poles?

13 A Certainly.

14 Q So the eruv would have had to come down completely?

15 A The existing eruv would have to come down completely, yes.

16 Q And the new eruv would be completely on private property.

17 Is that the compromise?

18 A I didn't have any idea how he was going to accomplish that.

19 Q And you said that you would take that back and discuss it  
20 with Council and get back to Rabbi Goldin?

21 A No.

22 Q You didn't say that?

23 A That was not at that meeting. The time I said I would  
24 bring something to the Council was at the first meeting with  
25 the two gentlemen who first came -- approached me.

Moscovitz - cross - Sugarman

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1 Q Okay. You did not tell Rabbi Goldin that you would  
2 consider the compromise that you talked about, whatever it was,  
3 and communicate with him and Ms. Kurland as to its  
4 acceptability?

5 A Not at all. I told him that the Mayor and Council have  
6 nothing, would have nothing to discuss, that they would have an  
7 absolute right to put anything on private property that they  
8 wished.

9 Q Mayor Moscovitz, I show you what I've marked as Plaintiffs'  
10 Exhibit 17 and ask if you can identify it?

11 A Yes, this -- I remember this letter.

12 Q And that's a letter that you received from Rabbi Goldin and  
13 Ms. Kurland?

14 A Yes.

15 MR. SUGARMAN: I offer it in evidence, your Honor.

16 MR. LESNEVICH: No objection, your Honor.

17 THE COURT: Okay. This might be a good time break for  
18 lunch.

19 MR. SUGARMAN: Okay, your Honor. Thank you.

20 (P-17 is received in evidence.)

21 THE COURT: See you back here 2 o'clock. Oh, I  
22 forgot. I have a plea another 2 o'clock. It will take me  
23 about 20 minutes to get through that, so we'll pick it up at  
24 2:30. All right?

25 (Witness temporarily excused.)

Moscovitz - cross - Sugarman

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A F T E R N O O N      S E S S I O N

(Proceedings resume.)

THE COURT: Counsel, I apologize for the delay. It was a Spanish interpreter, it took us a little longer to get through the plea. Thank you for your patience.

A N N    A.    M O S C O V I T Z , resumes, testifies further as follows:

CROSS-EXAMINATION CONTINUES

BY MR. SUGARMAN:

Q    Mayor Moscovitz, I showed you just before the lunch break what has been marked as Plaintiffs' Exhibit 17, which is a letter from Rabbi Goldin and Ms. Kurland to you. Do you have a copy of that?

A    Yes.

MR. SUGARMAN: Judge, do you have a copy of that?

THE COURT: I'm not sure that I do. Which one is that now?

MR. SHAPIRO: P-17.

THE COURT: 17?

MR. SUGARMAN: Here's another, your Honor.

A    I believe the people out there indicated they couldn't hear.

THE WITNESS: Judge, I believe that the people out

Moscovitz - cross - Sugarman

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1 there nodded that they couldn't hear anything.

2 THE COURT: They could not hear?

3 UNIDENTIFIED VOICE: Can't hear.

4 UNIDENTIFIED VOICE: The microphone on?

5 MR. SUGARMAN: I'm afraid to touch it.

6 THE WITNESS: Hello?

7 This -- yes? You can hear this?

8 BY MR. SUGARMAN:

9 Q Now, the letter refers, does it not, to the proposed  
10 compromise that had been discussed at your meeting on September  
11 14th. Correct?

12 A Not actually.

13 Q Not accurately?

14 A Yes.

15 Q Is that what you said?

16 A I said "actually," but "accurately" is all right.

17 Q All right. And it says in his description -- in their  
18 description of the compromise, that it, quote, called for  
19 portions of the eruv on public property to be removed while  
20 allowing those portion of the eruv on existing telephone poles  
21 to remain.

22 Now is that an accurate description of the compromise  
23 that you and the Rabbi --

24 A No not at all.

25 Q And Ms. Kurland talked about?

Moscovitz - cross - Sugarman

1 A No.

2 Q Did you respond to this letter?

3 A No.

4 Q In the next paragraph the letter refers to, quote, numerous  
5 calls were placed to your office and were ignored without even  
6 the courtesy of a return call.

7 Did you receive messages from Rabbi Goldin or Ms.  
8 Kurland during the period between September 14 and October 25

9 A The secretaries were instructed to send such phone calls,  
10 direct such phone calls to the attorney who was handling this  
11 At this time the eruv was up. The misunderstanding of the  
12 Rabbi was a moot point and I was not going to interfere between  
13 my attorney and their attorney who were discussing this matter

14 Q Well the attorneys were discussing the matter to arrange  
15 for the mechanics of the application. Isn't that right?

16 A I don't know, you'd have to ask the attorneys.

17 Q So you received a letter from a rabbi of one of the  
18 synagogues in the area, the director of the Jewish Community  
19 Relations Council in the area which misstated a conversation  
20 that you and they had, and for the reasons you stated you did  
21 not choose to respond. Is that right?

22 A That's correct.

23 Q And you received numerous calls, and you referred those to  
24 your attorney. Right?

25 A That's correct.

Moscovitz - cross - Sugarman

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1 Q Did you follow up with your attorney to determine whether  
2 he had returned any of the numerous calls that the Rabbi or Ms.  
3 Kurland had made?

4 A I didn't actually get the calls. I instructed the  
5 secretary to refer them to the attorney, so I don't know when  
6 they might have come in.

7 Q So you don't even know whether these calls were received,  
8 is that what you're saying?

9 A I said what I said.

10 Q Now, you also had a telephone conversation on the subject  
11 of the eruv with Mr. Agus. Is that correct?

12 A That was way at the beginning, not at this time. It was  
13 very -- before this started. I believe.

14 Q Well, let me try to clarify that. You had said in your  
15 earlier testimony that the very beginning Mr. Agus and Mr. Osen  
16 visited you. Wasn't it Mr. Gottlieb and Mr. Osen who visited  
17 you in July of '99?

18 A You know, I'm confused about that now. I thought it was  
19 Mr. Agus.

20 Q Okay. What --

21 A But am I wrong? I don't -- they can tell you.

22 Q I think the record will reflect that it was Mr. Gottlieb  
23 and Mr. Osen in July of 1999. And why don't you look at your  
24 affidavit.

25 A Was it? Yeah.

Moscovitz - cross - Sugarman

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1 Q Look at your affidavit in paragraph 19.

2 A My affidavit says Gottlieb, but --

3 Q No, no, no, in paragraph 19.

4 A Where? All right.

5 Q Now your affidavit -- okay. We'll start with -- yes, your  
6 affidavit in paragraph 3.

7 A I really don't remember. Now I'm very confused.

8 Q Let's try to get this straight. Let's look at paragraph 3.

9 And that reports the meeting in July?

10 A Mr. Gottlieb.

11 Q In June 1999 with Mr. Gottlieb and Mr. Osen. Right?

12 A Right, I guess so.

13 Q Then --

14 A I don't remember.

15 Q Then go to paragraph 19th.

16 A I'm going to what?

17 Q Paragraph 19.

18 A Paragraph 19?

19 Q Right.

20 A Yes.

21 Q And that talks about a telephone conversation you had with  
22 Mr. Agus. Correct?

23 A I just have to review my memory on this.

24 (There is a pause for the witness.)

25 A That's right.

Moscovitz - cross - Sugarman

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1 Q And that was a late-in-the-evening telephone conversation.  
2 Correct?

3 A I don't know that it was late in the evening. It was in  
4 the evening.

5 Q Okay. In that -- let's focus on the conversation with Mr.  
6 Agus. In that conversation you mentioned to Mr. Agus the fear,  
7 among other things, the fear that the establishment of an eruv  
8 would lead to an influx of Orthodox Jews and eventually to  
9 deterioration of the public schools.

10 A No.

11 Q You did not say that to Mr. --

12 A I never said that, no.

13 Q Did you have a discussion with Mr. Agus --

14 A Yes.

15 Q -- in which you discussed the subject of an influx of  
16 Orthodox Jews?

17 A Mr. Agus, if my memory serves me, Mr. Agus said something  
18 to me about, was I afraid that an influx of Orthodox Jews would  
19 affect our schools.

20 As they had in -- I don't know whether he said, "As  
21 they had in Teaneck," something like that. He asked me such a  
22 question. And I believe I asked him a question in return like:  
23 "Do you think they would?"

24 Q Well --

25 A I never expressed such an opinion, because I'm on record as

Moscovitz - cross - Sugarman

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1 having said exactly the opposite -- made exactly the opposite  
2 comment.

3 Q Your recollection is it was Mr. Agus who first raised  
4 Teaneck, and not you?

5 A I don't -- I don't remember. I don't think I did. I  
6 wasn't aware that Teaneck had the eruv at first. That was  
7 brought to my attention by other people.

8 Q Well, let me see if this -- didn't you ask Mr. Agus about  
9 Teaneck, and then ask him how he thought the Teaneck schools  
10 got into the position that they were?

11 A Yes. He said something about, was I afraid that that might  
12 happen? And I said -- or is that what happened to -- did I  
13 think that was what happened in Teaneck?

14 And I said, "I don't know. Do you think so?" Or  
15 "What do you think happened in Teaneck?" Those were my words:  
16 "I don't know. What do you think happened in Teaneck?"

17 Q So your recollection is, he mentioned Teaneck before you  
18 did? Or was it you who mentioned Teaneck, and then --

19 A I don't remember.

20 Q And then asked him --

21 A I don't remember.

22 Q You don't remember?

23 A But I do remember that response, that I said to him, "I  
24 don't know. What do you think happened to Teaneck?"

25 I never made that comment about Teaneck. He made that

Moscovitz - cross - Sugarman

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1 comment. Whether Teaneck had been mentioned before by either  
2 one of us, I absolutely don't remember.

3 Q Okay. But it is your recollection that you did not talk to  
4 him about an influx of Orthodox Jews leading to a deterioration  
5 of the public schools?

6 A I know I could never have made such a statement, I never  
7 thought such a thing.

8 Q Now, in your affidavit you talk about the conversation with  
9 Mr. Agus in paragraph 19. And you don't say there, do you,  
10 that there was no discussion of an influx of Orthodox Jews?

11 A Excuse me. That question? I --

12 Q Let me rephrase it.

13 A You said -- yes.

14 Q You comment in paragraph 19 of your affidavit about your  
15 conversation with Mr. Agus. Correct?

16 A That's correct.

17 Q And you say he took your comments out of context, and you  
18 say that your questions regard the impact of large numbers of  
19 families potentially withholding their children from public  
20 schools was simply a question. That's what you say. That's a  
21 question that you asked?

22 A In response to his comment about Teaneck schools going  
23 down.

24 Q All right.

25 A As I -- exactly what I said are already.

Moscovitz - cross - Sugarman

1 Q Okay. And then you go on to say that arguments can be made  
2 both ways. It could harm the schools, or aid the schools.  
3 That's the next sentence. Right?

4 A That -- that should be -- that it may harm the schools.  
5 All right. The schools, by lowering the number of pupils and  
6 keeping the same budget. That's right.

7 Q Right.

8 A There were times when Tenafly schools did not have enough  
9 students, it would have harmed the schools to have less  
10 students. Right now it would be extremely beneficial to the  
11 schools to have less students. And I made that exact comment  
12 to the Lubavitch at a meeting there in public. I welcomed  
13 those Orthodox families and I said, it's wonderful, you pay  
14 taxes and you don't even use our schools. And that was long  
15 before this.

16 Q Now, let me go back to the question that I asked. And the  
17 question I asked is: Mr. Agus in his affidavit says that you  
18 spoke about the establishment of an eruv which would lead to a  
19 influx of Orthodox Jews. You comment on Mr. Agus' affidavit.  
20 You do not contest in your affidavit that he said that?

21 A I'm not an attorney, I don't pick things apart that way.  
22 It did not occur to me to contest everything that was said.

23 Q You do recall that you asked Mr. Agus how he thought the  
24 Teaneck public schools got to be in the condition they are  
25 today?

Moscovitz - cross - Sugarman

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1 A He's the one who said what condition they were in, I didn't  
2 make that comment.

3 Q But you then asked him why he thought that was the case.  
4 Isn't that what you said before?

5 A He asked me -- you keep asking me the same question over  
6 and over again. I'll give you the same answer over and over  
7 again. He mentioned the condition of the Tenafly schools --

8 Q Tenafly?

9 A Of the Teaneck schools, and asked me if I thought an influx  
10 of Orthodox Jews caused them to be in the condition they were  
11 in.

12 And I said, do -- why do you think they're in the  
13 condition they're in?

14 I don't know what condition they're in. Why do you  
15 think they're in that condition? I don't know.

16 Q So you just didn't know one way or the other?

17 A No.

18 Q You weren't implying by that question that the influx of  
19 Orthodox Jewish people into Teaneck was responsible for the  
20 decline of the Teaneck public schools?

21 A Actually I thought their schools were pretty good.

22 Q You did listen at the public hearings to some people who  
23 said the opposite. Isn't that correct?

24 A I listened to a lot of bad things at those meetings. I  
25 don't necessarily agree with everything that's said.

Moscovitz - cross - Sugarman

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1 Q I'm not saying that you agreed with them. Wasn't it a fact  
2 that there were people at those hearings that said the Teaneck  
3 public schools deteriorated --

4 A There were people at those meetings who said a lot of  
5 terrible things, yes.

6 Q And among them were the influx of Orthodox Jews caused a  
7 deterioration of the Teaneck school system?

8 A Absolutely, people said that, I did not.

9 Q All right. Are you familiar with the term "the Spring  
10 Valley phenomenon"?

11 A No.

12 Q You never used that term?

13 A No.

14 Q Did you ever hear Mr. Lipson use that term?

15 A I don't recall. I don't recall the term.

16 Q Did you ever say to Mr. Agus that there was a fear that the  
17 establishment of an eruv would lead to the emergence of all  
18 sorts of new synagogues which you called the "Spring Valley  
19 phenomenon"?

20 A Spring Valley phenomenon? I don't recall ever using that  
21 term.

22 Q Do you know -- withdrawn.

23 A My -- I know that small synagogues have sprung up in Spring  
24 Valley. I don't recall ever using such a term.

25 Q Whether you used the term or not, do you recall

Moscovitz - cross - Sugarman

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1 articulating the fear that the --

2 A No.

3 Q -- establishment of an eruv would lead to the emergence of  
4 all sorts of new synagogues?

5 A It would -- it might have been an observation, certainly  
6 not a fear.

7 Q An observation in your conversation with Mr. Agus?

8 A I might have stated my observation during the conversation  
9 with Mr. Agus. That's not when I observed it, no.

10 Q So it was something you stated but not that anything you  
11 observed. Is that what you're saying?

12 A No. You asked me whether I observed it during my  
13 conversation with Mr. Agus, and I said no, I might have  
14 mentioned it during my conversation with Mr. Agus.

15 Q Did you mention to Mr. Agus that you had talked to a real  
16 estate broker in Englewood who said that there were over 40  
17 families looking to move into the area near the Smith Street  
18 School?

19 A I said that a real estate broker told me that there was a  
20 realtor in Englewood who had a list of people who wanted to  
21 come in when the eruv was built, yes.

22 Q And wasn't that in the context of the discussion with Mr.  
23 Agus about the potential influx of Orthodox Jews if the eruv  
24 was approved?

25 A I suppose so.

Moscovitz - cross - Sugarman

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1 Q And did you also talk to Mr. Agus about the fear that the  
2 establishment of an eruv would lead to damaging local  
3 businesses?

4 A No, but I do think that's where I mentioned Teaneck. I  
5 don't think I mentioned it about the schools. I said that the  
6 businesses changed. I didn't say they would be damaged.

7 Q So that -- so you said to Mr. Agus that you thought that  
8 would lead to a changing of the businesses as opposed to a  
9 damaging of the businesses, is that what you said?

10 A There would be a change in some of the businesses, yes, and  
11 I believe I said they would probably be closed on Saturdays.

12 Q And what was the basis of your saying that?

13 A Something that he asked me I guess.

14 What was the basis of --

15 Q Of your saying to Mr. Agus that there would be a change in  
16 the business and some of them would close on Saturdays. Why  
17 would that happen?

18 A Because the Orthodox don't shop on Saturdays.

19 Q So --

20 A So if they opened Kosher stores or restaurants, those would  
21 be closed on Saturdays.

22 Q And that that would be another result of a potential influx  
23 of Orthodox Jews into town?

24 A Yes, a result is not a fear. I don't equate the two, and  
25 you are equating the two.

Moscovitz - cross - Sugarman

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1 Q Okay. So you talked about the possibility -- let's change  
2 the word from "fear" to "possibility" -- you talked about the  
3 possibility that the influx of Orthodox Jews would change the  
4 character of Tenafly --

5 A No, I didn't say the character, I said a few of the stores.  
6 That's not the same thing.

7 Q So you said -- you talked about the possibility that an  
8 influx of Orthodox Jews would change a few of the stores?

9 A Just as our Korean population has changed some of our  
10 stores, just as our Asian -- all of our other Asians have  
11 changed our stores. Our Indian have changed the stores. That  
12 happens when you get a nice mosaic of people living in the  
13 town, you get a variety of stores.

14 Q In paragraph 12 of your affidavit right at the end you were  
15 talking about a public school system in the context of a  
16 discussion, another discussion, and you said --

17 A Paragraph 12?

18 Q Paragraph 12. And then it's on page 3 and onto page 4.  
19 And you said that a statement that was attributable to you  
20 about the ruination of the public schools was a total  
21 fabrication. And then you said, quote, I never said those  
22 words and I never had those thoughts.

23 Well, you certainly, did you not, have the thoughts of  
24 some possible impact on the public schools one way or the other  
25 when you talked to Mr. Agus?

Moscovitz - cross - Sugarman

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1 A Excuse me. That's not the implication of this paragraph.  
2 This is highlighting the words "those people." I never used  
3 those words. I never thought of Orthodox as "those people,"  
4 and this paragraph makes it sound as though I have a prejudice  
5 against them, which I do not have. And therefore, I never said  
6 those words and I never had those thoughts.

7 Q Okay. So you were not intending in that paragraph to say  
8 you had never had any thoughts about the possible impact on the  
9 Tenafly public schools of an influx of Orthodox Jews? That's  
10 not what you meant to say there?

11 A Absolutely not.

12 Q Okay. In paragraph 20 you talked about the factors that  
13 lead to why people choose homes; the house, the location,  
14 community facilities, price, too few bedrooms, and then the  
15 last on page 6 is, quote, there may not be an eruv.

16 So one of the factors in leading people to choose  
17 homes is whether or not there was eruv. Is that what you're  
18 saying?

19 A That's what they told me.

20 Q Okay. And that is what you said in that paragraph 20?

21 A Right. I also said there may not be a house of worship of  
22 the chosen denomination.

23 Q Right. So all of those are factors which you delineate as  
24 to why people may or may not choose to buy a home?

25 A Absolutely.

Moscovitz - cross - Sugarman

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1 Q Okay. And so if there is not an eruv, some Orthodox Jews  
2 would choose not to buy a home in that town. Correct? It's  
3 one of the factors?

4 A It's a possible factor. If that's what they were looking  
5 for, then they certainly wouldn't buy a home where there wasn't  
6 one.

7 Q The vote on the application for the eruv was taken on  
8 December 12th. Correct?

9 A I suppose. I don't have the dates.

10 Q I think that's been agreed upon.

11 A Yes.

12 Q That on December 12th the Council voted.

13 A Yes.

14 Q Now, I think as you indicated before, up to that point you  
15 had been the subject of criticism, correct, by people -- you  
16 had been misquoted?

17 A Still am.

18 Q But you had been then?

19 A Yes.

20 Q And your position had been misdescribed?

21 A Yes.

22 Q Now, there were two public meetings on this subject.  
23 Correct?

24 A Yes.

25 Q And you could have at either of those public meetings, or

Moscovitz - cross - Sugarman

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1 both, asked questions with respect to anybody's presentation.

2 Correct?

3 A I could have asked questions?

4 Q You could have asked questions -- you sat at these two  
5 public meetings. You could have asked some questions.

6 A That wasn't the purpose, we don't usually ask questions.  
7 This was for presentations --

8 Q You could have --

9 A -- by the public. We were listening. This was hearing.  
10 We were listening.

11 Q And you just didn't take the opportunity to either ask  
12 questions or make any statements. Correct?

13 A I can't remember if I asked any or not. It would be  
14 unusual if I did.

15 Q You didn't feel the need or purpose to set the record  
16 straight with respect to the misquotes or the criticisms that  
17 you had been subjected to up to that time?

18 A I don't believe that I was even misquoted or criticized at  
19 the time of the hearings. I don't think somebody came up and  
20 accused me of having said something at the hearings. If it  
21 happened, I don't remember that.

22 Q Some of the newspaper articles did appear before the  
23 hearings, did they not?

24 A Yes, but the hearing was not the time to relate to  
25 newspaper articles, it was only the time to hear the people who

Moscovitz - cross - Sugarman

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1 had come to the hearings who made presentations. We weren't  
2 there to debate with them, we were only there to listen to the  
3 points of view; and we listened.

4 Q And nobody, with the exception of Mr. Sullivan, and to some  
5 degree Ms. Kerge, explained at that meeting, December 12th, the  
6 basis on which they were voting. Correct?

7 A That's my recollection.

8 Q Now, the next day, the 13th, Mr. Lesnevich on behalf of the  
9 Borough wrote a letter to Cablevision and reported the vote and  
10 directed Cablevision to take down the lechis. Is that right?

11 A I don't remember what his letter said.

12 Q But there was a letter on the next day, Wednesday?

13 A I believe he wrote a letter. I don't -- I didn't read the  
14 letter. I might have gotten a copy later, but I don't remember  
15 what it said exactly. I can't testify to that.

16 Q But you can testify, can you not, that on the next day,  
17 Thursday, you placed a call to Cablevision demanding that they  
18 immediately start removing the lechis. Is that right?

19 A I requested that they remove them as soon as they could.

20 Q And that was a call that you made on that Thursday?

21 A I made the call.

22 Q And you knew at the time, did you not, that the Plaintiffs  
23 in this case were preparing to challenge the vote of the  
24 Council?

25 A How would I know that?

Moscovitz - cross - Sugarman

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1 Q Did Mr. Lesnevich tell you that he had conversations with  
2 Mr. Shapiro in which it was stated --

3 A I don't believe so.

4 Q You don't believe so?

5 Did you hear that Mr. Shapiro had asked Mr. Lesnevich  
6 for a brief stay of the action to give the Plaintiffs an  
7 opportunity to file their case?

8 A I don't think at that point I knew that.

9 Q Did you know --

10 A I think I knew that the following day.

11 Q The following day, being -- before you called Cablevision?

12 A No.

13 Q Well, the following day is when the lawsuit started, so you  
14 certainly knew it then. The question is whether you knew it,  
15 that the lawsuit was going to happen, before you called  
16 Cablevision and demanded that they take it down as soon as  
17 possible.

18 A I don't believe so.

19 Q Were you also aware at the time you made that call that  
20 Cablevision was very, very busy, being the holiday season, with  
21 answering service requests from its subscribers, including  
22 people in Tenafly?

23 A How would I know about Cablevision's business? No.

24 Q You didn't have any knowledge of that? But you --

25 A No.

Moscovitz - cross - Sugarman

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1 Q -- did call and request, in your words, that Cablevision  
2 take this -- these lechis down as soon as possible?

3 A I asked them to remove them, especially in the nature  
4 center where they were on the trees and a danger.

5 Q Are you saying that in December of 2000 there were any  
6 wires in the nature center?

7 A I knew there had been wires in the nature center. I  
8 believed that they were put up. Maybe they had come down by  
9 then, I don't remember, I don't know. I don't remember.

10 Q Did Cablevision have anything to do with the wires in the  
11 nature center?

12 A I have no idea.

13 Q You just said you wanted to specifically ask Cablevision to  
14 take down the wires in the nature center.

15 A No. I said that I wanted them to take down the wires, and  
16 I did feel the ones in the nature center were a hazard.

17 Whether they were still up or not -- actually now that you  
18 refresh my memory, I think they were not up any more. I think  
19 the Park Department had been ordered to remove them. Or the --  
20 or had asked somebody to remove them. I don't remember to be  
21 sure --

22 Q Months earlier.

23 A Because usually this is done by --

24 MR. SHAPIRO: Months earlier.

25 A Now that he refreshes my memory, I think you're correct, I

Moscovitz - cross - Sugarman

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1 think the nature center ones were down.

2 Q But you thought it appropriate for you, the Mayor, to call  
3 Cablevision and request or demand that they take the lechis  
4 down immediately. Right?

5 A Yes.

6 MR. SUGARMAN: I have nothing further, your Honor.

7 MR. LESNEVICH: Just very briefly, Mayor.

8 REDIRECT EXAMINATION

9 BY MR. LESNEVICH:

10 Q You were asked about an alleged comment to a reporter, a  
11 woman reporter from the Jewish Standard, was it?

12 A No, not the Jewish Standard.

13 Q What paper was that?

14 A I don't remember the name. The reporter's name was Susan  
15 something.

16 Q The Jewish Voice?

17 A Jewish Voice, that's it.

18 Q And you said that you were angry and would never speak to  
19 her again. But you never got to directly answer the question:  
20 Did you make those comments she attributed to you?

21 A Absolutely not.

22 Q Okay. At the first meeting in July, was the request made  
23 to you of the method by which approval should be obtained?

24 A Yes.

25 Q What was the method they wanted?

Moscovitz - redirect - Lesnevech

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1 A They wanted to do it -- they wanted to give me a dollar or  
2 some gift in exchange for my giving them permission to erect  
3 the eruv.

4 I told them I couldn't do it. I told them that they  
5 would have to appear before a public meeting of the Mayor and  
6 Council where a vote would be taken, and the votes are only  
7 taken at the public meetings.

8 They then said to me they really wanted to do this  
9 very quietly. Was there some way they could do it quietly?  
10 Could they get a feeling of how the Mayor and Council would  
11 react to their request before coming to a public meeting?

12 And I said the only way that could be done would be if  
13 the subject was brought up at a work session.

14 They seemed to be in a hurry to have this done, which  
15 is why it was on the second agenda, as Mrs. Kerge mentioned,  
16 because there was a pregnancy involved and the need to carry or  
17 push the baby carriage. So, and I said, I can bring it up for  
18 you if you like at a work session, and I'll do it at the next  
19 available time and let you know what the feeling of the Council  
20 is.

21 Q There was another meeting months later after the Council  
22 meeting, after the July 9th meeting, there was the other  
23 meeting you had with the Rabbi and Mrs. Kurland. Correct?

24 A Yes.

25 Q Did this concept of doing it quietly come up again?

Moscovitz - redirect - Lesnevich

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1 A No, not there, not the concept of doing it quietly. The  
2 concept of coming to a compromise is what was discussed.

3 Q And did you endorse any compromise involving Borough  
4 property?

5 A Not involving Borough property, no.

6 Q What compromise did you think they had come up with?

7 A Rabbi Goldin said, could we come to a compromise whereby  
8 we'd only put the eruv on private property?

9 I didn't know how he could do that, but I said, if you  
10 do that, then do it because we have no control over what's done  
11 on private property.

12 Q Okay. Thank you very much.

13 THE COURT: Mr. Sugarman.

14 MR. SUGARMAN: I don't have anything further.

15 THE COURT: Mayor, thanks very much. You can step  
16 down.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 MR. LESNEVICH: The only witness the Borough of  
20 Tenafly has left is Councilman Sullivan who will be here 2  
21 o'clock Tuesday. I've been on the phone with various issues,  
22 and I'm going to ask the Court's indulgence if we can make it  
23 2:30 Tuesday. Thank you. 'Because timing is tight from  
24 LaGuardia to here.

25 Mr. Shapiro and Mr. Sugarman have been discussing the

1 schedule of what happens next. I believe they have a witness  
2 to produce today.

3 MR. SUGARMAN: We have one here and one on the way, so  
4 that we can put those on and then we will have one and possibly  
5 two more for next Tuesday after Councilman Sullivan.

6 MR. LESNEVICH: Your Honor, I would like, if the Court  
7 wishes -- we had booked tomorrow -- I would like to go into  
8 legal argument tomorrow on the standard to apply to the facts  
9 of this case. I say that because Mr. Feldman is here from  
10 Boston, he'll be handling that issue, he'll be here tomorrow  
11 and we did plan on tomorrow, and you have all this factual  
12 testimony. The obviously is a big issue, so we would like to  
13 address that at some point; tomorrow if possible.

14 MR. SUGARMAN: Your Honor, we had actually made a  
15 proposal which is not acceptable. Our thought is that we  
16 should complete the factual record next Tuesday, and then have  
17 a brief amount of time to make submissions we thought on the  
18 factual record. We could also make submissions on the  
19 constitutional standard, and then with everything before your  
20 Honor in an organized and appropriate way, we could have  
21 argument and then you could decide. I think to do it, you  
22 know, a legal argument tomorrow, finish the testimony next  
23 Tuesday, it just is an awkward way to do it.

24 THE COURT: Let me --

25 MR. LESNEVICH: I don't know if your Honor -- it's up

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1 to you. Do you need -- after hearing this testimony, do you  
2 need -- do we need to get a transcript and submit written  
3 factual arguments? It would seem to me that you need the  
4 constitutional law to --

5 THE COURT: The only problem is, I'm a little hesitant  
6 to interrupt the factual presentation to discuss the legal  
7 standards when we have not yet heard all of the testimony.

8 MR. LESNEVICH: I see the point.

9 THE COURT: And I know I've kind of gotten away from  
10 that by throwing out the one case the other day that I was  
11 thinking of, but I just wanted, while you were going along in  
12 this, to be thinking about some of the legal issues. But I  
13 would prefer getting the factual presentation done.

14 MR. LESNEVICH: So if we conclude the factual  
15 presentation Tuesday the 8th, when would the Court want oral  
16 argument on these issues? How will we proceed after that?

17 THE COURT: I would like to do it --

18 MR. LESNEVICH: The 9th?

19 THE COURT: The 9th.

20 MR. SUGARMAN: Well, your Honor, I still believe, and  
21 I think it would be helpful to the Court, if we were able to  
22 pull together the testimony that has been before your Honor in  
23 a --

24 THE COURT: In terms of written closing arguments?

25 MR. SUGARMAN: Well, I don't have a problem with

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1 written closing arguments and have you study them and then come  
2 in and have an oral argument so your questions could be framed,  
3 we could answer them and we could make the presentations and  
4 fully develop a logical and complete record.

5 THE COURT: What I guess counsel is basically saying,  
6 which is sometimes done in preliminary injunction cases, is the  
7 opportunity to give me basically a supplemental brief based  
8 upon the testimony presented.

9 MR. LESNEVICH: So after the 8th we would wait for a  
10 transcript.

11 THE COURT: Yeah.

12 MR. LESNEVICH: And then submit a brief.

13 THE COURT: Yes.

14 MR. LESNEVICH: And then select the date for the  
15 return.

16 THE COURT: Right. All right?

17 MR. LESNEVICH: Yes. So we won't select that date for  
18 return yet?

19 THE COURT: Yeah. As long as it's done in the month  
20 of May.

21 (Laughter.)

22 MR. SUGARMAN: Fine.

23 THE COURT: I assume that I'll have the benefit of the  
24 transcripts if you're going to be referring to them in the --

25 MR. SUGARMAN: We'll order them.

1 THE COURT: -- supplemental briefs.

2 MR. SUGARMAN: Yes, your Honor.

3 THE COURT: While you're in the process of thinking  
4 through these issues, I don't have the case at my fingertips,  
5 but let me ask you this: Why is this case any different from  
6 those cases involving an application to a municipal officer for  
7 a parade permit -- parade permit to use the streets? Where the  
8 Supreme Court has indicated that the denial without standards  
9 violates the constitution. I'll get you the case in the  
10 meantime, but basically what I'm saying is, why is this any  
11 different from those whole string of cases of the Supreme Court  
12 that say the denial of an application by a municipality without  
13 any standards is unconstitutional?

14 Okay. Counsel, thanks very much. We'll see you then  
15 next Tuesday.

16 MR. LESNEVICH: I have one more thing, if I may.

17 MR. SHAPIRO: We do have witnesses.

18 THE COURT: I'm sorry, I'm sorry, you're right.

19 (Laughter.)

20 THE COURT: Shows you where my mind is.

21 MR. LESNEVICH: Your Honor, there's an issue of the  
22 November 21, 2000 closed session. I got the transcript. I  
23 certify to the Court that it is a discussion between my clients  
24 and I on whether there will be litigation, how much litigation  
25 would cost, what would it involve, and it is totally a

1 lawyer/client litigation issue. There's no discussion of the  
2 merits at all.

3 MR. SHAPIRO: Judge, we'll accept Mr. Lesnevich's  
4 representation.

5 MR. LESNEVICH: Thank you.

6 THE COURT: Thank you.

7 MR. SHAPIRO: We did, however, make a request, and Mr.  
8 Lesnevich indicated he only got one of two. He's going to  
9 check the other one which was earlier in October.

10 MR. LESNEVICH: I am indeed working on it.

11 THE COURT: Thank you, Mr. Lesnevich.

12 Mr. Sugarman, are you ready?

13 MR. SUGARMAN: Yes, your Honor.

14 The Plaintiffs call Charles Agus.

15 THE COURT: All right.

16 MR. SUGARMAN: Could you have him affirm.

17  
18 C H A R L E S A G U S, called as a witness, having  
19 first duly affirms, is examined and testifies as follows:

20  
21 THE DEPUTY CLERK: Please be seated. Just move that  
22 chair a little closer to the microphone.

23 Please state your name, both first and last, for the  
24 record.

25 THE WITNESS: Sure. My name is Charles Agus. First

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1 name is spelled C-h-a-r-l-e-s; last name Agus, spelled A-g-u-s

2 DIRECT EXAMINATION

3 BY MR. SUGARMAN:

4 Q Mr. Agus, could you briefly describe your educational  
5 background and what you do professionally?

6 A Sure. After graduating from Princeton University with a  
7 degree in government, I went to Columbia University for  
8 graduate school. I received dual degrees there, and I  
9 subsequently worked in real estate investment banking at  
10 Goldman Sachs, and now for the past year I have worked at a  
11 real estate internet company.

12 Q Where do you live?

13 A I live in Tenaflly.

14 Q Have you ever had a conversation with Mayor Moscovitz about  
15 the potential impact of an eruv in Tenaflly?

16 A Yes, I have.

17 Q Was that conversation face-to-face or on the telephone?

18 A It was on the telephone.

19 Q When did that take place?

20 A The conversation took place toward the end of October of  
21 last year.

22 Q Who initiated the telephone call?

23 A I did.

24 Q Would you, as best you can recall, give us the words and  
25 substance of that call; what you said, what the Mayor said?

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1 A Sure. In that conversation the Mayor had expressed several  
2 concerns related to Observant Jews moving into Tenaflly.

3 THE COURT: Mr. Agus, could you just move that chair a  
4 little bit closer to the microphone.

5 THE WITNESS: Sure.

6 A First we talked about the impact of Observant Jews moving  
7 into Tenaflly and the subsequent impact on the public school  
8 system. And the Mayor expressed a concern that an increased  
9 number of Observant Jews in Tenaflly would result in a harmful  
10 impact on the public schools.

11 We talked about the Teaneck public school system. And  
12 I had expressed the view that I did not believe that the  
13 presence or the increase of Observant Jews in Teaneck resulted  
14 or caused a decline in the public school system. And the Mayor  
15 responded with a question I interpreted to be a rhetorical  
16 question, and I pretty clearly remember the question. She  
17 said, "Oh, then what do you think caused the decline in the  
18 public schools in Teaneck?"

19 I started to talk about some other communities in the  
20 area in New Jersey as well as New York which have a substantial  
21 presence of Observant Jews as well as flourishing public  
22 schools, such as the community in Livingston, New Jersey, close  
23 by, as well as Scarsdale, New York.

24 Another concern that the Mayor expressed related to  
25 the impact of Orthodox Jews moving into Tenaflly and forming

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1 many different types of synagogues, what the Mayor termed the  
2 "Spring Valley phenomenon," where the fear was expressed that  
3 Orthodox Jews come in and form a lot of schools or synagogues  
4 and then they're taken off the tax roles.

5 The Mayor told me that she had spoken with a broker in  
6 Englewood who had told her that there was a pipe where there  
7 were approximately 40 families that were looking to move into  
8 Tenafly in the area near the Smith School.

9 A final concern the Mayor expressed relates to  
10 Orthodox Jews' impact on local businesses and causing local  
11 businesses to potentially go out of business because the  
12 concern was that we do not shop in local institutions or local  
13 businesses.

14 MR. SUGARMAN: No further questions, your Honor.

15 CROSS-EXAMINATION

16 BY MR. LESNEVICH:

17 Q Mr. Agus, you heard the Mayor say that she never used the  
18 words "Spring Valley phenomenon." Right?

19 A I did.

20 Q Did she lie?

21 A I would not want to say the Mayor lied, but I did hear that  
22 the Mayor used the word "Spring Valley" --

23 Q She said you're wrong. Is she telling the truth or are  
24 you?

25 A I think we have differences of opinion in relation to the

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1 conversation.

2 Q And you are here, sir, on a cause with a purpose, are you  
3 not?

4 A I'm not sure what you mean.

5 Q I mean, your purpose here is to get an eruv established in  
6 Tenaflly, is it not?

7 A What do you mean by "here"?

8 Q In this courtroom.

9 A We already have an eruv in Tenaflly.

10 Q Are you aware that the Council voted to take it down?

11 A I am aware of the vote.

12 Q And your concern and cause is to override that and have it  
13 stay. Is that not correct?

14 A My concern is to preserve the openness and diversity that  
15 exists in the Tenaflly community.

16 Q Is the Mayor's concern about the schools, having a concern  
17 about the schools, is that appropriate?

18 A Can you repeat the question?

19 Q Should the Mayor be concerned about the quality and the  
20 existence of the schools?

21 A Sure. I think we should all be concerned about the quality  
22 of public schools.

23 Q Have you been to the Lubavitch synagogue?

24 A Yes, I have.

25 Q Were you there when the Mayor made her speech about how

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1 helpful they were to the schools because they paid taxes but  
2 didn't send their kids to the crowded schools?

3 A I did not have the opportunity to hear the Mayor give that  
4 speech.

5 Q Do you know right now in Tenaflly whether we have a problem  
6 of over-crowding or under enrollment in our schools?

7 A I have heard that that is a problem, there is a problem of  
8 overcrowding in the public schools in Tenaflly, yes.

9 Q You've heard that we have more kids than we can fit.  
10 Correct?

11 A That's right.

12 Q The local business concern you alleged the Mayor expressed,  
13 are you familiar with the A & P problem in Tenaflly?

14 A I have heard about it. I'm not by any means very familiar  
15 with it.

16 Q Are you aware that there's a lawsuit wherein the A & P is  
17 seeking to build a 60,000 square foot shopping center in our  
18 town? Are you aware of that lawsuit?

19 A I have heard about it but I really don't know much about  
20 the details.

21 Q Is it possible that the A & P 60,000 square foot, nine  
22 satellite store shopping center is of a lot more concern to our  
23 business than whether Orthodox Jews move in or not?

24 A Can you repeat the question?

25 Q How many members are there in the Tenaflly Eruv Association?

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1 A I do not know.

2 Q You said that the Mayor's comments concerning  
3 Teaneck, I believe your words were, that, quote, I interpreted  
4 it to mean. Is that correct? You said "I interpreted it" a  
5 few minutes ago.

6 A Okay.

7 Q Yes?

8 A I'm -- is your question, did I say "I interpreted"?

9 Q Yes.

10 A It's possible that that's what I said, yes. I believe  
11 that's what I said.

12 Q Is it possible your interpretation was wrong?

13 A It was a rhetorical question. I know a rhetorical question  
14 when I hear one.

15 Q How do you know it when you weren't even face-to-face with  
16 the person?

17 A I can tell it by the sound in the voice.

18 Q And so you're sure that she meant it a certain way because  
19 of the tone of her voice?

20 A That's absolutely correct.

21 Q Have you ever met Mayor Moscovitz before?

22 A Have I met her before that conversation?

23 Q Yeah.

24 A I don't believe I had, no.

25 Q How long were you on the phone before she made that, what

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1 you interpret as a rhetorical question?

2 A The phone conversation lasted about one hour. I can't say  
3 precisely how long we were on the phone. I would estimate that  
4 it occurred somewhere maybe halfway in the conversation, but I  
5 really can't say precisely when it occurred.

6 Q So about 30 minutes of history of speaking to a person on  
7 the phone, not in person, you are certain you could interpret  
8 what she meant by her comment?

9 A If it were one minute I'd be able to know what she meant by  
10 a rhetorical question, yes.

11 Q You couldn't be wrong, could you, that she had a different  
12 meaning because you're not used to her inflection, her tone of  
13 voice or her mood when she spoke?

14 A I think that conversations can always be misinterpreted,  
15 but I certainly interpreted it this way and I heard it to be a  
16 rhetorical question, and that's the way I understood it.

17 Q That's the way you understood it?

18 A That's correct.

19 Q But are you certain as to what Ann Moscovitz as a person  
20 meant by that?

21 A I can never know what anyone means by words that they say.

22 Q Thank you.

23 MR. LESNEVICH: I have nothing further.

24 A Sure.

25 Q Oh, one more. I'm sorry, I forget a document.

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1 Sir, Plaintiffs' Exhibit 16 is the letter from I  
2 believe you and your wife to the Mayor and Council. I'm going  
3 to show you this. Do you recognize that document, sir?

4 A Yes, I do.

5 Q Would you go to page 2, please.

6 A Sure.

7 Q Two-thirds of the way down there's a blue line, underlined  
8 sentence.

9 MR. SUGARMAN: Is there one in the exhibit?

10 MR. LESNEVICH: Yes.

11 (Counsel confer off the record.)

12 A Yes, I see that.

13 MR. SUGARMAN: I'd like to see it.

14 Q Allow me, it's only on this copy, sir. I'm sorry.

15 A Sure.

16 Q Would you read -- well, first of all, did you author that  
17 sentence?

18 A Which sentence are you referring to?

19 Q The one underlined.

20 A There are two underlined, but my wife and I both authored  
21 it.

22 Q Two-thirds the way down the page?

23 A Yes, my wife and I authored that sentence.

24 Q Would you read it out loud? It's in evidence.

25 A Sure, absolutely. "Moreover, lack of an eruv does not

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1 preclude Observant Jews from moving into a given area."

2 Q Is that correct?

3 A Yes, that's correct.

4 Q So whether or not there's an eruv in Tenafly, Observant  
5 Jews may move into the town? And, in fact, you did before  
6 there was an eruv, right?

7 A We moved in with anticipation that there would be an eruv.  
8 I think that if you're asking is an eruv necessary --

9 Q No, I'm not, sir. I'm asking if that sentence you wrote is  
10 true: May Observant Jews live in a town without an eruv?

11 A Observant Jews may live in a town without an eruv but an  
12 eruv affords significant enhancement to --

13 Q No, I know you have a cause to get the sentence in, but I'm  
14 asking you just to read that sentence.

15 THE COURT: Mr. Lesnevich, let's just stop here.

16 First of all, I don't have the sentence that's  
17 underlined. Could I just take a look at that?

18 THE WITNESS: Sure.

19 THE COURT: Just listen to the question that's asked,  
20 just answer that question.

21 THE WITNESS: Sure.

22 THE COURT: Your attorney will have an opportunity to  
23 get back and clear anything up that needs to be clarified.

24 THE WITNESS: Sure.

25 BY MR. LESNEVICH:

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1 Q That sentence, you wrote it. It's a true sentence.

2 Correct?

3 A Correct.

4 Q Now you were trying to get in another phrase about  
5 observant and accommodation. Correct? You were trying to say  
6 something more, and I interrupted you.

7 A Yes, I was going to say something additional.

8 Q And why do you want to say that? Is it because you wanted  
9 the Judge to get your cause?

10 THE COURT: Mr. Lesnevich, there's two questions.

11 MR. SUGARMAN: Objection.

12 THE COURT: You have two questions. The first  
13 question you asked and you didn't give him a chance to answer.

14 MR. LESNEVICH: Your Honor, I'm going to stop now and  
15 withdraw them. Thank you very much.

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MR. SUGARMAN:

19 Q What was the sentence that you were in the middle of when  
20 Mr. Lesnevich interrupted you?

21 A Sure, thank you.

22 I believe that an eruv affords a significant  
23 enhancement to the practice of my religion. An eruv enables my  
24 wife and I to attend synagogue with both of our children in a  
25 way that we wouldn't be able to without an eruv. We would be

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1 able to in addition go to our friends' homes on a Saturday, and  
2 in addition a simple thing like taking our children to the park  
3 would be -- we would be enabled to do through an eruv.

4 Q Thank you.

5 MR. SUGARMAN: No further questions.

6 THE COURT: Indulge me. You used the expression a few  
7 minutes ago "Observant," "an Observant Jew" and I think you  
8 also used it in a letter we just talked about. What is your  
9 understanding of what that means?

10 THE WITNESS: Sure. My understanding of an  
11 Observant -- of the term "Observant Jew" is a Jew who observes  
12 certain commandments that I would say we believe were given to  
13 us at Mt. Sanai.

14 THE COURT: How does that -- all right, I understand.  
15 Okay. Okay, thanks.

16 THE WITNESS: Sure.

17 THE COURT: Anything else?

18 Okay. Mr. Agus thanks. You can step down.

19 You can leave that there.

20 (Witness excused.)

21 MR. SHAPIRO: Your Honor, we do have another witness.  
22 We've been on the phone and we understand that he's in transit,  
23 on the way here. If we could take perhaps a short break, I  
24 think we could finish that witness today.

25 THE COURT: Sure. Just there's some documents that

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1 ought to be picked up.

2 Let me know when he gets here.

3 MR. SHAPIRO: Thank you.

4 THE COURT: Thank you.

5 (A recess is taken.)

6 (Proceedings resume.)

7 MR. SHAPIRO: Thank you, Judge.

8 MR. YALE: The Plaintiffs call Rabbi Shmuel Goldin to  
9 the stand.

10  
11 S H M U E L G O L D I N, called as a witness, having  
12 first duly affirms, is examined and testifies as follows:

13  
14 THE COURT: Good afternoon, Rabbi.

15 THE WITNESS: Good afternoon, Judge.

16 THE DEPUTY CLERK: Please be seated. Just move that  
17 chair a little closer to the microphone.

18 Please state your name, spelling it for the record.

19 THE WITNESS: Shmuel Goldin. S-h-m-u-e-l;  
20 G-o-l-d-i-n.

21 DIRECT EXAMINATION

22 BY MR. YALE:

23 Q Good afternoon, Rabbi.

24 Can you please give us your professional background?

25 A I'm presently Rabbi of Congregation Ahavath Torah in

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1 Englewood, New Jersey, which is a large Orthodox congregation  
2 in Englewood. I teach at Yeshiva University Bible and  
3 philosophy. I have been a Rabbi for close to 30 years. I  
4 served previously in Potomac, Maryland, and before that, in  
5 California.

6 I am the Present of the Rabbinical Alumni Association  
7 of Yeshiva University and have been very actively involved in  
8 other Rabbinic organizations. I'm founding chairman of Shvil  
9 Hazahav, which is a Zionist organization, and am involved in  
10 numerous other areas of Rabbinic interests and concerns.

11 Q How long have you been the Rabbi in Englewood?

12 A Close --

13 Q A Rabbi --

14 A Close to 18 years.

15 Q Are you a resident of Tenafly?

16 A No.

17 Q Where do you live?

18 A 221 Sunset Avenue, Englewood, New Jersey.

19 Q Have you ever had a conversation with Mayor Moscovitz  
20 regarding the eruv in Tenafly?

21 A Yes.

22 Q When did this take place?

23 A This took place in the fall of 2000, sometime in September.

24 Q Was there anyone else present at this meeting?

25 A Charles Lipson was there as well and Joy Kurland from the

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1 Jewish Community Relations Council.

2 Q And where did this meeting take place?

3 A In the Mayor's office.

4 Q To the best of your recollection, can you tell us what you  
5 said at that meeting and what the Mayor and Mr. Lipson said to  
6 you?

7 A I had been asked to play a role in trying to explain the  
8 eruv and see if I could broker some sort of compromise or  
9 attempt to broker a compromise.

10 I came and I asked the Mayor why she and the others  
11 were against the eruv.

12 She told me a number of things which I felt were  
13 superficial. And I kept asking her, I don't believe that's the  
14 real reason you're against it. I kept pushing.

15 Finally she turned to me and she said, "I don't want  
16 them moving in. I don't want them throwing stones at my  
17 cars -- my car on the Sabbath, I don't want them blocking my  
18 streets."

19 At that --

20 Q Who are the "them" that you believe she was referring to?

21 A Orthodox Jews.

22 At that point I became visibly upset and I stood to  
23 leave the room. I left the room. I was called back in by the  
24 Mayor. She asked me to remain, as did Joy Kurland.

25 The Mayor then continued to talk about her own

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1 personal experiences. She became somewhat emotional. She said  
2 that she -- when she first wanted to move into Tenaflly they did  
3 not want any Jews in Tenaflly, and that she was unable to move  
4 into particular areas. And look how far she had come. She was  
5 now the Mayor, and what would happen now is if the Orthodox  
6 community moved in, they would say -- "they," meaning I guess  
7 rest of the community -- look happens when you elect a Jewish  
8 Mayor, she lets the Orthodox in.

9 At that point I said to her, do you realize that you  
10 are doing or seeking to do to others what was once done to you,  
11 and still obviously pains you greatly?

12 At that point she said, but I have to reflect my  
13 community.

14 To which I responded, you have to lead your community.

15 Discussion continued at that point.

16 We brokered what I thought was the beginning of a  
17 compromise. Both Joy Kurland and I left the meeting feeling  
18 that we had come to not a full agreement but to some beginning  
19 of an agreement, which was that the eruv might be reconfigured  
20 to avoid places such as the Nature Reserve and areas like that.  
21 That since the permission had already been granted by the  
22 utility companies to allow the poles to be used, that the city  
23 would not have to actually give permission, they would allow  
24 the poles to be used in an appropriate fashion, and we were  
25 told by the Mayor and by the councilmen that they would return

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1 and ask their town -- or their Borough lawyer as to whether or  
2 not this kind of compromise could be brokered so that the town  
3 could basically say, the utility companies have given  
4 permission for this to be done, the county has done what its  
5 done and we don't have an involvement here. That was the  
6 attempt at a compromise.

7 Both Ms. Kurland and I felt that we understood that  
8 the next steps were going to be that the Mayor was going to  
9 speak to the lawyer, as would the councilmen, and that we would  
10 be contacted.

11 We received no further contact. A number of phone  
12 calls that Ms. Kurland made to the Mayor's office I understand  
13 were not immediately returned, and that was the last that we  
14 really heard of the conversation.

15 Q During your meeting, was there any discussion about why she  
16 did not want them moving in, meaning the Orthodox Jews?

17 A Yeah. As I mentioned, she did not want them moving in,  
18 quote/unquote, to the best -- that she did not want them moving  
19 in, she did not want them throwing stones on her car on the  
20 Sabbath, she did not want them blocking her streets.

21 Q Those were things that she said?

22 A Those were actual quotes, to my recollection.

23 Q Let me just show you Exhibit 17 which was previously marked  
24 Plaintiffs' Exhibit 17. Is that the communication that you  
25 referred to that you sent after the meeting?

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1 A Absolutely. Absolutely. In fact, I now remember that Joy  
2 and I discussed the fact that we had not received any further  
3 communication from the Mayor, and we received -- and we sent  
4 her a letter saying that that was the case, and that there  
5 was -- that we were upset. We were concerned that no one in  
6 the Mayor's office saw fit to even communicate with us after  
7 the meeting, as we had agreed.

8 Q Did you ever receive a response to that letter?

9 A No.

10 Q Plaintiffs' Exhibit 17?

11 A No, I did not.

12 Q You did not.

13 Do you know if anybody did?

14 A To my knowledge, no one did.

15 Q Do you know if Joy Kurland did?

16 A I am not aware of her receiving a response. I've spoken  
17 with her since. She never mentioned one.

18 Q If she had received one, would you expect her to have  
19 informed you of that?

20 A Absolutely.

21 MR. YALE: I have no further questions.

22 CROSS EXAMINATION

23 BY MR. LESNEVICH:

24 Q Rabbi, when you left that meeting with the feeling that it  
25 was the beginning of a compromise, was it your intent to have

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1 the Eruv Association make an application to the town for this  
2 compromise to be approved?

3 A I have absolutely no involvement with the steps that the  
4 Eruv Committee is taking or has taken. My understanding was  
5 that I had been asked to serve as broker, to participate in  
6 this meeting, and that the Mayor was going to communicate to  
7 myself and to Joy Kurland as to whether or not this compromise  
8 was possible, at which point appropriate steps would then be  
9 taken in the fashion that the town saw fit.

10 Q Do you know that the Eruv Association eventually did file  
11 an application to keep the eruv in place?

12 A I'm not aware of the steps -- I'm not involved with the  
13 Eruv Association other than the meeting that I had.

14 Q Do you know if the application that was made did indeed  
15 have some points of the discussion compromise you proposed?

16 A I have absolutely no knowledge of that application or of  
17 its details.

18 Q So is it possible, Rabbi, that the Association made an  
19 application to the town which was the furtherance of what you  
20 discussed, and that that's the application that was rejected?

21 A Anything is possible. I don't know.

22 Q At that meeting you said I believe that you were visibly  
23 upset.

24 A I became visibly upset after the Mayor said, "I don't want  
25 them throwing stones at my car on the Sabbath. I don't want

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1 them blocking my streets," that is correct.

2 I said to her at that time, "I can't believe I'm  
3 hearing this in Tenafly in the year 2000."

4 Q Are you aware that Mayor Moscovitz has sworn that she  
5 didn't say those words?

6 A I have been told -- yes, I saw an affidavit to that extent.

7 Q Is it fair to say that both you and the Mayor were very  
8 emotional at that meeting?

9 A I don't believe we were emotional at the meeting. I  
10 believe that there were points at which I became angry, and I  
11 believe there were points at which Mayor Moscovitz became  
12 somewhat emotional. However, my recollection of the meeting is  
13 absolutely clear and I know what was said.

14 Q Did you tell Mayor Moscovitz that she was anti-Semitic?

15 A I never said anything of the sort. She is a Jew. I'm not  
16 quite sure how she could be anti-Semitic.

17 Q And you didn't yell and scream at her and tell her she was  
18 terrible?

19 A Absolutely not.

20 Q Thank you, sir.

21 MR. LESNEVICH: Your Honor, if I may, my co-counsel is  
22 going to follow up on the next question.

23 CROSS EXAMINATION

24 BY MR. FELDMAN:

25 Q Rabbi Goldin, good afternoon.

Goldin - cross - Feldman

133

1 A Good afternoon.

2 Q My name is Noah Feldman. I'm one of the counsel for the  
3 Defendants in the case.

4 In your affidavit, Rabbi, you mentioned that you spoke  
5 with Mayor Moscovitz about the eruv proclamation at the time of  
6 your meeting. Is that correct?

7 A The eruv proclamation?

8 Q Yes, that's your language. I take it that it refers to the  
9 rental proclamation about which the Mayor asked you.

10 A Could you show me the affidavit?

11 Q Sure, I'd be happy to.

12 A Right.

13 In the beginning, as I mentioned, the Mayor -- when I  
14 asked the Mayor as to why she was against the eruv, she  
15 indicated to me that no one could buy -- would buy the town of  
16 Tenafly. She was referring at that point to a ritual  
17 requirement that for an eruv to stand, there has to be a ritual  
18 rental of the area. She said that no one would do it.

19 I said to her, I believe that that's not your real  
20 reason. If I suspended that requirement theoretically, would  
21 you still be against the eruv?

22 It was at that point she continued and said her real  
23 reasons.

24 Q Rabbi, would you tell the Court a little bit about this  
25 rental proclamation that you described?

Goldin - cross - Feldman

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1 MR. YALE: Objection, your Honor. The Rabbi is here  
2 as a fact witness concerning what took place during a  
3 conversation between himself and the Mayor and Councilman  
4 Lipson. He's not here as an eruv expert or anything to do with  
5 the halacha rules.

6 MR. FELDMAN: Your Honor, I don't intend to offer him  
7 to explain anything that requires special knowledge or  
8 understanding, just what the comment in the affidavit was.

9 THE COURT: What was the what?

10 MR. FELDMAN: What the topic of this conversation in  
11 the affidavit was.

12 THE COURT: Could I have the question rephrased?

13 MR. FELDMAN: Of course.

14 THE COURT: What's the question again?

15 MR. FELDMAN: The question is: Could you please  
16 explain to the Court the meaning of the rental proclamation to  
17 which you referred in the conversation with the Mayor.

18 THE COURT: Referring to what he used in the  
19 affidavit?

20 MR. YALE: Phrased that way, I have no objection.

21 THE COURT: Okay. Rabbi, you can go ahead.

22 A Could you repeat the question, please?

23 BY MR. FELDMAN:

24 Q I'll try to get as closely as I can.

25 Could you please explain to the Court the meaning of

Goldin - cross - Feldman

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1 the eruv rental proclamation as you have used it in your  
2 conversation with the Mayor?

3 A There is a ritual requirement that for an eruv to be  
4 operational, the area within the boundaries of the eruv is  
5 ritually rented to the people who are using the eruv. There  
6 is -- there are no legal consequences of any kind and no  
7 ownership consequences assigned to that proclamation.

8 Therefore, when the Mayor raised it to me as an  
9 objection, I immediately said to her, I don't believe that's  
10 your real reason.

11 Q When you say there are no legal consequences, Rabbi Goldin,  
12 you mean there are no civil legal consequences?

13 A That is correct.

14 Q But there are Jewish legal consequences?

15 A It makes it an area where an eruv can exist, that's  
16 correct.

17 Q Rabbi Goldin, another question. You used the word  
18 "Orthodox Jews" several times to describe your congregation.  
19 You're Rabbi of an Orthodox congregation.

20 A That's correct.

21 Q Can you explain to the Court what you mean by using the  
22 word "Orthodox?" What does "Orthodox Judaism" mean to you?

23 MR. YALE: Objection, your Honor. I don't see where  
24 he's going with this and what the relevance is.

25 THE COURT: Is it in the affidavit?

Goldin - cross - Feldman

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1 MR. FELDMAN: The word "Orthodox"? I don't know --  
2 yes, the word "Orthodox Jew" is in the affidavit and he used it  
3 in the testimony.

4 THE COURT: If he used it in the affidavit, I think  
5 it's a fair question.

6 I'm having trouble locating that particular affidavit.

7 MR. FELDMAN: I can give you my copy.

8 THE COURT: Do you have an extra copy, Mr. Feldman?

9 MR. FELDMAN: This is all right. You can have this  
10 copy, that's fine.

11 A Could you repeat the question, please?

12 THE COURT: Sure.

13 BY MR. FELDMAN:

14 Q Certainly. Could you please explain to the Court what you  
15 mean by the term "Orthodox Jew" when you use it in your  
16 affidavit or in your testimony?

17 A Do you want a two-year explanation or a one-year  
18 explanation?

19 Q I know it's a difficult question, but I ask --

20 A Right. "Orthodox" means, to my understanding, Jews who  
21 choose to adhere to Jewish law known as halacha in as rigorous  
22 a way as possible.

23 I am the Rabbi of a modern Orthodox congregation,  
24 which means that they are at the same time individuals who are  
25 professionals, live in the world, interface with other Jews,

Goldin - cross - Feldman

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1 non Jews, people of many other persuasions, and yet at the same  
2 time believe that the observance of Jewish law is meaningful to  
3 them and enhances their lives in a meaningful way.

4 Q Rabbi Goldin, the term that you just used I believe was the  
5 term "modern Orthodox." Could you please explain what you mean  
6 by "modern Orthodox" to the extent there may be any distinction  
7 between "modern Orthodox Judaism" and any other kinds of  
8 Orthodox Judaism?

9 A I just stated, modern Orthodox Judaism means that people,  
10 although the distinctions are not that cast in stone, it's not  
11 like different denominations in other traditions, but some  
12 someone who claims to be modern Orthodox basically means -- it  
13 basically means that he lives a modern life-style, that he  
14 participates in commerce and in the world and in civic duties  
15 and responsibilities, as does any other citizen, but that he  
16 retains an adherence to traditional Jewish practice.

17 Q Thank you, Rabbi.

18 THE WITNESS: You're welcome.

19 MR. YALE: Nothing further.

20 THE COURT: Thank you.

21 Rabbi, that's fine, thanks.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 THE COURT: The Rabbi's affidavit has gone missing in  
25 my in file. Could I make a copy of it now?

1 MR. SHAPIRO: I'll give you mine.

2 I think we're at least as far as today is concerned,  
3 Judge, we maybe have gone as far as we can go until Tuesday.

4 THE COURT: All right. That's fine.

5 MR. SHAPIRO: Thank you.

6 THE COURT: I throw this out for your consideration.  
7 The question is: What are the applicable constitutional  
8 standards governing legislative review of private requests for  
9 access to non-public forum government property for purposes of  
10 religious exercise or religious speech?

11 MR. LESNEVICH: Yes, sir.

12 THE COURT: Counsel, thank you very much.

13 MR. SHAPIRO: Thank you, Judge.

14 THE COURT: We'll see you back here Tuesday.

15 MR. SHAPIRO: Thank you.

16 MR. LESNEVICH: Could the court reporter read that  
17 sentence again slowly, please?

18 THE COURT: Actually, actually we can make a copy of  
19 it.

20 MR. LESNEVICH: Thank you, that would be easier.  
21 Sure, there were about ten of us copying it. I want to make  
22 sure we got it right.

23 (At 4:40 p.m., an adjournment is taken to Tuesday, May  
24 8, 2001, at 2:00 p.m.)

25 \* \* \*



A 658

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL NO. 00-cv-6051

TENAFLY ERUV ASSOCIATION, INC., :  
et al, :

Plaintiffs, :

v. :

TRANSCRIPT OF PROCEEDINGS  
- Evidentiary Hearing -

THE BOROUGH OF TENAFLY, :  
ANN MOSCOVITZ, individually and :  
in her official capacity as Mayor: :  
of the Borough of Tenaflly, et al, :

Defendants. :

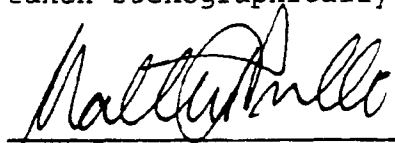
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Newark, New Jersey  
May 8, 2001

B E F O R E:

THE HONORABLE WILLIAM G. BASSLER,  
UNITED STATES DISTRICT JUDGE

Pursuant to Section 753 Title 28 United States Code, the  
following transcript is certified to be an accurate record as  
taken stenographically in the above entitled proceedings.



WALTER J. PERELLI, CSR, CRR  
Official Court Reporter



1 A P P E A R A N C E S:

2 HELLRING, LINDEMAN, GOLDSTEIN & SIEGAL, LLP  
BY: RICHARD D. SHAPIRO, ESQ.

3 - and -

WEIL, GOTSHAL & MANGES, LLP  
4 BY: ROBERT G. SUGARMAN, ESQ.

HARRIS J. YALE, ESQ.

5 ESTHER K. ILAN, ESQ.

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8 LESNEVICH & MARZANO-LESNEVICH, ESQS.

BY: WALTER A. LESNEVICH, ESQ.

9 - and-

10 McCUSKER, ANSELM, ROSEN, CARVELLI & WALSH, EQS.

BY: BRUCE S. ROSEN, ESQ.

11 Attorney for Defendants

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JOHN THOMAS SULLIVAN				
By Mr. Lesnevich	5		27	
By Mr. Sugarman		7		28

E X H I B I T S

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>IN EVID.</u>
P-18	Proclamation issued by the Office of the county Executive Of Bergen County dated December 15, 1999	13
P-12	Agreement between the Borough of Tenaflly and Gerhard Van Biema, dated Ocoober 20, 1994	33
P-19	Agreement between the Borough of Tenaflly and Jeff and Judy Fagan, dated July 21, 1997	33
P-20	Letter from the Borough of Tenaflly to Mr. Cheah with attachment, dated November 14, 1997	33

1 THE COURT: Counsel, good afternoon.

2 MR. SHAPIRO: Good afternoon, your Honor.

3 THE COURT: Let's see.

4 I guess we should have appearances for the record.

5 MR. SHAPIRO: Good afternoon, your Honor. On behalf  
6 of the Plaintiffs, Richard Shapiro from the firm of Hellring,  
7 Lindeman, Goldstein & Siegal; and Robert Sugarman, Harris Yale,  
8 Craig Lowenthal and Esther Ilan from the law office of Weil,  
9 Gotshal & Manges.

10 MR. LESNEVICH: Good afternoon, your Honor. Walter  
11 Lesnevich, Borough Attorney in the Borough of Tenafly. My  
12 co-counsel, Bruce Rosen.

13 THE COURT: All right. Let's see. I believe, Mr.  
14 Lesnevich, you're up at bat. Right?

15 MR. LESNEVICH: Yes, sir. I'm going to present my  
16 final witness, John Sullivan, please.

17 He just stepped out.

18 Excuse me, your Honor.

19 THE COURT: Good afternoon, Mr. Sullivan.

20 MR. SULLIVAN: Good afternoon, sir.

21 Thank you for accommodating my schedule.

22 THE COURT: Yes, sir.

23 J O H N T. S U L L I V A N, called as a witness, having  
24 been first duly sworn, is examined and testifies as  
25 follows:

1 THE DEPUTY CLERK: Please be seated. Just move that  
2 chair a little closer to the microphone.

3 THE WITNESS: Yes, sir.

4 THE DEPUTY CLERK: Please state your name, spelling it  
5 for the record.

6 THE WITNESS: John Thomas Sullivan, S-u-l-l-i-v-a-n

7 DIRECT EXAMINATION

8 BY MR. LESNEVICH:

9 Q Mr. Sullivan, please tell the Court briefly your business  
10 and educational background, what you do for a living.

11 A Yes, sir. I am the business and project manager in the  
12 treasury division of a large multi national bank. My  
13 educational background consists of double bachelors from the  
14 University of California, Santa Cruz, and a Masters in Business  
15 Education from Cornell University.

16 Q And what is your civic background in the town of Tenaflly?

17 A They are multiple. I'm a Councilman of the Borough of  
18 Tenefly; I am a coach in the Tenaflly Junior Soccer League; I  
19 coach track within the town for the kindergarten through eighth  
20 graders at Mt. Carmel, and also within town activities I coach  
21 there.

22 Q As a councilman, did you have occasion to vote on the  
23 application of the Tenefly Eruv Association, Incorporated?

24 A Yes, sir, I did.

25 Q And what was your vote?

Sullivan - direct - Lesnevich

6

1 A My vote was to deny the application.

2 Q Did any bias or animosity toward Orthodox Judaism or  
3 Orthodox Jews affect your vote on that decision?

4 A No, sir.

5 Q Do you have such bias?

6 A No, sir.

7 Q Did you have occasion to meet with Mr. Book of that  
8 Association?

9 A Yes, sir, on three different occasions.

10 Q Would you tell the Court what you and Mr. Book did on those  
11 occasions.

12 A On the first occasion with Mr. Chaim Book, I had the  
13 ability to meet with him at his house and his family. And at  
14 that time he introduced me to the concept of the eruv, reviewed  
15 the history of the eruv with us, and why he and his colleagues  
16 thought it was necessary to have an eruv in Tenafly.

17 Q Did there come a time when you walked through the town with  
18 him?

19 A No, sir, I did not walk through the through the town. I  
20 walked on my own.

21 Q Oh.

22 A Basically through the town, but not with Mr. Chaim Book,  
23 no.

24 MR. LESNEVICH: I have nothing further.

25 Thank you very much.

Sullivan - cross - Sugarman

7

CROSS-EXAMINATION

BY MR. SUGARMAN:

Q Good afternoon, Mr. Sullivan. My name is Bob Sugarman, and I'm one of the counsel for the Plaintiffs.

A Good afternoon, Mr. Sugarman.

Q Did you submit an affidavit in this case?

A Yes, sir, I did.

Q I would like to show you a document and ask if you recognize it to be the affidavit you submitted?

A Yes, sir.

MR. SUGARMAN: Your Honor, do you have a copy? Or I can give you another one.

THE COURT: I have a copy. I didn't bring it out with me.

THE WITNESS: You may have this one, sir.

THE COURT: You may need it.

Thanks, Mr. Sugarman.

Q Mr. Sullivan, in paragraph 2 of your affidavit you described some of the factors that went into your vote. And one of the things you said was, "...discussions with members of the Orthodox and non-Orthodox Jewish community of Tenafly."

Now, you've testified that you had a discussion or three discussions I think with Mr. Book. Did you have any discussions with anyone else of the Orthodox Jewish community in Tenafly?

Sullivan - cross - Sugarman

8

1 A Yes, sir. Mr. Charles Agus was involved in several of  
2 these discussions. In, fact, it was Mr. Agus who originally  
3 had approached me. Also I have a neighbor who is a member of  
4 the Lubavitch community, and I would say is a good friend, and  
5 I believe also ascribes to or his family ascribes to the  
6 Orthodox faith.

7 Q Did you have any discussions with Mr. Nelkin?

8 A No, sir.

9 Q You don't recall any discussions with a man by the name of  
10 Jay Nelkin?

11 A I'm sorry, Jay, yes. My apologies, sir. Yes.

12 Q Did you have some discussions --

13 A Yes, I'm sorry. I didn't recall the surname.

14 Q Okay. Now, you also say in that paragraph that you had  
15 discussions with people in California where eruvs were being  
16 considered.

17 A Yes.

18 Q Did you have any discussions with any people in New Jersey?

19 A Yes, sir.

20 Q Other towns in New Jersey?

21 A Yes, sir. East Windsor Township, I believe that's in the  
22 southern part of New Jersey, and where there was an eruv or had  
23 been an eruv under discussion.

24 Q Did you have any discussions with any people in any towns  
25 where there were existing eruvs in New Jersey?

Sullivan - cross - Sugarman

9

1 A Other than friends of mine who live in Teaneck or  
2 Englewood, that would be the sum total of it.

3 Q No discussions with anybody, for example, from Fort Lee or  
4 West Orange or Fair Lawn?

5 A Sir, I'm not a native of New Jersey, and most of my friends  
6 are within a short distance radius of Tenafly.

7 Q You did, however, reach out to California to discuss the  
8 issue. Right?

9 A That is correct Sir.

10 Q Turning to the second page in paragraph 4, the last  
11 sentence says: "Therefore, I determined that the eruv  
12 contravenes the rights of Tenafly's residents to free  
13 association without religious and government interference."

14 When you used the word "free association" in that  
15 sentence, what do you mean?

16 A The way I use that terminology or define that terminology  
17 is that reading above in item number 4 there, if you would, is  
18 that the eruv establishes a domain, a reshut, I think is the  
19 proper terminology. I did not think it proper that the eruv be  
20 established in a manner that would involve both the government  
21 and a religious entity. And as a consequence, it was my  
22 feeling that we had best try to stay clear of the issue, and  
23 that is what I meant by that "free association."

24 Q Free association of whom with whom?

25 A Oh, basically the residents of Tenafly with all other

Sullivan - cross - Sugarman

10

1 religious entities, i.e., that the residents of Tenaflly are  
2 a -- basically they are the public, and they are being asked to  
3 accommodate a religion -- or a religious practice by permitting  
4 a domain to be established within the Borough of Tenaflly that  
5 is outside the normal Borough domain, if you will. It's a  
6 domain within a domain, or a domain within the Borough, I  
7 should say.

8 Q Okay. But my question is, how does that contravene the  
9 rights of the Tenaflly residents to free association?

10 Or let me put it another way. Does the eruv prevent  
11 any resident of Tenaflly from associating with any other  
12 resident of Tenaflly?

13 A I think not. That's -- I don't see that. I mean, I freely  
14 associate with members of the Orthodox Jewish religion.

15 Q Okay. So the eruv doesn't contravene anybody's right to  
16 associate with anybody else. Is that right?

17 A That's not the context I had it -- I meant it to be. I  
18 meant it as a free association of, I live within a public  
19 Borough which is not encumbered by a religious domain, and that  
20 is the meaning of that word.

21 Q So you didn't have it meaning in any free association in  
22 the way that one person could associate with another person?  
23 That's not what you meant?

24 A That is your interpretation, sir, not mine.

25 Q Okay. What government interference did you have in mind

Sullivan - cross - Sugarman

11

1 when you were writing that sentence?

2 A What government interference I had in mind?

3 Q Yes.

4 A Well, frankly, it's my belief and it's my personal belief  
5 that the government should not be making decisions pertaining  
6 to one's religious practice. That is a personal belief.

7 Q Okay. And of what government interference did you see in  
8 the eruv? In what way was the government interfering?

9 A Well, the whole concept -- my sense is the whole concept of  
10 voting for or against an eruv was, in my view, my personal  
11 view, a sense of government interference. I would have to say  
12 that by permitting an eruv, I was interfering with people who  
13 I'm elected to represent who may or may not want an eruv.

14 Q Okay. Well let's -- in what way were you interfering with  
15 anybody who didn't want an eruv?

16 A In what way was I interfering?

17 Q Yes. You just said that in voting for the eruv you would  
18 be interfering --

19 A Well, essentially my sense is that in one way, if I took a  
20 vote or another, that I would have to be essentially saying  
21 that I did or did not like a particular practice. That's how I  
22 could be construed, and I was quite concerned about that.

23 Q Does the existence of the eruv affect the day-to-day lives  
24 of anyone in Tenafly?

25 A How to do you define "affect"?

Sullivan - cross - Sugarman

12

1 Q Well, does it have any impact on the day-to-day -- is there  
2 something that you or any other person in Tenafly could not do  
3 now that the eruv is there which you could do -- could have  
4 done before the eruv went up?

5 A The eruv is not part of my religious practice, it has no --  
6 therefore, no particular effect.

7 Q Okay. And is that the same for Jews who are not Observant  
8 Jews?

9 A I cannot answer for them. You are asking me to make a  
10 statement, a supposition. I can only respond as to how it  
11 affects me.

12 Q But one thing is clear, for the non Jewish population of  
13 Tenafly, the existence of the eruv or not has no effect on  
14 their activities from one day to the next. Is that fair?

15 A I couldn't answer that.

16 Q Did you ever read the Proclamation that established the  
17 private domain that we've been talking about?

18 A The Proclamation --

19 Q Issued by the County Executive of Bergen County.

20 A You mean Bergen County President, County President Schuber,  
21 is that what you're referring to?

22 Q Yes, County Executive Schuber. Did you ever read the  
23 Proclamation?

24 A Yes, I did.

25 MR. SUGARMAN: I'd like to mark as Plaintiffs' Exhibit

Sullivan - cross - Sugarman

13

1 18 a --

2 MR. LESNEVICH: Your Honor, no objection to that going  
3 into evidence because it's already part of the record, your  
4 Honor.

5 THE COURT: Yes. P-18 in evidence.

6 (Plaintiffs' Exhibit 18 is received in evidence.)

7 Q So this -- you haven't read what's been marked as  
8 Plaintiffs' Exhibit 18?

9 A I have read it.

10 Q All right. And this, is it not, is the Proclamation that  
11 establishes the private domain?

12 MR. LESNEVICH: Your Honor, I have to object. That's  
13 well out of the scope of his knowledge. That's a question of  
14 Jewish law as to what --

15 THE COURT: It really is. I'm going to sustain the  
16 objection. I don't know how he could answer that question.

17 Q Did you understand this document to be the document which  
18 establishes what you had put in your affidavit as the Reshut  
19 hayachid?

20 A Reshut? I -- is this the document?

21 No, I did not read this as establishing -- if counsel  
22 refer to the last paragraph which is, "The said eruv shall not  
23 be valid or binding for any other purpose and this Proclamation  
24 creates no rights, duties, or obligations enforceable in any  
25 court whether in law or in equity."

Sullivan - cross - Sugarman

14

1 Q Right. And you understood that that was contained within  
2 the Proclamation. Correct?

3 A I think it's clear that it is in the Proclamation, sir.  
4 But the problem is that you asked me the question is that,  
5 whether or not this establishes the so-called reshut hayachid,  
6 and I said I don't --

7 Q Okay.

8 A The bottom paragraph I think clearly says otherwise.

9 Yes?

10 Q But the bottom paragraph that you read does make it clear  
11 that whatever this Proclamation does, it doesn't diminish,  
12 increase, or affect any other rights that you as a citizen of  
13 Tenaflly and New Jersey have under the law. Is that right?

14 A I don't know. I can't interpret it that way.

15 Q In that last sentence where you talk about free association  
16 in paragraph 4, you talk about religious and government  
17 interference.

18 What religious interference did you have in mind when  
19 you said what you said?

20 A Again, I refer you to the beginning of statement 4, is that  
21 it does designate an eruv as a reshut hayachid. Certain  
22 Orthodox Rabbinical rights refer to the reshut hayachid -- and  
23 excuse my lack of pronunciation -- as the religious extension  
24 of the home, a private domain.

25 In numerous research and writings that I undertook,

Sullivan - cross - Sugarman

15

1 the word "domain" was used. To establish a domain, religious  
2 or otherwise, within the Borough of Tenafly, created a sense  
3 of, let us say, of another authority or something different  
4 within the town. And to me within the context of the Borough  
5 of Tenafly it must maintain the Borough or the public domain,  
6 if you will.

7 Q Does the --

8 A Reshut hayachid, I believe, is considered to be a private  
9 domain, sir.

10 Q Okay. Does that private domain interfere with the practice  
11 of your religion?

12 A Me personally?

13 Q Yes.

14 A The reshut hayachid is not part of my religion.

15 Q And therefore it doesn't interfere with the practice of  
16 your religion?

17 A It is not part of my religion.

18 Q Is there any religious interference, in your words in  
19 paragraph 4, with your religion as a result of the eruv?

20 A Would you define what you call "religious interference,"  
21 sir?

22 Q Well, it's really not important what I mean. You used the  
23 words "religious and government interference." My question is:  
24 Does the eruv create any religious interference with the  
25 practice of your religion?

Sullivan - cross - Sugarman

16

1 A Personally?

2 Q Yes.

3 A It does not.

4 Q The absence of an eruv does interfere with the way in which  
5 certain Orthodox Jews practice their religion. Isn't that  
6 right?

7 A No, sir, I would not know that. Again, it was explained to  
8 me, but I am not an Orthodox Jew nor can I say what is right or  
9 wrong, nor have I read the Talmud.

10 Q Okay. But it was explained to you that, for example,  
11 without an eruv someone with a small child could not push a  
12 baby carriage to synagogue?

13 A I heard comments to that effect.

14 Q And did you have any reason or basis to question the  
15 sincerity of those comments?

16 A The sincerity?

17 Q Yeah.

18 A The sincerity of those comments were given to me by Mr.  
19 Chaim book. I have no, I repeat, no basis to object to that  
20 gentleman's sincerity. He's a sincere individual.

21 Q Right. So that you knew that at least for Mr. Book, the  
22 absence of an eruv would have an effect on his ability to go to  
23 the synagogue on the Sabbath?

24 A As he explained, it would have an effect upon him, and I  
25 countered with a concept that I had looked at or had read about

Sullivan - cross - Sugarman

17

1 called the shabbat goy. And again, my pronunciation may be  
2 wrong.

3 Q Okay. Now, in paragraph 5, you say: "Upon research and  
4 reading of past Borough ordinances, the erection of an eruv  
5 upon a utility pole or any other public use facility without  
6 the explicit prior approval of the Borough Council is a  
7 violation of enacted law."

8 Now, you didn't know that, did you, when you started  
9 to make your statement at the December 12 Council meeting at  
10 which the vote was taken?

11 A Actually I had made an inquiry to confirm from our Council  
12 that, in fact, we do have that ordinance. It can be construed,  
13 if you so wish, that it looked like I was hesitating. I was  
14 aware of the fact that there was an ordinance, but I wanted  
15 clarification from the Council as during the discussions, if I  
16 rightly recall, the mention of the ordinance was not brought up  
17 by either party.

18 Q Well, do you recall stating as part of your statement at  
19 the December 12 meeting of the Council, "To the best of my  
20 knowledge -- and this can be confirmed -- there is no  
21 ordinance, no resolution that says that you cannot hang  
22 something from a utility pole, to the best of my knowledge, and  
23 please correct me if I'm wrong. There's no ordinance." Do you  
24 remember saying that?

25 A Yes, I do. And I would like to just say that there's

Sullivan - cross - Sugarman

18

1 nothing wrong in asking a question in the negative by asking,  
2 again, please correct me if I'm wrong.

3 Q And so what you're intending to do is ask a question, not  
4 make a statement. Is that what you're saying?

5 A I'm asking a question. "Please correct me if I'm wrong"  
6 usually follows with a question mark.

7 Q Now, in the next paragraph of your affidavit you state that  
8 your vote took into account that the Tenefly Eruv Association  
9 offered no workable procedure for a citizen of Tenaflly to opt  
10 out of the eruv's encirclement.

11 Didn't you and Mr. Book and Mr. Nelkin have a  
12 conversation about a mechanism for people in Tenaflly to be able  
13 to opt out?

14 A Yes, sir, we did. We did mention a -- the question was  
15 posited to me that, what if the people wanted to opt out?

16 And we were trying to work out a solution. I don't  
17 believe we came to a workable solution at the time. It was --  
18 we were considering various concepts. That is my recollection  
19 of it.

20 Q Well, wasn't it -- didn't the discussion start with your  
21 raising the "opt out" concern?

22 A Yes, sir, it did, it most definitely did.

23 Q And then there was a discussion of practical ways in which  
24 to opt out if you wanted to?

25 A There were discussions of methodologies. I can't say that

Sullivan - cross - Sugarman

19

1 they were practical.

2 Q Well, when one of them was to develop a form that would be  
3 available at the Borough Hall for people to sign and therefore  
4 opt out?

5 A My recollection is that we did talk about a sign. As to  
6 where the location of that sign would be, we did -- I don't  
7 recall where that would be. I did not consider that to be a  
8 workable solution on retrospect when I went back to think about  
9 it. But, yes, we did discuss it.

10 Q You did say at the time, however, that you thought that  
11 that was a simple workable solution, didn't you?

12 A My recollection is that my initial thoughts were that it  
13 could have been a workable solution, but upon retrospect -- and  
14 I think we're all allowed to have retrospect when we go back  
15 and think something out -- that we can say at that, whether  
16 it's workable or not or reconsider. That's the pleasures of  
17 living in a democracy, sir.

18 Q Did you ever go back to Mr. Book or Mr. Nelkin and say,  
19 gee, I'm thinking this over in my mind and, you know, we are in  
20 a democracy and I'm entitled to change my mind but now I have  
21 questions and I don't think the thing that we agreed on that  
22 was practical would work out?

23 A On that particular instance, prior to the vote I don't  
24 believe we had sufficient enough time. Subsequent to the vote,  
25 I believe I spoke to Mr. Nelkin asking if we could find another

Sullivan - cross - Sugarman

20

1 way of a compromise.

2 THE COURT: I'm just curious -- can I just interrupt  
3 for a minute?

4 MR. SUGARMAN: Absolutely, your Honor.

5 THE COURT: I'm just curious about the discussion,  
6 this business of coming into the Borough Hall and signing  
7 something. I'm just curious s to what -- what was going on.

8 THE WITNESS: Oh, basically, sir, what I was trying to  
9 determine is that if there was some form of compromises that we  
10 could work out. For example, I work with a number of young  
11 children in town who must do community service. They're not of  
12 the religious faith of the Orthodox Jews. However, for the  
13 sake of interfaith workings, these children could be basically  
14 be the shabbat goy, basically they could do the carrying, the  
15 pushing on behalf of my neighbors.

16 There was attention given to the concept, sir, of can  
17 we form natural boundaries within towns other than using -- I  
18 believe, in part, there are other areas of this country which  
19 utilize natural boundaries to form the eruv. I was trying to  
20 find, sir, a methodology that was not an actual physical  
21 affixion to public property --

22 THE COURT: Right.

23 THE WITNESS: -- that would work.

24 THE COURT: But you mentioned something else about  
25 people coming in and signing a piece of paper?

Sullivan - cross - Sugarman

21

1 THE WITNESS: Well, there was the concept, sir, of --  
2 presented of, well, on an opting out, why don't we have people  
3 come in and say -- and write down that they don't want to be  
4 part of the eruv.

5 I think my initial concept of that was, I said, we  
6 were having such a discussion as that -- it sounded feasible,  
7 it sounded like a simple way of doing it. On retrospect, sir,  
8 I felt that folks would come into that, look at that and they  
9 would probably be a little reticent about signing it  
10 themselves, and it may not be workable. It would not be a true  
11 reflection of whether one wants to or desires to be or not to  
12 be part of the eruv.

13 THE COURT: In any event, you were looking for some  
14 solution to the problem?

15 THE WITNESS: Absolutely. If I may, Mr. Book and Mr.  
16 Agus are neighbors of mine, and as a Councilman, I'm there to  
17 represent them as well.

18 THE COURT: Sure.

19 BY MR. SUGARMAN:

20 Q Councilman Sullivan, you said in one of your earlier  
21 answers that there wasn't sufficient time between the meeting  
22 at which you discussed these potential procedures and the vote.

23 The discussion that you had about the procedures for  
24 opt out took place on the Sunday after Thanksgiving in the  
25 bagel store. Isn't that right?

Sullivan - cross - Sugarman

22

1 A I know it was a Sunday and I know it was in the bagel  
2 store. I cannot tell you whether it was or not, but most  
3 definitely it was at a bagel store on a Sunday.

4 Q Okay. And the meeting at which the vote was taken was  
5 December 12th?

6 A That is correct.

7 Q Now you mentioned natural boundaries. And in your  
8 affidavit in paragraph 7 in the last sentence you state, quote:  
9 The failure to find harmony and to compromise by seeking to  
10 establish an eruv with natural boundaries weighed upon your  
11 decision; my decision.

12 So, is what you're saying, that an eruv with natural  
13 boundaries would have been okay?

14 A I think I made that pretty clear in my response to the  
15 Judge, that I'm trying to find a way that it's not an affixtion  
16 to public property.

17 Q Okay. So a natural boundary -- so if a natural boundary  
18 met those qualifications, you would have been comfortable with  
19 an eruv that was made up of natural boundaries?

20 A Personally?

21 Q Yes.

22 A The answer is in the affirmative.

23 Q Okay. That eruv with natural boundaries would have been  
24 the same private domain. Correct?

25 A That would be an eruv -- I think what I'm more really

Sullivan - cross - Sugarman

23

1 looking for here is something that is not affixed or not part  
2 of the public. I personally also must say that I don't like to  
3 be part of anyone else's domain other than my own domain, and  
4 that of what I consider to be the Borough of Tenafly, that's  
5 what I subscribe to.

6 Q All right. But my question was, an eruv that consists of  
7 natural boundaries would be every bit as much a private domain  
8 as an eruv that's boundaries are telephone wires and rubber  
9 strips up the pole?

10 A That would have been a solution.

11 Q Please let me ask the question: Wouldn't it have been the  
12 same kind of private domain that the existing eruv creates?

13 A I guess I would look at that in that area as a possibility.  
14 I can say yes or no definitively, but there is that  
15 possibility.

16 Q Now, you also mentioned that you met with Mr. Nelkin after  
17 the vote. Correct?

18 A I believe it was. I can't -- it was dark outside in the  
19 parking lot. It was either Mr. Nelkin or Mr. Agus, and I have  
20 to apologize.

21 Q But it was in the parking lot after the vote?

22 A Yes, sir.

23 Q Right?

24 And you told Mr. Nelkin that while you didn't  
25 personally have any opposition to the eruv, you voted because

Sullivan - cross - Sugarman

24

1 you had been elected by your constituents, and they objected to  
2 the eruv. Isn't that right?

3 A I don't recall the words, sir.

4 Q Is that --

5 A I do recall that I did mention something about my personal  
6 feelings. I think it's very clear to the members of the  
7 Tenefly Eruv Association what my personal feelings are.

8 Q But you said to Mr. Nelkin that you cast your vote because  
9 you were elected by the constituents, and those constituents  
10 objected to the eruv. Isn't that right?

11 A There were a variety of constituents who had objected to  
12 the eruv, and I had to represent them as well as members of the  
13 Eruv Association.

14 Q And so you were casting your vote because you came out that  
15 you would go with their views as opposed to the members of the  
16 Tenefly Eruv Association?

17 A Sir, I came out because of my own personal views of the  
18 situation. And my own personal views are that having something  
19 affixed to a utility pole in our town is against our particular  
20 ordinances.

21 Q So are you saying you didn't say to Mr. Nelkin that the  
22 reason for the vote was not your personal opposition but the  
23 opposition of your constituents?

24 A I don't recall the precise words. I don't.

25 Q Forget the words, I mean I'm not interested in the words.

Sullivan - cross - Sugarman

25

1 Was the substance of what you said to Mr. Nelkin: I don't  
2 personally have any objection to this, but there are a lot of  
3 people here in town who do, and I'm elected to represent them  
4 and that's why I voted the way I did?

5 A Again, I can say that, the first part of it, I am  
6 personally not against it. I can't recall. I may have said  
7 something to that order, but I cannot recall.

8 Q And did you also say an explanation for why they were  
9 against it, it was because of their concern that it would cause  
10 Orthodox Jews to move into Tenafly?

11 A I don't recall saying those words.

12 MR. SUGARMAN: Could I have a minute, your Honor?

13 (There is a pause for Mr. Sugarman.)

14 Q Mr. Sullivan, did you take any notes of any of the meetings  
15 that you had or any of the interviews or any of the readings  
16 that you did?

17 A Did I take any notes?

18 Q Yes. Did you make any notes in a notebook or on a piece of  
19 paper of any of these discussions or any of the results of the  
20 research that you did?

21 A Not with discussions with -- I think I did bring a notebook  
22 with me as I'm prone to do. I think I -- I can't rightly  
23 recall but I'm pretty sure I brought a notebook with me to Mr.  
24 Book's home.

25 Q And do you have notes that you made, whether it's in a

Sullivan - cross - Sugarman

26

1 meeting or in connection with your research or based on a  
2 telephone call or whatever, involving this issue?

3 A Yes, I do keep fairly detailed notes of what transpires. I  
4 know I kept them at the Council meetings, for example.

5 Q All right.

6 MR. SUGARMAN: Your Honor, we had requested those  
7 notes as part of the document request and have not been  
8 provided them, and I would request that that be done. It would  
9 have been nice to have them before he testified, but we don't.

10 THE COURT: Yeah.

11 THE WITNESS: Those -- excuse me, if I may interject,  
12 your Honor?

13 THE COURT: Yes, sir.

14 THE WITNESS: Most of those notes that I took were  
15 from the public record during the public meeting. Notes that I  
16 would have other taken were simply those found on the internet  
17 in definitions of words, such as reshut hayachid.

18 THE COURT: That's fine, except apparently they were  
19 requested prior to the hearing.

20 MR. LESNEVICH: Yes, your Honor, they were. I was  
21 aware Mr. Sullivan's notes of the meeting, I wasn't aware of  
22 these other matters being produced. If he has them.

23 THE COURT: We're going to ask you to produce those,  
24 please.

25 THE WITNESS: Oh, certainly.

Sullivan - cross - Sugarman

27

1 MR. LESNEVICH: Just give them to me and I'll get them  
2 to the counsel.

3 THE COURT: That's fine.

4 THE WITNESS: Okay.

5 BY MR. SUGARMAN:

6 Q Mr. Sullivan, do you have any of those notes with you  
7 today?

8 A I only have a memorandum of law that was produced by the  
9 city attorney from Palo Alto, which I think you already have.

10 Q That we do have. I'm talking about any of your handwritten  
11 notes from your notebook.

12 A Oh, no, not in that particular notebook, no, sir.

13 MR. SUGARMAN: I have nothing further, your Honor.

14 THE COURT: Thanks, Mr. Sullivan.

15 MR. LESNEVICH: One second, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. LESNEVICH:

18 Q Mr. Sullivan, your conversation with Mr. Nelkin after the  
19 vote out in the parking lot, about what hour in the morning was  
20 that?

21 A Oh, that would be close -- a bit past midnight; 12:30  
22 maybe, between 12:15 and 12:30 a.m.

23 Q Did he initiate the discussion or did you?

24 A I came by, I saw him, and I just shook hands and I said to  
25 him, you know, I'm really sorry, or words to that effect, that

Sullivan - redirect - Lesnevich

28

1 this all had to come to pass. And if that was initiating the  
2 conversation, then that's initiating the conversation.

3 Q And before the vote you had taken numerous steps to try to  
4 effect a compromise, had you not?

5 A Yes, sir.

6 Q None of it worked though?

7 A None of them were acted upon.

8 Q Were all your compromise suggestions and all your work  
9 oriented toward the idea of having the eruv not be on public  
10 property?

11 A Yes, sir.

12 Q Thank you.

13 MR. LESNEVICH: I have nothing further.

14 THE COURT: Anything else of Mr. Sullivan?

15 THE WITNESS: No, sir.

16 THE COURT: No, I was asking counsel. I'm trying to  
17 get you out of here, Councilman.

18 THE WITNESS: I appreciate it.

19 RECROSS-EXAMINATION

20 BY MR. SUGARMAN:

21 Q Mr. Sullivan, wasn't the problem that the Tenefly Eruv  
22 Association wanted to compromise and cooperate but your  
23 colleagues on the Council didn't?

24 A I have not had the opportunity to fully discern the thought  
25 process of members of the Council. To the extent that I

Sullivan - recross- Sugarman

29

1 believe I was the only Council member, including the Mayor,  
2 other than that one meeting who met with members of the Tenefly  
3 Eruv Association, if you can construe that as a desire to  
4 compromise between both parties, I think there was -- there was  
5 that willingness, but I don't think there was anything really  
6 practical that could come out. It pains me to say that.

7 I really thought that, you know, setting up other  
8 natural boundaries or the concept of the shabbat goy where we  
9 could have children or myself included, could assist our  
10 Orthodox neighbors, that didn't seem to be something that was  
11 going to be considered or acted upon, and I may have that  
12 wrong. But I don't think that was something that could be  
13 acted upon by the Tenefly Eruv Association. I was told that --  
14 if I recall correctly, that that was a bit complicated and they  
15 didn't really want to impose upon other people. I think that's  
16 really where we left that. I feel that that's still an open  
17 issue. It's not quite closed yet.

18 Q Well, is it fair to say that the Eruv Association made  
19 significant efforts to compromise?

20 A I think the Eruv Association, or at least with me, made the  
21 effort to explain themselves. I don't -- I think there was --  
22 let me call it an intent, but I didn't see an action. I think  
23 their -- frankly, there was a -- a good faith intent, from --  
24 that's my personal -- again my personal perspective.

25 Did I relay that to the Council, I think is your real

Sullivan - recross- Sugarman

30

1 question?

2 I did rely a portion of that or attempt that -- I had  
3 been talking to them.

4 Q Is it also fair to say that you didn't get any favorable  
5 response from any of the other members of the Council?

6 A I think it was just -- it was an open -- it was all part of  
7 our discussions. I had explained to members of the Council the  
8 concept of shabbat goy, and I know the Mayor was aware of it.

9 Q To your knowledge, none of the other members of the Council  
10 met with the --

11 A Met with them privately.

12 Q -- with the Eruv Association to attempt to compromise this?

13 A To the best of my knowledge, other than the meeting that  
14 the Mayor had with I believe it was Rabbi Goldin, no other  
15 member had met with the Tenevly Eruv Association either  
16 together or individually, to the best of my knowledge.

17 MR. SUGARMAN: Thank you, your Honor.

18 MR. LESNEVICH: Nothing further, your Honor.

19 THE COURT: Mr. Sullivan, thanks very much.

20 THE WITNESS: Thank you.

21 THE COURT: You can step down.

22 THE WITNESS: Shall I leave this here?

23 THE COURT: Yes, you can leave that.

24 THE WITNESS: And I'll get those notes, sir.

25 THE COURT: Yes.

1 (Witness excused.)

2 MR. LESNEVICH: That concludes our witness list, your  
3 Honor.

4 THE COURT: Okay.

5 MR. SUGARMAN: Your Honor, I think there have been  
6 discussions, there's one more witness who is out of town this  
7 week but will be available -- and I understand it works with  
8 your schedule -- Monday the 14th at 11 o'clock. We had been in  
9 touch with Mr. Creegan about that.

10 MR. LESNEVICH: Your Honor, I --

11 THE COURT: Yeah. This catches me by surprise, but --  
12 can I chat with counsel in chambers for a few minutes?

13 MR. LESNEVICH: Yes.

14 MR. SUGARMAN: Sure.

15 (A recess is taken.)

16 The Court and Counsel confer off the record in  
17 chambers.)

18 (Proceedings resume in open court.)

19 THE COURT: Counsel, just to recapitulate, we have one  
20 final witness from the Plaintiffs. Right? Scheduled for  
21 Monday, May 14th at 11 o'clock?

22 MR. SHAPIRO: Yes, Judge.

23 THE COURT: And the American Civil Liberties Union has  
24 requested permission to file an additional brief. I'll do  
25 that. I don't think anybody here objects. And I'll require

1       them to file it by June 1st.

2               The parties' briefs will be filed no later than June  
3       15th, and I'll entertain closing arguments and oral argument on  
4       Thursday, July 19th at 10 o'clock. In the meantime, the  
5       Restraining Order will be kept in effect.

6               MR. LESNEVICH: Yes, your Honor.

7               THE COURT: Would somebody be good enough to draft  
8       that order for me, please?

9               MR. SHAPIRO: Judge, I'll do it.

10              MR. SUGARMAN: Your Honor, there are three exhibits --

11              THE COURT: Yes, I'm sorry. What was that again?

12              MR. SUGARMAN: Exhibit 12 has been marked and now I  
13       offer it. That's an agreement of October 20, between the  
14       Borough and Gerhard Van Biema.

15              THE COURT: Is there any problem with that?

16              MR. LESNEVICH: Which one is it? I'm sorry.

17              MR. SHAPIRO: The one we marked last week.

18              MR. LESNEVICH: No objection.

19              MR. SUGARMAN: And then as Plaintiffs' Exhibit 19, an  
20       agreement dated July 21, 1997 between the Borough and Jeff and  
21       Judy Fagan.

22              THE COURT: I'm sorry. What is that?

23              MR. SUGARMAN: It's an agreement dated July 21, 1997  
24       between the Borough of Tenafly and Judy Fagan with respect to  
25       the sprinkler system.

1 MR. LESNEVICH: No objection.

2 THE COURT: Okay.

3 MR. SUGARMAN: And then as Plaintiffs' Exhibit 20, a  
4 letter dated November 14, 1997 having to do with a canopy over  
5 the entrance to a restaurant, and attached to that is a  
6 memorandum to the Mayor and Council dated October 23rd, and a  
7 diagram.

8 MR. LESNEVICH: No objection.

9 (Plaintiffs' Exhibits 12, 19 an 20 are received in  
10 evidence.)

11 THE COURT: Did anybody ever find the copy of one of  
12 the easements that actually go to the utility? I had mentioned  
13 that earlier on. I'm not sure it's so critical but I just  
14 wanted to see what the wording of it was.

15 MR. LESNEVICH: I believe that's covered in the  
16 agreement with the utility that's in our papers.

17 THE COURT: In the papers?

18 MR. LESNEVICH: There's no other easement as such that  
19 I'm aware of. It's an agreement with the utility. Basically  
20 says to Bell Atlantic, use the poles and you must allow cable  
21 to use them.

22 THE COURT: All right. So, counsel, just to  
23 recapitulate, in terms of the additional briefing, I'm  
24 requesting counsel to focus on the Supreme Court cases that I  
25 have brought to your -- well you've mentioned them as well, but

1 dealing with the standards that the municipality or government  
2 criteria can utilize with respect to the use of non-public  
3 forum property; the issue of mixed motivation in terms of  
4 denying the use of non-public forum property; the issue of  
5 whether motivation at all applies under those circumstances,  
6 that is, as long as the ordinance or the administrative  
7 decision is content neutral, it makes no difference what the  
8 motivation was; what do you do if there are mixed motivations?  
9 And I think that pretty much covers it.

10 In any event, you have the other issues that were  
11 concerning me which I would appreciate some additional briefing  
12 on.

13 MR. LESNEVICH: Yes, sir.

14 THE COURT: Counsel, thanks very much.

15 MR. LESNEVICH: Thank you, your Honor.

16 MR. SHAPIRO: Thank you, Judge.

17 (At 4:18 p.m., an adjournment is taken to Monday, May  
18 14, 2001, at 11:00 a.m.)

19 \* \* \*



A 692

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL NO. 00-cv-6051

TENAFLY ERUV ASSOCIATION, INC., :  
et al, :

Plaintiffs, :

v. :

TRANSCRIPT OF PROCEEDINGS  
- Evidentiary Hearing -

THE BOROUGH OF TENAFLY, :  
ANN MOSCOVITZ, individually and :  
in her official capacity as Mayor: :  
of the Borough of Tenaflly, et al, :

Defendants. :

- - - - - x

Newark, New Jersey  
May 14, 2001

B E F O R E:

THE HONORABLE WILLIAM G. BASSLER,  
UNITED STATES DISTRICT JUDGE

Pursuant to Section 753 Title 28 United States Code, the  
following transcript is certified to be an accurate record as  
taken stenographically in the above entitled proceedings.



WALTER J. PERELLI, CSR, CRR  
Official Court Reporter

WALTER J. PERELLI, C.S.R., OFFICIAL COURT REPORTER, NEWARK, NJ

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## I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
JAY P. NELKIN		
By Mr. Yale	5	
By Mr. Rosen		51

## E X H I B I T S

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>IN EVID.</u>
P-12 thru 26	Photographs	44
P-27 thru 31	Photographs	51
P-32	Four pages of handwritten notes of Councilman Sullivan	80
P-33 (P-33A thru 33L)	Borough of Tenafly Newsletter	80

(Exhibit numbers reserved:

P-34	Audio tapes of public hearing	-
P-35 and 36	Lechi and a photograph of same	-)

1 THE COURT: Good morning, counsel everybody.

2 MR. SHAPIRO: Good morning, your Honor.

3 THE COURT: I guess we should start off with  
4 appearances.

5 MR. SHAPIRO: Your Honor, for the Plaintiffs, good  
6 morning, Richard Shapiro from the firm of Hellring, Lindeman,  
7 Goldstein & Siegal. And from the law firm of Weil, Gotshal &  
8 Manges, Robert Sugarman, Harris Yale, Craig Lowenthal and  
9 Esther Ilan.

10 THE COURT: Good morning.

11 MR. SUGARMAN: Good morning.

12 MR. ROSEN: For the Defendants, Bruce Rosen, with  
13 McCusker, Anselmi, Rosen, Carvelli & Walsh in Chatham.

14 THE COURT: Mr. Rosen, good morning.

15 MR. ROSEN: Good morning.

16 MR. YALE: Your Honor, Plaintiffs would like to call  
17 at this time Mr. Jay Nelkin to the stand.

18 THE COURT: Very well.

19 Mr. Nelkin, good morning.

20 MR. NELKIN: Good morning.

21 THE COURT: We're going to ask you, please, to take an  
22 affirmation, if you would.

23 MR. NELKIN: Yes.

24

25

Nelkin - direct - Yale

5

1 J A Y P. N E L K I N, called as a witness, having first  
2 duly affirmed, testifies as follows:

3  
4 THE DEPUTY CLERK: Please be seated. Just move that  
5 chair a little closer to the microphone.

6 Please state your name, spelling it for the record.

7 THE WITNESS: Yes. Jay Philip Nelkin. J-a-y;  
8 P-h-i-l-i-p; N-e-l-k-i-n

9 DIRECT EXAMINATION

10 BY MR. YALE:

11 Q Good morning, Mr. Nelkin.

12 Would you please describe your educational background  
13 and what you do professionally?

14 A Yes. I attended Brown University and I graduated with a  
15 Bachelor's in 1990. I then attended the London School of  
16 Economics. I received a Masters Degree in Comparative  
17 Government. My degree at Brown was in political science. And  
18 then I attended New York University School of Law, graduated in  
19 1994 with a JD. I am associated with a family law firm in  
20 Texas which I do appellate work for, and I also run a start-up  
21 business that involves life science technology of which I'm the  
22 president.

23 THE COURT: I just misunderstood. Where is the law  
24 firm?

25 THE WITNESS: Texas.

Nelkin - direct - Yale

6

1 THE COURT: In Texas?

2 THE WITNESS: Yeah. I go back and help out on  
3 appellate cases. I was formally with --

4 THE COURT: I thought I heard you say Texas.

5 THE WITNESS: I was formally with Sullivan & Cromwell.  
6 And I'm primarily running this -- this business, but as needed  
7 I go back and help.

8 THE COURT: Okay.

9 BY MR. YALE:

10 Q When you're not commuting back and forth between Texas,  
11 where do you live?

12 A I live -- I own a home at 77 Chestnut Street in Englewood,  
13 New Jersey. We're currently doing renovation on that home, so  
14 during the course of the renovation I'm residing at 430  
15 Winthrop Street in Teaneck.

16 THE COURT: I missed -- could you just move that chair  
17 a little bit closer to the microphone?

18 THE WITNESS: Sorry, your Honor.

19 THE COURT: It's me I guess.

20 I just want to get the address straight. You're  
21 living in Englewood now?

22 THE WITNESS: No, I own a home in Englewood at 77  
23 Chestnut Street, but I'm doing renovation on it and the  
24 renovation is extensive enough that we cannot reside in the  
25 home. So during the course of the renovation I have a

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1 temporary residence in Teaneck.

2 THE COURT: In Teaneck. Okay.

3 Q Just to be clear, you're not a resident of Tenaflly?

4 A No, I'm not.

5 Q Have you ever had a conversation with a Tenaflly Council  
6 member about the potential impact an eruv might have in  
7 Tenaflly?

8 A Yes, I have.

9 Q When did you have that conversation?

10 A I had it with Councilman Sullivan.

11 Q Did you have one conversation or more than one?

12 A No, I met with Councilman Sullivan on three separate  
13 occasions.

14 Q Have you ever had any conversations with other Council  
15 members regarding the eruv?

16 A No, I have not.

17 Q Let's start with the first conversation you had with  
18 Councilman Sullivan. When did that conversation take place?

19 A It took place shortly before the first meeting where there  
20 was public comment allowed on the issue of the eruv. I believe  
21 it was in November.

22 Q November of what year?

23 A 2000.

24 Q Was that conversation face-to-face or over the telephone?

25 A It was face-to-face.

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1 Q Was there anybody else present?

2 A Chaim Book was present.

3 Q Who initiated that meeting?

4 A I believe Chaim Book did. I did not.

5 Q As best you can recall, can you tell us what you said  
6 during that meeting and what Councilman Sullivan said during  
7 that meeting?

8 A Yes. It was a rather extensive meeting. It lasted quite  
9 some period of time, and we discussed many different issues at  
10 that meeting. We discussed the necessity of an eruv from the  
11 purposes of the group of people who were proponents and how the  
12 lack of an eruv would prevent people from moving into Tenafly  
13 and how it would make it difficult or unpleasant to observe our  
14 religious beliefs in the town of Tenafly for those of us that  
15 were actually living there.

16 We also discussed the fact that if it was not -- if  
17 there was no eruv, that the community or group of people who  
18 were trying to -- planning on moving to that area would be  
19 effectively stopped in its tracks; that taking down the eruv  
20 would be a death knell.

21 We discussed the opposition to the eruv and we  
22 discussed the different points that had been raised in  
23 opposition to the eruv. We discussed Councilman Sullivan's  
24 concerns with the eruv, and we had an extensive discussion  
25 about the eruv and what an eruv was.

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1 Q What were some of Councilman Sullivan's concerns that he  
2 expressed to you?

3 A When we met with Councilman Sullivan he was operating under  
4 several misapprehensions, and so he raised those and we  
5 discussed each of them. One is, he was working under the view  
6 that the Tenefly Eruv Association was seeking some sort of  
7 declaration or grant or conveyance from the town, and he  
8 expressed his discomfort with having the town convey the rights  
9 to private people's individual domains.

10 We indicated to him that that was not something that  
11 the Eruv Association was seeking. We explained that in order  
12 to have an eruv, you needed several things. One was a grant of  
13 permission from some executive body. And that because the  
14 County had already conveyed the right to carry on the Sabbath  
15 to the Tenefly Eruv Association, that there was no desire or  
16 request by the Tenefly Eruv Association to have the town grant  
17 or declare anything. And so when Sullivan, Councilman Sullivan  
18 expressed concerns about how the Tenaflly eruv would require the  
19 town to convert people's private domains or part of the public  
20 domain into a -- a different type of private domain use of the  
21 Eruv Society, we explained to him that that was not something  
22 that we were asking the town to do.

23 Q What were you asking the town to do?

24 A We simply were asking the town to leave up these plastic  
25 markers utilized by the telephone company to ground their wires

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1 on the telephone poles where they marked the boundaries of the  
2 eruv.

3 Q Did Mr. Sullivan express any other concerns to you during  
4 this meeting?

5 A Councilman Sullivan indicated to us that he was concerned  
6 about what the eruv -- how the eruv would affect the town of  
7 Tenafly esthetically, and he wanted to know why we needed to  
8 use wires or things of that sort and why couldn't we use  
9 natural boundaries.

10 And we explained to him that -- well, we mentioned  
11 several things. One is, we mentioned that Tenafly as it  
12 existed had no natural boundaries that would suffice for an  
13 eruv. It is not an island, it's not surrounded by some sort of  
14 earthen berm or wall or fence. We also mentioned that the eruv  
15 would not require any additional structure. That while there  
16 had been an aberrant wire that ran through the Nature Center or  
17 near the Nature Center, that that was not something that the  
18 eruv as currently standing would require, that the only thing  
19 that the eruv was going to utilize were the existing telephone  
20 poles as modified by these plastic strips. And therefore, we  
21 explained to Councilman Sullivan that rather than constructing  
22 some sort of artificial boundary or trying to create some sort  
23 of more naturally looking boundary such as a rock wall or  
24 something of that sort, that we viewed the existing telephone  
25 poles as effectively a natural boundary and the least obtrusive

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1 form because they didn't require any additional structures,  
2 they already were preexisting. And when we discussed that,  
3 Councilman Sullivan's objections on those grounds seemed to  
4 dissipate.

5 THE COURT: Can I interrupt for just a second?

6 MR. YALE: Certainly, your Honor.

7 THE COURT: Just to clarify in my own mind.

8 The proposal is not to have any additional string of  
9 wires involving the telephone pole or the telephone wires?

10 THE WITNESS: It's my understanding, your Honor, that  
11 the only structures that extend from a telephone pole would be  
12 the wires that are part of the telephone system itself. That  
13 there's -- that there are areas of Tenafly that will either be,  
14 you know -- if there's not a telephone pole that surrounds  
15 them, that those will somehow not be part of the eruv itself.  
16 That what we're talking about is something that utilizes solely  
17 the existing telephone system wires.

18 THE COURT: Okay. The plastic strips, those are the  
19 lechis?

20 THE WITNESS: Yes.

21 THE COURT: Those plastic strips -- you used something  
22 about the word -- maybe I misunderstood you -- that they are  
23 devices that the telephone company already uses for grounding  
24 the wires?

25 THE WITNESS: It's my understanding, your Honor -- and

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1 I have to say I was not involved in the construction of the  
2 eruv, and this is what I understand based on my own  
3 investigation, I've asked people -- is that the telephone  
4 company has a black plastic strip that they use to ground their  
5 wires. By that -- I'm not an electrician and so I assume that  
6 they cover up some wire with this covering. It's my  
7 understanding that the eruv to mark or demarcate the poles that  
8 are part of it utilizes these same exact strips that the  
9 telephone company would otherwise utilize. The only difference  
10 would be whether or not there's a wire underneath it. But to  
11 the outside observer it would look identical.

12 THE COURT: Okay.

13 THE WITNESS: And, in fact, my own observation of  
14 telephone poles seems to indicate that they all have plastic  
15 strips on them. I haven't done any investigation to see  
16 whether there are wires under them or not.

17 THE COURT: Okay.

18 MR. YALE: Your Honor, I don't think there's any  
19 dispute in this case that the eruv consists of the existing  
20 telephone wires, no other additions in terms of structures.  
21 And then the plastic strips that have been fixed to the poles  
22 themselves, what we've been calling the lechis in this case.

23 THE COURT: But the point that Mr. Nelkin was making  
24 which I may have overlooked, the plastic trips are devices that  
25 the telephone company uses for another purpose?

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1 MR. YALE: They are identical to what the telephone  
2 company uses for covering its own existing wires.

3 THE COURT: It's the same thing?

4 MR. YALE: Yes.

5 THE COURT: Okay.

6 BY MR. YALE:

7 Q Mr. Nelkin, during your discussion with Mr. Sullivan at  
8 this meeting, you previously testified that you told him that  
9 without the eruv this would be a death knell. A death knell to  
10 whom?

11 A A group of my friends. The core group of my friends and I  
12 and my family had been living in -- in New York, and we were  
13 seeking to move to another area and we were looking at  
14 different towns. And so some of my friends settled in Tenafly.  
15 And the idea would be that an Orthodox community would be  
16 established in that town. My friends and I all have young  
17 children. Friends who we believe might move to that area also  
18 have young children. Virtually all of my friends and I have  
19 children that are stroller age, and so without an eruv and the  
20 ability to leave your house on the Sabbath, no Orthodox  
21 community or modern Orthodox community composed of younger  
22 people with children or handicapped children -- people will  
23 ever be able to flourish and thrive in Tenafly.

24 And so we discussed explicitly Councilman Sullivan  
25 wanted to know -- I don't remember if it was at the first

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1 meeting or one of our subsequent meetings -- whether we  
2 couldn't move to Tenaflly and try and convince the people in  
3 Tenaflly to stand back from their opposition. And we explained  
4 that in the absence of an eruv, that the people who lived in  
5 Tenaflly who thought a community or Orthodox -- a group of  
6 Orthodox people would settle there, they would be forced to  
7 either -- well, no new people would move into the town, and I  
8 believe that some people who had settled there in anticipation  
9 of additional families following them would choose to leave.

10 Q This is something that you explicitly discussed with  
11 Councilman Sullivan?

12 A We explicitly discussed, and we explicitly used the word  
13 "death knell."

14 THE COURT: Can I interrupt for just a minute?

15 MR. YALE: Please, your Honor.

16 THE COURT: I just want to clarify something.

17 The friends that you have that have already moved to  
18 Tenaflly, they're living in Tenaflly now?

19 THE WITNESS: Most of my friends actually live in the  
20 northern part of Englewood, or live in areas that are directly  
21 adjacent and could be made part of the existing Englewood eruv.  
22 But there are people who have moved into Tenaflly. Chaim Book  
23 is one of them.

24 THE COURT: Well that's what I'm -- I want to make  
25 sure factually --

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1 THE WITNESS: Right.

2 THE COURT: -- that there are now currently in  
3 Tenafly, Orthodox Jews --

4 THE WITNESS: Yes, Chaim Book is there; Gary Osen is  
5 there.

6 THE COURT: I'm sorry. Who?

7 THE WITNESS: Gary Osen and his family are there.

8 THE COURT: Osen?

9 THE WITNESS: Erez Gottlieb is there. There are there  
10 are other people who I believe live in --

11 THE COURT: All right. So there's no standing issue.  
12 That's the reason I asked the question. I know nobody has  
13 raised the issue of standing, I'm just going to make sure it's  
14 not going to resurrect its head at a later date. What I'm  
15 saying is, in view of that testimony, there's no standing  
16 issue.

17 MR. YALE: Mr. Nelkin is not a named plaintiff, your  
18 Honor. Mr. Book is, Mr. Osen is, and --

19 THE COURT: Yes.

20 MR. YALE: -- they are residents of Tenafly.

21 THE COURT: Right. And the Eruv Association --

22 MR. YALE: Yes.

23 THE COURT: -- has members who are not just  
24 anticipating moving but actually reside in Tenafly?

25 MR. YALE: Are currently residents of Tenafly, yes,

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1 sir.

2 THE COURT: So we don't need to worry about that.

3 MR. YALE: I would hope not.

4 THE WITNESS: What we discussed with Councilman  
5 Sullivan is, is that there was a small group of families that  
6 had moved in, and that the -- that that group would never  
7 expand, would never be able to attract additional families, and  
8 therefore things that require larger groups such as building  
9 a synagogue would be difficult or fall on too few shoulders.

10 BY MR. YALE:

11 Q By the end of this first meeting with Mr. Sullivan, what  
12 was his reaction to everything that you and Mr. Book had said?

13 A At the end of our first meeting?

14 Q Yes.

15 A His reaction was he had been under several -- he had  
16 misunderstood several key points. That he had been  
17 misinformed, I think was his words, that he felt that this was  
18 not something that should be coming before the Town Council.  
19 He expressly said that he was concerned and that it was going  
20 to be before a public meeting, he wanted to try to do his best  
21 to get it off the agenda. Because he felt if he had a public  
22 meeting on this issue it would only bring out the worst  
23 elements of Tenafly, and that the voicing of that hatred would  
24 tear the town apart. And he cared about Tenafly too much to  
25 allow that to happen. So he left the meeting telling us he was

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1 going to do his best to try and get this whole issue off the  
2 agenda because he felt it wasn't something that the town should  
3 be voting on.

4 Q Did he explain to you what this hatred was that he referred  
5 to?

6 A Well, we had reviewed it with him. We talked to him about  
7 the comments that had been made at a previous meeting. We  
8 strongly suggested to him that he listen to the tape of those  
9 meetings, and we specifically went through the different points  
10 that had been raised in opposition to the eruv, many of which  
11 we found to be either anti-Semitic, untrue, or just completely  
12 inappropriate. And so we talked about the fact that people  
13 felt that somehow if Orthodox Jews were allowed to move into  
14 the town, that that would change the character of the town.  
15 And we talked about the ways that people had discussed that the  
16 town might change; Orthodox Jews would boycott the stores, that  
17 Orthodox Jews would not avail themselves of the school system,  
18 that Orthodox Jews would stone cars, and many --

19 THE COURT: You discussed that with Sullivan?

20 THE WITNESS: Absolutely.

21 And I mean, what Sullivan had to say on the public  
22 school issue was that that was not something that should be the  
23 focus. That I think his kids went to parochial school, that  
24 there were Catholic schools, there were other private schools  
25 in the town and that was simply not something that he felt was

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1 an appropriate thing for people to challenge the eruv on.

2 A (Continuing) We had similar discussions on each of the  
3 different points that had been raised. We talked about the  
4 fact that there would be no additional structures, we talked  
5 about the fact that there would be no -- there was no request  
6 for the town to make any declaration or any religious  
7 proclamation. We went through each and every one of the  
8 concerns that had been raised at the previous meetings, as well  
9 as some that we thought might be raised at future meetings.

10 Q And at the end of this, what was Mr. Sullivan's reaction?

11 A Mr. Sullivan's reaction was that this was not a -- I mean,  
12 what he said to us is that after listening to us and the  
13 discussion about the natural boundaries and the discussions  
14 about the other things that I've testified to, that he didn't  
15 see an issue with the eruv; that this was not a religious  
16 symbol.

17 We spent some time discussing how this was simply  
18 something that allowed us to perform other tasks, but it  
19 wasn't -- I mean, I think of a Menorah as a religious symbol or  
20 such as a cross.

21 THE COURT: I'm sorry, I just missed what you said.

22 THE WITNESS: I'm talking about it wasn't a religious  
23 symbol such as a cross. I said I think of a Menorah as a  
24 religious symbol.

25 THE COURT: Right.

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1 THE WITNESS: That this was simply a boundary marker  
2 in Sullivan's words, and that it was simply an accommodation  
3 and that it shouldn't be on the agenda and that he was going to  
4 do his best to get it off.

5 BY MR. YALE:

6 Q At any time during this first meeting did he make reference  
7 to an ordinance that would require the Eruv Association to seek  
8 permission from the town?

9 A No, to the contrary. We were all working under the  
10 assumption at the time that there was no ordinance in effect,  
11 and we discussed the fact that the opposition was not premised  
12 on an ordinance or any other type of administrative concern  
13 with the eruv. And we had explicit discussions where Sullivan  
14 said the opposition to the eruv has -- no one on the Town  
15 Council, including myself, has any opposition to the eruv that  
16 is premised on an administrative concern. And went on to  
17 elaborate that the town is not being required to have  
18 insurance, it's not required to inspect it, this thing is  
19 invisible, other things of that sort that might trigger some  
20 sort of administrative concern.

21 He said it's simply a boundary marker and an  
22 accommodation. And the opposition to it was premised not on  
23 the eruv itself but on the fact of what the eruv would allow;  
24 is the fact is that the eruv would make the town of Tenafly  
25 attractive to Orthodox families, and that there was a

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1 perception by the opposition that they either didn't want  
2 Orthodox people moving into the town, or that Orthodox people  
3 would have some sort of negative effect on the town.

4 Q Was this a view that Mr. Sullivan was conveying to you?

5 A Mr. Sullivan continued to express his belief that we would  
6 be valuable members of the community, that he himself cherished  
7 religious beliefs and I think he's a devout man, I think he  
8 said. And that he didn't adhere to those beliefs himself, but  
9 that that -- I mean, the discussion was focused on what the  
10 opposition had voiced. But he felt -- and he mentioned this at  
11 each of our meetings -- that he was personally in favor of the  
12 eruv and would like to see us have an eruv, but --

13 Q These fears and concerns that he expressed, were these his  
14 views or were these the views of his constituents?

15 A They were --

16 MR. ROSEN: Objection.

17 A -- not his views, they were the views that had been voiced  
18 by members of the town speaking at the public meetings. At  
19 least at the first meeting that's what the discussion was  
20 focused on.

21 Q You said you had two other meetings with Mr. Sullivan.  
22 When did the next meeting take place?

23 A The next meeting took place shortly after the first public  
24 meeting when comments were allowed. I believe it was the  
25 weekend of Thanksgiving 2000.

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1 Q Do you recall where this meeting took place?

2 A It took place in a bagel store in Tenafly.

3 THE COURT: I'm sorry, when was that?

4 THE WITNESS: It was I believe the Sunday following  
5 Thanksgiving. It was definitely the weekend after  
6 Thanksgiving.

7 Q Was there anybody else present at this meeting?

8 A Chaim Book was present at that meeting as well.

9 Q Do you recall how long this meeting took place?

10 A That meeting was shorter than the first meeting we had. It  
11 was more of a focused meeting. It had been held -- we had -- I  
12 believe Chaim arranged the meeting as a result of concerns on  
13 his behalf, my behalf based on some of Sullivan's comments at  
14 that previous meeting, that Sullivan had shifted his support,  
15 and so we wanted to have that meeting.

16 THE COURT: And where was the meeting again?

17 THE WITNESS: It was at a bagel store in Tenafly.

18 THE COURT: A sit-down place?

19 THE WITNESS: Yeah. We sat in a booth.

20 THE COURT: Oh.

21 THE WITNESS: In fact, members of the community  
22 actually came up to him as he was sitting there; hi, Councilman  
23 Sullivan.

24 But it was a private session in the corner of the  
25 store.

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1 BY MR. YALE:

2 Q As best you can recall, can you tell us what you said  
3 during this meeting and what Councilman Sullivan said during  
4 this meeting?

5 A Councilman Sullivan -- well, we raised our concerns based  
6 on his comments that he had -- was now against the eruv. And  
7 he assured us that we had misunderstood his comments, and that,  
8 in fact, he had meant to convey support.

9 Q What were his comments that you were concerned about?

10 A He had made a comment about, he said something to the  
11 effect of, I wonder how the Council would react if I approached  
12 them and asked to hang green streamers from the telephone poles  
13 and to dedicate the town to St. Francis of Assise.

14 Q These were comments that Councilman Sullivan said when?

15 A At the public meeting.

16 Q Now you're meeting at the bagel store took place after  
17 that?

18 A Right.. And we wanted to talk to him about those comments  
19 because we mentioned to him again that we were not seeking to  
20 have the town dedicated to the Eruv Association in any way.  
21 And that was our real concern with his comments, is it seemed  
22 that he had misperceived what the Eruv Society or Association  
23 was asking.

24 And so we ran through that issue again and said, we  
25 were not asking the town to do anything except not act. We're

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1 not asking for a proclamation, we're not asking for a  
2 dedication, we're not asking for any sort of conveyance, we're  
3 not asking to rent the town. Those are not things that we're  
4 seeking. All we're seeking is for the town to let these  
5 plastic strips, the lechis, stay up on the poles where they  
6 are. And so we're asking the town not to act. We kept  
7 repeating that phrase.

8 And he -- I mean, he understood that.

9 Q What was his response?

10 A His response is, "I understand that." And that his use of  
11 the term "dedication" was not meant to, you know, somehow raise  
12 a higher standard for the eruv.

13 But I mean, I think at the very least we felt that it  
14 was a poor choice of words on his behalf and it raised some  
15 real concerns with us that we felt we needed to address. But  
16 he at the meeting assured us that that was not -- I mean, we  
17 ran through that point.

18 He also had some additional concerns that he wanted to  
19 raise with us. One of which is he said that he was very  
20 concerned about how to compromise, reach a compromise with  
21 those people who didn't want to be a part of the eruv. He  
22 said, what can we do about those people who have some objection  
23 to having their house or yard or whatever be part of the eruv?

24 And so we said to him -- he said is there -- I don't  
25 remember who raised it -- I believe he did -- is there some way

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1 that people can opt out of the eruv?

2 And we discussed many different ways that we felt that  
3 that was possible. We said that while we were not rabbis, we  
4 believed that it was possible and would not interfere with the  
5 eruv if people could indicate they wished to opt out. And so  
6 therefore any mechanism would be acceptable, and that it  
7 wouldn't interfere with us because what people were seeking was  
8 the right to carry on the Sabbath on public streets. No one  
9 was going to be traversing anyone's front yard or backyard or  
10 any other -- you know, walk through someone's home. So if you  
11 had a big area that had little subsections carved out of it, it  
12 would be more like a doughnut where you wouldn't interfere in  
13 any way.

14 And so we discussed the possibility of having a  
15 sign-in sheet, you know, a form at City Hall or Borough Hall,  
16 you know, whoever wants to opt out, put your name here, your  
17 address. We talked about having just people be able to send a  
18 letter or some other form back to City Hall. We talked about  
19 the possibility you could put a sign in your front yard if you  
20 really felt the need to advertise it. We discussed a lot of  
21 things but they weren't really issues with Sullivan. And  
22 that's --

23 Q Why do you say that?

24 A Because it was -- he raised it, as like, well, would it be  
25 difficult to have an opt-out procedure?

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1 And we said that it would not be difficult to have an  
2 opt-out procedure, and any mechanism would be acceptable to the  
3 Eruv Society.

4 And so, you know, if Sullivan wanted to propose  
5 something or he felt that the ones that we discussed were  
6 not -- you know, didn't accomplish the goals in an efficient  
7 way, we certainly were prepared to discuss any other mechanism.

8 Q What was his reaction to that?

9 A His reaction, I mean, was basically that this is not going  
10 to be an issue, that there are other issues that, I mean,  
11 mainly the opposition that would have to be overcome.

12 Q And --

13 A But he indicated to us that he was in favor of the eruv and  
14 would work to do what he could to see an eruv maintained in  
15 Tenafly. And so I guess at the end of both our first  
16 meeting -- well, at the end of our first meeting we felt he was  
17 firmly in favor of the eruv and would do everything to  
18 accomplish it or to prevent the town from voting it down,  
19 getting it off the agenda.

20 After his public comments we were concerned, we had a  
21 second meeting with him. And he -- I mean, he convinced me  
22 that he was again firmly in favor of the eruv and would do what  
23 he could to get it -- you know, have it remain in effect.

24 Q Did Councilman Sullivan indicate to you that he was passing  
25 along all of your explanations to the other Council members?

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1 A We certainly discussed the fact that we were trying to  
2 answer any or address any concerns that Councilman Sullivan or  
3 the other councilmen had, and we mentioned that we had done  
4 everything that we could to answer or address those questions  
5 and had tried to meet with the other councilmen. But some  
6 councilmen were refusing to meet with us or -- and that  
7 Sullivan had been one of the few, if not the only one who had  
8 actually taken the time to sit down and raise concerns and have  
9 them addressed. But we wanted to be clear that we were more  
10 than willing to meet with the Town Council, had tried  
11 repeatedly to meet with the members of the Town Council and  
12 remained available to meet with the members of the Town  
13 Council.

14 Q What was the response from the other Council members with  
15 your request for the meeting?

16 A I wasn't involved in those overtures, but I know that  
17 people either from what I've been told --

18 MR. ROSEN: Objection.

19 THE COURT: Yeah, let's stay away from what you were  
20 told.

21 THE WITNESS: Okay.

22 Q Did you offer to Councilman Sullivan at any of your  
23 meetings to go to the other Council members and talk to them?

24 A We said that we would be more than willing to meet with any  
25 or all of the Council members, that we wanted to do that. We

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1 had tried to do that, but to date he had been the only one who  
2 had taken us up on the offer.

3 Q Any other issues that he raised during this second meeting  
4 with you?

5 A Well, I mean there is one issue that he had raised before  
6 which had to do with, he wanted us to try and do what we could  
7 to overcome opposition from people, and he had mentioned that  
8 he wanted us to try and meet with religious leaders and other  
9 people in the town. And we did that. In fact, I went and met  
10 with different religious leaders. And, in fact, you know,  
11 there was no opposition from those people. In fact, there were  
12 voices of support in favor of the eruv.

13 But Councilman Sullivan's focus was: How do we  
14 overcome this opposition?

15 And to my recollection, I mean, we said, if there's  
16 anything that you're concerned with, we'd like to address it.  
17 And that there were no issues that remained open for him or  
18 that he felt that we had not dealt with adequately.

19 Q So what opposition was he referring to then?

20 A He had discussed with us the fact that there was a lot of  
21 fear and hatred that we had to overcome and that we needed to  
22 convince people that we would be assets to the community and  
23 would not change the community in some negative way. That he  
24 knew that those -- that fear and hatred was baseless, but that  
25 we had a job of education to do; we had to go and educate the

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1 populous and overcome the opposition.

2 Q And the "we" you're referring to is whom?

3 A Myself, Chaim, and other members of the, you know, our  
4 supporters of the eruv.

5 THE COURT: Can I ask you whether there was any  
6 discussion as to how you were to overcome this fear and hatred?  
7 How was that to be done?

8 THE WITNESS: We offered, and in fact I think it was  
9 offered at the -- at one of the public meetings -- we asked for  
10 a delay, but we offered to hold public meetings,  
11 question-and-answer sessions: What is an eruv, how is an eruv  
12 constructed, trying to overcome misperceptions that might have  
13 been based on the eruv. But the real discussion that we had  
14 with Councilman Sullivan, as I said, if you're telling us --  
15 and I had this conversation with him several times at several  
16 of the meetings -- is, if you're telling me that the eruv is  
17 too high, too low, too yellow, I can fix that. I mean, we can  
18 do something to address some concern with the eruv itself. But  
19 if you're telling us that the real objection to the eruv has to  
20 do not with the eruv or any aspect of the eruv but the fact  
21 that it will allow Orthodox Jews to settle in this town, I  
22 can't help you and I don't want to help. And that was the  
23 discussion that we had.

24 But we said, as far as trying to overcome  
25 misperceptions, I think we submitted letters to the Council

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1 trying to address issues that had been raised.- I think that we  
2 offered to hold public forums. We offered -- I think there was  
3 a mediation that was discussed of some sort. All of those  
4 offers were rebuffed. Members of the other supporters went and  
5 met with members of the Town Council to try and work through  
6 some of these issues. And I wasn't, you know, party to a lot  
7 of those things.

8 THE COURT: Right.

9 THE WITNESS: But we certainly discussed with Sullivan  
10 our desire to do anything that we could to -- one of the things  
11 that we talked about is, the thing that attracted people to  
12 Tenafly was that it was a nice community. And no one wanted to  
13 go in and create division or be, you know, considered the  
14 outcast. So we wanted to do things to be -- to work with the  
15 community and to overcome people's fears.

16 But that fear, I mean, there's nothing that you can do  
17 if the concern is over your existence or your presence itself.  
18 If it has to do with the way you're constructing your eruv or  
19 the way that your eruv looks, that's something that can be  
20 addressed. But if the fact is that having the eruv allows you  
21 to live in the town and that's the problem, that -- there's not  
22 really a way to have an effective compromise.

23 BY MR. YALE:

24 Q You then had a third meeting with Mr. Sullivan?

25 A Yes.

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1 Q When did that take place?

2 A Immediately following the vote by the Town Council to deny  
3 or turn down the eruv permit.

4 Q Going back, approximately what was the interval between  
5 your second meeting and the actual vote?

6 A Well, I believe the actual vote was around December 12th,  
7 and our meeting was I think the last week in November. So two  
8 to three weeks.

9 Q At any time during that two to three-week period, did  
10 Councilman Sullivan contact you to raise conditional questions?

11 A No, he did not.

12 Q Did he contact you to discuss anything at all?

13 A No, he did not.

14 Q Did any other Council member contact you?

15 A No.

16 Q This third meeting that took place the night of the vote I  
17 believe you said, where did this meeting take place?

18 A In the parking lot of the Borough Hall.

19 Q Anybody else present?

20 A No.

21 Q Who initiated this?

22 A Councilman Sullivan.

23 Q As best you can recall, what did he say and what did you  
24 say during this meeting?

25 A I was standing in the hallway or the vestibule right

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1 outside the town auditorium, and Councilman Sullivan came out  
2 of the town meeting room and he walked by me. And as he walked  
3 by me he went like this (demonstrating), which I interpreted --  
4 and I think he mouthed the words "call me," and then he walked  
5 out the door.

6 And so I paused for a second because I couldn't figure  
7 out what he wanted to talk about; he just voted against the  
8 eruv. But I figured it was worth it to go and talk to him.

9 So I walked out into the parking lot and I said to  
10 him, Councilman Sullivan, you said I should call you. I don't  
11 understand. I'm confused. What is there you want to talk  
12 about?

13 And he said, I mean, his opening words were, he said,  
14 I'm really sorry about what just happened back there.

15 And I said something to the effect about, so was I.

16 And he said, you have no idea how much opposition you  
17 face and how much fear and hatred there is that you have to  
18 overcome. And you have a real job of -- to overcome that, to  
19 educate the opposition.

20 And he -- I mean, he said -- I mean, I told him that I  
21 didn't know how to overcome it. And we had the same discussion  
22 about the eruv being too tall, too high, too yellow.

23 I said, you told us before repeatedly that there were  
24 no administrative concerns about the eruv, and you're now  
25 telling us that you want us to try and compromise.

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1 He said, I would like you to try and find a  
2 compromise.

3 I said, what type of compromise can we work out?  
4 There's no -- I mean, we've had this discussion. There's  
5 nothing wrong with the eruv. There is no concern you or the  
6 councilman have raised that has to deal with the eruv, it has  
7 to do with the eruv allowing Jews to settle in this town, and  
8 that's not something we can compromise.

9 I said, we offered to have an opt-out provision. We  
10 offered to, you know, hold whatever type of forum you wanted to  
11 educate people, we asked for a delay in order to have it. But  
12 how can we -- what type of compromise? The only compromise  
13 you're asking for is for us to completely give up our rights to  
14 live in Tenafly.

15 We had a discussion about whether or not we could live  
16 in the town and work towards having an eruv or whether we  
17 needed an eruv from the outset.

18 And Councilman Sullivan was like, you need to come  
19 here and convince people.

20 And I said, it's never going to happen. By not having  
21 the eruv, there's not going to be anyone settling in this town,  
22 there's not going to be anyone to carry that battle forward,  
23 because the eruv is an absolute necessity for Orthodox Jews to  
24 live here.

25 Q What was Councilman Sullivan's reaction to that?

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1 A Councilman Sullivan's reaction was that, you have to  
2 understand, we're politicians, the councilmen are politicians  
3 and we have to respond to our constituents. And our  
4 constituents, there are more people opposed to the eruv than  
5 there are in favor of the eruv. He's like, so while I am  
6 personally in favor of the eruv, we have to be cognizant of our  
7 constituents.

8 And then we discussed, you know, how this was going to  
9 cement people's positions, willingness to compromise and how  
10 this was likely to spiral into something ugly; not that the  
11 town meetings hadn't been ugly enough with all the things that  
12 had been voiced at them.

13 THE COURT: Can I stop there for a minute?

14 I've read the -- I believe I've read all the  
15 transcripts of the meetings, but it's one thing to read them,  
16 it's another thing to be there.

17 You were at all the meetings?

18 THE WITNESS: Yes. Well, I was not -- there was some  
19 early session where the Eruv Society request for the  
20 proclamation --

21 THE COURT: Right.

22 THE WITNESS: -- this is before the County. I was not  
23 at that. I was -- there was an open --

24 THE COURT: Two public meetings?

25 THE WITNESS: Two public meetings and one meeting

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1 where there was -- you could sit there but you couldn't  
2 comment.

3 THE COURT: A workshop?

4 THE WITNESS: Yeah. So I was at all three of those.

5 THE COURT: At the workshop meeting -- I just  
6 forget -- did they precede the two public meetings?

7 THE WITNESS: Yes.

8 THE COURT: And you were at all three of those; the  
9 workshop and the two public meetings?

10 THE WITNESS: Yes.

11 THE COURT: And at that workshop meeting they did  
12 permit people from the public to get up and talk?

13 THE WITNESS: No.

14 THE COURT: They did not. All right. Let's just  
15 stick with the two public meetings.

16 I'd like to hear from you your description of the  
17 tenor of those meetings.

18 THE WITNESS: Well, as I was sitting at the meeting.  
19 I had Reverend Donaghue on one side of me -- he's the Lutheran  
20 minister -- strongly in favor of the eruv, and then I had --  
21 this is at the first meeting --

22 THE COURT: You have to move a little closer to the  
23 microphone.

24 THE WITNESS: Oh.

25 I had the Reverend Donaghue on one side of me, and I

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1 had a rabbi who was speaking in favor of the eruv and to  
2 discuss it on the other side. I didn't know the rabbi before.  
3 I had met Minister Donaghue.

4 And I was sitting there and I was listening to person  
5 after person stand up and say -- I mean, there were so many  
6 people that had unbelievably hateful things to say about  
7 Orthodoxy and Orthodox Jews to the point where the rabbi turned  
8 to me at one point and said, "I've never heard such hatred in  
9 my life."

10 And it was -- it was pretty upsetting. It was also  
11 upsetting to me, a lot of them -- a lot of the comments were  
12 coming from non Observant Jews, and so it was sort of an  
13 interesting phenomena to be, you know, the subject of such  
14 hatred and to have it come in some respects from within your  
15 own group.

16 But I mean, the way I characterized it is I walked out  
17 of it shaking my head and thinking, I haven't -- I've never  
18 heard this type of hatred publicly voiced, and how embarrassed  
19 I would be to stand up and say that about someone else. And I  
20 think I have a reasonably high tolerance for that. I mean, I  
21 mentioned I do appellate practice. I do appellate practice in  
22 civil rights law where there's a lot of, you know, rude and  
23 awful things that get said about people. And yet to hear  
24 people get up and basically accuse you of everything short of  
25 poisoning wells, you know, it was pretty awful.

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1 I mean, people saying that you were going to destroy  
2 their community, and that they had lived in communities where  
3 Orthodox Jews lived and how awful Orthodox Jews were and how  
4 they would turn Tenafly into this awful, horrible place. And  
5 then I look around at myself, my friends, my family, and I  
6 think, you know, how different the view is. And you have to  
7 wonder -- I mean, it really makes you wonder how --

8 THE COURT: Well, you don't have to tell me how you  
9 wondered.

10 THE WITNESS: No.

11 THE COURT: I just wanted to get the atmosphere of the  
12 meeting.

13 THE WITNESS: No, the atmosphere was one of just  
14 having to listen to person after person stand up and say  
15 absolutely vial things about you and your beliefs, and how you  
16 would be a severe detriment to their community.

17 THE COURT: All right. I got the picture.

18 MR. YALE: Your Honor, the transcripts of these  
19 hearings that have been submitted to the court were prepared  
20 from audiotapes, and we're prepared to submit those audiotapes  
21 to the Court so that you can hear the actual meetings  
22 themselves.

23 THE COURT: Oh, good. Right. Right.

24 BY MR. YALE:

25 Q Just following up, Mr. Nelkin, on one thing the Judge

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1 inquired: Were you going to speak at the hearing on December  
2 12th when the vote was taken?

3 A I was prepared to speak. I chose not to.

4 Q Why did you choose not to?

5 A Well, there were several reasons I chose not to. One is,  
6 the fact is I felt that what I was going to say had just been  
7 voiced by someone already, which was I live in -- or will live  
8 in Englewood. And so when people were standing up, they were  
9 being asked where they lived, and there was a general  
10 atmosphere of hostility to anyone who was outside of the  
11 community of Tenaflly.

12 That being said, I just felt that there was a very  
13 important point to be made as to why it was important to people  
14 like myself who didn't technically reside within the eruv of  
15 Tenaflly to nevertheless have the eruv remain up. That being is  
16 that we have friends that live on the other side of the  
17 Tenaflly/Englewood border. The Englewood eruv goes up to the  
18 border. On the Sabbath, which is our primary day because of  
19 people's work schedules and families to socialize and to be  
20 part of, you know, of a vibrant group of friends, if there is  
21 no eruv that connects Tenaflly to Englewood, then we're  
22 effectively cut off from all those people. We can't visit them  
23 on the Sabbath for meals, they can't visit us because we all  
24 have kids with strollers. If we wanted to visit them and bring  
25 a bottle of wine for -- or some other gift when we're going

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1 over their house, we can't do that. There are all sorts of  
2 things that cannot be done and you effectively have built, I  
3 mean for all practical purposes, just a "Berlin Wall" on the  
4 border that effectively on the Sabbath cuts me off from them  
5 and them off from me. And they're my good friends and I have  
6 every intention of remaining that way.

7 And so for them to not be able to -- for us to not be  
8 able to socialize because of the lack of an eruv, I felt that  
9 was very troubling. And I would have raised that point. But  
10 someone else effectively raised that as well. And so I chose  
11 not to speak.

12 Q Going back to the meeting with Mr. Sullivan in the parking  
13 lot after the vote, I believe you testified that he said that  
14 they are politicians, meaning himself and all the other Council  
15 members, and that they had to follow the views of their  
16 constituents.

17 What did you understand that to mean?

18 A Well, Sullivan had repeatedly said that there was no  
19 administrative objection to the eruv, that there was no  
20 objection with the eruv itself, and that -- I mean, he implied,  
21 or explicitly stated that that was his view and the view of the  
22 Council members. And we had spent our previous conversations  
23 talking about the opposition and the types of fears and hatreds  
24 that had been voiced. And so I interpreted his thing to mean  
25 that his vote and the votes of his Council members was premised

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1 on the fact that their constituents had a fear and hatred of  
2 either Orthodox Jews per se or Orthodox Jews moving into  
3 Tenafly and the impact on the town that it would have.

4 Q Did Mr. Sullivan say that to you in that parking lot?

5 A He simply said, "You have no idea about how much fear and  
6 hatred you have to overcome."

7 He apologized for his vote. He indicated that he was  
8 a politician, had to respond to his constituents. But he  
9 didn't say, you know, "my vote is premised on this."

10 MR. YALE: One moment, your Honor.

11 (There is a pause for Mr. Yale.)

12 Q Mr. Nelkin, have you submitted an affidavit in this matter?

13 A Yes.

14 Q And attached to that affidavit were several photographs?

15 A Yes.

16 MR. YALE: If your Honor please, if I could approach?

17 Q I direct your attention to Exhibit A.

18 A Yes.

19 MR. ROSEN: This is Exhibit A from the --

20 MR. SHAPIRO: The affidavit.

21 MR. YALE: Your Honor, I gave him my only set, so may  
22 I stand next to him?

23 THE COURT: Sure, that's fine.

24 Q Now, the first sign portrayed in the pictures that are  
25 attached as Exhibit A which identifies a Presbyterian church

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1 and an Episcopal church with direction signs --

2 A Yes.

3 Q -- where was this picture taken?

4 A It was taken at the intersection of Clinton and Engle  
5 Streets.

6 Q In the Borough of Tenefly?

7 A Yes.

8 Q When was this picture taken?

9 A That picture was taken during the period from around  
10 December to March; December 2000, March 2001.

11 Q Turning to the second photograph which shows a Presbyterian  
12 church sign.

13 A That's --

14 Q Again, when was this picture taken?

15 A The same period. All these pictures in my affidavit would  
16 be in that same --

17 THE COURT: I'm sorry. Can you just speak up a  
18 little?

19 THE WITNESS: I'm sorry.

20 A All those pictures would be in the same time frame, the  
21 ones that are attached to my affidavit.

22 THE COURT: 2001, roughly?

23 THE WITNESS: From December 2000 to then, yes.

24 THE COURT: Okay.

25 Q And this second picture, where is this sign located?

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1 A That's north of that intersection, I believe it's --

2 Q Which intersection?

3 A It's on -- that picture is on Engle Street north of the  
4 intersection with Clinton Street.

5 Q Thank you.

6 The third picture, what does that depict?

7 A I believe that's a far-away shot of the first picture that  
8 you showed me.

9 Q It's the same sign as in the first picture?

10 A I believe so. There are signs at three of the four corners  
11 at the intersection of Engle and East Clinton, and they're on  
12 the southeast corner, the northeast corner and the northwest  
13 corner. I don't believe there's one at the southwest corner.  
14 But they're all -- I mean, they're very similar signs at each  
15 of the ones.

16 Q The next picture in your affidavit, Exhibit A, and what  
17 does that depict?

18 A That would be a sign --

19 THE COURT: That's number four?

20 MR. YALE: Yes.

21 A That would be signs at the southeast corner of Engle and  
22 East Clinton. That would be on, you know, Engle south of that  
23 intersection.

24 Q And again, you would have taken this during the period  
25 December 2000 to March 2001?

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1 A Yeah. All those signs are still up.

2 Q How do you know that?

3 A I mean I frequently go down those streets. The Jewish  
4 community center is down those streets. My friends, the Books,  
5 live past those streets and that's the main street that we  
6 would go on.

7 Q The last picture in Exhibit A, what does that depict?

8 A That is the sign I believe at the northwest corner of the  
9 intersection of East Clinton and Engle Street.

10 Q Okay. And again, this was during the period December 2000  
11 to March 2001?

12 A Yes.

13 Q Since you took these pictures that are reflected in Exhibit  
14 A to your affidavit, have you taken additional pictures?

15 A Yes.

16 Q Mr. Nelkin, I hand you photographs that have been marked  
17 Plaintiffs' Exhibits 21 through 26 for identification purposes.

18 (Mr. Yale confers with Mr. Rosen off the record.)

19 Q Mr. Nelkin, when did you take these photographs?

20 A I believe April 30th, 2001.

21 Q And what does Plaintiffs' Exhibit 21 depict?

22 A It appears to depict a sign advertising the white bird was  
23 found.

24 Q Where was this picture taken?

25 A This picture was taken on Magnolia Street. It was a series

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1 of -- there were multiple copies of this on each of the  
2 telephone poles that line that street.

3 Q Magnolia Street in the Borough of Tene-fly?

4 A Yes.

5 Q Plaintiffs' Exhibit 22, what does that depict?

6 A That depicts what I assume is the street number for 13  
7 Laurel, either street or -- I don't know what, drive or  
8 something, but Laurel is the name.

9 Q Laurel is the name of the street?

10 A Yes.

11 Q In the Borough of Tena-fly?

12 A Yes.

13 Q Plaintiffs' Exhibit 23, what does that depict?

14 A That appears to depict a lost dog sign.

15 Q And where was the sign picture taken?

16 A Again, the Hickory Street or Avenue or Drive in the Borough  
17 of Tena-fly.

18 Q Plaintiffs' Exhibit 24 and 25, could you describe what  
19 those pictures depict?

20 A They appear to depict a sign advertising an office for  
21 rent. They were taken on Dean Drive in the Borough of Tena-fly.

22 Q And you took all of these pictures yourself?

23 A My wife may have taken some of these. We were driving  
24 around together.

25 Q Were you with her when these pictures were taken?

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1 A Yeah -- no, I was in the car and I said, please take them.  
2 But I think I took -- oh, no, I take it back. I took all of  
3 these myself. I was with my son on the day that I took these.

4 Q Plaintiffs' Exhibit 26.

5 A Plaintiffs' Exhibit 26 is again a sign for 200, I believe  
6 it's Serpentine Road.

7 Q Again, in the Borough of Tenafly?

8 A Yeah.

9 MR. YALE: Your Honor, we would offer these.

10 MR. ROSEN: No objection.

11 THE COURT: In evidence.

12 (Plaintiffs' Exhibits 21 through and including 26 are  
13 received in evidence.)

14 Q Since you took those pictures which are Plaintiffs'  
15 Exhibits 21 through 26, have you taken additional pictures, Mr.  
16 Nelkin?

17 A Yesterday I drove around in the car with my family and we  
18 took photos.

19 THE COURT: What kind of camera did you use?

20 THE WITNESS: A digit camera. It allows you to print  
21 it right there.

22 Q I hand you what have been marked as Plaintiffs' Exhibits 27  
23 through 31.

24 Plaintiffs' Exhibit 27. You just testified that you  
25 took these pictures yesterday I believe?

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1 A Yeah. I mean I think technically my wife took them, but I  
2 was with her. I drove to the sign. I said, please take that  
3 photo, and then I printed it.

4 Q What does Plaintiffs' Exhibit 27 depict?

5 A It depicts the same sign on the same street that was  
6 pictured -- or one of the three that was pictured before.

7 Q You're referring to Plaintiffs' Exhibit 21?

8 A Yes. I actually think it must be -- well, it could be the  
9 same. They both have the black wire down the side, but they  
10 were all in a row. And I don't remember if this is the exact  
11 one, but they were all -- it was on the same pole that I saw  
12 the signs on before.

13 Q Plaintiffs' Exhibit 21 you took on or about April 30th?

14 A Yes.

15 Q And Plaintiffs' Exhibit 27 you took on or about May 14th?

16 A Yes.

17 Q May 13th. Excuse me.

18 A Yes.

19 Q Directing you to Plaintiffs' Exhibit 29 -- excuse me -- 28.  
20 And what does that reflect?

21 A Again, it reflects the same sign that I took before on  
22 Laurel.

23 Q Okay. And you would be referring then to Plaintiffs'  
24 Exhibit 22?

25 A Yes.

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1 Q And again, there's the same two-week interval between the  
2 two pictures?

3 A Yes.

4 Q Plaintiffs' Exhibit 29.

5 A Yes.

6 Q And what does that reflect?

7 A This same sign I took on Serpentine.

8 Q And you're referring to Plaintiffs' Exhibit 26?

9 A Yes.

10 Q The next exhibit, Plaintiffs' Exhibit 30, again it's a  
11 photograph that you or your wife took yesterday?

12 A Yes.

13 Q Okay. And what does that reflect?

14 A The same sign I took on Hickory before.

15 Q And you're referring again to Plaintiffs' Exhibit 23.

16 A Yes.

17 Q Which was taken on or about April 30th?

18 A Yes.

19 Q Two weeks later. That same sign is up on the utility pole.  
20 Is that correct?

21 A Yes.

22 Q Okay. Now, Plaintiffs' Exhibit 31, can you identify what  
23 that reflects?

24 A Yes. That reflects another church sign, typical of the  
25 ones that are sort of dotted through Tenafly, but this one is

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1 on Jefferson Road.

2 THE COURT: Let's stop there for a minute. We went  
3 through an issue the other day whether the signs were on county  
4 roads or municipal roads. Do you know?

5 MR. SHAPIRO: Judge, I think I might be able to add  
6 something. In the interim we have -- your Honor may -- you  
7 have got an additional submission from DiGiacomo.

8 THE COURT: Right.

9 MR. SHAPIRO: We in turn have obtained from the County  
10 a document which identifies all county roads and their  
11 dimensions within Tenafly. I gave that to Mr. Lesnevich when  
12 we were last before your Honor and he was going to get back to  
13 me as to whether he had a problem with it and whether Mr.  
14 DiGiacomo might amend his affidavit. I haven't heard back yet,  
15 so we don't really know the answer to the question as we sit  
16 here right now.

17 THE COURT: But my recollection was the last affidavit  
18 you sent me --

19 MR. SHAPIRO: The county -- the Borough did.

20 THE COURT: Oh, the Borough did.

21 MR. SHAPIRO: Yeah.

22 THE COURT: But it clarified the fact that there were  
23 signs on municipal roads.

24 MR. YALE: That's correct.

25 MR. SHAPIRO: Yes. And it also said in the affidavit

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1 that certain of the signs were on county roads.

2 We do not believe that that's correct. We believe  
3 that they may be on municipal roads. So we're trying to agree  
4 rather than having a dispute about it, that's all. And we  
5 can't -- we haven't resolved it yet because Mr. Lesnevich is  
6 away.

7 THE COURT: It's an important issue. Factually we  
8 should nail down.

9 MR. SHAPIRO: I know that. That's why we went to the  
10 County and got the dimensions.

11 THE COURT: How about Exhibit 31, the sign for the  
12 Lutheran church?

13 BY MR. YALE:.

14 Q Where --

15 THE COURT: Does anybody know what street that is on?

16 Q Where was that picture taken?

17 A I believe it's on Jefferson.

18 MR. YALE: And we will ascertain whether in fact that  
19 is a municipal road, your Honor.

20 THE WITNESS: They're scattered around. They're on  
21 other streets as well.

22 THE COURT: I'm sorry?

23 THE WITNESS: They're scattered around the town.  
24 They're on other streets as well.

25 THE COURT: The signs?

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1 THE WITNESS: Yeah. I mean, there are church signs on  
2 other streets that I didn't take photographs of. I mean, there  
3 are plenty of other, you know, numbered signs for people's  
4 houses, they just dot the town. There are signs for the Lion's  
5 Club, the Rotary Club, the Clinton Inn, all sorts of  
6 directional signs for non governmental things.

7 THE COURT: All right.

8 MR. YALE: Just a moment, your Honor.

9 THE COURT: Counsel, maybe you can help me out. While  
10 I have Mr. Nelkin here, my recollection is that somebody sent  
11 me an affidavit with a photograph of the telephone poles with  
12 the lechis and I can't seem to put my finger on it.

13 Am I wrong or imagining that?

14 THE WITNESS: That wasn't me.

15 MR. YALE: That's not Mr. Nelkin, your Honor.

16 THE WITNESS: My affidavit had some telephone wire  
17 that was looped.

18 THE COURT: That was looped?

19 THE WITNESS: But that was not a lechi. I was just  
20 taking examples of throughout the town and the county there are  
21 lots of esthetically --

22 THE COURT: Oh, okay.

23 THE WITNESS: -- you know, unpleasant ways that the  
24 cable was --

25 THE COURT: I guess that's what --

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1 MR. YALE: Exhibit D to Mr. Nelkin's affidavit.

2 THE COURT: We have no photograph of the existing, any  
3 of the existing lechis?

4 MR. YALE: I don't think we have submitted any.

5 MR. SUGARMAN: Your Honor, we could do two things, and  
6 we could submit to you a physical piece of the wire or the  
7 covering, which consists of a lechi, and we'll submit to you  
8 pictures of the lechi on the pole.

9 THE COURT: Well, I think for the sake of the record  
10 we should have it.

11 MR. SUGARMAN: Yes, we'll do that. And we'll do it --

12 THE COURT: But it could be stipulated to.

13 MR. SUGARMAN: We'll do it by stipulation so there  
14 won't be any problem with it.

15 MR. ROSEN: Fine.

16 THE COURT: All right? Yeah, both ideas are good.

17 MR. SUGARMAN: Excuse me?

18 THE COURT: I say, both of your suggestions are good.

19 MR. SUGARMAN: Thank you.

20 MR. YALE: I have no further questions, your Honor.

21 THE COURT: Let's take a short break here, about 15  
22 minutes. My court reporter has been going at it since early  
23 this morning, and he needs a breather. All right?

24 MR. YALE: Thank you.

25 THE COURT: I'm okay, but he needs it.

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We'll step down for about 15 minutes.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

(Proceedings resume.)

J A Y P. N E L K I N, resumes, testifies further as follows:

MR. YALE: One thing, your Honor. I neglected to offer into evidence Exhibits 27 through 31, so I offer them now.

THE COURT: Any objection to those?

MR. ROSEN: No objection, Judge.

(Plaintiffs' Exhibits 27 through and including 31 are received in evidence.)

CROSS-EXAMINATION

BY MR. ROSEN:

Q Good afternoon, Mr. Nelkin.

A Hello.

Q My name is Bruce Rosen. I represent Defendants in this matter.

Could you tell me your involvement in the Eruv Association?

A I have no involvement in the Eruv Association. I'm not a member, I don't -- I mean, I met with Councilman Sullivan in an

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1 individual capacity but I didn't -- I'm not retained by the  
2 Eruv Association, I'm not a member of the Eruv Association.

3 Q Do you know who the members of the Eruv Association are?

4 A I know who some of them are. I'm not sure that it's an  
5 exhaustive list.

6 Q Could you tell me who you know?

7 A I believe Chaim Book is a member; I believe Erez Gottlieb  
8 is a member; and I believe that Gary Osen is a member, but I'm  
9 not positive about that. I've never seen their membership  
10 list.

11 Q How did you come to be involved in these discussions with  
12 Mr. Sullivan?

13 A I believe that Chaim told me that he was planning on  
14 meeting with Sullivan, and he suggested that it would be  
15 helpful if I came along.

16 Q Do you know why he asked you to come along?

17 A I think he thought that it would be helpful to have someone  
18 else to be able to answer questions in case there was something  
19 that veered off, and I also think that my background may have  
20 been helpful in that I had a relatively diverse background. I  
21 had -- I mean, I went to religious schools, I went to -- at  
22 different times a Catholic camp, I had just -- so I had sort of  
23 a wide ranging background. And so if people were concerned  
24 that Orthodox Jews were too insular that maybe I could speak to  
25 some of those issues.

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1 Q During the -- would you say that Mr. Sullivan evidenced  
2 good faith as far as you could see during the course of those  
3 first two meetings that you had with him?

4 A Mr. Sullivan seemed to be interested in investigating the  
5 matter and discussing the issues, and he seemed to be  
6 interested in having us address some concerns that he had  
7 raised.

8 Q He didn't make any specific representation after the first  
9 meeting where he said something to the effect of, now that  
10 you've told me all these things, I'm definitely in your corner  
11 and I'm going to vote your way?

12 A I don't believe that he said after the first meeting  
13 exactly those words. What he said is that the Council  
14 shouldn't be voting on this at all, and he's going to do  
15 everything that he could to get it taken off the agenda because  
16 it wasn't the sort of thing that the Council should be voting  
17 on; it was improper. That it was more of a -- you know, some  
18 other committee like as opposed to something that would come  
19 before the Council.

20 Q Do you know whether he did that or not?

21 A I don't know what he did behind the closed doors of the  
22 Council room, I just know that he told us that he was going to  
23 work as hard as he could, but that he was worried that there  
24 was -- would be opposition to that.

25 Q But you don't know whether he tried to get that off the

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1 agenda or not?

2 A I have no idea.

3 Q Okay. And that after the second meeting did Mr. Sullivan  
4 say something to the effect that, okay, you've convinced me, I  
5 was misguided, now I'm in your corner and I'm voting your way?

6 A What he continued to say was that --

7 Q Did he say that?

8 A Not those exact words.

9 Q You said during your testimony that it was a necessity to  
10 have an eruv in Tenaflly for those Jews who believed that an  
11 eruv was necessary for them to do certain things on Sabbath.  
12 Is that correct?

13 A Yes. I believe that it would allow certain practices to be  
14 performed that couldn't be, and that without that Orthodox Jews  
15 would not move to Tenaflly, or some would elect to move out of  
16 Tenaflly.

17 Q Well, when you say "necessity," do you mean necessity, you  
18 can't practice your religion without the eruv?

19 A There are certain things that I believe would be difficult  
20 to do. For instance, if the synagogue that I attend requires  
21 members from Tenaflly to make up our quorum, and at least  
22 currently it has been on many a Sabbath having exactly ten  
23 people to fill that quorum. If the members who live in Tenaflly  
24 remain for all practical purposes imprisoned in their homes and  
25 so therefore they can't come to synagogue because they can't

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1 leave their kids, and so therefore we lack the quorum, then we  
2 are unable to read the Torah, which is an obligation; we're  
3 unable to praise a quorum, many prayers would be unable to be  
4 said. So there are aspects like that. There are other things  
5 that are part of the enjoyment of the Sabbath, such as being  
6 able to have guests. That's a --

7 Q That's not part of your religion, to have guests, to have  
8 guests on Shabbes?

9 A There's a concept in Judaism of having people into your  
10 home and to enjoy the Sabbath. You're supposed to have a  
11 joyful experience. You're not supposed to sit confined to your  
12 dwellings. I think that's one of the differences between, you  
13 know -- I mean, and so therefore there are things that if  
14 they're not, to my way of thinking, integral components of my  
15 Sabbath enjoyment and observance.

16 Q There are Orthodox Jews, persons who call themselves  
17 Orthodox Jews who don't believe in the eruv, are there not?

18 A I believe that there's a pretty uniform belief among Jews  
19 as to the concept of an eruv.

20 Q Aren't there Orthodox Jews who don't practice the eruv?

21 A Who don't believe in the concept of an eruv?

22 Q Or don't practice using an eruv.

23 A Well, I mean, there are people who choose not to rely on  
24 existing eruvs because they may have some doubt as to the  
25 validity of the particular one that has been constructed. But

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1 there's an entire tractate of the Talmud called Eruvim that  
2 deals with eruvs, and I don't believe that there's any branch  
3 of conventional Orthodoxy that rejects volumes of the Talmud.

4 Q There are members of the Lubavitch in Tenaflly that don't --  
5 that live in Tenaflly and practice their religious without an  
6 eruv, are there not?

7 A I mean, I grew up in a Lubavitch community --

8 Q Would you answer my question, please?

9 A I believe that the members of the Lubavitch community would  
10 recognize the concept of an eruv.

11 Q You're not answering my question.

12 A Could you repeat the question?

13 Q Aren't there people from the Lubavitch community who live  
14 in Tenaflly and worship in Tenaflly without an eruv?

15 A There's currently an eruv in Tenaflly that would cover them  
16 I believe, so therefore --

17 Q Before the eruv was put up in Tenaflly.

18 A I can't speak to how they would have practiced their  
19 religion beforehand, but I believe that there was a Lubavitch  
20 community that preexisted the eruv. How those people practice  
21 their religion; whether they left their homes, whether they  
22 attended synagogue, I don't know.

23 Q Mr. Book lives in Tenaflly, does he not?

24 A Yes.

25 Q Does he practice his religion -- before the eruv was

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1 established, did he practice his religion?

2 A I don't know if he attended synagogue or did whatever. He  
3 may have davened at his house or prayed at his house. I  
4 apologize.

5 Q And Mr. Agus?

6 A Mr. Agus' house I believe is encompassed within the eruv of  
7 Englewood.

8 Q Mr. Agus lives in Englewood?

9 A No, but his house is configured in a way that somehow the  
10 wires --

11 THE COURT: Could I just clarify something? There's  
12 an existing synagogue in Tenaflly, right?

13 THE WITNESS: Existing synagogue? There's a Lubavitch  
14 synagogue in Tenaflly and there's some Conservative or Reformed  
15 synagogues -- at least a Reformed one.

16 THE COURT: But the eruv that is currently serving  
17 your community --

18 THE WITNESS: Yes.

19 THE COURT: -- that is, your friends -- that synagogue  
20 is not in Tenaflly?

21 THE WITNESS: The synagogue where I'm a member? That  
22 is one block into Englewood, and so therefore you have, in  
23 effect, a boundary. So anyone who would want to cross that  
24 boundary would be required to go.

25 THE COURT: Okay. But the concerns of your friends

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1 who are looking for a place to be able to celebrate Shabbes,  
2 currently, in any event, there is no synagogue that is  
3 servicing your group of friends in Tenaflly. Is that right?

4 THE WITNESS: There is no modern Orthodox synagogue  
5 that I'm aware of in Tenaflly, and therefore, those members of  
6 my group of friends who are adhering to a modern Orthodox faith  
7 as opposed to, you know, the practices of, say, a Lubavitch  
8 group or a Hasidic type practice in religion would be under-  
9 served or not be served by any existing facility.

10 THE COURT: This really doesn't have, I don't think,  
11 have so much to do with this case, but there is a Lubavitch  
12 synagogue in Tenaflly?

13 THE WITNESS: I believe that is the case.

14 THE COURT: And this is basically a Hasidic community.  
15 Is that right?

16 THE WITNESS: I didn't understand your question.

17 THE COURT: Hasidic. These are Hasidic Jews?

18 THE WITNESS: I've never attended their synagogue  
19 because I don't know the membership.

20 THE COURT: All right?

21 THE WITNESS: But Lubavitch I mean is a Hasidic group.  
22 They may have many people who attend, some of who may drive or  
23 be completely non religious but want to attend to either --  
24 either for, you know, some sort of celebration or to say a  
25 prayer for their parents. There could be a lot of reasons why

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1 someone who is not religious would nevertheless choose to  
2 attend. Or maybe they're in the process of becoming religious.  
3 So Lubavitch may have a more diverse group than just people  
4 who, you know, were born and raised and bred H sidic.

5 BY MR. ROSEN:

6 Q Would you agree with the statement that an eruv is not  
7 necessary for the practice of Judaism?

8 A I would disagree with that.

9 Q And would you agree with it -- would you think that your  
10 friend, Mr. Agus, would misstate the facts to the Tenaflly  
11 Borough Council?

12 THE COURT: I don't think he should be asked to  
13 comment on somebody else's testimony.

14 Q Did you see the letter that Mr. Agus wrote to the town  
15 on --

16 A If I did, I don't remember the text.

17 Q Do you remember a question and answer presentation in  
18 writing that was made by Mr. Agus and his wife to the town, one  
19 of the questions being -- one of the answers being that an eruv  
20 is not necessary to practice Judaism?

21 THE COURT: I thought I just said, I don't think it's  
22 fair for him to be examined about somebody else's letter.

23 MR. ROSEN: I'm sorry, your Honor.

24 THE COURT: It's not his letter.

25 MR. ROSEN: I thought perhaps that he might have

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1 helped form the --

2 THE COURT: Even if he read it, how could be examined  
3 about somebody else's thought process? I just don't think it's  
4 fair.

5 BY MR. ROSEN:

6 Q Do you believe it's possible for someone to have genuine  
7 concerns about allowing an eruv without having animus towards  
8 the Orthodox?

9 MR. YALE: Objection, your Honor.

10 THE COURT: Yeah. I'm just wondering if you're going  
11 to give me some idea of the basis of the objection.

12 MR. YALE: I don't understand the question.

13 THE COURT: Well, I understand the objection -- I  
14 understand the question but I don't think it's a proper  
15 question to put to this witness.

16 MR. ROSEN: Well, this witness --

17 THE COURT: I'm sustaining the objection.

18 MR. ROSEN: Thank you, your Honor.

19 Q Do you know if the eruv was put up with -- the eruv that  
20 exists in Tenafly -- whether it was put up with permission or  
21 without permission?

22 A It's my understanding that at the first meeting of --  
23 there's some transcript that was circulated that I saw, the  
24 Town Council expressed the belief that it couldn't -- it didn't  
25 require Borough permission to construct the eruv, and that the

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1 focus of the meeting had to do with requiring permission. So  
2 once they got permission from the County, my interpretation of  
3 that was that no permission, additional permission was  
4 necessary, that you needed permission from the telephone  
5 company.

6 Q Did there come a time when you realized or you were told  
7 that permission was necessary to put an eruv on the town's  
8 right-of-way?

9 A The first time that I became aware that there was some  
10 issue as to permission -- I believe that my impression up until  
11 the meeting where the vote was held was that there was not a  
12 requirement, that the Eruv Association never admitted or  
13 acknowledged that there was a requirement that there was  
14 permission necessary from the town to construct it once they  
15 had the permission from the telephone company, as other  
16 towns -- as the telephone company routinely did. And certainly  
17 in my discussions with Councilman Sullivan there was never a  
18 discussion of a requirement, it was more a question of, well,  
19 in order to overcome the opposition, why don't you let the town  
20 have a crack at it?

21 And so then I was somewhat surprised at the meeting  
22 when I believe -- I'm not exactly sure, but at some point the  
23 Mayor towards the end of the meeting raised some issue of some  
24 necessity of getting the permission.

25 Q What meeting was that?

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1 A The one where there was a vote. And suggested that there  
2 was some ordinance or something that had to be addressed.

3 But I believe that the whole approach of the Eruv  
4 Association in those meetings and up to the vote was, we don't  
5 believe we need permission, but because you have submitted that  
6 we went around you or did whatever we did, we're going to come  
7 here and submit an application.

8 Q Were you involved at all in the decision to string wires in  
9 the Nature Center?

10 A I had no involvement whatsoever in the construction of the  
11 eruv; in its design or even where it goes, and to this day I  
12 don't know the exact area.

13 Q And did Mr. Sullivan tell you that although he wasn't  
14 personally opposed to the eruv, that it was his personal view  
15 that having something affixed to a utility pole in Tenafly was  
16 against an ordinance?

17 A Never. In fact, the opposite. We were always working  
18 under the assumption that there was no ordinance. I was  
19 completely surprised when that ordinance was asserted at the  
20 very end.

21 Q You never heard of the ordinance at any point before that  
22 point?

23 A I was always under the distinct impression that there was  
24 no ordinance, and I believe that that had been -- it was my  
25 impression that that had been something that had been

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1 acknowledged by the town.

2 Q And what was your actual involvement beside coming to the  
3 meetings and the meeting with Mr. Sullivan?

4 A I met with some of the religious leaders of the town to  
5 discuss the Eruv Society's position and the desire of people  
6 like myself to have an eruv up and see where they stood on the  
7 issue.

8 Q Were you a member of the Eruv Society?

9 A No. And the person I went around with I don't believe was  
10 either. We were just people who were interested in having an  
11 eruv remain up.

12 Q Were you acting on behalf of the Eruv Society, the Eruv  
13 Association?

14 A I don't -- I mean, I was acting on behalf people in favor  
15 of the eruv, which includes the Eruv Association. But I  
16 wasn't -- I mean it wasn't like it was an official act by the  
17 Eruv Association, and I don't think any member of the Eruv  
18 Association specifically asked me to. I think what -- I  
19 believe that my impetus for doing it was I believe it was  
20 Charles Agus said that Sullivan wanted us to go and talk to  
21 his -- his minister or his priest, and we thought that would be  
22 a good idea while we were doing it to talk to the other  
23 ministers. I think one of them had spoken in opposition, and  
24 we just wanted to make sure that they were well informed about  
25 what an eruv was and the real issues so that any misinformation

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1 would not be a factor in their decision to support the eruv.

2 Q Didn't Mr. Sullivan continually tell you from the beginning  
3 that a compromise was necessary to allow you to have an eruv?

4 A He didn't say that it was a necessity. He said that he was  
5 interested in working out a compromise so that the Town of  
6 Tenafly would remain a peaceful town, and that we could have an  
7 eruv.

8 Q Did you take him at his word?

9 A I believed up until the time that he voted that he was in  
10 favor of the eruv; and, you know, I had no reason to doubt him.  
11 I felt that he asked us to address some concerns, and I believe  
12 that he felt that we had addressed them adequately. And I  
13 believe that he -- I mean -- and if you're asking -- well, can  
14 you repeat your question? I think I got off the course there.

15 Q Let me go on from there.

16 Did he continually raise with you the idea of a  
17 compromise from the very first time that he met with you  
18 through the first two meetings?

19 A I think as a politician he was looking for something that  
20 would not get him into hot water with his constituents.

21 Q That's not what I asked you, sir. Could you --

22 A Well you're asking if he wanted a compromise. A  
23 compromise -- I thought he was looking for a solution where an  
24 eruv could be constructed and the opposition would not -- I  
25 mean, would be dissipated in some way.

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1 Q Okay. And did he raise several prospective -- several  
2 ideas on how you might be able to do that?

3 A Well, I discussed some things that he raised as concerns.  
4 The issue of a natural boundary I feel he felt after we  
5 discussed it was a non-issue. The opt-out issue I think after  
6 we discussed it was a non-issue. I mean, I don't -- and the  
7 only thing I will say is the following: At the final meeting  
8 after he had voted against us, he said, "I really wish we can  
9 work out a compromise."

10 And we discussed the fact that having voted against  
11 it, it would cement the position of the different groups. And  
12 his view was that people should move into town and work to  
13 overcome the opposition. And I explained to him that that  
14 wasn't going to happen, that without -- if we were going to  
15 have a compromise it needed to be achieved in a way that  
16 allowed the eruv to remain up, not have the eruv come down and  
17 then try and work something out.

18 Q Did you tell him the night of the meeting in the parking  
19 lot that you were going to sue him or the Eruv Association was  
20 going to sue him?

21 A I told him that I thought that this would cement positions  
22 and that we were likely to head to litigation. And we had an  
23 extensive discussion about that, how neither one of us wanted  
24 it to end up in court, how litigation was an awful thing. I  
25 have a litigation background. He explained that that would

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1 only cause people in the town to, you know, hate the Orthodox  
2 or the group supporting the eruv more. and that it would make us  
3 pariahs in the town. And I explained to him that while no one  
4 wanted to do that and we wanted to be good neighbors, that  
5 unless we were allowed our right to settle in the town as an  
6 eruv would permit, that we were going to have to fight.

7 Because there are some levels on which you can't compromise,  
8 and that the type of compromise that he was asking for was not  
9 a compromise but a complete abrogation of our rights.

10 Q Do you think he misunderstood the requirements under Jewish  
11 law for putting an eruv in a community?

12 A I think at least at the first meeting he had some issues  
13 with technical requirements of an eruv, and I believe that we  
14 dealt with those, particularly with the domain issue. He was  
15 concerned about there would be some sort of renting of the  
16 town, conveyance, and that somehow a public domain or  
17 someone -- you know, a Tenafly resident's private domain would  
18 somehow be converted into a domain of the Eruv Society.

19 And he was using the Hebrew words for that, which is  
20 Reshut Hayachid, which is Harabim. And we explained to him  
21 that we were not seeking any sort of declaration, conveyance or  
22 grant, and that that was a non-issue.

23 Q That's because you had it already?

24 A From the County, yes.

25 Q And as you would essentially have created a rental from the

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1 County?

2 A I believe that what they obtained from the County was the  
3 right to carry on the Sabbath. I don't have the Proclamation  
4 in front of me, but it's clear on its face what was being  
5 conveyed.

6 Q The purpose of the Proclamation is not to declare the right  
7 to carry, it's to declare that there's a rental that has taken  
8 place here, whether the rental is symbolic or not?

9 THE COURT: Are you testifying, Mr. Rosen? Is that a  
10 question?

11 MR. ROSEN: There's a question mark at the end of it,  
12 your Honor.

13 THE COURT: Oh.

14 A What we discussed with Councilman Sullivan and what  
15 Councilman Sullivan discussed with us was how the whole concept  
16 of domains didn't translate into a direct equivalent less than  
17 in American law. That there was no existence of a right that  
18 the Eruv Society had been seeking from the County or had  
19 previously sought but had no longer intended to seek from the  
20 municipality.

21 You know, a public domain under Biblical law doesn't  
22 necessarily -- doesn't have an exact equivalent in American  
23 law. And I'm not an expert on that, and probably there have  
24 been experts that have testified in this case as to what those  
25 things are.

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1 But what Councilman Sullivan said after the course of  
2 our discussion is, I understand what you're talking about; it's  
3 a legal fiction. He said he was a banker and he said, in my  
4 own business we have these concepts where you have a problem  
5 and you have a solution that doesn't -- and he mentioned that  
6 he used to lend or his bank used to lend to Muslims and  
7 therefore they were under Muslim law or Islamic law, there's  
8 not an ability to pay interest. And so that there's some sort  
9 of banking arrangement that they do that accomplishes the same  
10 thing.

11 And therefore, he said he understood that we were not  
12 seeking to somehow, you know, co-op the property rights of the  
13 town, we weren't seeking anything from the town. We made that  
14 explicitly clear. That we do not want anything from the town  
15 in the way of a rental, a conveyance, a grant, et cetera. It's  
16 simply a legal fiction, and anything we need in regard to  
17 satisfy those requirements has been obtained from the County.

18 The only issue here has to do with these plastic  
19 strips which are identical to the ones that the telephone  
20 company uses already and for which we have permission in a  
21 contract from the telephone company.

22 Q What time was it that you had that final conversation with  
23 Mr. Sullivan?

24 A I don't know when the exact time the meeting ended, but it  
25 was within by ten or 15 minutes of the meeting. People were

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1 congregating in little groups and clusters discussing the vote.  
2 Sullivan, I don't think it was immediately after the meeting, I  
3 think he stayed perhaps to discuss county business or  
4 something.

5 Q Would you say it was after midnight?

6 A It could have been.

7 Q Were you angry?

8 A I was very disappointed with the vote.

9 Q Were you angry?

10 A Was I angry?

11 I would say I was disturbed and perhaps angry. I  
12 was -- yes, I mean I guess anger would have been one of the  
13 many emotions that I was feeling. I was particularly perturbed  
14 at Councilman Sullivan because I viewed him as having caved in  
15 to the bigots -- the bigotry of his constituents, and so I felt  
16 that that was a complete failure of leadership.

17 Q You don't believe that Councilman Sullivan could have had  
18 any other motivation other than the bigotry of his citizenry,  
19 as you put it?

20 A Well, at the time he said he was sorry to me about what  
21 happened until the conclusion of our conversation he never  
22 raised any additional points. So if he had them, he kept them  
23 to himself.

24 Q Well, it was 12, 12:30 in the morning, wasn't it?

25 A We spent a long time in that parking lot. We spent about

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1 20, 30 minutes, and I remember because it was freezing cold.  
2 But we were out there for a long time.

3 Q But you had been through all these points at least twice?

4 A Certainly the majority of them, yes. I don't -- I don't  
5 think he raised any new points.

6 Q Well, each time in the first two times he brought points to  
7 you, some of which you heard before and some of which you  
8 didn't?

9 A Yeah. Like for instance, the opt-out came at the second  
10 meeting I believe.

11 THE COURT: I have a question.

12 Did Sullivan ever say to you, one of the reasons that  
13 the Council is opposed to this is because the Eruv Association  
14 wants a permanent use of the public right-of-way?

15 THE WITNESS: No, he did not.

16 THE COURT: All right.

17 BY MR. ROSEN:

18 Q Did Mr. Sullivan ever tell you that he thought that an  
19 eruv -- oh, actually you testified earlier that Mr. Sullivan  
20 told you he believed that the eruv was a religious  
21 accommodation.

22 A At our first -- yeah. I don't know that he used the term  
23 "religious." He used the term "accommodation." He said it's  
24 not a boundary marker, it's not a religious -- it is a boundary  
25 marker. It's not a religious symbol, it's merely an

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1 accommodation.

2 THE COURT: He said it's not a religious symbol?

3 THE WITNESS: Yeah. I think he repeated something to  
4 that effect when he mentioned the streamers as well, that he  
5 talked --

6 THE COURT: When he mentioned what?

7 THE WITNESS: The streamers. In the conversation he  
8 said, that we were concerned with -- he said, if I hang  
9 streamers, you know, not an explicit religious symbol. So I  
10 think he was paralleling that there, too.

11 BY MR. ROSEN:

12 Q And did Mr. Sullivan at any time say anything that  
13 reflected any animus, any personal animus on his part toward you  
14 or the Eruv Association?

15 A No, to the contrary. He expressly said that he thought  
16 that we were the type of people that would be a benefit to the  
17 town, that it would be shortsighted, you know, that he would  
18 not be happy if the eruv was not allowed because he understood  
19 our concerns. And we talked about how it would be a death  
20 knell to our community, et cetera. He felt that religion was  
21 an important thing and people's practice of it was an important  
22 thing. And --

23 Q And he sent you to his -- to his own --

24 A He didn't send me. I think I had word from before that he  
25 wanted to us meet with him and --

Nelkin - cross - Rosen

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1 THE COURT: Meet with whom?

2 THE WITNESS: I think -- I may have the name wrong. I  
3 think it was Father Harrington who was his religious leader.

4 THE COURT: You're talking about somebody who I have  
5 no idea who we're talking about.

6 MR. ROSEN: I'm sorry. Let me finish the question.

7 Q At any time did Mr. Sullivan ask you to meet with his  
8 religious advisor or pastor?

9 A I don't remember him doing that. When we told him that we  
10 had been meeting with people, we mentioned that he -- we had  
11 tried to meet with his minister.

12 His minister said he won't oppose the eruv, but the  
13 Catholic church had some general hands-off approach to any sort  
14 of issue. So he felt he wasn't going to oppose it, he wasn't  
15 going to support it. So he didn't really feel the need to  
16 meet. And I don't remember. Sullivan may have said, well, you  
17 know, you ought to keep trying meet with him or not. I just  
18 don't remember.

19 So all of my conversations -- I mean Sullivan didn't  
20 send me to him. I had started to meet with him before. And  
21 when I met with Sullivan I was reporting to him -- we were  
22 trying to convince him that their constituents worked for the  
23 large part behind the eruv, and so we mentioned that we had  
24 spoken to the different religious leaders, that they had voiced  
25 support, that they didn't have any problems, it wouldn't

Nelkin - cross - Rosen

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1 interfere in any way with their practices, et cetera. And so  
2 we discussed it in that context of, look at the support that's  
3 behind it, and it's coming from leaders of your community, at  
4 least, you know, religious leaders.

5 Q I have a few questions about these photographs. Do you  
6 have them in front of you?

7 A I have Exhibits 21 through 26 --

8 Q Do you have your --

9 A I think I have through 31.

10 Q And do you have your affidavit?

11 A I no longer have my affidavit in front of me.

12 Q How much time did you spend looking for signs during the  
13 time when you were taking photographs for this affidavit?

14 A For the affidavit? Not -- I mean, maybe an hour or two. I  
15 mean, the second time I can tell you more -- with more  
16 precision because my wife gave me a specific time before I had  
17 to get my kids home to bed, so that was under an hour.

18 But the -- I'm not -- I mean, I didn't make a  
19 systematic effort to go through the streets of Tenafly. There  
20 are large tracts I didn't even bother to go through. These are  
21 on the main streets or certainly right around near where my  
22 friends live.

23 Q If I were to tell you that at least one of the pictures on  
24 Dean Drive was in Englewood, would you agree that's a  
25 possibility?

Nelkin - cross - Rosen

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1 A I actually looked at the map because I was interested in  
2 that, and I'll just tell you what I gleaned from the map and  
3 you may glean a somewhat different thing.

4 Dean Drive -- Englewood is to the south of Tenaflly.  
5 The sign saying "WELCOME TO ENGLEWOOD" is probably 50 to 100  
6 feet south of where I took the signs. On my maps, which are  
7 the book maps, the county, you know that they have -- I forget  
8 what -- who the publisher is, but each page, it's like a big  
9 set -- shows Phelps Drive to be in Tenaflly and shows that  
10 Englewood starts right at the next corner. These signs would  
11 be taken north of Phelps, either opposite on the far corner of  
12 Phelps, but I would interpret that to be part of Tenaflly.

13 If I'm wrong, you know, I didn't go out there with a  
14 surveyor stick, I just looked at the map afterwards and  
15 concluded that it was part of Tenaflly.

16 Q The second time you went looking for pictures -- we  
17 received some pictures in our office on Friday. How much time  
18 did you spend looking for signs --

19 A That's the one with my wife. I went back out just to see  
20 if there were signs out. I had my son with me, it was  
21 approximately 6 o'clock. She said she wanted to tuck him in by  
22 seven. I live -- I was going back to Teaneck. I got back  
23 about 7:10.

24 THE COURT: How old is he?

25 THE WITNESS: He's almost 6. 6 in July.

Nelkin - cross - Rosen

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1 THE COURT: 7 o'clock sounds about right.

2 Q And the third time when you went yesterday to take  
3 photographs?

4 A Yesterday we had a 4 o'clock meeting -- 4 o'clock Mother's  
5 Day dinner in New York City, and I left my house in Teaneck  
6 after two, somewhere between two and 2:30. We hit a lot of  
7 traffic on the bridge. And we were -- I dropped my wife off at  
8 the restaurant at four. It took me about -- a while longer to  
9 park. So you subtract off about 15 minutes on both sides to  
10 get to Tenafly, to get back, a half hour on the bridge; I would  
11 say about an hour.

12 Q So you had approximately three hours that you spent looking  
13 for -- for signs and taking pictures of signs --

14 A No. The second time really didn't even take that long. I  
15 went back to try to find the signs that I had taken before, and  
16 I didn't really look for new signs. There were signs -- in  
17 fact, I took a couple of pictures of particularly noticeable  
18 signs, but I don't think that they were submitted.

19 Q Well, according to my count there's approximately ten signs  
20 of either church directional signs or things on telephone poles  
21 that you've taken pictures of. And it took you approximately  
22 two to three hours to take -- to find those signs and take  
23 those pictures?

24 A Well, yeah. You have to park your car, get out. If you're  
25 blocking traffic you have to circle around, focus the camera.

Nelkin - cross - Rosen

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1 The digital cameras take awhile to focus and take it.

2 Q Is there a parking problem in Tenaflly outside of the  
3 business area?

4 A It's not necessarily a parking problem as much as it's no  
5 parking on a busy street with cars behind you honking their  
6 horn and saying, why are you stopped at the green light. These  
7 are sort of at the corners on busy intersections.

8 Q During this two hour, two and a half hour period you took a  
9 picture of every sign that you saw on the --

10 A Far from it.

11 Q -- on the streets -- can you wait?

12 A Far from it. There are plenty of signs that I did not  
13 take.

14 Q Why didn't you take the pictures of those signs?

15 A Either because there was someone standing in front of the  
16 house, and given the level of hostility I chose not to get out  
17 of the car. There were signs that I wasn't sure after this  
18 issue with the county road whether or not they were county  
19 roads or not. For instance, up and down, you know, some of the  
20 major thoroughfares there are plenty of signs that are church  
21 directional, Lion's Club, Rotary Club, Clinton Inn I saw  
22 things, things tell you what time their meetings are.  
23 Congressional signs, those type of things. I probably could  
24 have taken them. But the second time I was just going back to  
25 take the ones I took.

Nelkin - cross - Rosen

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1 After the affidavit with the -- where they had, I  
2 think the Borough had now admitted that there was no longer an  
3 issue with county versus municipal frontage as far as where the  
4 signs were located, I didn't feel the need to get into another:  
5 Is this a county road? Isn't it?

6 I Felt that there had already been sufficient signs  
7 that were clearly on the municipality roads. And I didn't  
8 choose to take yard sale signs or other things, I tried to take  
9 more -- you know, some of these street signs and things of  
10 that.

11 Q Did you ever tell the town about any signs that you felt  
12 might be illegal or in violation of any ordinances?

13 A No. But I really saw no need to either.

14 MR. ROSEN: I have no further questions.

15 One thing. You may have more, but I would like to  
16 make this representation on behalf Tenaflly: That all of the  
17 photographs that we were given on Friday were given over to the  
18 Town Administrator, and they were all taken down by 10 o'clock  
19 this morning. And it's the Town's position that there is a  
20 sign ordinance, and none of these things should be on the  
21 poles.

22 THE COURT: Let me just get this straight in my head.  
23 You're referring to which exhibits?

24 MR. ROSEN: 21, 22, 23.

25 Now on 24 and 25, it's the Town's position verified by

Nelkin - cross - Rosen

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1 the chief of police of Englewood that at least one of these  
2 "offices for rent" signs --

3 THE WITNESS: If I could speak to that?

4 THE COURT: Let me finish and hear his statement.

5 THE WITNESS: Okay.

6 MR. ROSEN: At least one of those "offices for rent"  
7 signs, 24 and 25, were located in Englewood.

8 THE COURT: All right.

9 MR. ROSEN: And 26.

10 THE COURT: 26 what?

11 MR. ROSEN: Plaintiffs' 26, they were all --

12 THE COURT: I'm sorry, I'm just not hearing you.

13 MR. ROSEN: They were all identified by the police and  
14 taken down.

15 THE COURT: As to 27, 28, 29 --

16 MR. ROSEN: 27 is the same as 21.

17 THE COURT: 30 and 31.

18 MR. ROSEN: 28 is the same as 22; 29's the same as 23;  
19 30 is the same as 26; and 31 is new to me, your Honor.

20 THE COURT: I'm sorry.

21 MR. ROSEN: 31 is new to me. But, you know, I will  
22 certainly let Mr. Lesnevich know about that one.

23 THE COURT: The other signs that were in evidence or  
24 in the affidavits, what the town calls directional signs  
25 regarding the church signs, are they up or down?

Nelkin - cross - Rosen

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1 MR. ROSEN: I believe that the Council has decided to  
2 communicate with all of these religious facilities and churches  
3 and inform them that the signs are inappropriate as they stand  
4 today.

5 THE COURT: Well I ought to get something -- and share  
6 that with Plaintiffs' counsel -- as to what the actual fact is,  
7 because the testimony as of today is those signs are up in the  
8 public right-of-way. Isn't that right?

9 MR. ROSEN: I understand, your Honor. It's just a  
10 little logistical problem because of Mr. Lesnevich not being  
11 here. And I was not at the meeting, I'm just communicating --

12 THE COURT: All right, okay.

13 MR. YALE: No further questions, your Honor.

14 THE COURT: Mr. Nelkin, thanks very much. You may  
15 step down.

16 (Witness excused.)

17 THE COURT: Anybody else?

18 MR. SUGARMAN: No further witnesses, your Honor. I do  
19 have two exhibits that I'd like to offer.

20 THE COURT: Okay.

21 MR. SUGARMAN: As Exhibit 32, a set of four pages of  
22 handwritten notes which have been represented to be Councilman  
23 Sullivan's notes. And I also understand and Mr. Rosen  
24 hopefully will confirm this, these are the only notes that  
25 exist on the subject of the eruv.

1 MR. ROSEN: That's what I was told by Councilman  
2 Sullivan.

3 THE COURT: Any objection to them coming in?

4 MR. ROSEN: No objection.

5 THE COURT: In evidence. 32. Okay.

6 (Plaintiffs' Exhibits 32 is received in evidence.)

7 MR. SUGARMAN: And as Plaintiffs' Exhibit 33, a  
8 Borough of Tenafly newsletter that was circulated in the last  
9 few days dated Spring 2001. The first page of which has a  
10 piece called "Tenefly Eruv Association versus Borough of  
11 Tenafly." We've marked the whole document as 33A through L,  
12 and we'll have copies made of the whole document. We don't  
13 have them as yet. I offer that in evidence, your Honor.

14 THE COURT: Mr. Rosen?

15 MR. ROSEN: I have no objection, your Honor.

16 THE COURT: In evidence.

17 (Plaintiff's Exhibits 33A through 33L are received in  
18 evidence.).

19 MR. ROSEN: Your Honor, Mr. Lesnevich is not here and  
20 I can't speak for him. There's a possibility, although I would  
21 say it's probably not a large one, that he might have a  
22 rebuttal witness for something involved with Mr. Nelkin, but I  
23 need to discuss that with him beforehand.

24 THE COURT: Yeah. Any problem with that?

25 MR. SUGARMAN: I'd like to wait and see what the

1 proposal is and --

2 THE COURT: But I mean we've got to I think -- that's  
3 fine, I have no problem with that. It's perfectly reasonable.

4 MR. ROSEN: I just didn't want to leave that open.

5 THE COURT: But we need to close this at some stage  
6 here.

7 MR. SUGARMAN: Right.

8 MR. ROSEN: Other than that, I believe we're finished,  
9 your Honor.

10 THE COURT: I have a couple of questions.

11 Mr. Nelkin mentioned I believe members of the Eruv  
12 Association writing to the Town Council, sending in letters,  
13 explaining their position. Are those part of the record?

14 MR. ROSEN: You have one letter that Mr. Agus --

15 MR. SUGARMAN: The only written communication was the  
16 letter from Mr. and Mrs. Agus, which is part of the record.

17 THE COURT: That's all?

18 MR. SUGARMAN: Well, Mr. Book wrote a letter as well,  
19 and that's part of the record.

20 THE COURT: And that's part of the record? I have  
21 that? Okay.

22 MR. SUGARMAN: That's in addition to the actual letter  
23 that was the -- that formed the basis of the application.  
24 There was one additional letter.

25 THE COURT: I have that, too, the application letter?

1 MR. SUGARMAN: Yes, your Honor.

2 THE COURT: Am I going to get --

3 MR. SHAPIRO: You do have it. I'm just trying to --

4 THE COURT: I want to make sure I have it.

5 MR. SHAPIRO: It's part of -- excuse me.

6 MR. SUGARMAN: Exhibit 16 is the November 20 letter to  
7 the Mayor and Council from Esther and Charles Agus.

8 THE COURT: All right. You're going to be getting me  
9 the transcript of this hearing?

10 MR. SUGARMAN: Yes, your Honor.

11 THE COURT: And I have -- now you have told me this, I  
12 just want to be sure. I have the transcripts of all of the  
13 meetings in front of the Council. Right?

14 MR. SUGARMAN: That's correct, and we will be  
15 submitting the actual tapes.

16 THE COURT: And you will give me the tapes?

17 MR. SHAPIRO: Judge, I think there are four. There's  
18 a work session in '99; there's a work session I believe on  
19 November 21st of 2000; and then there are two public meetings  
20 November 28th and December 12th.

21 THE COURT: But I have them all?

22 MR. SHAPIRO: You have all four of those, yeah.

23 THE COURT: All right. Mr. Shapiro, have you had a  
24 chance to put the Order together?

25 MR. SHAPIRO: Yes, I have it.

1 THE COURT: You have it? Great.

2 MR. SHAPIRO: Judge, when you look at this you'll see  
3 that Mr. Lesnevich signed -- it's countersigned, it's two  
4 signature pages. The one with his signature says "Draft" on  
5 the top, the one I sent to him Friday night to look at before  
6 he left. But it's agreed to. Mr. Rosen faxed it to me.

7 THE COURT: So I can get rid of the word "draft"? I  
8 can just use that Order?

9 MR. SHAPIRO: Well it's got -- no, no, if -- let me  
10 open it up.

11 THE COURT: All right.

12 MR. SHAPIRO: It's got his signature on it, that's the  
13 problem, Judge. I don't think you can get --

14 THE COURT: All I want to know is, do I have an Order  
15 I can sign in the file?

16 MR. SHAPIRO: Yes, you do.

17 THE COURT: Okay. Take a look at the caption in the  
18 complaint for a minute: Chaim Book. He's a resident of  
19 Tenaflly?

20 MR. BOOK: Yes, I am, your Honor.

21 MR. SUGARMAN: He's here. He's a resident of Tenaflly.

22 THE COURT: Okay. Stephanie Dardik.

23 MR. SUGARMAN: She is a resident of Tenaflly.

24 THE COURT: And Mr. Gottlieb -- oh, Gottlieb --  
25 Brenner. I'm sorry.

1 MR. SUGARMAN: Brenner is a homeowner in Tenafly.

2 THE COURT: All right.

3 MR. SUGARMAN: He's the individual who has a handicap.

4 THE COURT: And let's see. You're going to get me  
5 each of your preferred definitions of an eruv just so I have  
6 it?

7 MR. SHAPIRO: Yes.

8 MR. ROSEN: Yes, your Honor.

9 THE COURT: Anything else, other than letting me know  
10 whether there's going to be a rebuttal witness?

11 MR. SHAPIRO: Just the one thing mentioned earlier in  
12 the hearing, Judge, about the county road/not county road.  
13 We're going to try to work that out.

14 THE COURT: Right.

15 MR. SUGARMAN: Your Honor, the only thing else I would  
16 add is the Plaintiffs' 33 is the newsletter, and the first page  
17 is excerpts of the memorandum of law written by counsel for the  
18 Defendants. And as we will submit more extensively in our  
19 post-trial submission, it continues the rhetoric and the  
20 feelings that Mr. Nelkin described on the stand today in a  
21 Borough publication which is in no respect balanced and  
22 evenhanded.

23 THE COURT: I'm not sure what you're telling me.  
24 There's going to be a supplement to that exhibit? Is that what  
25 you're saying?

1 MR. SUGARMAN: No, it's the exhibit itself, your  
2 Honor. It's Exhibit 33.

3 THE COURT: Right.

4 MR. SUGARMAN: Is the publication of the Borough of  
5 Tenaflly which in our view perpetuates even --

6 THE COURT: Well, we can save that for closing  
7 argument. Right?

8 MR. SUGARMAN: Thank you.

9 THE COURT: All right. So the only open items is  
10 whether we have a rebuttal witness, hopefully a stipulation as  
11 to county roads, municipal roads. And was there one other  
12 thing?

13 MR. SHAPIRO: Eruv definition, Judge.

14 MR. SUGARMAN: The eruv definition and the tapes  
15 themselves.

16 THE COURT: Is there any difficulty -- do we have the  
17 tapes here?

18 MR. SUGARMAN: No, your Honor, we don't. We will have  
19 them delivered out either today or tomorrow.

20 THE COURT: You're going to make a copy? Or maybe  
21 they have them.

22 MR. SUGARMAN: We got them from them. We got them  
23 from the Borough.

24 THE COURT: Any problem with the tapes coming in?

25 MR. ROSEN: I don't believe so, your Honor. I'm

1 personally not familiar with the one from the 21st. Other than  
2 that, I don't believe there's a problem.

3 THE COURT: How many tapes are there?

4 MR. SUGARMAN: Well, there are tapes of --

5 MR. SHAPIRO: Four meetings.

6 MR. SUGARMAN: -- of four --

7 THE COURT: I'm going to mark them for the record, but  
8 I don't want a hassle later on as to what's in the record or  
9 what's not in the record or the tape is not authentic or  
10 somebody -- you know, I deal with a lot of people from a lot of  
11 different walks of life. I'm sure that wouldn't happen here,  
12 but I want to make sure that everybody agrees that these tapes  
13 are authentic. They're the tapes of the meetings, they haven't  
14 been spliced, stuff hasn't been taken out.

15 MR. SUGARMAN: Right.

16 MR. ROSEN: Why don't I offer them through the town  
17 and the town will supply copies of the four. There can't be  
18 anything more official than the town supplying the copies.

19 THE COURT: When I get the tapes somebody represent to  
20 me that these are the tapes and nobody has objections to them.  
21 I'm going to mark them as Exhibit 34.

22 MR. SUGARMAN: We'll work out a way.

23 And we had also volunteered to provide a physical  
24 specimen of a lechi and a picture.

25 THE COURT: That's it, yeah. We're going to mark that

1 35 and 36.

2 MR. SUGARMAN: All right.

3 THE COURT: Or 35A and B. How is that?

4 MR. SUGARMAN: Fine.

5 MR. ROSEN: Fine.

6 THE COURT: So with that observation, the record then  
7 is closed, and the hearing is closed, completed.

8 And let me see. Let me take a look at that Order.

9 Is there a reason I don't have -- oh, wait a minute.

10 Oh, I see.

11 Oh, I see, Mr. Lesnevich signed the fax copy. Right?

12 MR. SHAPIRO: Yes.

13 THE COURT: So we'll have the closing arguments on  
14 July 19th at 10 o'clock. I'll have a supplemental brief from  
15 the ACLU on June 1st; Plaintiffs' and Defendants' supplemental  
16 briefs June 15th; preliminary injunction continues.

17 MR. SUGARMAN: Temporary restraining order, your  
18 Honor.

19 THE COURT: Temporary restraining order continues.  
20 Thank you.

21 All right. I'll sign it now.

22 Counsel, thank you very much.

23 MR. SHAPIRO: Thank you, Judge.

24 MR. ROSEN: Thank you.

25 MR. SUGARMAN: Your Honor, I'm handing up Plaintiffs'

1 Exhibit 32 which was just admitted. We're making a copy of 33  
2 and we'll leave that with your chambers.

3 THE COURT: I think you now have a complete set of the  
4 exhibits.

5 THE COURT: If you want I'll file the consent order  
6 now and give everybody a copy --

7 MR. SHAPIRO: That's fine.

8 THE COURT: -- before they leave.

9 (Conclusion of evidentiary portion of hearing -  
10 adjourned to July 19, 2001, 10:00 a.m., for closing arguments.)

11 \* \* \*

**USAGE OF FACILITY AUTHORIZATION**

**REQUEST RECEIVED BY RECREATION:**

1. Recreation will validate organization as appropriate for usage of Board of Education facility.
2. Recreation will validate appropriate insurance coverage exists.
3. Recreation will complete permit request forms and send to Board of Education office.  
(Recreation will also be guided by High School calendar for sport in season determination.)
4. Board of Education will either approve or deny request and return to Recreation office.
5. Recreation will communicate with requester and either provide copy of approval as authorization for usage or advise requester of denial and act on the requester behalf to resubmit, as needed, or enforce denial.

**REQUEST RECEIVED BY BOARD OF EDUCATION**

1. Board of Education office will forward all requests for facility usage, as the request relates to any recreational activity, to the Recreation office.
2. Recreation will handle request as outlined in the above request procedures identified and numbered one through five.





POLE No.

62138

62137 (N/P)

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No. NUMBER

62201

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No. NUMBER

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62408 (N/P)

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STREETS

10th

WOODLAND / CHURCHILL

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ON TO CUNNINGHAM (WEST BOUND)

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STREET

STANTON, Leonard T. HANSON

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HANSON ST.

PAGE 3

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TEL: 201 541 0415

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POLE NOPAGE 8

STREET

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WESTERVELT

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AFTER RAILROAD CROSSING  
WESTERVELT / DEAN DR

N/R = NO NUMBER OR POLE

Total Number of Poles 183



# AGREEMENT

This AGREEMENT made this 17 day of September, 1997.

BETWEEN: The Borough of Tenally, a municipal corporation  
of the State of New Jersey, having its principal  
office at 100 Riveredge Road, Tenally, New  
Jersey (hereinafter "Borough")  
AND  
JONATHON R. and JUDITH E. FURER, residing at  
45 Park Street, Tenally, New Jersey  
(hereinafter owners)

## WITNESSETH

WHEREAS, Jonathon R. and Judith E. Furer, owners of Lot 6, Block 1604 as set forth on the tax assessment map of the Borough of Tenally, commonly known as 45 Park Street, has submitted to the Mayor and Council a request to permit the encroachment of two (2) 4'5" high x 2'5" square columns with 24" light fixtures affixed atop each, both of which are located in the Borough's right of way, to remain, as set forth on a plan entitled "Map of Property of Jonathon R. Furer & Judith E. Furer" prepared by G. B. Associates, Inc., Engineers and Surveyors, 144 Jewell Street, Garfield, NJ 07026, dated August 6, 1996; and

WHEREAS, under present conditions, the columns do not render pedestrian traffic dangerous or unsafe or obstruct the same.

NOW THEREFORE in consideration of One Dollar (\$1.00) and the mutual covenants and promises set forth herein, the parties do agree as follows:

1. The property owners may retain the columns with lights in accordance with the aforesaid plan (the plan shall be maintained as a permanent record with the Office of the Borough Clerk of the Borough of Tenally).
2. The maintenance of said columns with lights shall be the continuing duty and obligation of the property owners.
3. The property owner does hereby agree to indemnify and hold harmless the Borough for any liability occasioned by the encroachment into the Borough's right of way.



4. Any engineering or legal fees occasioned by this approval or any future modification pursuant to this Agreement shall be paid directly to the Borough by the property owner.

5. The Borough reserves the right to demand in the future the relocation of the columns with lights, and within (thirty) 30 days of said demand, which shall be in writing, the property owners, at their own cost and expense, shall comply with the demand of the Borough.

6. In the event the said columns with lights are removed from the right of way, or the property owners are in compliance with any then applicable ordinance, their liability hereunder shall cease.

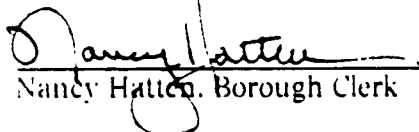
7. The cost of recording this document shall be borne by the property owners.

8. This agreement shall be a restriction upon the premises.

9. This agreement shall be binding upon the parties, their heirs, successors, administrators, assigns and any prospective purchaser of said tract.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and caused these presents to be signed by their proper officials and their corporate seal affixed the day and year first above written.


ATTEST:


  
Nancy Hatten, Borough Clerk

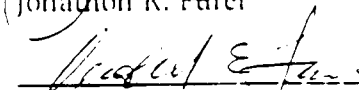
WITNESS:

\_\_\_\_\_

BOROUGH OF TENAFLY

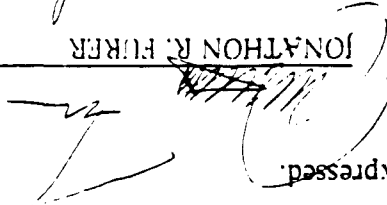
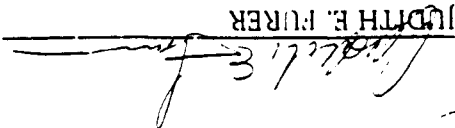
  
Ann A. Moscovitz, Mayor

  
Jonathon R. Furer

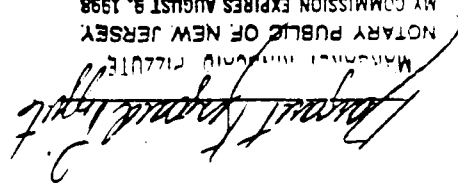
  
Judith E. Furer

STATE OF NEW JERSEY )  
( COUNTY OF BERGEN )

BE IT REMEMBERED that on this \_\_\_\_\_ day of September, 1997, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared JONATHON R. FURER, and JUDITH E. FURER, his wife, who I am satisfied are the persons named in and who executed the within instrument, and thereupon they acknowledged that they signed, sealed and delivered the same as their act and deed and for the uses and purposes therein expressed.

  
\_\_\_\_\_  
JONATHON R. FURER  
  
\_\_\_\_\_  
JUDITH E. FURER

Sworn to and subscribed to  
before me this 3 day  
of October, 1997.

  
MANUEL M. MONTANO, Notary Public  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES AUGUST 8, 1998

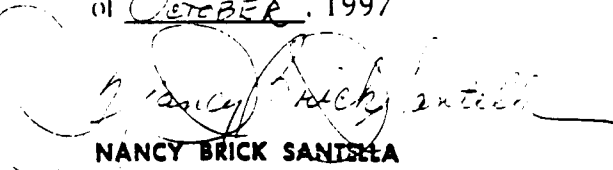
STATE OF NEW JERSEY )

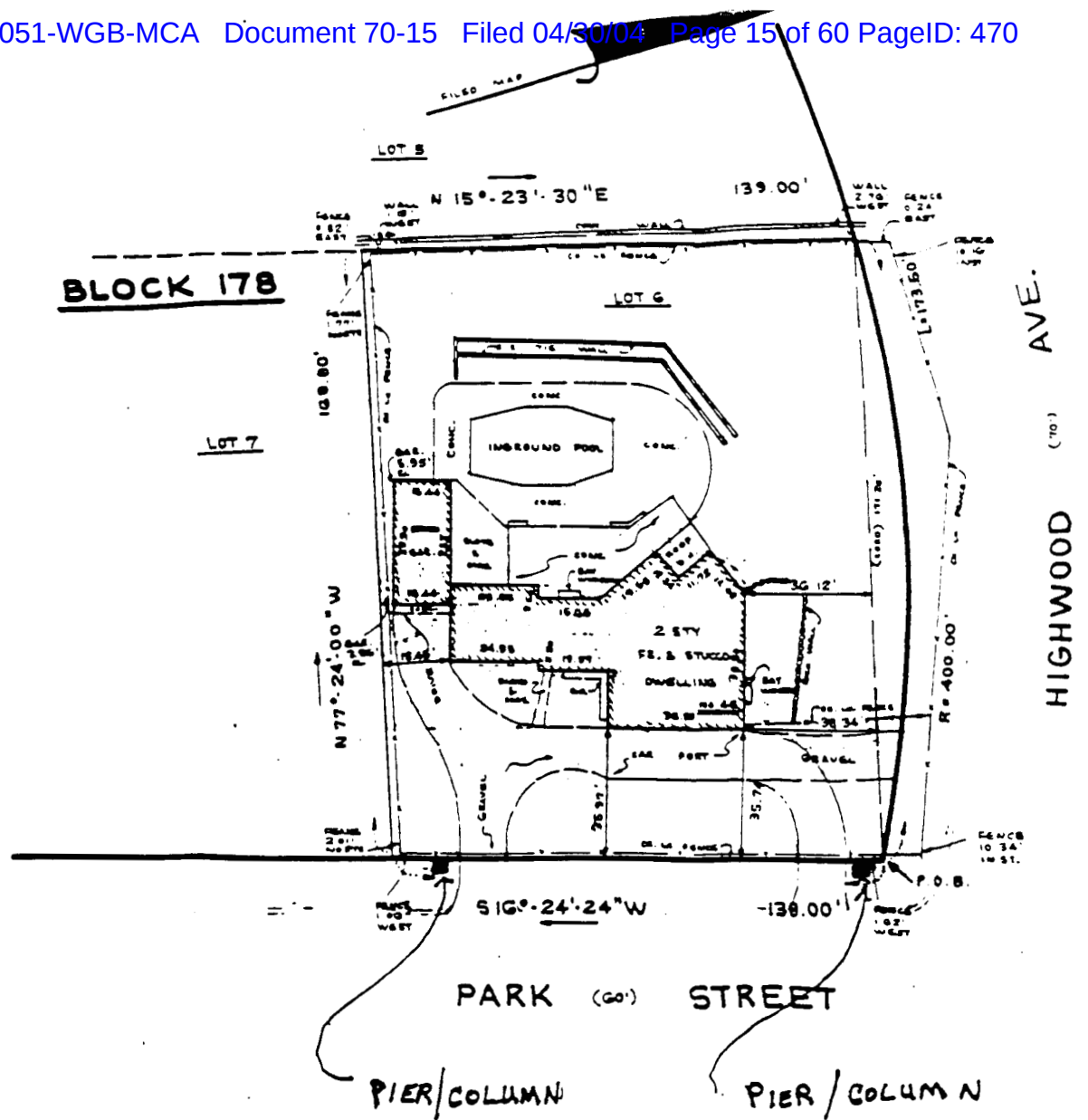
COUNTY OF BERGEN )

BE IT REMEMBERED, that on this 6<sup>th</sup> day of ~~September~~ October, 1997, before me the subscriber, a Notary Public of the State of New Jersey, personally appeared NANCY HATTEN, who being by me duly sworn on her oath, says that she is the Borough Clerk of the Borough of Tenafly, the municipal corporation named in the foregoing Instrument; that she well knows the corporate seal of said corporation; that the seal affixed to said Instrument is the corporate seal of said corporation; that the said seal was affixed and the said Instrument signed and delivered by ANN A. MOSCOVITZ, who was at the date thereof the Mayor of said municipal corporation, in the presence of this deponent, and said Mayor, at the same time acknowledged that he signed, sealed and delivered the same as his voluntary act and deed and as the voluntary act and deed of said corporation, by virtue of authority from its Mayor and Council, and that deponent, at the same time, subscribed her name to said Instrument as an attesting witness to the execution thereof.

  
NANCY HATTEN, RMC  
Borough Clerk

Sworn to and subscribed to  
before me this 6<sup>th</sup> day  
of OCTOBER, 1997

  
NANCY BRICK SANTALLA  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES OCT. 6, 1998



MAP REF:

1. BEING LOT 6 IN BLOCK 178 AS SHOWN ON TAX MAP OF BOROUGH OF TENAFLY.
2. BEING P/O LOT 59 AS SHOWN ON A MAP ENTITLED: MAP OF HIGHWOOD PARK & SITE " FILED IN BERGEN COUNTY, N.J. DATED 1866.

SURVEY CERTIFIED TO:

JONATHAN R. FURER AND JUDITH E. FURER;  
 COLE, SCHOTZ, MEISEL FORMAN & LEONARD, P.A.;  
 PROGRESSIVE TITLE AGENCY, INC.

*[Signature]*  
 GUNTIS BOLT NJ P.E. & L.S. LICENSE NO. 13,928

MAP OF PROPERTY OF	
JONATHAN R. FURER & JUDITH E. FURER	
LOT 6 IN BLOCK 178	TAX MAP
<b>BOROUGH OF TENAFLY</b>	
<b>BERGEN COUNTY</b>	<b>NEW JERSEY</b>
<b>G.B. ASSOCIATES, INC.</b>	
ENGINEERS & SURVEYORS 144 JEWELL STREET GARFIELD, NEW JERSEY 07028 (201) 340-0948 FAX 340-0015	
SCALE: 1" = 30'-0"	DATE: AUG. 6, 19
SHEET NO. 1 OF	FILE NO. 96/145



BOROUGH OF TENAFLY

RESOLUTION

OFFERED BY: Councilmember Rouse

SECONDED BY: Councilmember Saunders

At a regular meeting of the Mayor and Council of the Borough of Tenafly, New Jersey held on Tuesday, May 8, 1990.

WHEREAS, ALEXANDER AND KADRA ZARWI are the owners of Lot 20, Block 179 on the tax assessment map of the Borough of Tenafly, commonly known as 30 Park Street, Tenafly, New Jersey, has requested the Mayor and Council to grant permission to install a sprinkler system within the sidewalk area as defined in Ordinance No. 691 as amended, on Park Street adjacent to the aforesaid property; and

WHEREAS, the Mayor and Council have considered the said request with consideration being given to the guidelines of the aforesaid Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the request is hereby approved, subject to the following conditions:

1. The property owners shall execute the agreement attached hereto and made a part hereof.
2. All cost and expenses, including legal fees, recording charges and engineering fees, shall be paid by the property owner and their successors and assigns as may be required by the said agreement. The property owner shall deposit \$200.00 in escrow with the Borough Clerk to cover the initial costs.



3. The installation of the sprinkler system shall be in accordance with the plan prepared by the owner and attached hereto and made a part hereof.
4. The property owners, shall, at any time in the future, and upon 30 days' notice, in writing, from the Mayor and Council, modify the plan as demanded by the Mayor and Council at their own cost and expense.

Dated: May 8, 1990

Vote recorded as follows:

Councilmember Rouse	Aye
Councilmember Bruck	Aye
Councilmember Saunders	Aye
Councilmember Arilotta	Aye
Councilmember Lustig	Aye
Councilmember Kerge	Aye



RECORDING FEE \$50.00  
PAID *TU*

*Deeds*

RECORDED - PERCEN COUNTY

91 MAY -7 AM 11:08

037783

*Keller & Associates*

A G R E E M E N T

THIS AGREEMENT made this *23<sup>rd</sup>* day of *APRIL*, 1991

BETWEEN

THE BOROUGH OF TENAFLY, a municipal corporation of the State of New Jersey having its principal office at 401 Tenaflly Road, Tenaflly, New Jersey (hereinafter Borough)

AND:

DONALD WEIN and SANDRA WEIN, his wife at 198 Elm Street, Tenaflly, New Jersey 07670 (hereinafter owner)

W I T N E S S E T H

WHEREAS, Donald Wein and Sandra Wein, his wife, owners of Lot 16, Block 204 as set forth on the tax assessment map of the Borough of Tenaflly, commonly known as 198 Elm Street have submitted to the Mayor and Council a request to construct a sprinkling system within the sidewalk area as defined in the Borough Ordinance No. 691 as amended and as set forth on a survey attached hereto prepared by F. William Koestner, Jr., L.S. dated August 18, 1989; and

WHEREAS, under present conditions the proposal would not render pedestrian traffic dangerous or unsafe or obstruct the same.

NOW, THEREFORE, in consideration of ONE DOLLAR (\$1.00) and the mutual covenants and promises set forth herein the parties do agree as follows:

1. The property owner may construct said sprinkler system in accordance with the aforesaid plan, (the plan shall be

Prepared by:



*[Signature]*  
James P. Logan, Esq.

ny 7439 PG 936

maintained a permanent record with the office of the Borough Clerk of the Borough of Tenafly.)

2. The maintenance of said sprinkler system shall be the continuing duty and obligation of the property owner.

3. The property owner does hereby agree to indemnify and hold harmless the Borough for any liability occasioned by the encroachment into the said sidewalk area.

4. Any engineering or legal fees occasioned by this approval or any future modification pursuant to this Agreement shall be paid directly to the Borough by the property owner.

5. The Borough reserves the right to demand in the future the relocation of the sprinkler system, and within thirty (30) days of said demand, which shall be in writing, the property owner, at their own cost and expense, shall comply with the demand of the Borough.

6. In the event the said sprinkler system is removed from the sidewalk area as defined, or the property owners are in compliance with any then applicable ordinance, their liability hereunder shall cease.

7. The cost of recording this document shall be borne by the property owners.

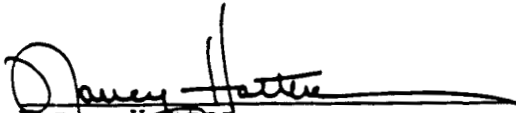
8. This agreement shall be a restriction upon the premises.

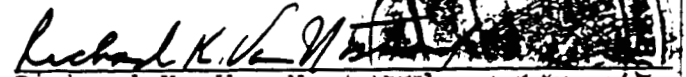
9. This agreement shall be binding upon the parties, their heirs, successors, administrators, assigns and any prospective purchaser of said tract.


IN WITNESS WHEREOF, the parties hereto have hereunto  
set their hands and seals and caused these presents to be  
signed by their proper officials and their corporate seal  
affixed the day and year first above written.

BOROUGH OF TENAFLY

ATTEST:

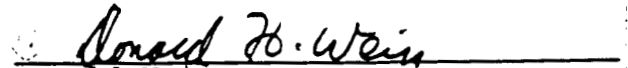
  
Nancy Hadden  
Borough Clerk

  
Richard K. Van Nost  
Mayor

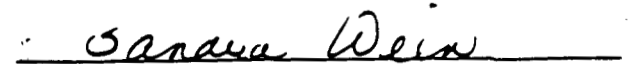


WITNESS

  
DONNA FRAIOLI

  
Donald Wein

  
DONNA FRAIOLI

  
Sandra Wein

STATE OF NEW JERSEY )  
 )  
COUNTY OF BERGEN )

BE IT REMEMBERED that on this 23<sup>rd</sup> day of April, 1991,  
before me, the subscriber, a Notary Public of the State of  
New Jersey, personally appeared Donald Wein and Sandra Wein,  
his wife, who I am satisfied are the persons named in and who  
executed the within Instrument, and thereupon they acknowledged  
that they signed, sealed and delivered the same as their act  
and deed and for the uses and purposes therein expressed.

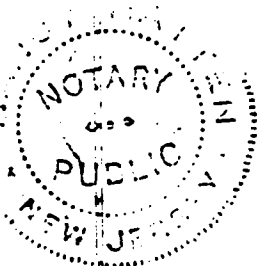
Donald H. Wein  
Donald Wein

Sandra Wein  
Sandra Wein

Sworn and subscribed to  
before me this 23<sup>rd</sup> day  
of April 1991

Nancy Hatten

NANCY HATTEN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires June 18, 1992



AK 7439 PG 939



BOROUGH OF TENAFLY

RESOLUTION

OFFERED BY: Councilmember Rouse

SECONDED BY: Councilmember Lustig

At a regular meeting of the Mayor and Council of the Borough of Tenafly, N.J. held on Tuesday, April 24, 1990.

WHEREAS, ALPEX WHEEL COMPANY is the owner of Lot 1, Block 164 on the tax assessment map of the Borough of Tenafly, commonly known as 29 Atwood Avenue, Tenafly, New Jersey, has requested the Mayor and Council grant permission to install a sprinkler system within the sidewalk area as defined in Ordinance No. 691 as amended, on Atwood Avenue, North Summit Street and Jersey Avenue adjacent to the aforesaid property; and

WHEREAS, the Mayor and Council have considered the said request with consideration being given to the guidelines of the aforesaid Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the request is hereby approved, subject to the following conditions:

1. The property owners shall execute the agreement attached hereto and made a part hereof.
2. All cost and expenses, including legal fees, recording charges and engineering fees, shall be paid by the property owner and their successors and assigns as may be required by the said agreement. The property owner shall deposit \$200.00 in escrow with the Borough Clerk to cover the initial costs.

PLAINTIFF'S  
EXHIBIT

6

3. The installation of the sprinkler system shall be in accordance with the plan prepared by the owner and attached hereto and made a part hereof.
4. The property owners shall, at any time in the future, and upon 30 days' notice, in writing, from the Mayor and Council, modify the plan as demanded by the Mayor and Council at their own cost and expense.

Dated: April 24, 1990

Vote recorded as follows:

Councilmember Rouse	Aye
Councilmember Bruck	Absent
Councilmember Saunders	Aye
Councilmember Arilotta	Absent
Councilmember Lustig	Aye
Councilmember Kerge	Absent



037855

95 APR 24 AM 9:05

A G R E E M E N T

THIS AGREEMENT, made this 7<sup>th</sup> day of April, 1995, between the BOROUGH OF TENAFLY, a Municipal Corporation of the State of New Jersey, having its principal office at 401 Tenaflly Road, Tenaflly, New Jersey, 07670 (hereinafter "Borough") and FULVIO TRAMONTINA, doing business as the VILLA CORTINA, located at 18 Piermont Road, Tenaflly, New Jersey 07670 (hereinafter "Owner").

W I T N E S S E T H

WHEREAS, VILLA CORTINA, which occupies premises known as Lot 9, Block 152, as set forth on the Tax Assessment Map of the Borough of Tenaflly, commonly know as 18 Piermont Road, has submitted to the Mayor and Council a request to construct a free-standing sign within the Borough right-of-way as defined in Borough Ordinance No. 691 as amended and as set forth on a plan attached hereto; and

WHEREAS, said free-standing sign will comply with all the provisions of the Sign Ordinance for a commercial business and pursuant to the plan attached to the application will be located near the northwesterly corner of the owner's property within the Borough right-of-way, and

WHEREAS, the Mayor and Council of the Borough of Tenaflly held a public hearing on March 14, 1995 at which time the Applicant was sworn and testified and no person from the audience asked any questions or asked to testify,

BK 7782 PG 497

PLAINTIFF'S  
EXHIBIT

7

Di Giacommo

Consideration \$  
 Realty Transfer Fee  
 Recording Fee  
 By  
 Totals

and

WHEREAS, under present conditions the proposal would not hinder pedestrian or vehicular traffic and would not render pedestrian traffic dangerous or unsafe or obstruct the same.

NOW THEREFORE, in consideration of ONE DOLLAR (\$1.00) and the mutual covenants and promises set forth herein the parties do agree as follows:

1. The property owner may construct said free-standing sign in the Borough right-of-way in accordance with the aforesaid plan.

2. The maintenance of said free-standing sign shall be the continuing duty and obligation of the property owner.

3. The property owner does hereby agree to indemnify and hold harmless the Borough for any liability occasioned by the encroachment into the said Borough right-of-way.

4. Any engineering or legal fees occasioned by this approval or any future modification pursuant to this Agreement shall be paid directly to the Borough by the property owner.

5. The Borough reserves the right to demand in the future the relocation of the said free-standing sign and within thirty (30) days of said demand, which shall be in writing, the property owner, at his own cost and expense, shall comply with the demand of the Borough.

6. In the event the said free-standing sign is removed from the Borough right-of-way as defined, or the property owner is in compliance with any then applicable ordinance, his liability hereunder shall cease.

7. The cost of recording this document shall be borne by the property owner.

8. This Agreement shall be a restriction upon the premises.

9. This Agreement shall be binding upon the parties, their heirs, successors, administrators, assigns and any prospective purchaser of said tract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and caused these presents to be signed by their proper officials and their corporate seal affixed the day and year first above written.

ATTEST:

Nancy Hatten  
Nancy Hatten, Borough Clerk

BOROUGH OF TENAELY

Walter W. Hemberger  
Walter W. Hemberger, Mayor

WITNESS:

Donna E. Lick

VILLA CORINTINA

By: Fulvio Tramontina  
Fulvio Tramontina, Owner

BK 7782 PG 500

STATE OF NEW JERSEY) )  
COUNTY OF BERGEN ) SS:

BE IT REMEMBERED, that on this 7<sup>th</sup> day of April, 1995, before me the subscriber, a Notary Public of the State of new Jersey, personally appeared, Nancy Hatten, who being by me duly sworn on her oath, says that she is the Borough Clerk of the Borough of Tenafly, the Municipal Corporation named in the foregoing Instrument, that she well knows the corporate seal of said corporation; that the seal affixed to said Instrument is the corporate seal of said corporation; that the said seal was affixed and the said Instrument signed and delivered by Mayor Walter W. Hemberger, who was at the date thereof the Mayor of said Municipal Corporation, in the presence of this deponent, of said Mayor, at the same time acknowledged that he signed, sealed and delivered the same as his voluntary act and deed and as the voluntary acts and deed of said corporation, by virtue of authority from its Mayor and Council, and that deponent, at the same time, subscribed her name to said Instrument as an attesting witness to the execution thereof.

Nancy Hatten  
Nancy Hatten, Borough Clerk

Sworn and subscribed to  
before me this 7th day of  
Dec 1925.

April 1991  
Roma Franchi

**DONNA FRAJOLI**  
**NOTARY PUBLIC OF NEW JERSEY**  
 BY COMMISSION EXPIRES SEPT. 11, 1996

BK 7782 PG 501

STATE OF NEW JERSEY)

) SS:

COUNTY OF BERGEN )

BE IT REMEMBERED, that on this <sup>27<sup>th</sup></sup> day of *March*, 1994, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared FULVIO TRAMONTINA, who I am satisfied is the person named in and who executed the within Instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his act and deed and for the uses and purposes therein expressed.

  
FULVIO TRAMONTINA

Sworn and subscribed to  
before me this *27* day of

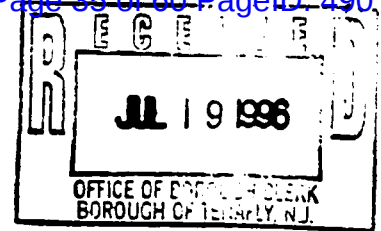
*March*, 1995.

*Maria Schwartz*

NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES ON 03/31/2000



Robert and Janet Rancan  
46 Prospect Terrace  
Tenafly, NJ 07670  
(201) 569-2714



July 18, 1996

8/8 C.O.W.

cc: M+C  
✓ WAL

SS/PR  
JLW

Mayor and Council  
Borough of Tenafly  
401 Tenafly Rd.  
Tenafly, NJ 07670

Dear Mayor Moscovitz:

I am writing to you in response to Gene Bialkowski's letter to me dated July 9th (copy enclosed) in order to ask permission to retain a section of fence that I erected in the right-of-way this spring.

My wife and I are owners of the house directly next door to the Grand Saloon. Our property marks the beginning of the R-7.5 zone. When the tavern was rebuilt last fall, the sidewalk construction tore up a portion of our front lawn. In April and early May, while restoring the lawn, we decided to add a small flower bed and "anchor" it with an 8' long, 4' high piece of wooden fence. What we did not realize, however, was that since our house and the bar are sited virtually without a setback, nearly all of the lawn is part of the right of way.

Prior to your June 6th meeting which concerned the Grand Saloon's application for outdoor tables, Mr. Bialkowski came by to measure where tables would be placed. At that time I had a conversation with him regarding this problem.

Although I have checked my survey and realize that Mr. Bialkowski is correct, I have decided to ask you for permission to leave the section in place. Since the width of the street varies, people walking in the street to the bar always angle across the grass in front of our house, even in wet and snowy conditions. We wanted to put something obvious across the sight line so that people would continue to walk in the street until they reached the new and well-lit sidewalk.

The fence section works: it is very visible and people have been skirting around its edges. At the same time, late at night



people tend to congregate as they leave further away from our windows.

As you will recall, we did express various concerns at the June 6th work session. We pointed out that the proximity of the buildings to each other makes the situation more difficult. We have had one other incident since then: a new flag was stolen from our porch steps on Flag Day. We believe that our small buffer helps somewhat.

Please give this matter due consideration at your next work session. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'RR' followed by a long horizontal stroke.

Robert Rancan

cc; Gene Bialkowski  
Construction Official





## Borough of Tenafly

100 RIVEREDGE ROAD  
TENAFLY, NEW JERSEY 07670  
(201) 568-6100

OFFICE OF THE  
BOROUGH CLERK

August 16, 1996

Robert Rancan  
46 Prospect Terrace  
Tenafly, NJ 07670

Dear Mr. Rancan:

Your letter requesting permission to retain a section of wooden fence 8' long and 4' high erected in the Borough's right-of-way on your property was discussed at a recent meeting of the Mayor and Council, and they have asked that I respond to you on their behalf.

The special circumstances surrounding your need to install the fence were duly noted, and upon individual inspections made to the site, your landscaping of the area demonstrates the care you have taken to incorporate the fence section as part of the property.

Permission has been granted for you to keep the fence section as it is presently installed, upon the following conditions, which are those placed on any and all property owners who request permission to install sprinkler systems, fences, etc. in the Borough's right-of-way:

- a. The maintenance of the fence section and surrounding landscaping is your continuing duty and obligation.
- b. You, as property owner, agree to indemnify and hold harmless the Borough for any liability occasioned by the encroachment of the fence section in the Borough's right-of-way.
- c. The Borough reserves the right to demand, in writing, in the future, the relocation of the fence section, and within 30 days of the demand, you agree to comply with this demand at your own cost and expense.
- d. This agreement pertains to the wooden section of fence, 8' long, 4' high, as described in your letter of July 18, 1996; any change from this initial installation requires notification to the Borough and possible reconsideration of the waiver granted.
- e. Should you decide to remove said fence section permanently, please be sure to notify the Borough of its removal.





## Borough of Tenafly

100 RIVEREDGE ROAD  
TENAFLY, NEW JERSEY 07670  
(201) 568-6100

OFFICE OF THE  
BOROUGH CLERK

If you agree to abide by these conditions as outlined above, please sign the enclosed copy of this letter where indicated and return it to me at your earliest convenience.

As always, if you have any questions, please call me.

Very truly yours,

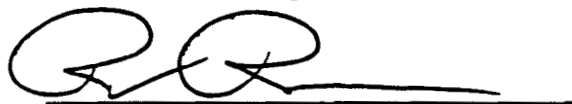
  
Nancy Hatten, RMC  
Municipal Clerk

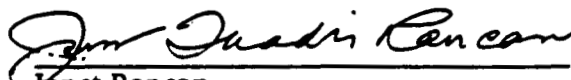
Enc.

cc: Mayor and Council  
Gene Bialkowski, Construction Official

Date: 8/27/16

I understand the conditional waiver granted regarding the installation of the 8' long, 4' high section of wooden fence as outlined above, and agree to maintain the fence at my own cost and expense, remove the fence upon 30 days' written notice from the Borough at my own cost and expense, and indemnify and hold the Borough harmless from any liability related to the existence of this fence.

  
Robert Rancan

  
Janet Rancan



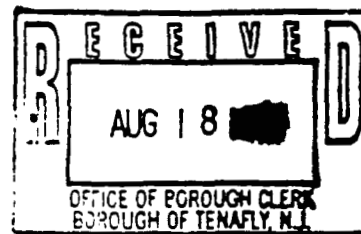


## Borough of Tenafly

100 RIVEREDGE ROAD  
TENAFLY, NEW JERSEY 07670  
(201) 568-6100

OFFICE OF THE  
BOROUGH CLERK

August 13, 1997



George A. Katsiaunis  
Dorothy J. Myridakis  
26 Woodland Park Drive  
Tenafly, NJ 07670

Dear Mr. Katsiaunis and Ms. Myridakis:

Your letter requesting permission to install a cedar picket fence in the Borough's right-of-way on your property was discussed at a recent meeting of the Mayor and Council, and they have asked that I respond to you on their behalf.

Permission has been granted for you to install the fence a distance of 6' 5" from the curb, upon the following conditions, which are those placed on any and all property owners who request permission to install sprinkler systems, fences, etc. in the Borough's right-of-way:

- a. The maintenance of the fence and surrounding landscaping is your continuing duty and obligation.
- b. You, as property owner, agree to indemnify and hold harmless the Borough for any liability occasioned by the encroachment of the fence in the Borough's right-of-way.
- c. The Borough reserves the right to demand, in writing, in the future, the relocation of the fence, and within 30 days of the demand, you agree to comply with this demand at your own cost and expense.
- d. This agreement pertains to the cedar picket fence as shown on the attached survey dated April 14, 1994 with the distance from the curb amended to 6'5"; any change from this revised installation requires notification to the Borough and possible reconsideration of the waiver granted.
- e. Should you decide to remove said fence permanently, please be sure to notify the Borough of its removal.

PLAINTIFF'S  
EXHIBIT

10

If you agree to abide by these conditions as outlined above, please sign the enclosed copy of this letter where indicated and return it to me at your earliest convenience.

As always, if you have any questions, please call me.

Very truly yours,

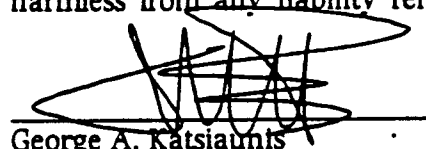
  
Nancy Hatten, RMC  
Municipal Clerk

Enc.

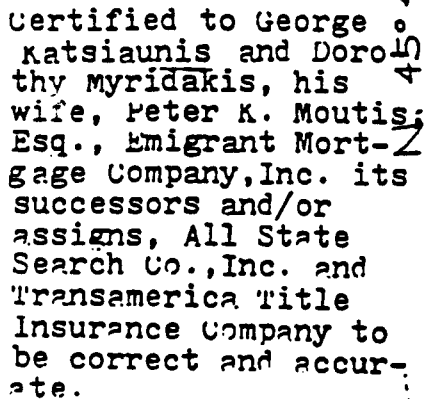
cc: Mayor and Council  
Joseph Di Giacomo, Borough Administrator  
Gene Bialkowski, Construction Official


Date: 8/14/97

I understand the conditional waiver granted regarding the installation of the cedar picket fence as outlined above, and agree to maintain the fence at my own cost and expense, remove the fence upon 30 days' written notice from the Borough at my own cost and expense, and indemnify and hold the Borough harmless from any liability related to the existence of this fence.

  
George A. Katsiaunis

  
Dorothy J. Myridakis



<b>SURVEY AT BOROUGH OF TENAFLY NEW JERSEY</b>	<b>COOGAN &amp; THOMAS</b> <b>ENGINEERING &amp; SURVEYING</b>  <small>384-4090</small> <small>333 SOUTH WASHINGTON AVENUE</small> <small>BERGENFIELD, NEW JERSEY 07021</small>	<small>DATE</small> <b>NOV 23, 1991</b>	<small>SCALE</small> <b>1" = 30'</b>
		<small>REV.</small> <b>APR. 14, 1994</b>	<small>REV.</small>
		<small>REV.</small>	<small>REV.</small>
<b>JACK COOGAN, P.E., L.S.</b> <b>PROFESSIONAL ENGINEER &amp; LAND SURVEYOR</b>	<b>JOHN R. THOMAS, L.S.</b> <b>LAND SURVEYOR</b> 		
<b>N.J. LIC. NO. 15466</b>	<b>N.J. LIC. NO. 9101</b>		



A G R E E M E N T

THIS AGREEMENT made this 20<sup>th</sup> day of November, 1990

BETWEEN THE BOROUGH OF TENAFLY, a municipal corporation of the State of New Jersey having its principal office at 401 Tenaflly Road, Tenaflly, New Jersey (hereinafter Borough)  
AND ARNOLD and MYRA GANS, residing at 8 Dogwood Lane (Block 227, Lot 5.02) Tenaflly, New Jersey (hereinafter property owner).

WHEREAS, Arnold and Myra Gans, owners of Lot 5.02, Block 227 as set forth on the tax assessment map of the Borough of Tenaflly, commonly known as 8 Dogwood Lane have submitted to the Mayor and Council a request to construct and to re-construct a dry stone wall within the right of way in Dogwood Lane as defined in the Borough Ordinance No. 691 as amended as set forth on the plan dated November , 1990 and attached hereto as Schedule A.

WHEREAS, under present conditions it is the opinion of the Mayor and Council that the same would not render pedestrian traffic dangerous or unsafe or obstruct the same.

NOW, THEREFORE, in consideration of ONE DOLLAR (\$1.00) and the mutual covenants and promises set forth herein the parties do agree as follows:

1. The property owner may construct and reconstruct said wall in accordance with Schedule A.
2. The maintenance of said wall shall be the continuing duty and obligation of the property owner.
3. The property owner does hereby agree to indemnify

PLAINTIFF'S  
EXHIBIT

11

and hold harmless the Borough for any liability occasioned to the Borough by the encroachment into the said right-of-way area.

4. Any engineering or legal fees occasioned by the Borough by this approval or any future modification pursuant to this Agreement shall be paid directly to the Borough by the property owner.

5. The Borough reserves the right to demand in the future the relocation of the wall within thirty (30) days of said demand, which shall be in writing, and the property owners, at their own cost and expense, shall comply with the demand of the Borough.

6. In the event the said wall is hereafter totally removed from the area as defined, the owner's liability hereunder shall cease.

7. The cost of recording this document shall be borne by the property owner.

8. This agreement shall be a restriction upon the premises.

9. This agreement shall be binding upon the parties hereto, their heirs, successors, administrators, assigns and



STATE OF NEW JERSEY )  
 ) SS:  
COUNTY OF BERGEN )

BE IT REMEMBERED that on this 10th day of November, 1990, before me, a Notary Public of the State of New Jersey, personally appeared NANCY HATTEN, who being by me duly sworn on her oath, says that she is the Borough Clerk of the Borough of Tenafly, the municipal corporation named in the foregoing Instrument, that she well knows the corporate seal of said corporation; that the seal affixed to said Instrument is the corporate seal of said corporation; that the said seal was affixed and the said Instrument signed and delivered by RICHARD K. VAN NOSTRAND, who was at the date thereof the Mayor of said municipal corporation, in the presence of this deponent, and said Mayor at the same time acknowledged that he signed, sealed and delivered the same as his voluntary act and deed and as the voluntary act and deed of said corporation, by virtue of authority from its Mayor and Council, and that deponent, at the same time, subscribed her name to said Instrument as an attesting witness to the execution thereof.

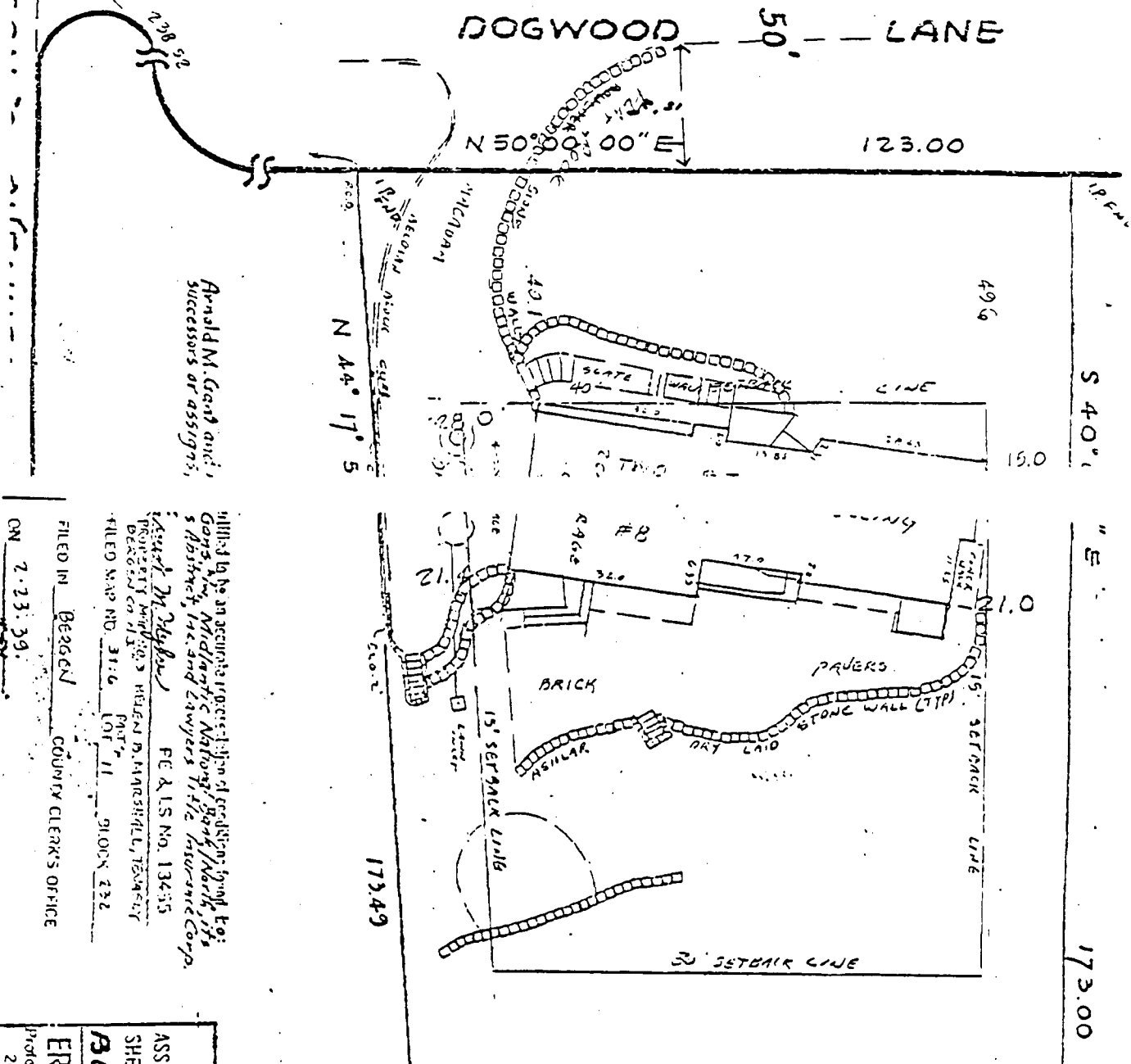
Pearl H. O'Connor  
A Notary Public of New Jersey

PEARL H. O'CONNOR  
NOTARY  
MY COMM. EXPIRES 11/30/95

STATE OF NEW JERSEY )  
 )  
COUNTY OF BERGEN )

BE IT REMEMBERED that on this 14 day of November, 1990,  
before me, the subscriber, a Notary Public of the State of  
New Jersey, personally appeared Arnold Gans and Myra Gans,  
who I am satisfied are the persons named in and who executed  
the within Instrument, and thereupon they acknowledged that they  
signed, sealed and delivered the same as their act and deed and  
for the uses and purposes therein expressed.

Frank J. O'Connor  
A Notary Public of New Jersey



BOROUGH OF TENAFLY

RESOLUTION

Motion by: Councilmember Saunders

Seconded by: Councilmember Rouse

At a regular meeting of the Mayor and Council of the Borough of Tenafly, N.J. held on Tuesday, November 13, 1990.

WHEREAS, Arnold and Myra Gans, owners of Lot 5.02 in Block 227 on the tax assessment map of the Borough of Tenafly, commonly known as 8 Dogwood Lane, Tenafly, New Jersey, have requested the Mayor and Council to grant permission to construct a certain stone dry-wall within the Municipal right-of-way as defined in Ordinance No. 691 as amended on Dogwood Lane upon which the aforesaid property fronts; and

WHEREAS, the Mayor and Council have received the report of the Building Department and considered the said request with consideration being given to the guidelines of the aforesaid ordinance.

NOW, THEREFORE, BE IT RESOLVED that the request is hereby approved, subject to the following conditions:

1. The property owners shall execute the agreement attached hereto and made a part hereof.
2. All cost and expenses, including legal fees, recording charges and engineering fees, shall be paid by the property owners and their successors and assigns as may be required by the said agreement.
3. The installation of the walls and plantings shall be subject to an accurate map to be submitted showing exact location of wall and plantings in the Borough right-of-way attached hereto and made a part hereof as Schedule A.
4. The property owner shall, at any time in the future upon 30 days' notice, in

writing, from the Mayor and Council,  
modify the plan as demanded by the  
Mayor and Council at the owner's own  
cost and expense.

Dated: November 13, 1990

Vote recorded as follows:

Councilmember Rouse	Aye
Councilmember Bruck	Aye
Councilmember Saunders	Aye
Councilmember Arilotta	Aye
Councilmember Lustig	Aye
Councilmember Kerge	Absent



**A G R E E M E N T**

THIS AGREEMENT, made this 20<sup>th</sup> day of October, 1994, between the BOROUGH OF TENAFLY, a Municipal Corporation of the State of New Jersey, having its principal office at 401 Tenaflly Road, Tenaflly, New Jersey, 07670 (hereinafter "Borough") and GERHARD VAN BIEMA, residing at 200 Serpentine Road, Tenaflly, New Jersey 07670 (hereinafter "Owner").

**W I T N E S S E T H**

WHEREAS, GERHARD VAN BIEMA, the Owner of Lot 29, Block 138, as set forth on the Tax Assessment Map of the Borough of Tenaflly, commonly know as 200 Serpentine Road, has submitted to the Mayor and Council a request to construct a parking space within the sidewalk area as defined in the Borough Ordinance No. 691 as amended and as set forth on a plan attached hereto; and

WHEREAS, said parking area will be 18 feet in depth in a north south direction and 10 feet in width in an east west direction and pursuant to the plan attached to the application will be located near the southeasterly corner of the owner's property with the right of the owner to park a motor vehicle within the 10 feet area set aside for sidewalks, and

WHEREAS, the Mayor and Council of the Borough of Tenaflly after public hearing has recommended that the length of the parking area be extended in a northerly direction as approved by the Superintendent of the



Department of Public Works in order to minimize the use of the 10 foot sidewalk area by locating any parked vehicle in a more northerly direction; and

**WHEREAS**, under present conditions the proposal as may be modified by the Superintendent of the Department of Public Works, would not render pedestrian traffic dangerous or unsafe or obstruct the same.

**NOW THEREFORE**, in consideration of ONE DOLLAR (\$1.00) and the mutual covenants and promises set forth herein the parties do agree as follows:

1. The property owner may construct said parking area in accordance with the aforesaid plan, as may be modified by the Superintendent of the Department of Public Works (the plan shall be maintained a permanent record with the Office of the Borough Clerk of the Borough of Tenafly.)

2. The maintenance of said parking area shall be the continuing duty and obligation of the property owner.

3. The property owner does hereby agree to indemnify and hold harmless the Borough for any liability occasioned by the encroachment into the said sidewalk area.

4. Any engineering or legal fees occasioned by this approval or any future modification pursuant to this Agreement shall be paid directly to the Borough by the property owner.

5. The Borough reserves the right to demand in the future the relocation of the parking area, and within thirty (30) days of said demand, which shall be in writing, the property owner, at his own cost and expense, shall comply with the demand of the Borough.

6. In the event the said parking area is removed from the sidewalk area as defined, or the property owner is in compliance with any then applicable ordinance, his liability hereunder shall cease.

7. The cost of recording this document shall be borne by the property owner.

8. This Agreement shall be a restriction upon the premises.

9. This Agreement shall be binding upon the parties, their heirs, successors, administrators, assigns and any prospective purchaser of said tract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and caused these presents to be signed by their proper officials and their corporate seal affixed the day and year first above written.

ATTEST:

Nancy Hatten  
Nancy Hatten, Borough Clerk

BOROUGH OF TENAFLY

Walter W. Hemberger  
Walter W. Hemberger, Mayor

WITNESS:

Donna F. Cusli

Gerhard Van Biema  
Gerhard Van Biema, Owner

**DONNA FRACLI**  
**NOTARY PUBLIC OF NEW JERSEY**  
**MY COMMISSION EXPIRES SEPT. 11, 1998**

STATE OF NEW JERSEY)

) SS:

COUNTY OF BERGEN )

BE IT REMEMBERED, that on this <sup>4th</sup> 20<sup>th</sup> day of October, 1994, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared GERHARD VAN BIEMA, who I am satisfied is the person named in and who executed the within Instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his act and deed and for the uses and purposes therein expressed.

Gerhard Van Biema.  
GERHARD VAN BIEMA

Sworn and subscribed to  
before me this 20<sup>th</sup> day of  
October, 1994.

Donna Frajoli

DONNA FRAJOLI  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES SEPT. 11, 1998



12/14/2000

11:01

2013678000

SELLING LINDEMAN

TO 12127354663

F.03/00

## LESNEVICH & MARZANO-LESNEVICH

Attorneys At Law  
A Partnership of Board Certified Attorneys

WALTER A. LESNEVICH \*†  
MADELINE MARZANO-LESNEVICH \*

AMANDA S. TRIGG \*  
SCOTT A. LATERRA

Certified Paralegals  
MEREDITH KAY SINCLAIR  
LAKISHA GRIFFIN



15 WEST RAILROAD AVENUE  
TENAFLY, N.J. 07670-2018  
201-567-8377

400 MADISON AVE. 18th FLOOR  
NEW YORK, NY 10017  
212-912-0774

FAX 201-567-8583  
e-mail: lesnevich@msn.com

Via Facsimile & Regular Mail

December 13, 2000

Mr. Jim Gaffney  
Director of Operations  
Cablevision  
5 Legion Drive  
Cresskill, NJ 07626

RE: Tenaflly Eruv Association

Dear Mr. Gaffney:

As you are aware I am the Borough Attorney of the Borough of Tenaflly. The Mayor and Council met in session and voted to deny the application of the Tenaflly Eruv Association to erect an eruv in Tenaflly yesterday December 12, 2000.

The agreement to not take action is, therefore, invalid. The Borough of Tenaflly hereby returns to its original request to you to remove any items placed for the eruv. Please take action as soon as possible.

Very truly yours,

WALTER A. LESNEVICH  
WAL/cc

Pc: Mayor & Council  
Richard Shaprio, Esq. (via facsimile)

PLAINTIFF'S  
EXHIBIT

tabbbs

13



HELLRING LINDEMAN GOLDSTEIN & SIEGAL LLP  
COUNSELLORS AT LAW

ONE GATEWAY CENTER  
NEWARK, NEW JERSEY 07102-5386  
(973) 621 9020

FAX (973) 621-7406

FAX COVER SHEET

DATE: November 2, 2000  
TO: Chaim Book, Esq.  
FROM: Richard D. Shapiro, Esq.  
FILE: PNM  
RE: Tenafly Eruv Assoc.  
FAX NO. 212-398-8835  
CONFIRMATION NO.: 212-221-7999  
COMMENTS: \_\_\_\_\_

TOTAL NUMBER OF PAGES INCLUDING THIS PAGE.  
Please call us immediately at (973) 621-9020 if the  
fax is incomplete or illegible.

\_\_\_\_\_  
FAX OPERATOR

*Nancy -  
Please distribute &  
return to me.  
Thank, Walt*

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. THANK YOU.



HELLRING LINDEMAN GOLDSTEIN & SIEGAL LLP

CONSELLORS AT LAW

BERNARD HELLRING (1918-1999)  
PHILIP LINDEMAN II  
D. SIEGAL  
JONAH HAN L. GOLDBERG  
DAVID M. EVENSCHICK  
JAMES A. EDWARDS  
MICHAEL EDELMAN  
MARGARET HILL HELLRING  
STEWART D. SHAFER  
CHARLES BRANDY  
RICHARD B. HONG  
RICHARD A. TROIAN  
ROBERT S. RAYMAN  
RONNY J. U.S. COAL  
STEPHEN L. DREYFUS  
JOHN A. ADLER  
JUDAH L. ESTIN  
BRUCE A. FLEPPMAN  
MATTHEW E. MOLSCHOK  
RACHEL N. DAVIDSON  
DAVID M. HARRIS  
ROBERT E. FROWICK  
ROBERT E. MOSLEY  
SHEILA E. KOONERT  
DAVID WOLFE  
LISA A. PARKER  
DAVID L. BLANK  
JEANETTE M. MOSE

November 2, 2000

ONE GATEWAY CENTER  
NEWARK, NEW JERSEY 07102-3000  
(973) 621-7000  
FAX (973) 621-7400

Via Telecopy

Walter A. Lesnevich, Esq.  
Lesnevich & Marzano Lesnevich  
15 West Railroad Avenue  
Tenafly, NJ 07670-2018

4/11/00  
TAL ONLY

Re: Borough of Tenafly and Tenafly Eruv  
Association

Dear Mr. Lesnevich:

Thank you for your letter dated October 31, 2000.  
Initially, it is also my client's understanding  
that the Eruv has been removed from the Tenafly  
Nature Center.

The Eruv Association appreciates the Borough's  
agreement to refrain from causing the Eruv to be  
removed for thirty (30) days from October 31, 2000  
while this matter proceeds before the Borough.  
Obviously if the matter is not concluded in 30  
days through no fault of either party the  
standstill agreement would continue until the  
matter is concluded before the Borough. This is  
to also acknowledge your advice that you have  
already requested Cablevision not to remove the  
Eruv while this matter proceeds before the  
Borough.

HELLRING LINDEMAN GOLDSTEIN & SEGAL LLP

Walter A. Leanevich

- 2 -

November 2, 2000

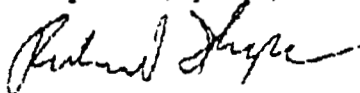
The Eruv Association does acknowledge that this agreement is not evidential and shall not be considered an acknowledgment, acceptance or approval of the Eruv. Likewise, this is also to confirm that the Borough agrees that the Eruv Association's agreement to remove the Eruv from the Tenafly Nature Center and to make a request of the Borough is not an acknowledgment, acceptance or approval of the Borough's position.

The Eruv Association appreciates the fact the Borough intends to proceed expeditiously by placing the Eruv Association's request on Borough Council's Committee of the Whole agenda for November 9, 2000, and November 21, 2000 and that the issue will be placed on the agenda for the public meeting on November 28, 2000 at 8:15 p.m. at Borough Hall.

I also appreciate your advice that the Borough has no specific ordinance covering this matter of any particular format for the Eruv Association to follow in submitting its request. A written request by the Eruv Association will be promptly submitted.

Your prompt attention to my inquiries and the prompt attention the Borough intends to provide this matter is appreciated.

Very truly yours,



RDS:vn

-2-

NOV 02 2000 15:29 FR HELLRING LINDEMAN

TO 12015678583

P.05/05

HELLRING LINDEMAN GOLDSTEIN & SEGAL LLP

Walter A. Lesnevich

- 3 -

November 2, 2001

cc: Chaim Book, Esq.

-3-

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\*\* TOTAL PAGE.05 \*\*



AGREEMENT

THIS AGREEMENT made this 21<sup>st</sup> day of July, 1997.  
BETWEEN

THE BOROUGH OF TENAFLY, a municipal corporation  
of the State of New Jersey, having its principal office  
at 100 Riveredge Road, Tenafly, New Jersey,  
(hereinafter "Borough")

AND:

JEFF FAGAN and JUDY FAGAN, his wife, at  
100 DeVriese Court, Tenafly, New Jersey,  
(hereinafter "Owners")

WITNESSETH

WHEREAS, Jeff and Judy Fagan, his wife, owners of Lot 1, Block 2801 as set forth on the tax assessment map of the Borough of Tenafly, commonly known as 100 DeVriese Court, have submitted to the Mayor and Council a request to construct a sprinkling system within the sidewalk area as defined in the Borough Ordinance No. 691 as amended, and as set forth on a survey attached hereto prepared by Robert J. Weissman, P.E., & L.S., dated June 13, 1997 and upon which survey the owners have indicated the approximate location of the subject sprinkler heads; and

WHEREAS, under present conditions the proposal would not render pedestrian traffic dangerous or unsafe or obstruct the same.

NOW THEREFORE, in consideration of ONE DOLLAR (\$1.00) and the mutual covenants and promises set forth herein, the parties do agree as follows:

1. The property owners may construct said sprinkler system in accordance with the aforesaid plan (the plan shall be



maintained a permanent record with the office of the Borough Clerk of the Borough of Tenally).

2. The maintenance of said sprinkler system shall be the continuing duty and obligation of the property owners.

3. The property owners do hereby agree to indemnify and hold harmless the Borough for any liability occasioned by the encroachment into the said sidewalk area.

4. Any engineering or legal fees occasioned by this approval or any future modification pursuant to this Agreement shall be paid directly to the Borough by the property owners.

5. The Borough reserves the right to demand in the future the relocation of the sprinkler system, and within thirty (30) days of said demand, which shall be in writing, the property owners, at their own cost and expense, shall comply with the demand of the Borough.

6. In the event the said sprinkler system is removed from the sidewalk area as defined, or the property owners are in compliance with any then applicable ordinance, their liability hereunder shall cease.

7. The cost of recording this document shall be borne by the property owners.

8. This agreement shall be a restriction upon the premises.

9. This agreement shall be binding upon the parties, their heirs, successors, administrators, assigns and any prospective purchaser of said tract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and caused these presents to be signed by their

proper officials and their corporate seal affixed the day and year first above written.

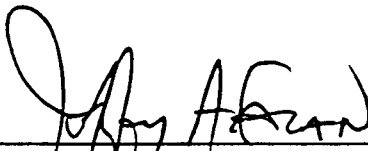
BOROUGH OF TENAFLY

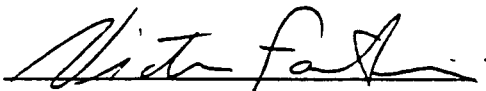
ATTEST:

  
ANN A. MOSCOVITZ, MAYOR

  
NANCY FLATTEN  
BOROUGH CLERK

WITNESS:

  
JEFF FAGAN



  
JUDY FAGAN





## Borough of Tenafly

100 RIVEREDGE ROAD  
TENAFLY, NEW JERSEY 07670  
(201) 568-6100

OFFICE OF THE  
BOROUGH CLERK

November 14, 1997

Simon Cheah  
MR. WOK RESTAURANT  
1 Highwood Avenue  
Tenafly, NJ 07670

Dear Mr. Cheah:

Your letter requesting permission to install a canopy over the entrance to your restaurant in the Borough's right-of-way was discussed at a recent meeting of the Mayor and Council, and they have asked that I respond to you on their behalf.

Thank you for providing the letter of no-objection from your landlord, Judith Altman. Therefore, permission has been granted for you to install the canopy a distance of 2' 6" from the curb, based upon the sketch provided and upon the following conditions, which are those placed on any and all property owners who request permission to install canopies, fences, etc. in the Borough's right-of-way:

- a. The maintenance of the canopy and supporting hardware is your continuing duty and obligation.
- b. You, as owner of the canopy, agree to indemnify and hold harmless the Borough for any liability occasioned by the encroachment of the canopy in the Borough's right-of-way.
- c. The Borough reserves the right to demand, in writing, in the future, the relocation or removal of the canopy, and within 30 days of the demand, you agree to comply with this demand at your own cost and expense.
- d. The canopy shall remain as shown on the sketch as approved by the Construction Official on October 23, 1997; any change requires notification to the Borough and possible reconsideration of the waiver granted.
- e. Should you decide to remove said canopy permanently, please be sure to notify the Borough of its removal.

PLAINTIFF'S  
EXHIBIT

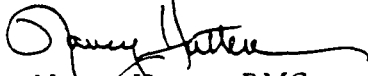
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If you agree to abide by these conditions as outlined above, please sign the enclosed copy of this letter where indicated and return it to me at your earliest convenience.

As always, if you have any questions, please call me.

Very truly yours,

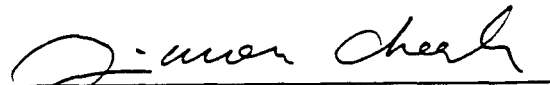
  
Nancy Hatten, RMC  
Municipal Clerk

Enc.

cc: Mayor and Council  
Joseph Di Giacomo, Borough Administrator  
Gene Bialkowski, Construction Official

Date: 11/17/97

I understand the conditional waiver granted regarding the installation of the canopy as outlined above, and agree to maintain the canopy at my own cost and expense, remove the canopy upon 30 days' written notice from the Borough at my own cost and expense, and indemnify and hold the Borough harmless from any liability related to the existence of this canopy.

  
Simon Cheah

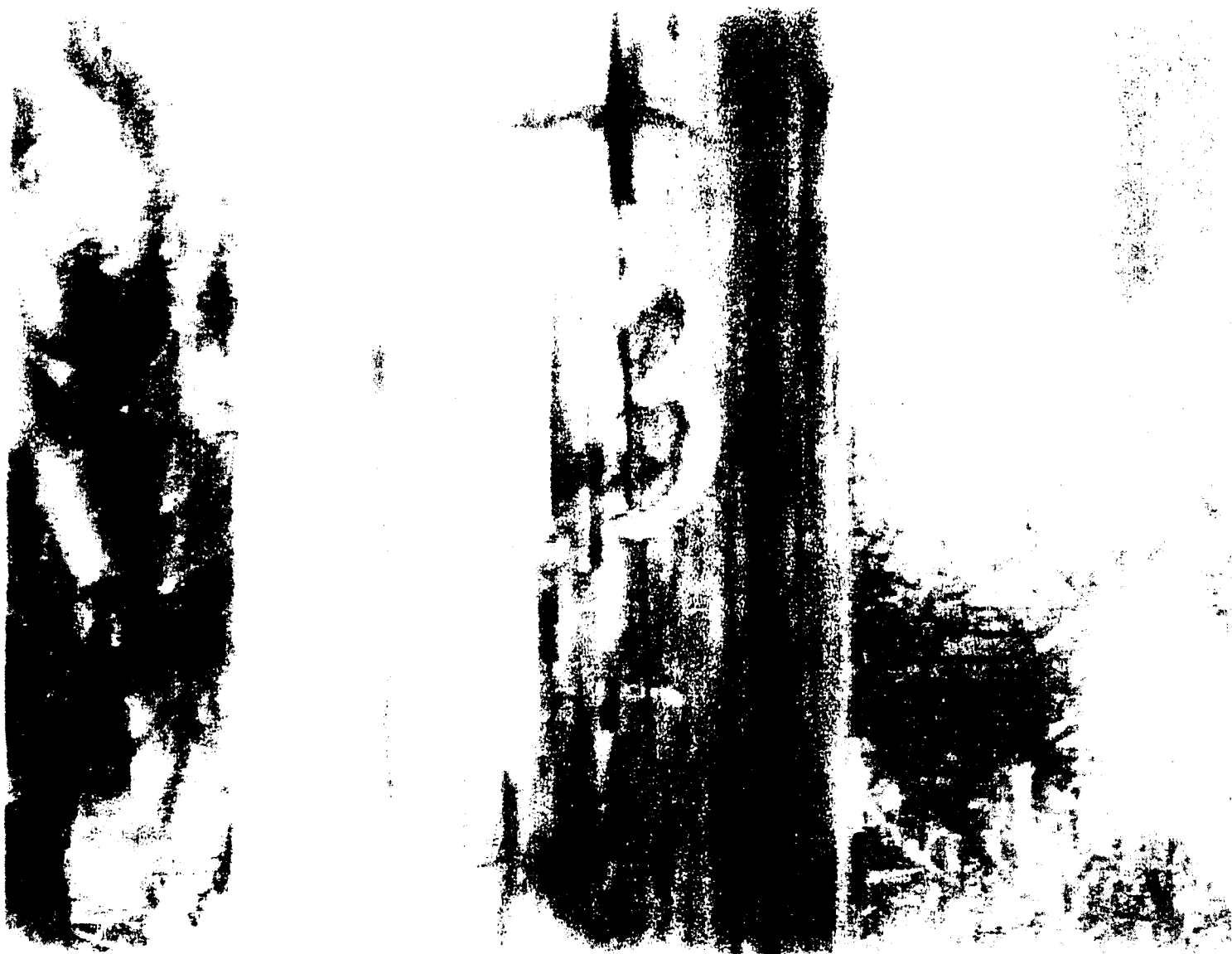
\*\*\*\*\**Note: 10/23 memo and diagram not attached*





PLAINTIFF'S  
EXHIBIT





PLAINTIFF'S  
EXHIBIT



Hilary



PLAINTIFF'S  
EXHIBIT  
72





PLAINTIFF'S  
EXHIBIT  
17



**OFFICES  
FOR RENT.  
19 PHELPS**

PLAINTIFFS  
EXHIBIT



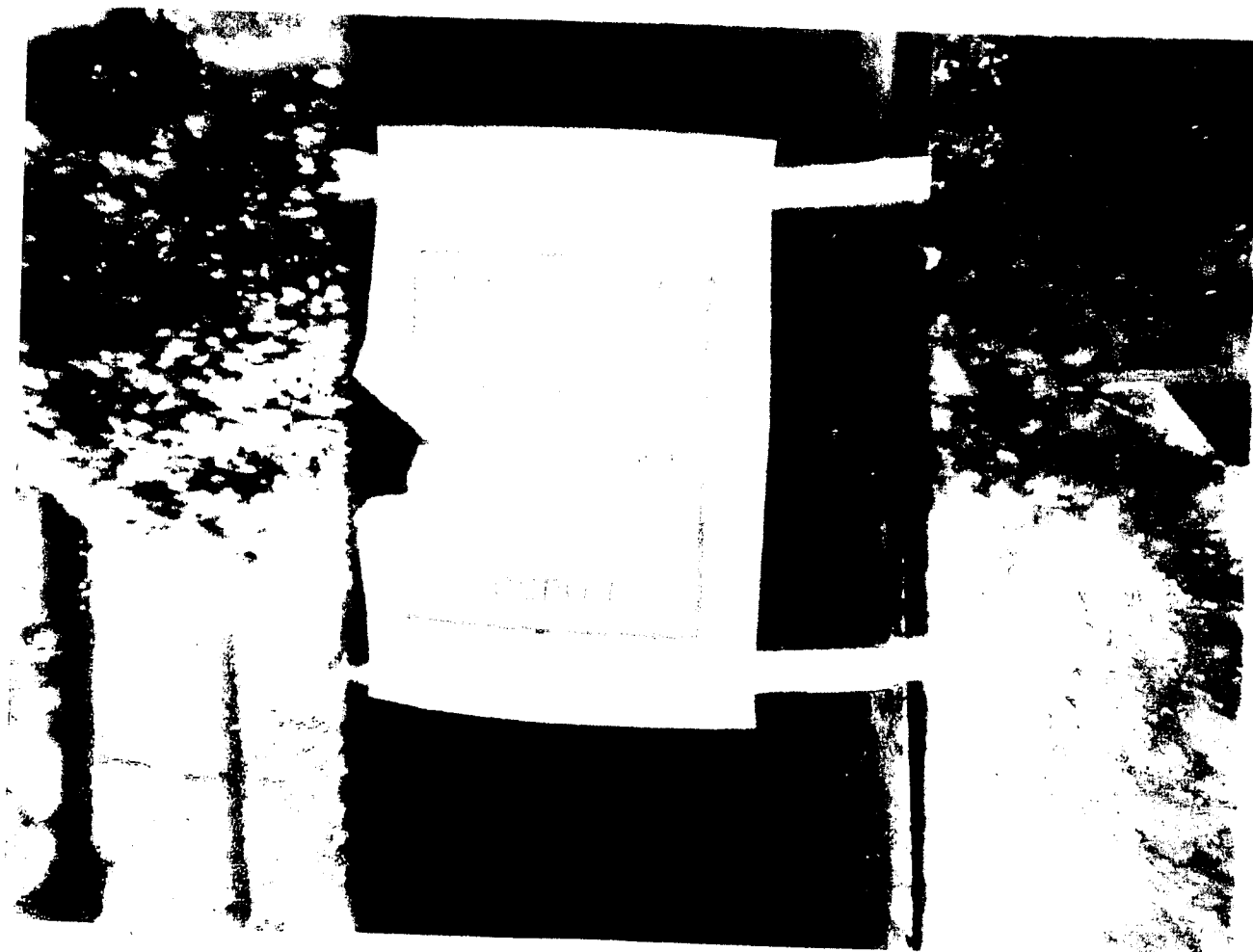


PLAINTIFF'S  
EXHIBIT



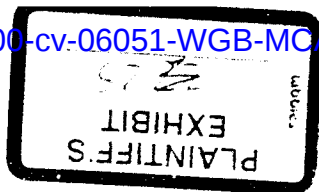
PLAINTIFFS  
EXHIBIT

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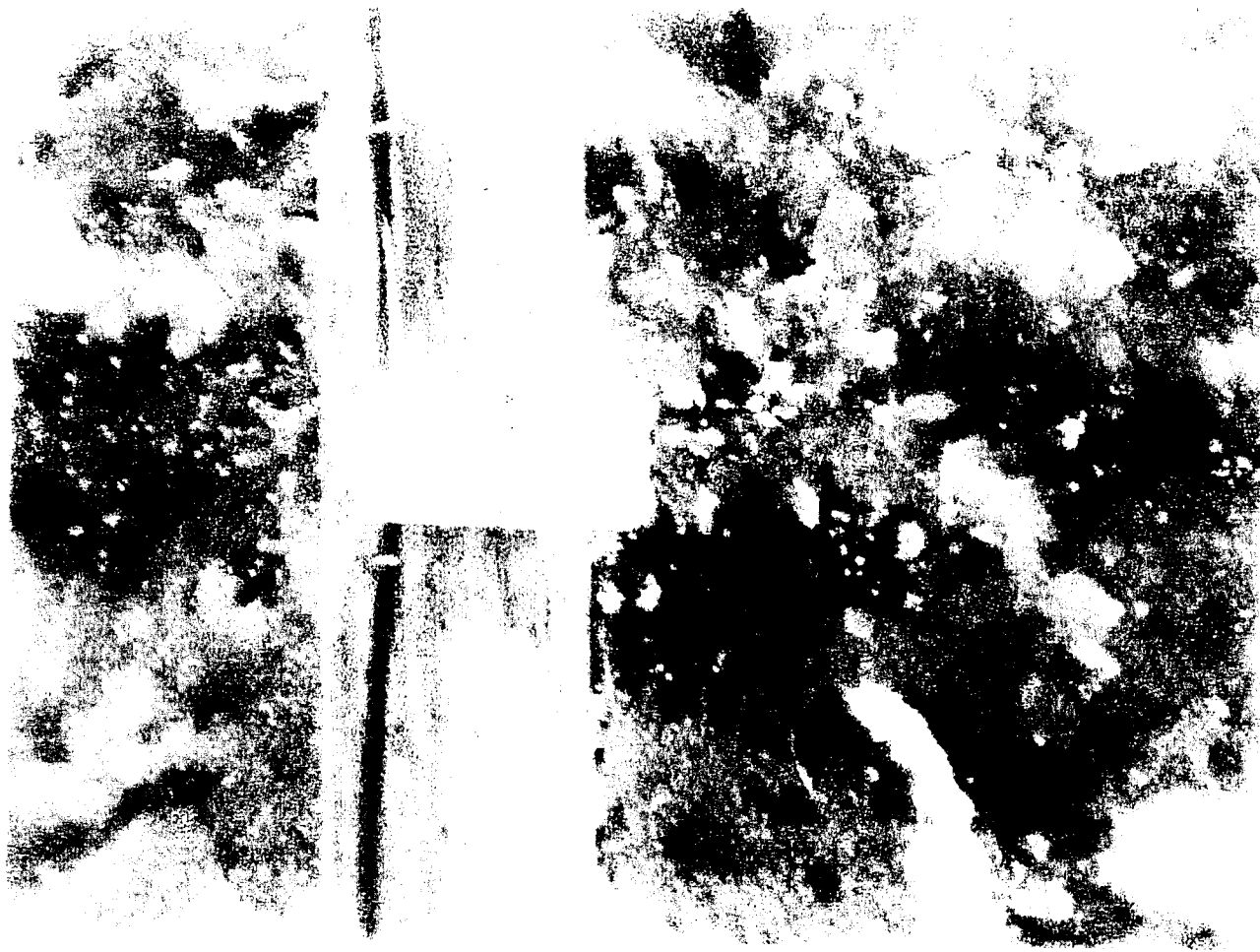
5/14/01











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5/14/01







922 LG.

PLAINTIFF'S  
EXHIBIT

35 a





PLAINTIFF'S  
EXHIBIT  
35 b



922 LB.







OFFICE OF  
ADMINISTRATOR

## Borough of Tenafly

401 TENAFLY ROAD  
TENAFLY, NEW JERSEY 07670

RECEIVED

MAR 14 1996

TELETYPE UNIT DEPT.  
BOROUGH OF TENAFLY  
201-261-6100

March 14, 1996

Mr. Michael Parlamis  
128 Downey Drive  
Tenafly, NJ 07670

Subject: **Four Directional Church Sign Locations  
Greek Orthodox Cathedral**

Dear Mr. Parlamis:

At the last Mayor and Council C.O.W. meeting March 7, 1996, your request to erect four (4) directional church signs at various locations in Tenafly was discussed. I have been instructed by the Mayor and Council to respond to your request.

**Location No. 1** indicates your sign would be either on the State's property or on the Palisade Interstate Parkway's property. You will need approval from one of them; it is not Borough property.

**Location No. 2** is approved providing the sign does not block any traffic signs from motorists' view, and also is not located on State's property. The State's property on 9W is 80' wide. If you erect the sign clear of their property and in the Borough's property, there would be no problem.

**Location No. 3** is approved as noted on your picture: i.e., south of the existing hydrant.

**Location No. 4** appears to be on Conrail's property. I believe the sign would be more meaningful if it was erected west of the tracks on Borough property. I will be glad to show you our proposed location if you want.

Mr. Michael Parlamis

- 2 -

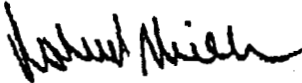
March 14, 1996

Since these directional signs will be installed on Borough property, it is important to note that all costs involved with the installation, repairs, maintenance of these signs is to be by the Church; and if required by the Mayor and Council for whatever reason, the signs must be removed within 30 days written notice by the Mayor and Council.

In addition, it is also important to keep in mind that the proposed signs cannot interfere with a driver's line of sight. As I noted before, I will assist you to make sure the signs conform.

Call me if you have any questions.

Very truly yours, -----



Robert P. Miller  
Borough Administrator

cc: Mayor and Council  
Brooks Bodecker, Supt. DPW  
Gene Bialkowski, Construction/Zoning Official  
Chief Layne  
Walter A. Lesnevich, Borough Attorney



TENAFLY

## Right-of-Way Use Agreement

**T**HIS RIGHT-OF-WAY USE AGREEMENT (this "Use Agreement") is dated as of Jan 31, 2001, 2000 (the "Effective Date"), and entered into by and between the BOROUGH OF TENAFLY, a New Jersey municipal corporation (the "Borough"), and METRICOM, INC., a Delaware corporation ("Metricom").

### Recitals

A. Metricom is in the business of constructing, maintaining, and operating a mobile digital data communications radio network known as Ricochet®, a network operated in accordance with regulations promulgated by the Federal Communications Commission, utilizing Radios (as defined in § 1.12 below) and related equipment certified by the Federal Communications Commission.

B. Metricom wishes to locate, place, attach, install, operate, and maintain Radios on facilities owned by the Borough, as well as facilities owned by third parties, located in the Municipal Right of Way for purposes of operating Ricochet®.

### Agreement

**Now, therefore,** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1 **DEFINITIONS.** The following definitions shall apply generally to the provisions of this Use Agreement:

1.1 **Agency.** "Agency" means any governmental or quasi-governmental agency other than the Borough, including the Federal Communications Commission and the BPU (as such term is defined in § 1.2 below).

1.2 **BPU.** "BPU" means the New Jersey Board of Public Utilities.

1.3 **Municipal Subscriber Program.** "Municipal Subscriber Program" means the discount program described in § 4.3 below.

1.4 **Fee.** "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to Persons doing business in the Borough lawfully

imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

**1.5 Installation Date.** "Installation Date" shall mean the date that the first Radio is installed by Metricom pursuant to this Use Agreement.

**1.6 Laws.** "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Borough or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement, in effect either as of the Effective Date or at any time during the presence of Radios in the Municipal Right of Way.

**1.7 Metricom.** "Metricom" means Metricom, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.

**1.8 Municipal Facilities.** "Municipal Facilities" means Borough-owned street light poles, lighting fixtures, electroliers, or other Borough-owned structures located within the Municipal Right of Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

**1.9 Municipal Right of Way.** "Municipal Right of Way" means the space in, upon, above, along, across, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the Borough. This term shall not include county, state, or federal rights of way or any property owned by any Person or Agency other than the Borough, except as provided by applicable Laws or pursuant to an agreement between the Borough and any such Person or Agency.

**1.10 Person.** "Person" means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business entity or association.

**1.11 Provision.** "Provision" means any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Use Agreement that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to this Use Agreement. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

**1.12 Radio.** "Radio" means the radio equipment, whether referred to singly or collectively, to be installed and operated by Metricom hereunder.

**1.13 Ricochet®.** "Ricochet®" or "Ricochet® MCDN" means Ricochet® MicroCellular Digital Network, a mobile, microcellular digital radio communications network owned and operated by Metricom.

**1.14 Services.** "Services" means the mobile digital communications services provided through Ricochet® by Metricom.

**1.15 Borough.** "Borough" means the Borough of Tenaflly.

**1.16 Use Agreement.** "Use Agreement" means this nonexclusive Use Agreement and may also refer to the associated right to encroach upon the Municipal Right of Way conferred hereunder.

**2 TERM.** This Use Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Use Agreement shall be renewed automatically for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless Metricom notifies the Borough of its intention not to renew not less than thirty (30) calendar days prior to commencement of the relevant renewal term.

**3 SCOPE OF USE AGREEMENT.** Any and all rights expressly granted to Metricom under this Use Agreement, which shall be exercised at Metricom's sole cost and expense, shall be subject to the prior and continuing right of the Borough under applicable Laws to use any and all parts of the Municipal Right of Way exclusively or concurrently with any other Person or Persons and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Municipal Right of Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in Metricom a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement may, at the Borough's option, be subject to the reasonable prior review and approval of the Borough.

**3.1 Attachment to Municipal Facilities.** The Borough hereby authorizes and permits Metricom to enter upon the Municipal Right of Way and to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Radios in or on Municipal Facilities for the purposes of operating Ricochet® and providing Services to Persons located within or without the limits of the Borough. In addition, subject to the provisions of § 4 below, Metricom shall have the right to draw electricity for the operation of the Radios from the power source associated with each such attachment to Municipal Facilities.

**3.2 Attachment to Third-Party Property.** Subject to obtaining the permission of the owner(s) of the affected property, the Borough hereby authorizes and

permits Metricom to enter upon the Municipal Right of Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Radios in or on poles or other structures owned by public utility companies or other property owners located within the Municipal Right of Way as may be permitted by the public utility company or property owner, as the case may be. Upon request, Metricom shall furnish to the Borough documentation of such permission from the individual utility or property owner responsible. Borough agrees to cooperate with Metricom, at no cost or expense to Borough, in obtaining where necessary the consents of third-party owners of property located in the Municipal Right of Way.

**3.3 No Interference.** Metricom in the performance and exercise of its rights and obligations under this Use Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other communications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement. Borough agrees to require the inclusion of the same prohibition on interference as that stated above in all agreements and franchises Borough may enter into after the Effective Date with other information or communications providers and carriers.

**3.4 Compliance with Laws.** Metricom shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

**3.5 Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Radios in the Municipal Right of Way shall require any permits, Metricom shall, if required under applicable Borough ordinances, apply for the appropriate permits and pay any standard and customary permit fees. Borough shall promptly respond to Metricom's requests for permits and shall otherwise cooperate with Metricom in facilitating the deployment of Ricochet® in the Municipal Right of Way in a reasonable and timely manner. The proposed locations of Metricom's planned initial installation of Radios shall be provided to the Borough promptly after Metricom's review of available street light maps and prior to deployment of the Radios.

**3.6 Notice of Location of Radios.** Upon the completion of installation, Metricom promptly shall furnish to the Borough suitable documentation showing the exact location of the Radios in the Municipal Right of Way.

**4 COMPENSATION; DISCOUNTS; UTILITY CHARGES.** Metricom shall be solely responsible for the payment of all lawful Fees in connection with Metricom's performance under this Use Agreement, including those set forth below.

**4.1 Annual Fee.** As compensation for the use of Municipal Facilities (including Municipal Facilities which the Borough may acquire in the future if the Borough does not currently own such facilities), Metricom shall pay to the Borough an annual fee (the "Annual Fee") in the amount of Sixty Dollars (\$60.00) for the use of each Municipal Facility upon which a Radio has been installed pursuant to this Use Agreement. Notwithstanding the foregoing, if a third party or utility co-owner of Municipal Facilities or other structures to which Municipal Facilities may be attached ("Joint Municipal Facilities") requests payment for Metricom's use of Joint Municipal Facilities pursuant to this Use Agreement, the Annual Fee payable to the Borough hereunder shall be reduced in proportion to the amount of any payments which Metricom makes to such third party or utility co-owner. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Radios installed on Municipal Facilities and/or Joint Municipal Facilities, as the case may be during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Installation Date.

**4.1.1 CPI Adjustment.** Effective commencing on the fifth (5<sup>th</sup>) anniversary of the Installation Date and continuing on each fifth (5<sup>th</sup>) anniversary thereafter during the term, the Annual Fee with respect to the ensuing five-year period shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Consumers, 1982-1984=100) which occurred during the previous five-year period for the Northeast Urban Region Consolidated Metropolitan Statistical Area.

**4.2 Electricity Charges.** Metricom shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Radios' usage of electricity and applicable tariffs.

**4.3 Municipal Subscriber Program.** In consideration of Borough's execution and delivery of this Use Agreement, Borough shall have the right throughout the term of this Use Agreement to ten (10) free Ricochet® basic service subscriptions. The number of free subscriptions which the Borough may receive shall be determined in accordance with Metricom's Municipal Subscriber Program at the time of execution of this Use Agreement, the Borough's official population (as shown on the latest available census data), as well as other considerations, including the terms and conditions of this Use Agreement. Borough shall

designate one person who shall be responsible for ordering and receiving any subscriptions. To take advantage of this program, the designated individual should contact Metricom's Network Real Estate Department at the address stated in § 8 below. Borough's right to use the subscriptions shall commence at the time that Ricochet® service is commercially available in the Borough and shall extend until the expiration of the term of this Use Agreement or through the length of time that Radios are deployed in the Municipal Right of Way, whichever is longer. Borough's use of the subscriptions shall be subject to the standard Ricochet® terms and conditions of use. Borough understands and agrees that modems and equipment required to utilize the subscriptions and any additional service subscriptions or service options the Borough may desire may be obtained from an authorized retailer at market rates current from time to time. Borough shall use all subscriptions provided pursuant to this section solely for its own use and shall not be entitled to resell, distribute, or otherwise permit the use of same by any other person, excepting a local public entity that provides public service within the corporate boundaries of the Borough (e.g., municipal schools, public safety, or fire departments, etc.). The level of benefits and service provided to Borough by Metricom as "basic service" shall not be diminished or reduced during the term of this Use Agreement or renewal thereof or prior to its cancellation or termination, as the case may be.

**4.4 Reimbursement of Municipality's Recurring Costs and Expenses.** Pursuant to and as allowed for in N.J.S.A. 54:30A-124, Metricom shall reimburse the Municipality for Municipality's recurring costs and expenses in providing actual services to administer this Use Agreement and the deployment of Radios in the Municipal Right-of-Way hereunder. The parties hereto agree that a reasonable fixed annual reimbursement for such costs and expenses shall be One Thousand Five Hundred Dollars (\$1,500.00), which annual amount shall be payable no later than the 45<sup>th</sup> day after the date that Metricom first provides Services to commercially paying subscribers within the Municipality using Radios installed pursuant to this Use Agreement and the 45<sup>th</sup> day after the start of each calendar year thereafter or fraction thereof. Such amount shall be prorated for any short calendar year at the commencement, termination or expiration of this Use Agreement. The parties further agree that such reimbursement shall compensate Municipality for all expenses relating to this Agreement, except for costs and expenses specifically identified as payable by Metricom under this Agreement. The reimbursement provided for in this § 4.4 shall not replace or excuse Metricom from the payment of any applicable Municipality permit fee for work undertaken in connection with this Use Agreement. In the event New Jersey law and Municipality's law are changed as explained in the first two sentences of § 4.5 below, then, upon the next anniversary of the annual reimbursement set forth in this § 4.4 following such change in New Jersey law, Metricom shall reimburse

the Municipality for administrative expenses and for the use of the Municipal Right of Way exclusively through the terms of § 4.5 and its subsections, and this § 4.4 shall no longer have effect.

**4.5 Right-of-Way Fees.** The parties hereto acknowledge and agree that, as of the Effective Date, New Jersey law does not permit Municipality to charge a fee for use of the Municipal Right-of-Way. The parties further agree that, in the event New Jersey law is modified to allow imposition of such a fee by Municipality, and Municipality formally incorporates this law into the Municipal code if necessary under state law, then and only then, pursuant to the procedure set forth in § 4.4 above, the provisions of this § 4.5, and its subsections, shall apply, to the extent consistent with applicable law. In order to reimburse Municipality for any costs it may incur in connection with Metricom's entry upon and deployment within the Municipal Right of Way, Metricom shall pay to the Municipality, on an annual basis, an amount equal to five percent (5%) (or, if lesser, the maximum percentage allowed under New Jersey law) of Metricom's Gross Revenues, as defined below, (the "Right-of-Way Fee") which amount will be collected from subscribers of the Services with billing addresses in the Municipality and remitted to Municipality as provided herein. The compensation provided under this § shall be payable annually, on or before the 45<sup>th</sup> day after the start of each calendar year following notification by Municipality to Metricom, or by Metricom to Municipality, that a Right-of-Way Fee is allowed under New Jersey law, and on or before the 45<sup>th</sup> day after the start of each calendar year thereafter, or fraction thereof, prorated as appropriate. The payment of said Right-of-Way Fee shall commence only if and when the Reimbursement of Municipality's Recurring Costs and Expenses under § 4.4 ceases, but in no event shall the Right-of-Way Fee be less than One Thousand Five Hundred Dollars (\$1,500.00). Such Right-of-Way Fee shall continue to be paid, as set forth above, until the date of termination of this Use Agreement. Within forty-five (45) days after the termination of this Use Agreement, compensation shall be paid for the period elapsing since the end of the last calendar year for which compensation has been paid. Metricom shall furnish to the Municipality with each payment of compensation required by this section a statement, executed by an authorized officer of Metricom or his or her designee, showing the amount of Gross Revenues for the period covered by the payment. If Metricom discovers that it has failed to pay the entire or correct amount of compensation due, the Municipality shall be paid by Metricom within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the Municipality through error or otherwise shall be refunded or offset against the next payment due from Metricom. Acceptance by the Municipality of any payment due under this section shall not be deemed to be a waiver by the Municipality of any breach of this Use Agreement occurring prior

thereto, nor shall the acceptance by the Municipality of any such payments preclude the Municipality from later establishing that a larger amount was actually due or from collecting any balance due to the Municipality.

**4.5.1 Gross Revenues.** "Gross Revenues" means the gross dollar amount received by Metricom for its Services (as defined in § 1.14 above) provided to subscribers with billing addresses in the Township, excluding (i) the Right-of-Way Fee, if any, payable pursuant to § 4.5 *et seq.* below and any utility users' tax, communications tax, or similar tax or fee; (ii) local, state, or federal taxes that have been billed to the subscribers and separately stated on subscribers' bills; and (iii) revenue uncollectible from subscribers (i.e., bad debts) with billing addresses in the Township that was previously included in Gross Revenues.

**4.5.2 Reduction of Right-of-Way Fee by Amount of Utility Users or Telecommunications Tax.** Notwithstanding anything to the contrary in this Use Agreement, if the Services are subject to a utility users tax, telecommunications tax, or other similar tax or fee by operation of the Municipality's Municipal Code or other applicable law, then the amount of the Right-of-Way Fee shall be reduced by the amount of the applicable utility users tax, telecommunications tax, or such other similar tax or fee.

**4.5.3 Accounting Matters.** Metricom shall keep accurate books of account at its principal office in San Jose or such other location of its choosing for the purpose of determining the amounts due to the Municipality under § 4.5 above. The Municipality may inspect Metricom's books of account relative to the Municipality at any time during regular business hours on fifteen (15) business days' prior written notice and may audit the books from time to time at the Municipality's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under this § 4.5 above. Additionally, Metricom will make available for inspection by the Borough, at Metricom's New York regional office currently located in Harrison, New Jersey, upon ten (10) days' prior written notice, the relevant portions of its books and records as reasonably necessary to confirm the accuracy of any payments due the Borough under this Agreement. The Borough agrees to hold in confidence any non-public information it learns from Metricom to the fullest extent permitted by Law.

**5 RELOCATION OF RADIOS.** Metricom understands and acknowledges that Borough may require Metricom to relocate one or more of its Radios, and Metricom shall at Borough's direction relocate such Radios at Metricom's sole cost and expense, whenever Borough reasonably determines that the relocation is needed for any of the

following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a Borough project; (b) because the Radio is interfering with or adversely affecting proper operation of Borough-owned light poles, traffic signals, or other Municipal Facilities; or (c) to protect or preserve the public health or safety. In any such case, Borough shall use its best efforts to afford Metricom a reasonably equivalent alternate location. If Metricom shall fail to relocate any Radios as requested by the Borough within a reasonable time under the circumstances in accordance with the foregoing provision, Borough shall be entitled to remove the Radios at Metricom's sole cost and expense, without further notice to Metricom.

**5.1 Relocations at Metricom's Request.** In the event Metricom desires to relocate any Radios from one Municipal Facility to another, Metricom shall so advise Borough. Borough will use its best efforts to accommodate Metricom by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Use Agreement.

**5.2 Damage to Municipal Right of Way.** Whenever the removal or relocation of Radios is required or permitted under this Use Agreement, and such removal or relocation shall cause the Municipal Right of Way to be damaged, Metricom, at its sole cost and expense, shall promptly repair and return the Municipal Right of Way in which the Radios are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If Metricom does not repair the site as just described, then the Borough shall have the option, upon fifteen (15) days' prior written notice to Metricom, to perform or cause to be performed such reasonable and necessary work on behalf of Metricom and to charge Metricom for the proposed costs to be incurred or the actual costs incurred by the Borough at Borough's standard rates. Upon the receipt of a demand for payment by the Borough, Metricom shall promptly reimburse the Borough for such costs.

**6 INDEMNIFICATION AND WAIVER.** Metricom agrees to indemnify, defend, protect, and hold harmless the Borough, its council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from Metricom's activities undertaken pursuant to this Use Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the Borough, its council members, officers, employees, agents, or contractors.

**6.1 Waiver of Claims.** Metricom waives any and all claims, demands, causes of action, and rights it may assert against the Borough on account of any loss,

damage, or injury to any Radio or any loss or degradation of the Services as a result of any event or occurrence which is beyond the control of the Borough.

**6.2 Limitation of Borough's Liability.** The Borough shall be liable only for the cost of repair to damaged Radios arising from the negligence or willful misconduct of Borough, its employees, agents, or contractors. The Borough shall not be liable for consequential damages.

**7 INSURANCE.** Metricom shall obtain and maintain at all times during the term of this Use Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Metricom in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than One Million Dollars (\$1,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the Borough, its council members, officers, and employees as additional insureds as respects any covered liability arising out of Metricom's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the Borough has received at least thirty (30) days' advance written notice of such cancellation or change. Metricom shall be responsible for notifying the Borough of such change or cancellation.

**7.1 Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this Use Agreement, Metricom shall file with the Borough the required original certificate(s) of insurance with endorsements, which shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (b) that the Borough shall receive thirty (30) days' prior notice of cancellation;
- (c) that Metricom's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the Borough may possess, including any self-insured retentions the Borough may have; and any other insurance the Borough does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

- (d) that Metricom's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the Borough.

The certificate(s) of insurance with endorsements and notices shall be mailed to the Borough at the address specified in § 8.

**7.2 Workers' Compensation Insurance.** Metricom shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the Borough with a certificate showing proof of such coverage.

**7.3 Insurer Criteria.** Any insurance provider of Metricom shall be admitted and authorized to do business in the State of New Jersey and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**7.4 Severability of Interest.** Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the Borough. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

**8 NOTICES.** All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, addressed as follows:

*if to the Borough:*

BOROUGH OF TENAFLY  
Attn: JOSEPH D. GIACOMO  
ADMINISTRATOR  
401 TENAFLY ROAD  
TENAFLY, NJ 07670

*if to Metricom:*

METRICOM, INC.  
Attn: Property Manager  
333 West Julian Street  
San Jose, CA 95110

*With a copy to :*

METRICOM, INC.  
Attn: Local Market Manager  
218 Middlesex Street  
Suite 201  
Harrison, NJ 07029

8.1 **Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

9 **TERMINATION.** This Use Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

10 **ASSIGNMENT.** This Use Agreement shall not be assigned by Metricom without the express written consent of the Borough, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of Metricom hereunder to a parent, subsidiary, successor, or financially viable affiliate shall not be deemed an assignment for the purposes of this Use Agreement.

11 **Bond.** Prior to the commencement of any work under this Use Agreement, Metricom shall furnish or cause to be furnished to the Municipality a good and sufficient bond, substantially in the form attached hereto as Exhibit A entitled Surety Bond, in the amount of Two Thousand Five Hundred Dollars (\$2,500), as security for the faithful performance by Metricom of the provisions of this Use Agreement.

**12 Reimbursement of Attorney's Fees.** Metricom shall reimburse the Municipality for all reasonable attorney's fees relating to the preparation, issuance, and implementation of this Use Agreement, up to a maximum of Two Thousand Dollars (\$2,000.00) promptly upon receipt of bills, paid invoices, and such other documentation as Metricom shall reasonably require. The reimbursement provided for in this § 12 shall not replace or excuse Metricom from the payment of any applicable Municipality permit fee for work undertaken in connection with this Use Agreement.

**13 Most-Favored Municipality Clause.** Should Metricom after the parties' execution and delivery of this Use Agreement enter into an attachment permit agreement with another municipality of the same size or smaller than the Municipality in the New Jersey Metropolitan Statistical Area which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the Municipality's opinion substantially superior to those in this Use Agreement, Municipality shall have the right to require that Metricom modify this Use Agreement to incorporate the same or substantially similar superior benefits and such other terms and burdens by substitution, *mutatis mutandis*, of such other agreement or otherwise.

**14 MISCELLANEOUS PROVISIONS.** The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

**14.1 Nonexclusive Use.** Metricom understands that this Use Agreement does not provide Metricom with exclusive use of the Municipal Right of Way or any Municipal Facility and that Borough shall have the right to permit other providers of communications services to install equipment or devices in the Municipal Right of Way and on Municipal Facilities; however, Borough agrees promptly to notify Metricom of the receipt of a proposal for the installation of communications equipment or devices in the Municipal Right of Way or on Municipal Facilities. In addition, Borough agrees to advise other providers of communications services of the presence or planned deployment of the Radios in the Municipal Right of Way and/or on Municipal Facilities.

**14.2 Amendment of Use Agreement.** This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

**14.3 Severability of Provisions.** If any one or more of the Provisions of this Use Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such Provision(s) shall be deemed severable from the remaining Provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this

Use Agreement and each Provision hereof irrespective of the fact that any one or more Provisions be declared illegal, invalid, or unconstitutional.

**14.4 Contacting Metricom.** Metricom shall be available to the staff employees of any Borough department having jurisdiction over Metricom's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Radios. The Borough may contact by telephone the network control center operator at telephone number (800) 873-3468 regarding such problems or complaints.

**14.5 Governing Law; Jurisdiction.** This Use Agreement shall be governed and construed by and in accordance with the laws of the State of New Jersey, without reference to its conflicts of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of New Jersey, County of Bergen, or in the United States District Court for the District of New Jersey.

**14.6 Attorneys' Fees.** Should any dispute arising out of this Use Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees.

**14.7 Exhibits.** All exhibits referred to in this Use Agreement and any addenda, attachments, and schedules which may from time to time be referred to in any duly executed amendment to this Use Agreement are by such reference incorporated in this Use Agreement and shall be deemed a part of this Use Agreement.

**14.8 Successors and Assigns.** This Use Agreement is binding upon the successors and assigns of the parties hereto.

**14.9 Advice of Displacement.** To the extent the Borough has actual knowledge thereof, the Borough will attempt promptly to inform Metricom of the displacement or removal of any pole on which any Radio is located.

**14.10 Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

**14.11 Waiver of Breach.** The waiver by either party of any breach or violation of any Provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other Provision of this Use Agreement.

**14.12 Representations and Warranties.** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 3.2 above. In addition, Borough specifically represents and covenants that Borough owns all Municipal Facilities for the use of which it is collecting from Metricom the Annual Fee pursuant to § 4.1 above, if any.

**14.13 Entire Agreement.** This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

**In witness whereof,** and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the Effective Date.

**Borough:** BOROUGH OF TENAFLY, a New Jersey municipal corporation

By: Ann A. Moscovitz

Ann A. Moscovitz  
(name typed)

Its: Mayor

Date: Jan. 31, 2001, 2000

Attest:

Doreen Hatten  
Borough Clerk

**Metricom:** METRICOM, INC., a Delaware corporation

By: Dick L. Au

(name typed)

DICK L. AU  
VICE PRESIDENT  
CORPORATE OPS

Its: CORPORATE OPS

Date: DEC 22 2000, 2000

Approved As To Form  
ROW Legal Department

By: AK

Date: 12/19/00