

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Verizon New York Inc. and Long Island Lighting
Company d/b/a LIPA

Plaintiff

v.
The Village of Westhampton Beach, The Village of
Quogue and The Town of Southampton

Defendant

CV11-0252

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

The Village of Westhampton Beach
165 Mill Road
Westhampton Beach, NY 11978

REVERT

TOMLINSON, M.J.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Debevoise & Plimpton LLP, 919 Third Ave., New York, NY 10022, Attn: Michael E. Wiles

Morgan Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178, Attn: Kelly A. Moore

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 01/18/2011

ROBERT C. HEINEMANN

Signature of Clerk or Deputy Clerk

RECEIVED
VILLAGE OF WESTHAMPTON BEACH
2011 JAN 18 P 3:55

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

The JS-11 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Verizon New York Inc. and Long Island Lighting Company d/b/a LIPA

(b) County of Residence of First Listed Plaintiff New York

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Debevoise & Plimpton LLP, 919 Third Ave., New York, NY 10022, (212)909-6000
Morgan Lewis & Bockius LLP, 101 Park Ave., New York, NY 10178, (212)309-6000**DEFENDANTS**

The Village of Westhampton Beach, The Village of Quogue and The Town of Southampton

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (if known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated or Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Alien or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

SEYBERT**IV. NATURE OF SUIT**

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (U.S. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 600 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 800 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment
VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 2000cc

Brief description of cause:

Action seeking declaration that Defendants may not restrict or impose conditions on attachment of "lechis" to utility poles

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Wexler/BoyleDOCKET NUMBER CV 11-0213DATE 1/9/2011

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ARBITRATION CERTIFICATION

I, _____, counsel for _____ do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs. X Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:
Verizon Communications, Inc., Long Island Power Authority

RELATED CASE STATEMENT (SECTION VIII)

All cases that are arguably related pursuant to Division of Business Rule 50.3.1 should be listed in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No

2.) If you answered "no" above:

a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes

b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes ☒ No ☐

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes ☐ (If yes, please explain) No ☒

Please provide your E-MAIL address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court. (This information must be provided pursuant to local rule 11.1(b) of the civil rules).

Attorney Bar Code: MW0962

E-MAIL Address: mewiles@debevoise.com

Electronic filing procedures were adopted by the Court in Administrative Order No. 97-12, "In re: Electronic Filing Procedures (ECF)." Electronic filing became mandatory in Administrative Order 2004-08, "In re: Electronic Case Filing." Electronic service of all papers is now routine.

I certify the accuracy of all information provided above.

Signature: [Signature]

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Attorneys for Long Island Lighting Company d/b/a/ LIPA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VERIZON NEW YORK INC. and LONG ISLAND
LIGHTING COMPANY d/b/a LIPA,

Plaintiffs,

-against-

THE VILLAGE OF WESTHAMPTON BEACH,
THE VILLAGE OF QUOGUE and THE TOWN
OF SOUTHAMPTON,

Defendants.

JAN 18 2011

CLERK OF COURT

100-1234567

SEYBERT J

TOMLINSON, M.J.

DISCLOSURE STATEMENT PURSUANT TO FED. R. CIV. P. 7.1

Pursuant to Federal Rule of Civil Procedure 7.1 and to enable District Judges and Magistrate Judges of this Court to evaluate possible disqualification or recusal, the undersigned counsel certifies:

1. Plaintiff Verizon New York Inc. is a private non-governmental party. Its corporate parent, a publicly held corporation, is Verizon Communications, Inc., which owns the following subsidiaries having securities in the hands of the public:

Verizon Delaware LLC [formerly known as “Verizon Delaware Inc.”, “Bell Atlantic - Delaware, Inc.” and “The Diamond State Telephone Company”]

Verizon Maryland Inc. [formerly known as “Bell Atlantic - Maryland, Inc.” and “The Chesapeake and Potomac Telephone Company of Maryland”]

Verizon New Jersey Inc. [formerly known as “Bell Atlantic - New Jersey, Inc.” and “New Jersey Bell Telephone Company”]

Verizon Pennsylvania Inc. [formerly known as “Bell Atlantic - Pennsylvania, Inc.” and “The Bell Telephone Company of Pennsylvania”]

Verizon Virginia Inc. [formerly known as “Bell Atlantic - Virginia, Inc.” and “The Chesapeake and Potomac Telephone Company of Virginia”]

Verizon New York Inc. [formerly known as “New York Telephone Company”]

Verizon New England Inc. [formerly known as “New England Telephone and Telegraph Company”]

Verizon California Inc. [formerly known as “GTE California Incorporated”]

Verizon Florida LLC [formerly known as “Verizon Florida Inc.” and “GTE Florida Incorporated”]

NYNEX Corporation

GTE Corporation

GTE Southwest Incorporated (dba Verizon Southwest)

Cellco Partnership (dba Verizon Wireless)

Verizon also owns non-controlling minority interests in various companies that have publicly held securities.

2. Plaintiff Long Island Lighting Company d/b/a LIPA (“LIPA”) is a corporation organized under the laws of the State of New York with its principle office at 333 Earle Ovington Blvd., Uniondale, NY 11510. LIPA is a wholly-owned subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York and a body corporate and politic and a political subdivision of the State of New York.

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UNITED STATES DISTRICT COURT
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THE VILLAGE OF WESTHAMPTON BEACH,
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Defendants.

FILED

JAN 18 2011 ★

BROOKLYN OFFICE

CV 11 - 0252

COMPLAINT

SEYBERT, J

TOMLINSON, M.J.

Plaintiffs Verizon New York Inc. ("Verizon New York") and Long Island Lighting Company d/b/a LIPA ("LIPA"), by their undersigned attorneys, for their Complaint herein, allege as follows:

Introduction and Nature of the Action

1. This is an action for a declaratory judgment and injunctive relief. Verizon New York and LIPA own and operate utility poles located in the Town of Southampton, including in The Village of Westhampton Beach and the Village of Quogue. The East End Eruv Association ("EEEE") and its members have asked Verizon New York and LIPA to allow the EEEA to

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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attach “lechis” to their utility poles in order to create an eruv (the “Eruv”). An eruv is a demarcated area that enables members of the Jewish faith with certain religious beliefs to carry or push objects within that area on the Sabbath and on Yom Kippur.

2. Lechis are wooden or plastic strips that do not interfere with the use or operation of utility poles; they have been installed in many locations throughout the country, including on Long Island, and they raise no health or safety concerns. Verizon New York and LIPA, who own the utility poles, are willing to allow the installation of such lechis to establish the Eruv and have entered into written agreements with the EEEA to that effect. However, Defendants the Town of Southampton, the Village of Westhampton and the Village of Quogue (collectively, the “Defendants”) have contended that the attachment of lechis to utility poles either is not permitted at all or requires Defendants’ prior approval pursuant to local laws that regulate the display of “signs” or that restrict intrusions upon public rights of way. Representatives of Defendants have stated publicly that they will not permit the Eruv to be established, that the installation of lechis would violate various local laws, and have threatened to impose fines and/or to take other legal action against Verizon New York and LIPA if they permit the installation of lechis.

3. The EEEA contends (and has provided photographs suggesting) that the local laws invoked by Defendants have not been consistently applied and that other attachments to utility poles and other intrusions over public rights of way have been permitted in the Defendants’ jurisdictions. The EEEA contends that under the circumstances the free exercise clause of the First Amendment to the United States Constitution, and federal statute, do not permit the cited local laws to be invoked by Defendants to bar the installation of lechis. The EEEA also contends that the cited local laws do not apply to the installation of lechis. As a result, the EEEA has asked Verizon New York and LIPA to permit the installation of lechis in

accordance with their contracts. The EEEA has also threatened legal action to enforce its contracts.

4. Defendants' actions affect Verizon New York and LIPA because they threaten to subject Verizon New York and LIPA to fines and other potential legal actions and to prevent Verizon New York and LIPA from fulfilling their agreements with EEEA. Verizon New York and LIPA therefore seek a declaration that they may permit lechis to be installed on their utility poles without incurring any fines or other legal sanctions and without any liability to the Defendants. Verizon New York and LIPA also ask that the Court enjoin the Defendants from interfering in any way with, or otherwise restricting or attempting to restrict, the installation of such lechis, and that the Court grant such other and further relief as may be just and proper.

JURISDICTION AND VENUE

5. This action arises in part under the Constitution and laws of the United States. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over each Defendant because each Defendant is located in this district.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because all of the defendants are located or reside in this district and because the actions by Defendants giving rise to the claims occurred in this district.

THE PARTIES

8. Plaintiff Verizon New York is a corporation organized under the laws of the State of New York with its principle office at 140 West Street, New York, NY 10007. Verizon New York is a subsidiary of Verizon Communications Inc. Verizon New York provides telecommunications services in New York State, including Long Island.

9. Plaintiff LIPA is a corporation organized under the laws of the State of New York and a wholly-owned subsidiary of the Long Island Power Authority. LIPA has its principle office at 333 Earle Ovington Blvd., Uniondale, NY 11510. LIPA owns and operates the electric transmission and distribution systems on Long Island and provides electric service to approximately 1.1 million customers on Long Island and the Rockaway Peninsula.

10. Defendant Village of Westhampton Beach (“Westhampton Beach”) is an incorporated village in Suffolk County, New York.

11. Defendant Village of Quogue (“Quogue”) is an incorporated village in Suffolk County, New York.

12. Defendant Town of Southampton (“Southampton”) is a town in Suffolk County, New York.

FACTUAL ALLEGATIONS

I. Verizon New York’s and LIPA’s Agreements to Permit Attachments of Lechis

13. An eruv, under Jewish law, is a demarcated area. The demarcation of an eruv boundary is created, in part, by using telephone or utility poles and wires and attaching small wooden or plastic strips (“lechis”) to the sides of the poles. The demarcation of an eruv allows Jews with certain religious beliefs to carry objects (purses, wallets and other items) or to push objects (wheelchairs, baby strollers, and other items) within the demarcated area on the Sabbath and Yom Kippur.

14. The demarcation of an eruv accommodates the religious beliefs of certain Jewish residents and visitors to an area and facilitates the exercise of their religious beliefs. Eruvs have been established in many areas in New York State (including Huntington, Stony Brook and elsewhere) and other areas throughout the country.

15. In 2010, the EEEA approached Verizon New York and LIPA and requested permission to affix lechis to Verizon New York's and LIPA's poles in order to complete the Eruv, which would fall within certain portions of the Defendants' boundaries. The lechis proposed to be used in the demarcation of the Eruv are smooth, sanded, soft wood or plastic strips that are no larger than 1" x 4" x 40" and that would be affixed to selected utility poles with the 40" dimension running vertically along the pole and attached flush against the pole.

16. Verizon New York and LIPA have determined that the installation of lechis does not interfere with the use or operation of utility poles. Verizon New York and LIPA are willing to permit the installation of such lechis in accordance with the agreements they have executed with the EEEA. This is in keeping with their practice in other areas and in other cases in which similar permissions have been sought.

17. In or about May 2010, Verizon New York entered into an Eruv-Lechi Stave Agreement with EEEA, a true and correct copy of which is attached hereto as Exhibit A (the "Verizon Agreement"). Pursuant to the Verizon Agreement, Verizon New York agreed to allow EEEA to affix lechis to Verizon New York's poles to complete the Eruv, subject to any permits or authorizations required by State or City laws and regulations.

18. On or about July 27, 2010, EEEA and LIPA entered into a License Agreement, a true and correct copy of which is attached hereto as Exhibit B (the "LIPA Agreement"). Pursuant to the LIPA Agreement, LIPA agreed to allow EEEA to affix lechis to LIPA's poles to complete the Eruv subject to the terms and conditions thereof, including the EEEA's compliance with all applicable laws, rules and regulations of governmental authorities.

II. Defendants' Opposition

19. The EEEA's efforts to establish the Eruv have been the subject of intense local debate and opposition. Those efforts have prompted the formation of opposition groups, such as the Jewish People Opposed to the Eruv and the Alliance for Separation of Church and State in the Greater Westhampton Area, and have generated significant press coverage. Some opponents of the Eruv have expressed a desire to avoid an influx of Orthodox Jewish people into the affected area, including citing fears that the Eruv will lead to the creation of an Orthodox Jewish enclave, that property values will decline, or that the "character" of the communities will be disturbed.

20. Defendants, through their various official representatives, have reacted to the intense opposition from local residents by making public commitments to oppose the creation of the Eruv and by invoking local ordinances in an effort to accomplish that goal. This has included threatening to impose fines and other legal sanctions against Verizon New York and LIPA if they permit the installation of lechis.

A. Westhampton Beach

21. In 2008, Westhampton Beach Building Inspector Paul Houlihan was quoted in local press sources as acknowledging that local ordinances do not prohibit the attachment of lechis to utility poles. *See* Jessica DiNapoli, Tenafly Eruv Battle Resonates in Westhampton Beach, The Southampton Press, August 18, 2008 (stating that "there is no sign ordinance special to the telephone poles," and that, in any event, the lechis would not qualify as signs for purposes of the local laws) attached hereto as Exhibit C.

22. Nevertheless, the trustees of Westhampton Beach sent a letter dated May 18, 2009 to Verizon New York counsel William Balcerski, referring to the potential establishment of the

Eruv and contending that the local sign laws required the prior approval of Westhampton Beach before lechis could be attached to utility poles in the Village. The letter referred to the Westhampton Beach sign law, and stated:

It's the Board's understanding that Verizon has again been discussing with the Hampton Synagogue an agreement that would result in attachments to utility poles owned by Verizon and/or the Long Island Power Authority located within Village limits in order to create an "eruv" under Jewish law. The Board further understands Verizon's position to be that it will not execute the proposed agreement, and will not take or permit any action with respect to utility pole attachments, unless and until the Village approves the attachments.

Westhampton Beach Letter, attached hereto as Exhibit D.

23. Mayor Teller of Westhampton Beach has publicly announced that he is opposed to the establishment of the Eruv. Will James, Debate over Jewish religious boundary begins to heat up, The Southampton Press, September 29, 2010, attached hereto as Exhibit E (noting that "[a]ll five members of the Westhampton Village Board, including Mr. Teller, said they will oppose an eruv if an application is ever presented to them"). More recently, Mayor Teller has confirmed that "he would abide by the wishes of his constituents and oppose the Eruv." Jennifer Barrios, Nonprofit Gets Preliminary Oks For Hamptons Eruv, Newsday, October 31, 2010, attached hereto as Exhibit F.

24. Members of the Board of Trustees of Westhampton Beach have also announced their opposition to the establishment of the Eruv. More particularly:

(a) In June 2010, Trustee Birk stated that her position with respect to the Eruv had not changed and that she continues to oppose it. Hallie D. Martin, Toni-Jo Birk Seeks Third Term in Westhampton Beach, The Southampton Press, June 16, 2010, attached as Exhibit G.

(b) Trustee Farrell has stated that she would not support the creation of an Eruv in Westhampton Beach and that "the community has made it clear that it opposes the idea." Hallie D. Martin, Sue Farrell Makes First Bid for Public Office in Westhampton Beach, The Southampton Press, June 16, 2010, attached as Exhibit H.

(c) Trustee Tucker has stated that "the Eruv will never happen on my watch." Hallie D. Martin, Hank Tucker Seeks to Unseat Mayor in Westhampton Beach, The Southampton Press, June 16, 2010, attached as Exhibit I.

(d) A June 2009 campaign flyer bearing both Trustee Levan's and Trustee Tucker's names stated, "[w]e will vigorously oppose any effort to obtain an eruv proclamation from any government official or entity outside of our Village. We will continue to make certain you have an opportunity to express your views, and will defend your right to oppose the eruv." Levan and Tucker Campaign Flyer, June 2009, attached as Exhibit J.

25. The Mayor and Trustees of Westhampton Beach therefore have made clear that they oppose installation of lechis and would reject any application to permit the installation of lechis in furtherance of creating the Eruv in Westhampton Beach and that they justify their opposition on the perceived desires of local residents.

26. Verizon New York and LIPA have been informed by the EEEA (and the EEEA has provided photographs suggesting) that other signs and objects have been placed on utility poles in Westhampton Beach that apparently have not been subject to enforcement under the Westhampton Beach sign law that allegedly bars such objects.

B. Quogue

27. On or about September 9, 2010, Mayor Peter S. Sartorius of the Village of Quogue sent a letter ("Quogue Letter") to Mr. Balcerski and to LIPA counsel Lynda Nicolino, which referred to the potential establishment of an eruv and which stated:

The purpose of this letter is to advise you that Chapter 158 of the Quogue Village Code, which is available at www.villageofquogue.com, prohibits any encroachments or projections (as those terms are defined) in any public right-of-way. Thus, any attachment of a non-utility device to any utility pole located in the right-of-way would be prohibited.

In any event, I understand that the position of Verizon with regard to attachment of a device to any pole (taken in connection with Westhampton Beach) is that local municipal approval is required.

Quogue Letter, attached hereto as Exhibit K.

28. By email dated September 17, 2010, Mr. Balcerski informed EEEA that, because the villages of Westhampton Beach and Quogue had sent letters voicing their position that their approval was required for the establishment of the Eruv, Verizon New York would not license any attachments to its poles in those communities until the communities' opposition was resolved.

29. Subsequently, EEEA provided Verizon New York with an opinion by its counsel, Weil, Gotshal & Manges ("Weil"), to the effect that no Quogue rule or ordinance applied to the establishment of the Eruv, that no rule or ordinance prevented the installation of lechis, and that the opposition of Quogue to the Eruv was in violation of the First Amendment and federal law. See October 4, 2010 Letter from Robert Sugarman to EEEA, attached hereto as Exhibit L. Among other things, the EEEA provided photographs suggesting that local officials have permitted signs and other objects to be placed on utility poles throughout Quogue.

30. Thereafter, by letter dated October 26, 2010, addressed to the Mayor of Quogue and copied to other parties (including Westhampton Beach), Verizon New York affirmed that

Verizon New York had no objection to the attachment of lechis to Verizon New York's poles, and invited a response to the opinion letter received from Weil (a copy of which was enclosed with the October 26 letter). Verizon New York later agreed to withhold action to give Quogue time to retain counsel and to provide a response.

31. By letter dated November 22, 2010, the Village of Quogue provided Verizon New York and LIPA with a memorandum prepared by Village Attorney Richard DePetris and Special Counsel Marci Hamilton. The memorandum expressed the opinion that "permission from the Village Board of Trustees is required for the attachment of lechis to utility poles located on Village streets for the purpose of establishing an eruv." November 19, 2010 Memorandum from Marci Hamilton and Richard DePetris ("Counsel's Memo") at 4, attached hereto as Exhibit M.

32. By letter dated December 17, 2010, a copy of which is attached as Exhibit N, Mayor Sartorius informed Verizon New York and LIPA that "there are laws that we believe clearly prohibit the attachment of lechis to utility poles without the Village's permission, and we will enforce them against Verizon and LIPA as the owners of the poles. The Village's ordinance provides for fines of \$1,000 per day and other penalties."

33. Thus, the Village of Quogue has made clear that it opposes the installation of lechis, and takes the position that it would reject any application to install such lechis to create the Eruv in the Village of Quogue.

34. Verizon New York and LIPA have been informed by the EEEA (and the EEEA has provided photographs suggesting) that there are other objects placed on utility poles in Quogue that apparently have not been subject to enforcement under the Quogue law that allegedly bars such objects as encroachments upon public rights of way.

C. Southampton

35. Southampton Town Attorney Michael C. Sordi wrote a letter to Mr. Balcerski dated November 16, 2010, copying LIPA counsel Michele Pincus, Mayor Sartorius, Mayor Teller, and EEEA, advising each such person of Southampton's position that the proposed Eruv would be "in contravention" of local sign laws. *See* Letter, attached hereto as Exhibit O. Citing § 330-203(B) of the Code of the Town of Southampton prohibiting the placement of signs throughout the town, the letter contended:

Base[d] upon the definitions of our sign law, and based upon the specification you provided to us with your letter, I am compelled to conclude that the lechis constitute a "sign" within the meaning and intendment of our Statute. Accordingly, the same are prohibited.

Sordi Letter at 2.

36. In response, EEEA provided Verizon New York and LIPA with a letter from Weil, explaining that affixing lechis to poles as part of the construction of the Eruv presents no violation of the sign law or any other provision of the Code of the Town of Southampton. November 18, 2010 Letter from Robert Sugarman to EEEA, attached hereto as Exhibit P. By email dated November 30, 2010, Mr. Sordi acknowledged receipt of a copy of the letter that Verizon New York had forwarded and asked for a statement of Verizon New York's intentions, but did not change the position asserted by Southampton as to the application of the sign law.

37. Verizon New York and LIPA have been informed by the EEEA (and the EEEA has provided photographs suggesting) that other signs and objects on utility poles in Southampton apparently have not been subject to enforcement under the Southampton sign law that allegedly bars such objects.

III. Plaintiffs' Dilemma

38. Defendants' threats and actions have created a situation in which the obligations and rights of Verizon New York and LIPA are uncertain and the resolution of which turns, in part, on significant questions of federal constitutional and statutory law.

39. Lechis do not interfere with the operation of utility poles. Verizon New York and LIPA have permitted the attachment of lechis in other areas in Long Island and are fully willing to permit their installation here. Verizon New York and LIPA have entered into contracts that would permit the lechis to be installed, subject only to the satisfaction of any legitimate laws or regulations relating to the installation of such lechis and certain other conditions which EEEA has satisfied.

40. Defendants have threatened to impose fines and/or to pursue other legal remedies and actions in the event that Verizon New York and LIPA permit the installation of lechis on their utility poles. On the other hand, Verizon New York and LIPA face potential liability to the EEEA, and action by the EEEA, if they do not permit the lechis to be installed on their respective poles.

41. No matter which party or parties are right, Verizon New York and LIPA require clarification of the applicability and enforceability of the cited local laws and of Verizon New York's and LIPA's associated rights and obligations.

FIRST CLAIM FOR RELIEF

42. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 41, inclusive, as though fully set forth herein.

43. Verizon New York and LIPA are contractually obligated to permit the installation of lechis, provided such installations conform with valid local laws and regulations.

44. Without the Eruv, Orthodox Jews in the relevant municipalities are limited in their religious observance because they cannot carry objects, or push baby carriages, strollers or wheelchairs to synagogue on the Sabbath and Yom Kippur. Such Orthodox Jews would not have this difficulty were the lechis installed and the Eruv established.

45. Verizon New York and LIPA are not aware of any aesthetic, safety, traffic, fiscal, or other problem that that would be caused by the attachment of lechis to utility poles in Westhampton Beach, Quogue, and Southampton, and are not aware of any compelling governmental interest sufficient to restrict the attachment of such lechis.

46. The EEEA has made clear that it believes the local laws are being invoked in a manner that violates the right to free exercise of religion under the First Amendment. Defendants have made clear that they intend to enforce the cited local laws and to proceed against Verizon New York and LIPA should lechis be installed.

47. Without a declaration as to the applicability and enforceability of the asserted local rules and ordinances, including their legality in light of the First Amendment's Free Exercise Clause, Verizon New York and LIPA face potential legal liability, either from Defendants (which have threatened fines or other legal action in the event that Verizon New York and LIPA permit the installation of lechis) or from the EEEA (which has contractual rights to install the lechis and has threatened legal action).

48. The issues raised herein represent a present controversy as to whether the Free Exercise Clause of the First Amendment applies to prevent the threatened invocation of local laws and the threatened actions against Verizon New York and LIPA. That controversy is ripe and appropriate for resolution by this Court.

SECOND CLAIM FOR RELIEF

49. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 41 and 43 through 48 as if fully set forth herein.

50. The local laws invoked by Defendants with respect to the attachment of lechis constitute the imposition or implementation of a land use regulation within the meaning of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §2000cc(a)(1).

51. Without the Eruv, Orthodox Jews in the relevant municipalities are limited in their religious observance because they cannot carry objects, or push baby carriages, strollers or wheelchairs to synagogue on the Sabbath and Yom Kippur. Such Orthodox Jews would not have this difficulty were the lechis installed and the Eruv established.

52. Verizon New York and LIPA are not aware of any aesthetic, safety, traffic, fiscal, or other problem that that would be caused by the attachment of lechis to utility poles in Westhampton Beach, Quogue, and Southampton, and are not aware of any compelling governmental interest sufficient to restrict the attachment of such lechis.

53. The EEEA has made clear that it believes the local laws are being invoked in a manner that violates RLUIPA. Defendants have made clear that they intend to enforce the cited local laws and to proceed against Verizon New York and LIPA should lechis be installed.

54. Without a declaration as to the applicability and enforceability of the asserted local rules and ordinances, including their legality in light of RLUIPA, Verizon New York and LIPA face potential legal liability, either from Defendants (which have threatened fines or other legal action in the event that Verizon New York and LIPA permit the installation of lechis) or from the EEEA (which has contractual rights to install the lechis and has threatened legal action).

55. The issues raised herein represent a present controversy that is ripe and appropriate for resolution by this Court.

THIRD CLAIM FOR RELIEF

56. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 41, 43 through 48 and 50 through 55 as if fully set forth herein.

57. As alleged herein above, EEEA has sought to establish the Eruv in Westhampton Beach, Quogue, and Southampton. To that end, EEEA has entered into private contracts with Verizon New York and LIPA to allow EEEA to affix lechis to Verizon New York's and LIPA's utility poles.

58. Defendants have taken the position that local laws prohibit the installation of lechis for the creation of the Eruv and/or that their approvals are required for the installation of lechis for the creation of the Eruv. EEEA has taken the position that by their own terms, such local laws do not apply to lechis installed on utility poles and there is no legal or factual basis for Defendants' positions.

59. Without a declaration as to the applicability of the asserted local rules and ordinances, Verizon New York and LIPA face potential legal liability, either from Defendants (which have threatened fines or other legal action in the event that Verizon New York and LIPA permit the installation of lechis) or EEEA (which has contractual rights to install the lechis and has threatened legal action).

60. By virtue of the foregoing, there now exists an actual, justiciable controversy between Plaintiffs and Defendants relating to their respective legal rights, duties, and obligations under the local laws, ordinances and regulations of Westhampton Beach, Quogue, and Southampton, which controversy is ripe for adjudication pursuant to 28 U.S.C. § 2201.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendants as follows:

A. Declaring that Defendants are barred from enforcing the local laws, ordinances and regulations to prevent the installation of lechis;

B. Permanently enjoining the Defendants from taking any actions which would prevent the Plaintiffs from allowing the installation of lechis on their utility poles for the creation of the Eruv;

C. In the alternative, granting such other declarations as to the applicability of the cited local laws, ordinances and regulations, and of the rights and obligations of Verizon New York and LIPA under such laws, ordinances and regulations, as may be appropriate; and

D. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 18, 2011



Michael E. Wiles
DEBEVOISE & PLIMPTON LLP
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New York, NY 10022
(212) 909-6000
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101 Park Avenue
New York, NY 10178
(212) 309-6000
*Attorneys for Long Island Lighting Company
d/b/a/ LIPA*

Exhibit A

ERUV

ERUV-LECHI STAVE AGREEMENT

THIS AGREEMENT, made as of the _____ day of May, 2012, between VERIZON NEW YORK INC., a corporation of the State of New York, having its principal office at 140 West Street, New York, New York 10007 (hereinafter called "Licensor"), and East End Eruv Associates, a corporation organized and existing under the laws of the State of New York, having its principal office at 1775 B'dway, N.Y., N.Y. (hereinafter called "Licensee").

WITNESSETH:

WHEREAS, Licensee for its own use desires to place and maintain "Lechi" staves on poles of Licensor; and

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the placement of said "Lechi" staves on its poles.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree to as follows:

SCOPE OF AGREEMENT

Subject to the provisions of the Agreement, the Licensor will issue to Licensee for any lawful purpose revocable, nonexclusive licenses authorizing the attachment of Licensee's "Lechi" staves to Licensor's poles in the City, Village or Town of Southampton, Quogue County of Suffolk, N.Y. Westhampton, Westhampton Beach, Quogue

This Agreement responds only to the use of the "Lechi" stave to define the boundaries of the symbolic enclosure. It does not authorize the use of wire, plastic rope or any other type of attachment to Verizon New York structures. Copies of all required permits, authorizations, etc. in conformance with State and City laws and regulations must also be attached to this document.

CONSTRUCTION OF ERUV

It is agreed that the aforementioned ERUV will be constructed using a variety of natural boundaries and non utilities structures. At those locations where utility structures are used to complete the enclosure, it is agreed to attach only staves and in the following manner:

Staves will be made of smooth, sanded soft wood, such as pine, coated with wood preservative, with a maximum allowable finished dimension of 1" x 2" x 40". In certain unusual and limited circumstances, as determined by the Licensee and approved in writing by Verizon New York, a finished dimension 1" x 4" x 40" smooth sanded, soft wood stave shaped to the contour of the pole may be placed. In all cases the staves will be affixed to poles with 8 penny

galvanized common nails as indicated on the attached Exhibit A. None of the above material or fastening techniques can be altered without the prior permission of Verizon New York.

The Licensee is required to submit a sketch outlining in detail the boundaries of the ERUV and showing the localities encompassed and a list of poles by number and location, that will have staves attached. This list will be maintained and updated annually by the Licensee who will send copies to the designated person in Verizon New York.

In no case may the staves interfere with normal Verizon New York operations or safety standards.

MAINTENANCE OF ERUV

Verizon New York will not warrant the future existence of its poles, cables and/or wire attachments.

Verizon New York will not give notice of any pole removals or replacements, nor will it build, maintain or move its plant for any Licensee.

Verizon New York will not transfer or relocate any Licensee's staves.

INSPECTION

Verizon New York may post inspect the ERUV after construction and periodically in order to protect the integrity of Verizon New York structures and to determine if the requirements of this Letter of Agreement have been adhered to. The cost of these surveys will be borne by the Licensee.

Any violations involving the authorized attachments will be reviewed with the Licensee and the violations corrected by the Licensee within 15 days of written notification. Safety violations will be removed immediately upon discovery.

The discovery of any unauthorized attachments will constitute immediate termination of this Letter of Agreement and will require removal of all "Lechi" staves within 15 days of notification of termination by Verizon New York.

LIABILITY

Proof of insurance coverage meeting the requirements for public liability and property damage as indicated on the attached Exhibit B will be affixed and become part of this Letter of Agreement.

Licensor shall exercise reasonable care to avoid damaging the facilities of Licensee attached to poles under this Agreement, and shall make an immediate report to Licensee of the occurrence of any such damage caused by Licensor's employees, agents or contractors. Licensor agrees to reimburse Licensee for all reasonable costs incurred by Licensee.

for the physical repair of damage to such Licensee's facilities proximately caused by the negligence of Licensor; however, Licensor shall not be liable to Licensee for any loss of Licensee's revenue or profits resulting from any interruption of Licensee's service caused by such damage or interference with the operation of Licensee's facilities caused by such damage.

Licensee shall exercise reasonable care to avoid damaging the facilities of Licensor and of others attached to Licensor's poles, and shall make an immediate report of damage to the owner of facilities so damaged. Licensee assumes all responsibility for any and all direct loss from damage caused by Licensee's employees, agents or contractors; however, Licensee shall not be liable to Licensor for any loss of Licensor's revenue or profits resulting from any interruption of Licensor's service caused by such damage or interference with the operation of Licensor's facilities caused by such damage.

Licensee shall indemnify, protect and save harmless Licensor from and against any and all claims, demands, causes of actions and costs, including attorneys' fees, for damages to property and injury or death to Licensee's employees or other persons, including but not limited to, payments under any Workers Compensation law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use or removal of Licensee's facilities or by their proximity to the facilities of all parties attached to Licensor's poles, or by any act or omission of the Licensee's employees, agents or contractors on or in the vicinity of Licensor's poles. The foregoing indemnity, hold harmless and defense provisions shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of Licensor. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct or joint fault of Licensee and Licensor, but in such case the amount of the claim for which Licensor is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Licensee.

The Licensee shall indemnify, protect and save harmless Licensor from any and all claims, demands, causes of action and costs, including attorneys' fees, which arise directly or indirectly from the construction, attachment or operation of Licensee's facilities on Licensor's poles, including but not limited to damages, costs and expense of relocating poles due to the loss of right-of-way or property owner consents, taxes, special charges by others, claims and demands for damages or loss from infringement of copyright, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all claims, demands and costs, including attorneys' fees, for infringement of patents with respect to the manufacture, use and operation of Licensee's facilities in combination with poles or otherwise. The foregoing indemnity shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of Licensor. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct, or joint fault of Licensee and Licensor, but in such case the amount of the claim for which Licensor is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Licensee.

Licensor and Licensee shall promptly advise each other of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by the erection, maintenance, repair, replacement, presence, use or removal of facilities

governed by this License Agreement. Copies of all accident reports and statements made to a Licensor's or Licensee's insurer by the other Licensor or Licensee or affected entity shall be furnished promptly to the Licensor or Licensee.

Unless expressly provided for otherwise herein, neither Licensor nor Licensee shall be liable to the other for any special, consequential or other indirect damages arising under this Agreement.

NOTICE TO PARTIES

Any notice other than hereinbefore provided to be given to the Licensor under this Agreement shall be sent by certified mail to:

Any notice other than hereinbefore provided to be given to the Licensee under the Agreement shall be sent by certified mail to:

LICENSE NOT EXCLUSIVE

Nothing herein contained shall be construed as a grant of any exclusive license, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any poles covered by this Agreement.

ASSIGNMENT OF RIGHTS

Licensee shall not assign or transfer any authorization granted herein, and such authorization shall not inure to the benefit of Licensee's successors or assigns without the prior written consent of the Licensor. In the event such consent or consents are granted by the Licensor, the provisions of this Agreement shall apply to and bind the Licensee's successors and assigns.

TERM OF AGREEMENT

If not terminated in accordance with its terms, this Agreement shall continue in effect for a term of one (1) year from the date hereof and thereafter until three (3) months after

written notice of termination is given by either party. Such notice of termination may be given to take effect at the end of the original one (1) year period or at any time thereafter.

WAIVER OR TERMS AND CONDITIONS

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement or the licenses granted hereunder terminated shall not constitute a waiver or relinquishment of any such term, condition or act but the same shall be and remain at all times in full force and effect.

All the stipulations contained in this Letter of Agreement shall be binding upon the parties; and in recognition of this commitment the following signatures are affixed:

East End Eruv Association, Inc. Licensee
by Marvin T. Tenzer, Pre

5/10/10
Date

Verizon New York Inc.

Date

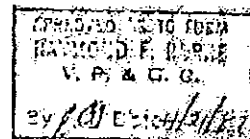
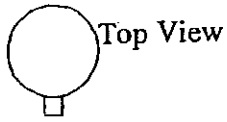


EXHIBIT A



SPECIFICATIONS

1. 1"x2"x40" long
Smooth sanded wood staves painted with wood preservative
2. Fasten securely with B penny galvanized common nails with minimum spacing as shown
3. Wood staves will not be placed where they may interfere with existing attachments

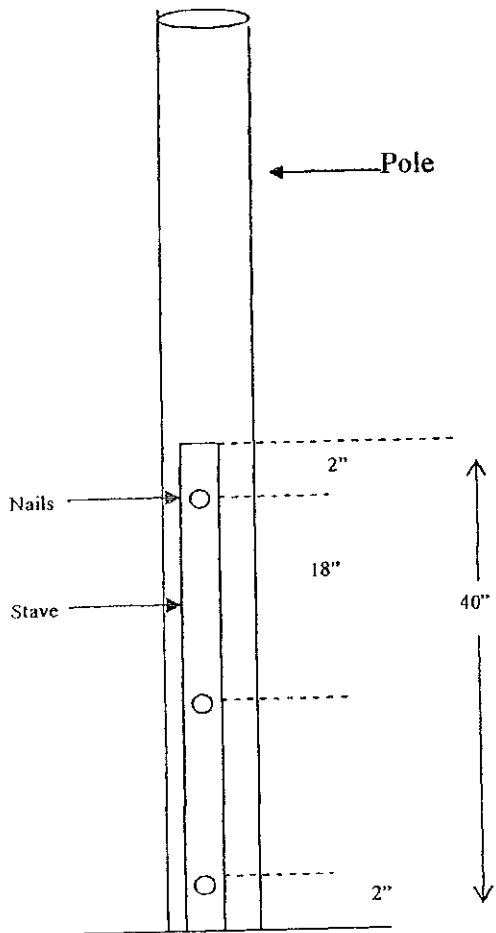


EXHIBIT B

SUBJECT: Verizon New York Insurance Requirements Relative to the Construction of ERUV

Licensee shall secure and maintain (and ensure its subcontractors, if any, secure and maintain) all insurance and/or bonds required by law or this Agreement including without limitation:

- (a) Commercial General Liability Insurance (including, but not limited to, premises-operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least \$2,000,000 combined single limit for each occurrence.
- (b) Commercial Automobile Liability with limits of at least \$2,000,000 combined single limit for each occurrence. Notwithstanding, if the Licensee does not own or operate any vehicles or automobiles associated with the Licensee's business or associated with the work related to this Agreement, then Licensee must only provide satisfactory evidence that its subcontractor(s) have purchased and maintained Commercial Automobile Liability insurance in such amount.
- (c) Workers' Compensation insurance as required by statute, and Employer's Liability insurance with limits of not less than \$1,000,000 per occurrence.

The above limits may be satisfied by a combination of underlying/primary and excess/umbrella insurance. All policies provided by the Licensee shall be deemed primary and non-contributory to all other applicable coverages. The Licensee shall waive its right of subrogation for all insurance claims. The Commercial General Liability and Commercial Auto Liability policies must name Verizon, its subsidiaries and affiliates as additional insureds. The Licensee's insurance companies must be licensed to do business in the applicable state(s) and must meet or exceed an A.M. Best rating of A-X or its equivalent.

For all insurance, the Licensee must deliver an industry recognized certificate of insurance evidencing the amount and nature of the coverage, the expiration date of the policy and the waiver of subrogation and stating that the policy of insurance issued to Licensee will not be cancelled or changed without thirty (30) days written notice to Licensor. Also, where applicable, such certificate of insurance shall evidence the name of the Licensor as an additional insured. The Licensee shall submit such certificates of insurance annually to the Licensor as evidence that it has maintained all required insurance.

Licensee is responsible for determining whether the above minimum insurance coverages are adequate to protect its interests. The above minimum coverages shall not constitute limitations upon Licensee's liability.

Exhibit B

7/22/10

LICENSE AGREEMENT

between

LONG ISLAND LIGHTING COMPANY D/B/A LIPA

THROUGH ITS AGENT NATIONAL GRID ELECTRIC SERVICES LLC

and

EAST END ERUV ASSOCIATION, INC.

Dated July 27, 2010

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THIS AGREEMENT, dated and effective as of the 27th day of July, 2010 ("Effective Date"), is between LONG ISLAND LIGHTING COMPANY D/B/A LIPA (hereinafter called the "LICENSOR"), a New York corporation with offices at 333 Earle Ovington Boulevard, Suite 403, Uniondale, New York 11553, through the LICENSOR's agent NATIONAL GRID ELECTRIC SERVICES LLC, and EAST END ERUV ASSOCIATION, INC. (hereinafter called the "LICENSEE"), a New York Corporation.

RECITALS

WHEREAS, Long Island Lighting Company d/b/a LIPA is a wholly-owned subsidiary of the Long Island Power Authority (the "Authority"), a corporate municipal instrumentality organized under the laws of the State of New York, and the owner of, with certain limited exceptions, the electric transmission and distribution ("T&D") system in Nassau and Suffolk Counties and on the Rockaway Peninsula in Queens County; and

WHEREAS, National Grid Electric Services LLC, formerly known as KeySpan Electric Services LLC, is currently the manager of the LICENSOR's T&D system (hereinafter the "T&D Manager"); and the T&D Manager is currently authorized by LICENSOR to act as Pole Attachment Manager ("PAM"), *i.e.*, to manage and administer, on behalf of LICENSOR, certain pole attachment agreements including this Agreement; and

WHEREAS, the LICENSEE proposes to occupy a portion of certain of LICENSOR'S utility poles for the establishment of an ERUV, attaching to each pole a lechi described in Exhibit A, Application and License, attached hereto; and

WHEREAS, the LICENSOR is unwilling to grant unrestricted rights to the LICENSEE or to others to make and maintain attachments to the LICENSOR's poles because such attachments may adversely affect and interfere with the LICENSOR's and other public utility operations; and

WHEREAS, the LICENSEE recognizes the concerns of the LICENSOR and is willing to arrange for the installation and maintenance of its lechis in connection with this Agreement in such fashion as to minimize any operating problems of LICENSOR;

WHEREAS, the PAM is authorized by the LICENSOR to grant certain license(s) to the LICENSEE and to others, on behalf of the LICENSOR, to make attachments to the LICENSOR's poles.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(1) The terms defined in this Article have the meanings ascribed to them in this Article and include the plural as well as the singular.

(2) "Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

(3) "Licensed Party" means any Person, including New York Telephone Company d/b/a Verizon, authorized by the LICENSOR and/or the PAM on behalf of LICENSOR to make attachments to the LICENSOR's poles.

(4) "Pole Attachment Manager (PAM)" means LICENSOR's designated manager for managing and administering, on behalf of LICENSOR, certain pole attachment agreements including this Agreement. The PAM is currently National Grid Electric Services LLC. LICENSOR may change the PAM in the future without altering the terms of this Agreement.

(5) "Pole" means a distribution utility pole owned by LICENSOR.

(6) "Communications Space" shall be as defined by LICENSOR from time to time, and for a standard 35-foot pole is currently defined as the 76.6 inches immediately above a point on the pole that is a minimum of 18 feet above ground.

ARTICLE II

GENERAL AGREEMENTS

Section 1. The LICENSOR agrees, subject to the conditions and limitations contained in this Agreement, that it will permit the LICENSEE to place and maintain attachments as specified in Exhibit A to be located in the non-communication space of the LICENSOR's pole. The LICENSEE agrees that its attachments will be used only as an ERUV and for no other purpose.

Section 2. The area covered by this Agreement is the LICENSOR's service area located in Nassau County, Suffolk County and Queens County, New York.

Section 3. The LICENSOR shall be under no obligation to grant any license, or if a license has already been granted, may cancel any such license on thirty (30) days written notice, where, in the LICENSOR's sole judgment, such attachments may (a) interfere in any way with the LICENSOR's own service requirements and/or the service requirements of any Person lawfully attached to the LICENSOR's poles, (b) involve hazardous conditions, or (c) in any other way be unsuitable or inadvisable. Without limiting the generality of the foregoing, the LICENSOR has the unlimited right in its sole discretion to refuse a license to the LICENSEE for any attachment.

Section 4. The LICENSOR shall have the right to terminate this Agreement upon thirty (30) days written notice to the LICENSEE if, in the LICENSOR's sole judgment, the LICENSEE is using the LICENSOR's poles for any purpose other than as provided for in Section 1 above or has announced plans which will have that effect, and no delay of the LICENSOR in acting pursuant to this Section 4 will bar the LICENSOR from exercising this right to terminate this Agreement.

Section 5. The LICENSEE has no right to make attachments to any pole of the LICENSOR until a license has been granted by LICENSOR, or by the PAM on behalf of the LICENSOR, to the LICENSEE identifying each pole to which an attachment may be made. No use, regardless of its duration, of the LICENSOR'S poles under this Agreement shall create or vest in the LICENSEE any ownership or property right in said poles, but the LICENSEE's rights therein shall be and remain a mere license. Nothing in this Agreement or elsewhere shall give the LICENSEE any exclusive right to the use of the LICENSOR's poles for any purpose, and the LICENSOR shall be free at any time, if it so desires, to grant attachment rights to other Persons. Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by the LICENSOR, by contract or otherwise, to other Licensed Parties to use any poles covered by this Agreement; and the LICENSOR shall have the right to continue and extend such rights or privileges. The attachment privileges herein granted shall at all times be subject to such contracts and arrangements. Nothing herein contained shall be construed to compel the LICENSOR to maintain any of its poles for a period longer than is necessary for its own service requirements. Nothing herein shall require the LICENSOR to extend its distribution system solely for the LICENSEE, except as the LICENSOR deems appropriate, nor will the LICENSOR own or maintain poles solely for the LICENSEE's purposes except under terms separately agreed to by the LICENSOR.

Section 6. The LICENSOR represents that it is authorized to grant licenses for attachments to its poles and that the LICENSOR has authorized the PAM to grant certain licenses on its behalf. With respect to any poles to which the LICENSOR may grant licenses only with the consent of a third party which has an interest in such poles, the LICENSOR shall use reasonable efforts to obtain such consent. LICENSOR may refuse to grant licenses to the LICENSEE unless the LICENSEE shall reimburse the LICENSOR for any expense or payment incurred or made by the LICENSOR in order to obtain such consent.

ARTICLE III

MAKE-READY WORK AND OTHER CHARGES

Section 1. The LICENSEE expressly recognizes that the LICENSOR's poles are used and are to continue to be used primarily by the LICENSOR for its business purposes, that attachments and any other use of the LICENSOR's poles by Licensed Parties are and will continue to be secondary and subordinate to the LICENSOR's rights to use its poles, and that this Agreement is made as an accommodation to the LICENSEE. The LICENSEE accordingly agrees expressly that it will pay in advance, as "Additional Charges" under this Agreement: (a) all the costs incurred by the LICENSOR in connection with any work performed by the LICENSOR in order to provide or maintain space on any pole for the LICENSEE's attachments licensed under this Agreement, and as provided for in this Agreement; (b) all costs incurred by the LICENSOR to transfer the LICENSEE's existing pole attachments to replacement poles whenever existing poles to which the LICENSEE's attachments are attached are replaced by the LICENSOR due to damage, destruction or deterioration to such existing poles, or due to governmental requirements, including public works projects; and (c) any other costs incurred by the LICENSOR arising out of this Agreement.

Section 2. Whenever the LICENSEE either wishes to apply for a license to attach to any of the LICENSOR's poles or whenever the LICENSOR advises the LICENSEE that the LICENSEE has made an unauthorized attachment to any of the poles and/or Licensed Party attachments, the LICENSEE shall make a written application therefor, in duplicate, on a form, a copy of which is appended to this Agreement as Exhibit A, specifying the location of the poles involved and describing the attachment on each pole. If applicable, the LICENSEE shall pay the LICENSOR in advance of the make-ready work, if any, for the estimated costs of making the survey and the estimates referred to in Section 3 of this Article III whether or not the application is later withdrawn or, as provided in Section 4 of this Article III, is deemed to have been withdrawn.

Section 3. The LICENSOR may in its sole discretion make appropriate surveys of such poles if applicable; and if applicable, may at its discretion do so with any other Licensed Parties; and if the LICENSEE desires, with the LICENSEE's representatives. The LICENSOR shall determine, among other things, (a) whether poles are available for the LICENSEE's attachments, (b) whether, in order to accommodate the LICENSEE's attachments, any rearrangements or changes are necessary in the facilities of the LICENSOR or any other Licensed Party, (c) whether any poles require strengthening (guying and anchoring) and (d) whether any poles require replacement with taller or stronger poles. All such work and other work required in connection therewith are referred to in this Agreement as "make-ready work". The LICENSOR shall notify the LICENSEE: (a) which poles are available for the LICENSEE's attachments, (b) the exact location available or to be made available on the LICENSOR's poles for attachments, (c) the make-ready work required to be performed in order to accommodate the LICENSEE's

attachments and (d) an estimate of the cost of such make-ready work. Upon the request of the LICENSEE, the LICENSOR shall permit the LICENSEE to review the work prints, together with available supporting costing details, in order that the LICENSEE may satisfy itself concerning the make-ready work contemplated and the costs estimated therefor by the LICENSOR. The LICENSOR agrees to consider any suggestions made by the LICENSEE, but all final decisions concerning the necessity for the make-ready work and the costs therefor shall be determined by the LICENSOR. At the LICENSOR's request, the LICENSEE shall promptly perform any make-ready work necessary on the LICENSEE's property to accommodate the LICENSOR or any other Licensed Parties on the poles. The LICENSOR and the PAM shall not be liable to the LICENSEE for the cost of any make-ready work performed by the LICENSEE to accommodate the service needs of the LICENSOR and Licensed Parties. If the LICENSEE fails to perform such make-ready work promptly, the LICENSOR shall have the right to cancel the LICENSEE's license with respect to any pole affected or to perform the make-ready work and charge the LICENSEE for such work.

Section 4. The application referred to in Section 2 of this Article III shall be deemed withdrawn if it is not confirmed by the LICENSEE in writing within thirty (30) days after the LICENSOR notifies the LICENSEE of the estimate of make-ready work. When the LICENSEE confirms its application and remits payment as provided in Article IV, the LICENSOR shall proceed with the make-ready work, subject to (a) the availability of the necessary material, equipment and labor and (b) the service requirements of the LICENSOR or any other Licensed Party.

Section 5. Upon completion of the make-ready work and full payment therefor as provided in Section 2.c. of Article IV of this Agreement, the LICENSOR or the PAM, on behalf of the LICENSOR, shall grant licenses with respect to such attachments by returning a copy of the application, suitably endorsed to specify the poles for which licenses have been granted.

Section 6. Under no circumstances shall the LICENSEE be entitled to the specification of costs in any greater detail than that found in the LICENSOR's and PAM's records related to this work. The LICENSEE hereby specifically waives its rights, if any, to any further specification or particulars.

Section 7. If, in the LICENSOR's judgment, after the granting of any license to the LICENSEE, the service needs of the LICENSOR and/or Licensed Parties and/or governmental requirements, including public works projects, require the LICENSEE's attachments to be moved, a pole or poles to be replaced, or any other changes to be made to any attachments on any pole or poles, the LICENSOR shall have the right, except in an emergency, to send a notice thereof to the LICENSEE. Within thirty (30) days of the receipt of such notice, the LICENSEE shall either: (a) pay for such changes if the LICENSOR elects to make such changes, (b) make such changes as LICENSOR directs at LICENSEE'S own expense, or (c) remove its attachments. All such work and other work required in connection therewith are hereinafter referred to in this Agreement as "additional make-ready work". Such additional make-ready work may include the

replacement of an existing pole with a taller or stronger pole, and the relocation of the LICENSEE's attachments. If this additional make-ready work is performed by the LICENSOR and would not have been necessary except in order to accommodate LICENSEE's attachments, the LICENSEE agrees that it will pay the LICENSOR for such additional make-ready work. If other Licensed Parties also have attachments on any such pole or poles or Licensed Party attachments which also cause additional make-ready work that would not otherwise be required, the cost of such additional make-ready work shall be apportioned among the LICENSEE and all such other Licensed Parties on a pro rata basis determined by the LICENSOR. If the LICENSEE fails to comply with any request made by the LICENSOR under this Section 7 of Article III, the LICENSOR shall have the right to cancel the LICENSEE's license with respect to any attachment affected by the LICENSEE's failure to comply upon the giving of thirty (30) days written notice; and furthermore LICENSOR shall have the right, upon notice to the LICENSEE as the LICENSOR deems reasonable in the circumstances, to perform any additional make-ready work. In case of emergency, the LICENSOR may perform such work without notice to the LICENSEE or upon such notice as the LICENSOR deems reasonable in the circumstances. The LICENSEE shall pay in advance all of the costs of any work performed by the LICENSOR attributable to the LICENSEE's attachments as additional charges as provided for in Article IV. The invoice for such Additional Charges shall be payable within thirty (30) days after the date of such invoice.

Section 8. The LICENSEE agrees, subject to the conditions and limitations contained in this Agreement, that the LICENSOR, in its sole discretion and without any notice or upon such notice as the LICENSOR deems reasonable under the circumstances, to the LICENSEE, may transfer the LICENSEE's existing pole attachments to replacement poles for the fee established in accordance with Section 2.h. of Article IV when existing poles to which the LICENSEE's attachments are attached are replaced due to damage, destruction or deterioration to such existing poles, or due to governmental requirements, including public works projects. The invoice for such costs shall be regarded as Additional Charges. If the LICENSEE fails to pay the amounts due under this Section 8 of Article III, the LICENSOR shall have the right, upon thirty (30) days written notice to the LICENSEE, to terminate this Agreement unless the LICENSEE shall have paid the amounts due within the thirty (30)-day notice period. In its sole discretion, the LICENSEE may exercise its rights to bring an action to recover such Additional Charges from any third party causing the damage, destruction or deterioration of any pole and the resulting transfer of the LICENSEE's attachments. The LICENSEE will not include the LICENSOR or the PAM in any such action.

Section 9. As used in this Article III, the costs of make-ready work and additional make-ready work undertaken by LICENSOR shall be determined by the LICENSOR and shall include the costs of all materials, supplies, engineering, labor (including overtime and board and lodging, where necessary to meet the LICENSEE's requirements), supervision, transportation, taxes, general overhead, including appropriate loadings for such things as relief and pension accruals, social security taxes, vacations, holidays, sickness, Worker's Compensation, and other items associated with the work which are chargeable to the LICENSOR's and PAM's accounts. The cost shall be determined by the LICENSOR and shall include the total costs, when required,

of (a) the installation of a pole, (b) the removal of the existing pole, (c) the transfer of the attachments of the LICENSOR and Licensed Parties from the existing pole to the new pole, (d) the cost of obtaining any permits, licenses or easements from any person required to accommodate the requirements of the LICENSEE, including reasonable attorneys fees and out-of-pocket expenses and (e) any other costs associated with the make-ready work or additional make-ready work required for the LICENSEE's attachments. Except as provided by separate agreement with the LICENSEE or another Licensed Party, the LICENSOR shall be the owner of any replacement pole.

ARTICLE IV

FEES, RATES AND CHARGES

Section 1. Fees

a. For each attachment to the pole or to a Licensed Party attachment, the LICENSEE shall pay a pole attachment fee to the LICENSOR at the rate(s) set forth in Exhibit D, attached hereto and made a part hereof, pro rated from the date of issuance of a license for attachment through December 31 of the year in which said license is issued. The first such payment shall be due and payable within thirty (30) days after issuance of said license. Thereafter, the LICENSEE shall be billed annually for each twelve (12) month period (January 1 – December 31) that follows. A late payment charge of one and one-half percent (1½%) per month will be assessed for payments received subsequent to the thirtieth (30th) day following payment due.

b. The LICENSEE shall not be required to pay an application fee.

Section 2. Additional Charges

a. Additional Charges for make-ready work and additional make-ready work means those amounts charged for the work referred to in Article III of this Agreement.

b. When the LICENSOR utilizes an outside contractor other than the PAM to perform make-ready work and additional make-ready work, the LICENSEE shall pay an amount equal to the contractor's fees plus applicable overhead. The LICENSOR shall make available any written estimates and work orders pertinent to make-ready work and additional make-ready work performed by such contractors.

c. Additional Charges for make-ready work or additional make-ready work shall be paid in full by the LICENSEE before the LICENSOR begins any such make-ready work or additional make-ready work. Any amount paid as an estimated amount for make-ready work or additional make-ready work that exceeds the actual cost will be refunded within thirty (30) days of the completion of the work. Additional Charges for make-ready work or additional

make-ready work that exceed the estimated amount shall be paid in full by the LICENSEE within thirty (30) days following the completion of work and the receipt by the LICENSEE of an invoice therefor.

d. For purposes of determining the applicable Additional Charges for an unauthorized attachment, the LICENSEE agrees that the attachment shall be deemed to have been made at the time of the installation of the earliest authorized attachment for which any license has been granted in accordance with Article III of this Agreement, or at an earlier time if LICENSOR finds that the unauthorized attachment was made at such time. Additional Charges for each unauthorized attachment means an amount for each unauthorized attachment equal to three (3) times the fee or fees that otherwise would have been applicable for the time period from when the attachment is deemed to have been made in accordance with the preceding sentence through the date of the LICENSOR's acceptance of an application for authorization of such previously unauthorized attachment, plus a late payment charge of 1 ½ % per month, with the LICENSOR reserving all its legal rights and remedies.

e. Any tree trimming required by the LICENSOR on account of the attachments of any Licensed Party shall be done by the LICENSOR, its agents or contractors at a cost that shall be shared on a pro rata basis among the Licensed Parties whose attachments have necessitated the tree trimming. The LICENSEE's pro rata share of such tree trimming shall be billed to the LICENSEE as Additional Charges.

f. If the LICENSEE's attachments cause the LICENSOR to pay any new or additional tax which the LICENSOR would not otherwise pay, the LICENSEE shall, within thirty (30) days of receiving a bill therefor from the LICENSOR, reimburse the LICENSOR as Additional Charges in full for such new or additional tax.

g. The LICENSOR may inspect each of the LICENSEE's attachments after its installation, after any modification, periodically or when conditions warrant; and the LICENSEE shall, on demand, reimburse the LICENSOR as Additional Charges for the cost of such surveys and inspections. Such inspections shall not operate to relieve the LICENSEE of any responsibility, obligation or liability assumed under this Agreement or required by law, regulation, ordinance or governmental authority.

h. Whenever, pursuant to Section 8 of Article III, the LICENSOR transfers the LICENSEE's existing attachments from an existing pole to a replacement pole due to damage, destruction or deterioration of the pole, or due to governmental requirements, including public works projects, the LICENSEE shall pay, as Additional Charges, the cost for the transfer of each attachment, as determined by the LICENSOR.

i. Additional Charges shall be paid no later than thirty (30) days from the date of the invoice for such Additional Charges. A late payment charge of one and one-half percent (1½%) per month will be assessed for payments received subsequent to the thirtieth

(30th) day following the date of the invoice.

ARTICLE V

LICENSEE'S ATTACHMENTS

Section 1. The LICENSEE, at its own cost and expense, shall construct, maintain in safe condition and, when it deems it appropriate, shall replace its attachments on the LICENSOR's poles; and LICENSEE shall carry out these activities in accordance with the requirements and specifications of: (a) the National Electrical Safety Code, (b) any rules or orders now in effect or that may hereafter be issued by any governmental authority having jurisdiction and (c) the LICENSOR's and the PAM's specifications and requirements, as all of the aforementioned may be amended, revised and supplemented from time to time. In the event of conflict or ambiguity among the various laws, codes, specifications, rules, regulations or orders, heretofore mentioned, the LICENSOR shall in its sole discretion determine and advise the LICENSEE which law, code, specification, rule, regulation or order shall govern.

Section 2. Notwithstanding anything in this Agreement or elsewhere to the contrary, at no time is the LICENSEE authorized to permit any of its employees, agents or contractors to climb any of the LICENSOR's poles. All work on poles or on attachments to poles is to be performed from ladder trucks or bucket trucks. No work shall be done by the LICENSEE when there is reason to suspect that working conditions on a pole may be hazardous as the result of weather or any other conditions without first receiving written permission from the LICENSOR or PAM. All attachments to the LICENSOR's poles shall be made by the LICENSEE in accordance with Exhibit B, attached hereto and made a part hereof. The LICENSOR has the right, in its sole discretion, to revise Exhibit B from time to time and shall notify the LICENSEE in writing of any such revisions. The LICENSEE agrees to comply with the specifications set forth in Exhibit B as may be revised from time to time by the LICENSOR. At all times, the LICENSEE's agents or employees shall stand aside and not hinder or in any way interfere with the LICENSOR's and/or the PAM's employees, agents, or contractors performing or about to perform work on poles or overhead and underground lines to correct any condition which, in the sole judgment of the LICENSOR and/or PAM, has caused or may reasonably be expected to cause interruption of service or hazard to the public or property.

Section 3. The LICENSOR reserves to itself, its successors and assigns, the right to maintain the poles and underground facilities and to operate its equipment in such a manner as will best enable the LICENSOR to fulfill its public service requirements. The LICENSOR and/or the PAM shall not be liable to the LICENSEE or to any other person (and the LICENSEE shall indemnify, protect and save the LICENSOR and/or the PAM harmless against any claims of liability made by any other person) for any interruption of any service related to the LICENSEE's activities in connection with this Agreement and attachments, or for interference with, or any abnormality in the operation of any property owned, leased or otherwise used by the LICENSEE arising in any manner whatsoever, as a result of the activities described in this Agreement,

whether or not any such interruption or interference is caused by the LICENSOR and/or the PAM or their agents or employees as a result of the activities described in this Agreement. The LICENSEE specifically waives any claim for indirect, special, consequential or punitive damages in connection with this Agreement.

Section 4. The LICENSEE shall construct, install, maintain and replace its attachments, and all of its property used in conjunction with such attachments to the LICENSOR's poles, in conformity with this Article V, and as specified in Exhibits A and B hereto.

Section 5. It is understood that neither by inspection or non-rejection, nor in any other way, does the LICENSOR or the PAM give any warranty, express or implied, as to the adequacy, safety or other characteristics of any cables, wires, or other structures or equipment owned, installed or maintained by or for the LICENSEE.

Section 6. The LICENSEE shall not at any time make any additions to or changes in the location of its attachments or connections on the poles covered by this Agreement without the written consent of the LICENSOR, except in cases of emergency as determined by LICENSOR. In cases of emergency, the LICENSEE shall procure the LICENSOR's consent orally, and such request and consent shall be confirmed in writing by LICENSEE and approved in writing by the LICENSOR once the emergency has been resolved.

Section 7. Upon written notice from the LICENSOR to the LICENSEE that the use of any poles and/or Licensed Party attachments is forbidden by federal, state or local governmental authorities or by property owners, permission to attach or connect to such poles and/or Licensed Party attachments shall immediately terminate and the attachments or connections of the LICENSEE shall be removed by the LICENSEE at once from the affected poles. LICENSOR will make reasonable efforts to work with LICENSEE to find a suitable alternative location.

ARTICLE VI

LIABILITY, DAMAGES AND INSURANCE

Section 1. The LICENSEE shall exercise special precautions in performing the activities covered by this Agreement to avoid damage to the facilities of the LICENSOR, or any Licensed Party and hereby assumes all responsibility for any and all loss from such damage. The LICENSEE hereby agrees to reimburse the LICENSOR, the PAM or any Licensed Party for any costs incurred by any of them in making repairs to any of such parties' property damaged by the LICENSEE. The LICENSEE shall promptly advise the LICENSOR and the PAM of all incidents and claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the installation, erection, maintenance, repair, presence, use, replacement or removal of the LICENSEE's property

in connection with this Agreement. Copies of all accident or other reports made to any insurer by the LICENSEE shall be furnished to the LICENSOR and the PAM.

Section 2. LICENSEE shall indemnify and hold harmless LICENSOR, the Authority, the PAM, and their respective directors, trustees, officers, employees, affiliates, agents, assigns, successors, representatives, contractors and subcontractors from and against all liabilities, penalties, losses, costs, damages, claims, proceedings, suits, judgments, liens, encumbrances, or expenses of whatever form or nature, including reasonable attorneys' fees and other costs of legal defense and of investigating any proceeding commenced or threatened, whether direct or indirect, as a result of, arising out of or in any way connected with LICENSEE's activities under this Agreement, whenever made or incurred. LICENSOR, the Authority and the PAM shall have the right to demand that LICENSEE undertake to defend any and all suits and to investigate and defend any and all claims, against LICENSOR, the Authority, the PAM, or their respective directors, trustees, officers, employees, affiliates, agents, assigns, successors, representatives, contractors or subcontractors related to LICENSEE's activities under this Agreement. Notwithstanding the foregoing, LICENSEE shall have no obligation to indemnify or defend against any loss, judgment, claim or suit to the extent such loss, judgment, claim or suit is the result of the gross negligence or willful misconduct of the LICENSOR, the Authority, the PAM, or their respective directors, trustees, officers, employees, affiliates, agents, assigns, successors, representatives, contractors and subcontractors.

Section 3. The LICENSEE and/or its contractors as applicable shall carry insurance at its sole cost and expense to protect the parties hereto. The LICENSEE and/or its contractors, as applicable shall provide insurance for the entire life of this Agreement, acceptable to LICENSOR and the PAM, for the following risks, to the extent shown, and before making any applications for licenses under this Agreement, shall file with the LICENSOR's or PAM's designated Risk Manager Certificates of Insurance evidencing such coverage:

- a. Worker's Compensation insurance meeting statutory requirements and Employers' Liability insurance with a minimum limit of \$1,000,000 each occurrence.
- b. Commercial General Liability Insurance including personal injury, contractual liability, independent contractors and broad form property damage with the following minimum liability limits: (i) \$1,000,000 per occurrence combined single limit (ii) \$2,000,000 general aggregate.

The Commercial General Liability Policy shall include an endorsement stating that Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority and National Grid Electric Services LLC d/b/a National Grid and its subsidiaries and affiliates and any Licensed Party are additional insureds with respect to

operations relating to this Agreement. Pursuant to LICENSOR's request, LICENSEE shall arrange for inclusion of a new PAM in such endorsement.

- c. Commercial Automobile Liability Insurance with a minimum liability limit of \$1,000,000 per occurrence combined single limit.
- d. Owner's Protective Policy shall be procured in the name of Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority, National Grid Electric Services LLC d/b/a National Grid and its subsidiaries and affiliates and any Licensed Party with a minimum liability limit of \$3,000,000 per occurrence/aggregate. Pursuant to LICENSOR's request, LICENSEE shall arrange for inclusion of a new PAM in such Policy names.
- e. Umbrella Liability Policy with Employers' Liability, Commercial General Liability, Commercial Automobile Liability, and Owners' Protective policies scheduled, and with a minimum limit of \$5,000,000 per occurrence/aggregate. Pursuant to LICENSOR's request, LICENSEE shall arrange for inclusion of a new PAM in such Policy name.

The LICENSEE agrees that it will require all of its contractors and subcontractors to provide insurance meeting the requirements of this Section 3 and will be responsible for ensuring that all contractors and subcontractors comply with these insurance provisions at all times.

Certificates and/or policies shall provide that coverage may not be canceled or changed without thirty (30) days prior written notice to the LICENSOR.

Section 4. Notwithstanding anything in this Agreement other than Section 5 of this Article VI, the LICENSOR's and the PAM's liability, if any, to the LICENSEE with respect to all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, arising out of or in any way connected with the activities under this Agreement, shall in no event exceed the Additional Charges, pole attachment fee(s), and application fee(s) actually paid by LICENSEE with respect to the attachments to which the claim relates and actually paid by LICENSEE within one year prior to presentation of the claim to LICENSOR or PAM.

Section 5. With respect to the work performed by LICENSOR in connection with the transfer of the LICENSEE's existing attachments from existing poles to replacement poles when, pursuant to Section 9 of Article III, the poles are replaced by the LICENSOR due to damage, destruction or deterioration to such existing poles, or due to governmental requirements,

including public works projects, and with respect to any amount paid by LICENSEE pursuant to Section 2.h. of Article IV, the LICENSOR's and the PAM's liability to the LICENSEE on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, shall in no event exceed the charge actually paid by the LICENSEE to the LICENSOR for a single transfer pursuant to Section 2.h. of Article IV.

ARTICLE VII

SECURITY, DEFAULT AND REMEDIES FOR FAILURE TO PERFORM

Section 1. If the LICENSEE shall fail to pay the sums due under this Agreement, the LICENSOR shall have the right to terminate this Agreement on thirty (30) days written notice unless the LICENSEE shall have paid the sums due within the thirty (30)-day notice period. If the LICENSEE fails to furnish or continue in force the insurance required by Section 3 of Article VI of this Agreement, the LICENSOR shall have the right forthwith to immediately terminate this Agreement. If the LICENSEE shall default in any other respect in performing any action required under this Agreement, the LICENSOR shall have, in addition to its rights of termination set forth in this Agreement, the right to cancel the license relating to any attachment upon the expiration of thirty (30) days after written notice of the default has been given to the LICENSEE, provided that the default has not been cured within such thirty (30)-day period. Termination of this Agreement shall not release the LICENSEE from any liability or obligation under this Agreement.

Section 2. LICENSOR shall have the right to terminate this Agreement immediately, by giving written notice, in the event the LICENSEE (a) is declared insolvent or bankrupt, or makes an assignment or other arrangement for the benefit of its creditors; or (b) has all or a substantial portion of its capital stock or assets expropriated by government authority; or (c) is dissolved or liquidated (except as a consequence of an event referred to in the preceding subsections (a) or (b) of this Section 2).

Section 3. In addition to the remedies provided in this Agreement, the LICENSOR and the PAM shall have all rights provided by law or in equity.

Section 4. Upon expiration or termination of this Agreement, or upon cancellation of any licenses, the LICENSEE shall remove its attachments from any poles within thirty (30) days after the effective date of such expiration, termination or cancellation.

Section 5. If the LICENSEE fails to remove any attachments upon expiration or termination of this Agreement or upon cancellation of any licenses, the LICENSOR shall have the right but no obligation to effect such removal. The LICENSEE shall pay all of the costs incurred by the LICENSOR attributable to the presence and removal of the LICENSEE's attachments following expiration or termination of this Agreement or cancellation of any

licenses. The invoice for such costs is payable within thirty (30) days after the date of such invoice as Additional Charges. If the LICENSEE removes its property as required by the LICENSOR upon expiration or termination of this Agreement or upon cancellation of any licenses, and in doing so fails to leave the LICENSOR's property in its original condition, the LICENSEE shall be liable in damages to the LICENSOR for the necessary restoration. If, pursuant to this Section 5, the LICENSOR removes any of the LICENSEE's property from the LICENSOR's poles or leaves the LICENSEE's property in place on the LICENSOR's poles, then the LICENSOR: (a) may hold such property as security for the payment of any sums due under this Agreement; (b) upon the expiration of thirty (30) days written notice of the LICENSEE's failure to pay any sums due under this Agreement may sell such property at a public or private sale in which the LICENSOR and/or the PAM may bid for the property; in the event the property cannot be sold, the LICENSOR shall dispose of it; (c) may turn such property over to the LICENSEE; or (d) may do any combination of these things. In the event that the LICENSOR sells any of the LICENSEE's property, the LICENSOR shall apply the net proceeds to the payment of sums due under this Agreement and shall remit the balance, if any, to the LICENSEE.

ARTICLE VIII

TERM OF AGREEMENT

Section 1. Unless previously terminated pursuant to the provisions of this Agreement, this Agreement shall continue in effect until five (5) years from its Effective Date and shall continue thereafter until six (6) months after written notice of termination is given by the LICENSOR and/or the LICENSEE.

Section 2. This Agreement shall terminate six (6) months from the date hereof if the LICENSEE shall not have applied for any license hereunder within that period.

Section 3. The LICENSEE may give up its license as to any poles by removing its attachments therefrom and thereafter giving the LICENSOR notice of such removal on a form, a copy of which is appended to this Agreement as Exhibit C.

Section 4. This Agreement shall be subject to termination by the LICENSOR in whole or part without notice, or, where circumstances permit, upon thirty (30) days written notice to the LICENSEE, when: any governmental authority notifies LICENSOR that continuance of this Agreement in whole or part violates a governmental law, regulation, code, rule, ordinance, or order; or if the LICENSEE's properties are used in violation of any governmental law, regulation, code, rule, ordinance, or order.

ARTICLE IX

GENERAL PROVISIONS

Section 1. The LICENSEE may not assign or otherwise transfer any rights under this Agreement without the prior written consent of the LICENSOR, which consent shall not be unreasonably withheld or delayed. No such assignments or transfers shall release the LICENSEE from its obligations under this Agreement unless and until the assignees and transferees have expressly agreed in writing to be bound by all terms and conditions hereto. The LICENSOR may assign, or transfer rights under, this Agreement in whole or part. Subject to the foregoing, however, this Agreement shall extend to and bind the successors, assigns, and transferees of the parties hereto. Any attempted assignment or transfer by LICENSEE in violation of this Section shall be void.

Section 2. Failure of the LICENSOR and/or the PAM to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

Section 3. This Agreement constitutes the entire agreement thereon between the parties and it may not be amended, waived, modified or supplemented nor may any obligation of either party be changed or discharged except in writing signed by a duly authorized representative or agent of the party to be charged.

Section 4. The LICENSOR shall have the right to transfer ownership of any of its poles, even though the LICENSOR, or the PAM on behalf of the LICENSOR, has granted the LICENSEE a license with respect thereto. The LICENSOR shall, if possible, provide the LICENSEE with not less than thirty (30) days notice prior to any transfer. Upon such transfer, said license shall terminate. If the LICENSEE has an existing attachment agreement with the new owner of the pole, the LICENSEE's attachment shall thenceforth be subject to and governed by the provisions of that agreement. The LICENSOR and the PAM shall have no liability whatsoever to the LICENSEE in the event or as the result of such pole ownership transfer.

Section 5. If the LICENSOR becomes owner of a pole to which the LICENSEE has made attachments pursuant to an agreement with the former owner of the pole, the LICENSEE agrees that said pole, with the LICENSEE's attachments, shall, as of the day said pole becomes the property of the LICENSOR, be subject to and governed by the terms of this Agreement.

Section 6. Except as otherwise specified, any notice to be given to the LICENSOR under this Agreement shall be sent by registered mail, return receipt requested, to:

National Grid Electric Services LLC
on behalf of
Long Island Lighting Company
d/b/a LIPA
175 East Old Country Road
Hicksville, New York 11801
Attention: Contract Management Section
Telephone No.: (516) 545-5761

5/12/10

Facsimile No.: (516) 545-5734

with a copy to:

Long Island Lighting Company d/b/a LIPA
333 Earle Ovington Blvd., Suite 403
Uniondale, New York 11553
Attention: Office of General Counsel
Telephone No.: 516-222-7700
Facsimile No.: 516-222-9137

Any notice to be given to the LICENSEE under this Agreement shall be sent by registered mail, return receipt requested, to:

Marvin Tenzer
1775 Broadway
New York, NY 10019
Telephone No.: (212) 262-6699
Facsimile No.: (212) 262-6959

Any notice shall be effective immediately upon being deposited in the United States mail.

Section 7. This Agreement shall be governed by and interpreted according to the laws of the State of New York without reference to its choice of law rules.

Section 8. The parties hereto shall at all times observe and comply with, and the provisions of this Agreement are subject to, all governmental laws, regulations, codes, rules, ordinances, or orders which in any manner affect the rights and obligations of the parties hereto under this Agreement. LICENSEE shall, at LICENSEE's sole cost and expense, comply with all of the requirements now in force, or which may hereafter be imposed, by all federal, state, county, municipal and other applicable governmental authorities, pertaining to site plan, subdivision, special permit or other approval required in connection with carrying out this Agreement including, but not limited to, the requirements under the State Environmental Quality Review Act (SEQRA). If requested by LICENSOR, as a pre-condition to being granted each license under this Agreement, LICENSEE shall provide written certification satisfactory to LICENSOR that LICENSEE is in compliance with all applicable governmental requirements, as referred to in the pervious sentence, and has obtained any other necessary third party consents. Without diminishing in any way LICENSEE'S obligation to comply with all governmental requirements, such certification shall identify all governmental approvals required and all governmental approvals received, and all other third party consents required and all third party consents received. LICENSEE agrees to indemnify and hold LICENSOR, the Authority, the PAM and their respective directors, trustees, officers, employees, affiliates, agents, assigns, successors, representatives, contractors and subcontractors harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial actions or proceedings, and orders, judgments, enforcement actions of any kind, and all costs and expenses whatsoever incurred in connection therewith including, but not limited to, attorneys',

consultants' and/or engineering fees and expenses arising, directly or indirectly, in whole or in part, out of or in connection with any failure by LICENSEE to comply with the terms of any resolution, order or other ruling or decision issued by any federal, state or municipal government department or agency having regulatory authority over land use and/or environmental matters regarding any activity carried on or undertaken under this Agreement by LICENSEE or any employees, agents, contractors or subcontractors of LICENSEE. This indemnification and hold harmless shall survive the termination and expiration of this Agreement for whatever reason.

Section 9. The LICENSEE shall be available to the staff employees of the LICENSOR and/or the PAM 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 attachments. The LICENSOR and/or the PAM may contact the LICENSEE at telephone number (212) 262-6699 regarding such problems or complaints.

Section 10. This Agreement, including the fees, rates and charges set forth herein, shall be subject to the Authority's Tariff for Electric Service, including any future revisions or successor to that Tariff. LICENSEE agrees that the Pole Attachment Fee, as referenced in Article IV, Section 1.a and set forth in Exhibit D hereto, shall be adjusted retroactively for all times during which LICENSEE was subject to such fee pursuant to this Agreement, to reflect any different Pole Attachment Fee in the Authority's Tariff for Electric Service for LICENSEE's type of attachment.

5/12/10

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

NATIONAL GRID ELECTRIC SERVICES LLC EAST END ERUV ASSOCIATION, INC.
ON BEHALF OF LONG ISLAND
LIGHTING COMPANY D/B/A LIPA

By: [Signature]

(Signature)

NAME: John Bruckner

(Print)

TITLE: Sr. Vice President L.I. T&D

DATE: 8/3/10

By: [Signature]

(Signature)

NAME: Marvin L. Tenzer

(Print)

TITLE: President

DATE: 7/26/10

EXHIBIT A**APPLICATION AND LICENSE**

(See Article II, Section 1 and Article III, Section 2)

National Grid Electric Services LLC
 on behalf of
 Long Island Lighting Company
 d/b/a LIPA
 175 East Old Country Road
 Hicksville, New York 11801
 Attention: Lighting & Attachments Section

In accordance with the terms of the Agreement between Long Island Lighting Company d/b/a LIPA, through its agent National Grid Electric Services LLC, and East End Eruv Association, Inc., dated as of July 27, 2010, application is hereby made for a license or licenses to make attachments in the form of lechis (as shown attached hereto) which will not require the attachment of cables and wires, to the following poles:

	Pole Location	Mounting Height
Pole	(Street, Cross	on Pole (Maximum and Minimum)
<u>Number</u>	<u>Street, Grid)</u>	

By: _____ Title: _____
 (Signature)
 Name: _____ Date: _____
 (Print)

License Number _____ is hereby granted for attachment to such of the above poles as have not been stricken from the above list.

NATIONAL GRID ELECTRIC SERVICES LLC, ON BEHALF OF LONG ISLAND
 LIGHTING COMPANY D/B/A LIPA

By: _____ Title: _____
 (Signature) Contract Management Section
 Name: _____ Date: _____

5/12/10

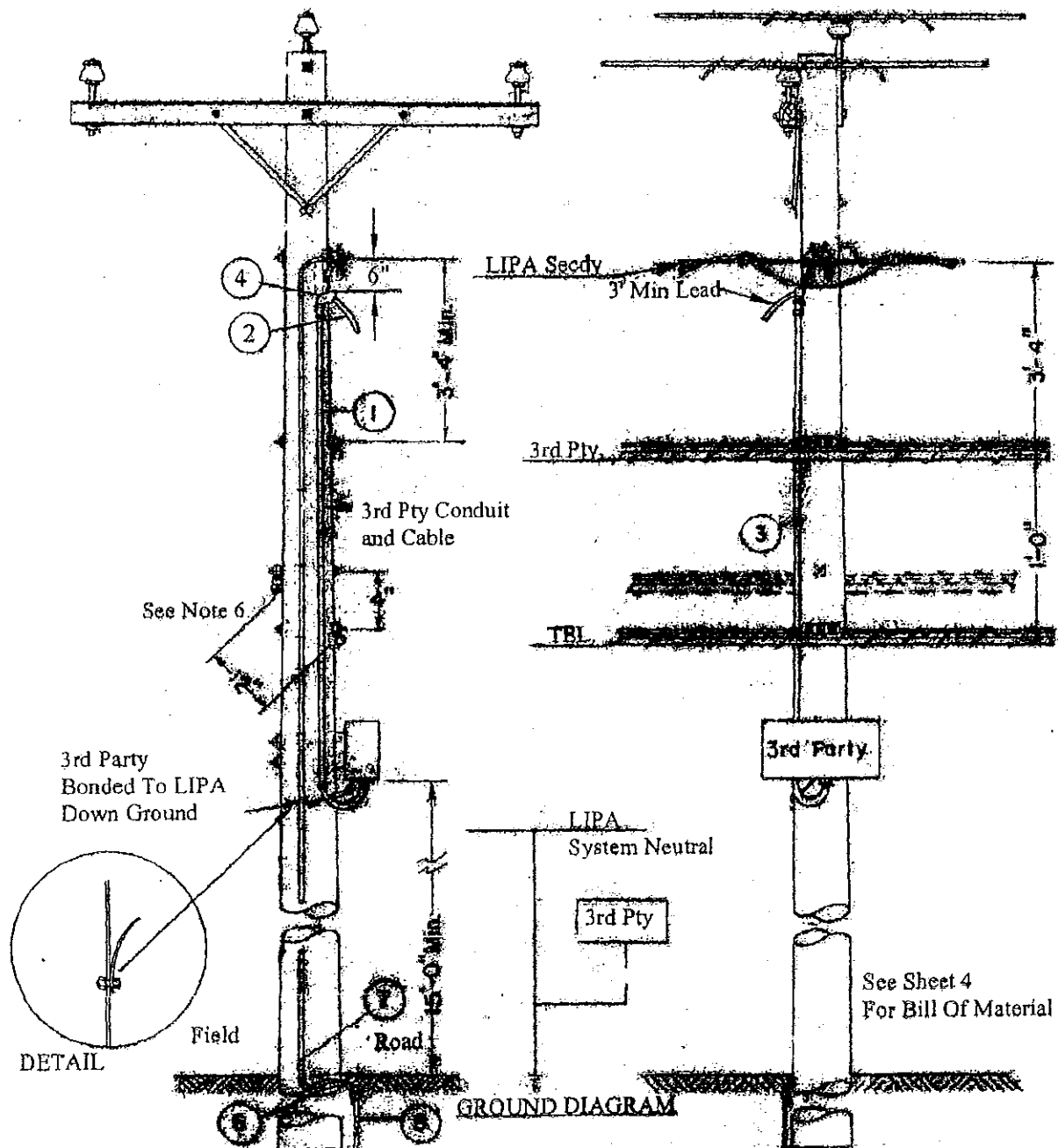
EXHIBIT B

SPECIFICATIONS FOR MAKING ATTACHMENTS

(See Article V, Section 2)

NOTES:

1. This standard pertains to communication attachments only.
2. Additional party attachments shall be installed 1'-0" above last party's attachments and 3'-4" below LIPA facilities.
3. Separation between vertical run and joint use equipment shall be one-eighth of the pole circumference if practicable, but in all cases at least 2 inches.
4. Licensor shall specify the location of licensee's attachments on each pole, including the location of licensee's riser cables.
5. Licensee's strand-mounted equipment housings and cable drop loops shall be placed at least six inches above the next lower facility.
6. Where LIPA permits using both sides of the pole, the vertical 12" minimum clearance may be reduced, provided the diagonal clearance is 12" and a minimum separation of 4" between bolt holes is maintained.



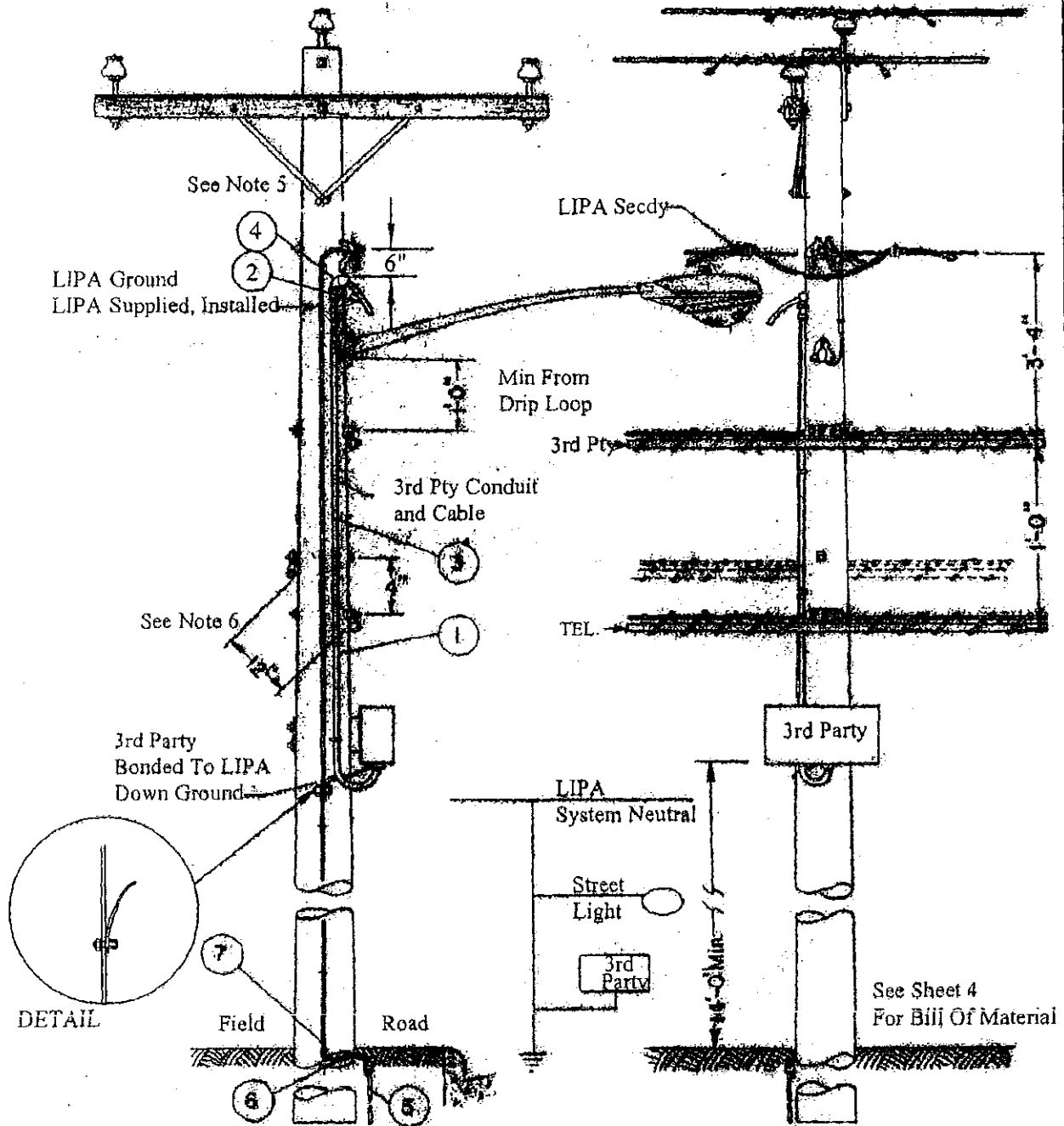
APPROVED BY <i>[Signature]</i>	REVISION 8. 09/04: GENERAL REVISION
DATE: 10/15/04	
LONG ISLAND POWER AUTHORITY KeySpan Energy Corporation	

MISC. LIGHTING AND ATTACHMENTS:
TRAFFIC, NAVIGATION, FIRE, POLICE, DECORATION
THIRD PARTY COMMUNICATION ATTACHMENT
TO
**LIPA OVERHEAD FACILITIES
WITHOUT STREETLIGHT**

CONSTRUCTION STANDARD DRAWN BY AH		
NUMBER	SHEET No	REV
3410	1 of 6	8

NOTES:

1. This standard pertains to communication attachments only.
2. Additional party attachments shall be installed 1'-0" above last party's attachments and 3'-4" below LIPA facilities.
3. Separation between vertical run and joint use equipment shall be one-eighth of the pole circumference if practicable, but in all cases at least 2 inches.
4. Licensor shall specify the location of licensee's attachments on each pole, including the location of licensee's riser cables.
5. Licensee's strand-mounted equipment housings and cable drop loops shall be placed at least six inches above the next lower facility.
6. Where LIPA permits using both sides of the pole, the vertical 12" minimum clearance may be reduced, provided the diagonal clearance is 12" and a minimum separation of 4" between bolt holes is maintained.



REVISION	8.09/041 GENERAL REVISION	MISC. LIGHTING AND ATTACHMENTS: TRAFFIC, NAVIGATION, FIRE, POLICE, DECORATION THIRD PARTY COMMUNICATION ATTACHMENT TO LIPA OVERHEAD FACILITIES STREET LIGHT MOUNTED ABOVE 3rd PARTY	CONSTRUCTION STANDARD DRAWN BY AH		
			NUMBER	SHEET No	REV
LONG ISLAND POWER AUTHORITY KeySpan Energy Corporation	3410		2 of 6	8	

Exhibit C

Tenaflly eruv battle resonates in Westhampton Beach

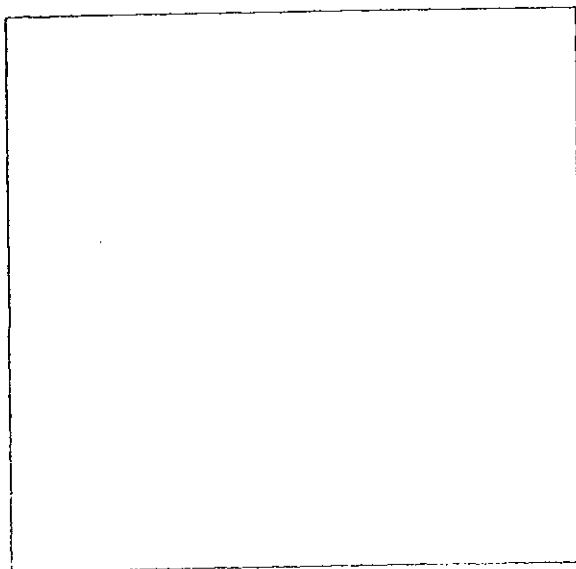
Publication: The Southampton Press

By Jessica DiNapoli Aug 18, 2008 1:50 PM [2 COMMENTS](#)



Kenneth Wagner, a member of the Tenaflly eruv association.

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RELATED ARTICLES

Since February, when the Hampton Synagogue first asked Westhampton Beach Village for a proclamation permitting an invisible religious boundary to be established in the municipality, both opponents and supporters of the eruv have referenced a federal court case that permitted the construction of a similar boundary in the Borough of Tenaflly, New Jersey.

And for just as long, proponents and opponents of the Westhampton Beach eruv have quoted the court case in making their arguments both for and against the establishment of the religious boundary.

Officials at the synagogue, located on Sunset Avenue, said the boundary is needed to allow Orthodox Jews to push and carry objects, such as baby carriages and wheelchairs, on the Sabbath so they can attend temple. They say the court ruling clears the way for the village to act, and even makes establishment of an eruv a First Amendment right. But opponents interpret the Tenaflly ruling differently, saying it in no way makes an eruv a religious right.

The battle over the religious boundary in Tenaflly—which is close to other boroughs, like Englewood and Teaneck, that also have eruvs—began in 1999, when a local synagogue first proposed the eruv. The battle did not end until 2006, when local government officials finally signed off on the proposal and had to pay more than \$300,000 in attorney fees to the group fighting for the religious boundary.

Borough officials were forced to pick up the attorney fees accumulated by the Tenaflly Eruv Association as part of the court settlement, according to Robert Sugarman,

> Letter Suggests Synagogue Had Sights Set On a Manhattan-based attorney who represented the group in the case.

Larger Religious Boundary Nov 3, 2010 11:24

AM

> Westhampton Beach Eruv Proposal Moves Forward Oct 27, 2010 1:48 PM

> New proposal for religious boundary on public roads spurs questions In Westhampton Beach Sep 1, 2010 2:02 PM

> Westhampton Beach quashes discussion on proposed religious boundary Oct 23, 2008 2:46 PM

> Hampton Synagogue files legal brief on proposed religious boundary Oct 21, 2008 2:20 PM

[more](#)

Jeff Fox, the rabbi at Keshet: The Community Synagogue of Tenaflly and Englewood, explained that the Tenaflly eruv, which is delineated by lechis, or black plastic pipes—similar to what is being proposed in Westhampton Beach Village—was established by the Tenaflly Eruv Association after securing permission from Bergen County, and not local borough officials. The reason: Borough of Tenaflly officials were dragging their feet on the application, so the association bypassed their authority on the matter, going to county officials.

Chaim Book, the main catalyst behind the creation of the Tenaflly eruv, could not be reached for comment.

But several articles in The Bergen Record, some of which quote Mr. Book, explain that the Tenaflly Eruv Association, after being stymied by Borough of Tenaflly officials, secured a proclamation from former Bergen County Executive William "Pat" Schuber in order to create the religious boundary. Shortly thereafter, borough officials filed an injunction against the association after it installed the black plastic pipes on utility poles in Tenaflly, demarcating about an estimated 20-square-mile area, Rabbi Fox explained.

A series of lawsuits and countersuits followed that first injunction until, finally, the case reached the U.S. Court of Appeals for the 3rd Circuit—the highest federal court in New Jersey in 2002. Rabbi Fox noted that borough officials then filed an appeal against the 3rd Circuit Court decision, which permitted the eruv, but the next court that could entertain the issue—the U.S. Supreme Court—refused to hear the case, leaving the appeals court ruling as the final word.

IMPACT OF RULING

Today, this federal-level case stands as one of the most referenced by those entrenched in the controversy over the eruv in Westhampton Beach. The case, which was decided in 2002 but not settled on the local level until 2006, permitted the eruv to stay in place on account of the borough's "selective enforcement" of an ordinance involving the posting of signs on utility poles within the borough.

Mr. Sugarman explained that it took four years to reach a settlement due to a series of negotiations between the association and the borough, as well as the borough's petition to the U.S. Supreme Court. Borough officials were forced to return to the negotiation table after the court denied its request.

Since between 50 to 60 percent of the Tenaflly eruv had been established already by 2001, the ruling went on to say that the religious boundary would "cause neither the borough nor its residents any serious injury." The case goes on to state that "the [eruv association's] free exercise of religion will be impaired" if the eruv were to be taken down.

"The balance tips easily in the plaintiffs' favor," the ruling continues.

Many opponents of the eruv in Westhampton Beach claim that the Tenaflly case holds no weight in the village, while supporters of the eruv say the court decision proves that, if the Hampton Synagogue ever has to file a lawsuit, it would win based on the precedent of the Tenaflly case.

Rabbi Marc Schneier, the founding rabbi of the Hampton Synagogue, has declined to answer questions about whether or not he would pursue legal action if the Westhampton Beach Village Board denies his request for an eruv, once it is refiled this fall. The measure was temporarily withdrawn by the synagogue earlier this summer after vocal opponents of the religious boundary urged the village to deny the request.

Rabbi Schneier also caused widespread speculation that he would bypass the Village Board altogether—similar to the way the Tenaflly Eruv Association skipped over borough officials—when, earlier this month, he invited New York Governor David Paterson to speak following the end of Shabbat services at the Westhampton Beach synagogue on August 2. Any entity that has the authority to close roads can approve the creation of a eruv, according to Rabbi Schneier.

Bruce Rosen, an attorney with the Florham Park, New Jersey-based law firm McCusker, Anselmi, Rosen and Carvelli, represented the Borough of Tenaflly in its court battle against the New Jersey synagogue. He explained that the 3rd Circuit decision on the Tenaflly case states that if the borough allows utility poles to be used by individuals for secular purposes, it cannot forbid a religious organization, such as the Tenaflly Eruv Association, to also utilize the poles for the lechis for an eruv.

Mr. Rosen added that while the Tenaflly case did permit the established eruv to remain in place, it in no way ruled that Orthodox Jews "have a right to the eruv."

"It doesn't say anywhere that a municipality has to provide a religious accommodation in the form of an eruv," Mr. Rosen said. "If they're allowing their poles to be used by other organizations, [borough officials] can't deprive the synagogue of doing it."

Mr. Rosen also stressed that permission to create an eruv is not a "civil right"—a term used by Rabbi Schneier to describe his synagogue's desire to have a 1-square-mile religious boundary, which would be demarcated with between 30 and 40 black plastic pipes affixed to utility poles, in Westhampton Beach.

Morris Tuchman, a member of the eruv association at the Hampton Synagogue in Westhampton Beach, countered that the Tenaflly case is a civil rights case because it applied "strict scrutiny" to the issue. Strict scrutiny is code for a civil rights case, Mr. Tuchman explained.

However, Mr. Rosen said that "there is nothing mandating that the town must allow [the eruv]," the eruv. He explained that the proposed creation of an eruv is "not an unconstitutional entanglement of church and state"—although this argument has been made by eruv opponents in Westhampton Beach.

Mr. Tuchman agreed that there is nothing mandating that Westhampton Beach must approve an eruv, but added that the village still needs a "compelling state interest" in order to deny the proclamation. This, Mr. Tuchman contends, will be difficult to find.

Mark Williams, a retired lawyer and one of the leaders against the eruv in Westhampton

Beach, agreed with Mr. Rosen's opinion, noting that the village needs to come up with a legitimate excuse to deny such an application. Mr. Williams is involved with the Alliance for the Separation of Church and State in the Greater Westhampton Beach Area, a group that opposes the eruv.

Mr. Williams said he agrees with the decision of the Tenaflly case—that a municipality cannot selectively enforce an ordinance. But, he explained, if an ordinance regarding signs on utility poles is enforced impartially, then it could be used to prohibit the establishment of an eruv.

"All the Constitution requires is that the government be neutral to religion," Mr. Williams said. "It can't favor it—it can't discriminate."

Mr. Williams declined to go into greater detail at this time, explaining that he has been asked by the Westhampton Beach to provide a legal opinion on the eruv on behalf of the alliance.

DEFINING A SIGN

Paul Houlihan, the village's building inspector, said Westhampton Beach currently lacks a sign ordinance that specifically relates to utility poles—only one that addresses the "public right-of-way" in the village.

"There is no sign ordinance special to the telephone poles, but if a sign is placed in the public right-of-way, the building inspector can remove it," Mr. Houlihan said.

He also added that, in his opinion, the lechis would not qualify as signs. Quoting the village code, Mr. Houlihan said that a sign is defined as a "material structure or device or part thereof which shall display or include any letter, word, model, banner, pennant, insignia, device, flag, string of lights, artificial lighting or graphic representation."

"A sign is all about advertising or announcing a business or product or event," Mr. Houlihan said. "Nothing I've heard so far with these pieces of pipes sound like a sign to me. I'm hard-pressed to find a difference between that and other plastic pipes on poles now."

AN ERUV'S IMPACT

Regardless of what happens in Westhampton Beach, since 2001 Orthodox Jews in Tenaflly, New Jersey, have been permitted to push and carry objects on the Sabbath, the Jewish holy day. On Saturday mornings in the borough, which has a year-round population of about 14,000, Orthodox Jewish mothers push strollers while walking next to their husbands. At least 30 strollers were parked outside of Keshet: The Community Synagogue for Tenaflly and Englewood during a recent visit.

The community, though significantly larger than Westhampton Beach, has not been transformed into an Orthodox enclave since the eruv was established—the stores in the borough were open on Saturday, cars navigated within the eruv, and the streets were not congested with Orthodox Jews walking to and from synagogue.

This is the opposite of some fears held by some Westhampton Beach residents—some of whom believe that the eruv will act as the first step in transforming the village into an Orthodox enclave.

Some opponents of the eruv have charged that the synagogue unfairly labels anyone who opposes the religious boundary as "anti-Semitic." A desire to avoid such branding

has prompted a large number of village residents to publicly oppose the eruv. A smaller group has suggested that the village would become "too Jewish" with an eruv, while others have speculated that the synagogue would eventually demand that all of shops in the village close their doors on Saturdays. Rabbi Schneier has denied that allegation in previous interviews.

"Just because the eruv makes an area appealing to one group of people, it isn't necessarily going to block out another group," said Kenneth Wagner, a congregant of Keshet Synagogue and a member of the Tenaflly Eruv Association. Originally from Great Neck, Mr. Wagner has helped establish eruvs in Bell Harbor and Atlantic Beach in New York, as well as in Stamford and New Haven, both in Connecticut.

"If you open an Italian supermarket, you're not going to block out the Orthodox who won't eat the cheese," Mr. Wagner said.

Yael Polinsky, a young mother who is a congregant of Keshet: The Community Synagogue of Tenaflly and Englewood, says that the religious boundary is an absolute necessity for everyday life.

"I would never live somewhere where there wasn't an eruv," said Ms. Polinsky, who must push a baby carriage if she wants to attend religious services on the Sabbath. "I couldn't be kept in the house all day.

"It would be impossible without a synagogue," Ms. Polinsky continued. "With young kids and a baby, you can't leave the house. It's overly restrictive."

Ms. Polinsky explained that she is originally from Rochester, a city in upstate New York that has an eruv. "Rochester is not a mecca of Judaism, but everyone supports each other," she said. "When I came here, to a town hall meeting, it seemed like most of the things seemed to concentrate on ... keeping the Orthodox out."

Other residents of Tenaflly have mixed opinions about the impact of the eruv. Sherry Kaplan, a resident of Cresskill, a borough neighboring Tenaflly, explained that some people thought that the eruv violated the separation of church and state.

"It brought to mind the conflict of church and state to some," said Ms. Kaplan, who works in Tenaflly. "But it was more an issue of tolerance. After all, it's just small strips of plastic that are practically invisible."

Once the eruv was established, Ms. Kaplan said she and her husband went around trying to find the lechis, but could not locate them.

A woman on the street in the downtown business area in Tenaflly, who spoke on the condition of anonymity, said "there shouldn't have been any argument" over the eruv. "Every other town does it—it was ridiculous," she said.

The woman noted that the eruv did bring in more Orthodox families, though that did not "bother" her. "I think the borough wasted a lot of tax money," she said.

Meanwhile, Mike Granoff, the current president of the Keshet synagogue, said that in his personal dealings with the Borough of Tenaflly, he never "came across anyone who said they were opposed to [the eruv]." He added that he does not believe it "negatively influenced the community in any way." In fact, he thinks that the opposite is true.

12/23/2010

Westhampton Beach News - Tenafly er...

"It's attracted young families to the town," Mr. Granoff said. "It's been a boon to the town."

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Exhibit D

29

Incorporated Village of Westhampton Beach
165 Mill Road, Westhampton Beach, New York 11978
(631) 288-1654 * Fax: (631) 288-4332 * clerk@westhamptonbeach.org
May 18, 2009



Conrad Teller
Mayor

Toni-Jo Birk
James Kametler
Joan Levan
Hank Tucker
Trustees

Kathleen McGinnis
Village Clerk

Hermon J. Bishop
Village Attorney



William J. Balcerski
Assistant General Counsel
Verizon Communications
VC54N070A
One Verizon Way
Basking Ridge, NJ 07920-1097

Dear Mr. Balcerski-

We're writing as the Board of Trustees of the Village of Westhampton Beach, the Village's governing body. It's the Board's understanding that Verizon has again been discussing with the Hampton Synagogue an agreement that would result in attachments to utility poles owned by Verizon and/or the Long Island Power Authority located within Village limits in order to create an "eruv" under Jewish law. The Board further understands Verizon's position to be that it will not execute the proposed agreement, and will not take or permit any action with respect to utility pole attachments, unless and until the Village approves the attachments.

For your information, the Synagogue submitted an application to the Village Trustees in March 2008 seeking approval of an eruv within Village limits. The application was "withdrawn" by the Synagogue in May of 2008. Since that time, the Village has received no request for approval of utility pole attachments. In the event such a request is received, it will be considered in accordance with Village regulations and procedures, and you will be notified of the Board's decision forthwith.

Please feel free to call us or our Village Attorney, Hermon J. Bishop if you have any questions. In any event, please contact us immediately if our understanding of Verizon's position with respect to utility pole attachments (paragraph 1, above) is not correct.

Thank you for your consideration.

Sincerely,
Village of Westhampton Beach Trustees

Toni-Jo Birk
James Kametler
Joan Levan
Hank Tucker 516-359-3506

cc: Mayor Teller

Hermon J. Bishop, Village Attorney 631-288-0440

06 JUN - 9 AM 09:00
CLERK'S OFFICE

Exhibit E

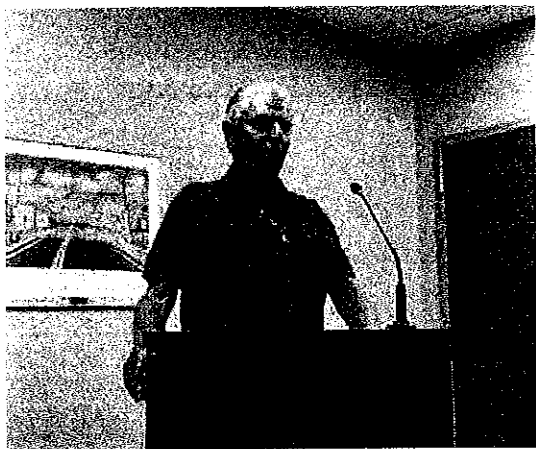
Debate over Jewish religious boundary begins to heat up

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Publication: The Southampton Press

By Will James Sep 29, 2010 2:00 PM 53 COMMENTS



Arnold Sheffer, chairman of Jewish People Opposed to the Eruv, speaking at a Westhampton Beach Village Board meeting on September 2.
 Photo by Will James

Opposition continues to stir over plans to establish an eruv in western Southampton Town, near Westhampton Beach and Quogue villages, even though a formal application for the symbolic Jewish religious boundary has yet to materialize before either the village or Southampton Town.

Throughout September, after a renewed push for the religious boundary surfaced, local residents have sent dozens of letters and e-mails to the three municipalities, opposing the creation of an eruv that would encompass all of Westhampton Beach and Quogue, and parts of Quogue and Westhampton. An eruv is a mostly invisible boundary that allows Orthodox Jews to carry and push certain objects on the Sabbath—activities that are normally prohibited on their holy day. It is typically delineated with black markings affixed to utility poles.

In late August, Westhampton Beach Mayor Conrad Teller announced that he had caught wind of a possible application for a larger eruv than the one originally proposed two years ago by the Hampton Synagogue in Westhampton Beach. The earlier application, which was later withdrawn by the Sunset Avenue synagogue, called for a religious boundary only in Westhampton Beach.

Marvin Tenzer, the head of a nonprofit called East End Eruv Association, later confirmed that his group is now considering establishing a larger eruv in that general area, and has contacted utility companies about marking poles. Mr. Tenzer, a resident of Westhampton Beach and a partner in the law firm Tenzer and Lunin LLP in Manhattan, did not return calls over the past two weeks inquiring about the status of his proposal.

Opposition to the latest eruv application is centered in Westhampton Beach, where a similar application filed by the synagogue in 2008 sparked protests from residents. Over the past month,

residents have sent more than 20 letters and e-mails to village officials in Westhampton Beach, expressing opposition to any future eruv proposals in the area. They have also sent a handful of similar letters to officials in Quogue Village and Southampton Town.

"I strongly oppose the creation of an eruv and anything religious that imposes on others," wrote Mark Mitzner, who identified himself in a letter to Mr. Teller as a resident of the village who is Jewish. "The people that are attempting this outrage are the people who are intolerant. If the eruv is created I would hope every other recognized religion would place their insignia on the telephone poles."

The group Jewish People Opposed to the Eruv, which formed to protest the 2008 application, has reemerged as a force in the mounting opposition. A meeting of the group drew scores of people to Starr Boggs restaurant in Westhampton Beach on Sunday, September 26, according to Chairman Arnold Sheffer.

Mr. Sheffer, who lives Westhampton Beach, said he thinks the Hampton Synagogue is behind the current proposal, even though Mr. Tenzer, who is listed as a founder in the synagogue's list of benefactors, said the house of worship was not involved. Mr. Sheffer accused Rabbi Marc Schneier, the founding rabbi of the synagogue, of having a financial stake in his house of worship, adding that the rabbi is only seeking to increase the value of his investment by establishing an eruv around it.

Rabbi Schneier has not returned calls seeking comment over the past month.

Mr. Sheffer, who is Jewish, said concerns over the government's involvement in religious matters drives his group's opposition. "We don't believe a governmental body should segregate a portion of any area to one particular group, whether religious or otherwise," he said. "We believe that the communities we live in are secular communities where all religions are treated the same."

The chairman also said an eruv would "change the character of the neighborhood" by turning the area into an "enclave of just ultra-Orthodox Jewish people" and lower property values. He said anti-Semitism was not at the heart of the opposition to the eruv.

But Clint Greenbaum, a Westhampton Beach resident and one of two people to write to the village in support of an eruv, said those concerns are "laughable," and designed to conjure fear and mask anti-Orthodox discrimination. The opposition, he said, is making the issue seem bigger than it is.

"An eruv is only something that allows you to push a baby's stroller or a wheelchair, or carry keys or a prayer shawl on the Sabbath. That's it," said Mr. Greenbaum, who attends services at Hampton Synagogue but said he would not benefit from the eruv. "The eruv is so invisible that you literally have to give a map to people because you don't know where it is."

A woman named Carol Schechter also wrote a letter to Mr. Teller and Southampton Town officials on September 22, calling the opposition to the eruv "blatant anti-Semitism."

"An eruv would not physically change anything in the town," she wrote. "It will allow those with small children to push a carriage on the Sabbath, and allow those in a wheelchair to go to services by being able to be pushed. It will allow my diabetic friend to be able to bring her syringes and insulin to the synagogue on the Sabbath."

Debate over Jewish religious boundary begins to heat up

[POST A COMMENT](#)
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Publication: The Southampton Press

By Will James Sep 29, 2010 2:00 PM 53 COMMENTS



Arnold Sheiffer, chairman of Jewish People Opposed to the Eruv, speaking at a Westhampton Beach Village Board meeting on September 2.
Photo by Will James

All five members of the Westhampton Beach Village Board, including Mr. Teller, said they will oppose an eruv if an application is ever presented to them. They have taken the position that East End Eruv Association must, by law, apply with the village to post the markings that delineate the boundary, and have said they are planning to hire an attorney to represent them in the matter.

Quogue Village Mayor Peter Sartorius wrote in a letter on September 9 to attorneys for Verizon and the Long Island Power Authority—the companies that own the utility poles—stating that affixing markers to utility poles is prohibited under village code, indicating that such an application would require special village approval. As of earlier this week, the mayor, who said he has not yet taken a position on the eruv, had not received a response from the companies.

Jennifer Garvey, a spokeswoman for Southampton Town Supervisor Anna Throne-Holst, said the town has not received an application for an eruv, and officials have not yet taken a position on the issue.

Verizon spokesman John Bonomo confirmed in August that the East End Eruv Association approached the company about marking the utility poles for an eruv. This week, Mr. Bonomo said Verizon would not sign off any such application until the applicant first secured approval from the local governments—the same stance his company took with the 2008 proposal.

"Once all the necessary issues are resolved and any permits from the town or village that are required, when they are secured, I think then we would go ahead and work with whatever groups want to get this done," he said.

The particulars of legal and religious processes for establishing an eruv are unclear. David Ebin, a math professor at Stony Brook University whose Stony Brook Hebrew Congregation created an eruv in Stony Brook in 2008, said Jewish law requires that congregations apply with officials before creating the boundary.

Mr. Ebin, who served as president of the Orthodox congregation when the eruv was established, said he did not remember if his congregation applied with Brookhaven Town, Suffolk County or New York State. He referred that question to the rabbi at the time, Robert Roffman, who is no longer with the congregation and did not return multiple e-mails seeking comment. Mr. Ebin said his congregation also received the permission of the utility companies to create the eruv.

The Stony Brook eruv was not controversial, according to Mr. Ebin. His congregation, which meets at Stony Brook University and in houses, opted not to put up markings on the telephone poles, instead using existing utility wires themselves to delineate the eruv. Where there were no wires, they used strings to cover the gaps, he said.

"It's an enclosed area, kind of symbolically imposed," he said of the eruv. "You won't know about it unless you look for it. In practical terms, it provides an area within which one is allowed to carry items on the Sabbath."

There are also eruvs surrounding the synagogues Young Israel of Huntington and Young Israel of East Northport. Rabbis at those two synagogues did not return calls seeking information about the establishment of their eruvs.

A spokesman for Suffolk County said he was not aware of any past eruv applications. Officials in Brookhaven and Huntington towns, which contain the religious boundaries, did not return calls this week.

<< 1 | 2

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Exhibit F

Nonprofit gets preliminary OKs for Hamptons eruv

October 31, 2010 by JENNIFER BARRIOS / jennifer.barrios@newsday.com



A nonprofit formed to create an eruv in the Hamptons has received preliminary permission from two utilities to use their poles in creating the symbolic religious border in the Westhampton Beach area.

The East End Eruv Association, a nonprofit created in March, had applied to Verizon and the Long Island Power Authority for permission to string wires on their utility poles to create the eruv, a symbolic boundary that would allow Orthodox Jews to carry items and wheel strollers within its space on the Sabbath. Such activity is traditionally prohibited on the Sabbath without an eruv.

The move mirrors a 2008 attempt by the Hampton Synagogue to create an eruv around Westhampton Beach. The synagogue withdrew that proposal after opponents argued that the eruv would attract more Orthodox Jews to the neighborhood, changing the makeup of the community.

Representatives from the East End Eruv Association, which includes several people involved in the 2008 attempt, and the Hampton Synagogue did not return repeated calls for comment. It is unclear whether the synagogue supports the latest eruv proposal.

Proposed eruv borders

The eruv - which would look similar to wire strung on utility poles - would encompass Westhampton Beach and Quogue and include parts of Quogue and Westhampton in the town of Southampton.

Verizon said last week that it would allow the eruv to proceed. In an Oct. 26 letter to Quogue mayor Peter Sartorius, Verizon's legal counsel said that the utility "intends to issue licenses to permit the Association to attach lechis to Verizon's poles," and that a legal opinion offered by proponents of the eruv stated "that permission from the Village is not necessary." Lechis are small wooden sticks that are attached to utility poles as part of the construction of an eruv. LIPA also said it would allow the project.



Sartorius said he was dismayed that the eruv could go up without his village's approval. He said village attorneys likely would send a letter to Verizon arguing against the eruv because they believe it violates the village's zoning code.

Westhampton Beach Mayor Conrad Teller said he would abide by the wishes of his constituents and oppose the eruv. The village plans to hire an attorney to challenge the eruv if the plan progresses.

A spokeswoman for the town of Southampton said officials there believe only the utility companies, and not the town, would be involved, since the eruv would be on the utility poles.

Opponents of the eruv say that it will turn Westhampton Beach and surrounding areas into an Orthodox Jewish enclave, which they fear could drive down property values.

Arnold Sheiffer, founder and chairman of Jewish People Opposed to the Eruv, said his group believes that the eruv would make the area similar to Lawrence, which has a significant Orthodox population.

"We want to continue as a secular village and our way of life," said Sheiffer, a Westhampton Beach resident. "This really has ramifications similar to what happened in Lawrence, Long Island, where the area was turned into an Orthodox area, public schools were closed and real estate values fell."

Estelle Lubliner, a resident of Westhampton and Manhattan, agreed.

"It would have an effect on the demographics of this town, the economy of this town, the whole landscape of the town," she said. "If you need an eruv, this is just not the place. Why does the town have to change for certain people? There are other seaside communities. If you're Orthodox, know that not every place in the world is for you."

It's 'religious freedom'

Rabbi Mordecai Golshevsky of Young Israel of Coram, an Orthodox congregation not involved in the eruv proposal, said he's dismayed by the opposition he's seen.

"This is America, home of religious freedom," he said. "What's going on here? They're pointing to Lawrence. What's wrong with Lawrence? Orthodox Jews live there? So what - we should chase them out? This whole conversation's obscene."

[< back to article](#)

Exhibit G



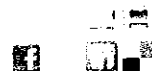
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Toni-Jo Birk seeks third term in Westhampton Beach

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Publication: The Southampton Press

By Hallie D. Martin Jun 16, 2010 12:50 PM



Toni-Jo Birk



Toni-Jo Birk is proud of the things she's accomplished during her first four years on the Westhampton Beach Village Board, pointing to the finalization of the village's master plan in 2007 and the installation of a new preschool playground off Main Street. Noting that she has built a reputation for being a good listener, Ms. Birk hopes that voters will elect her to a third two-year term on Friday.

"I'll do whatever the community wants," she said.

Ms. Birk, 50, who was elected to the board in 2006 and reelected in 2008, said she supports holding disciplinary hearings for Westhampton Beach Police Officers Michael Bruetsch and Joseph Pesapane. The officers were suspended by Mayor Conrad Teller in October after an external investigation conducted by Suffolk County Police found that they lied about the circumstances involving the disappearance of a fellow officer's handgun at police headquarters. The firearm was later recovered. The two officers, meanwhile, were reinstated by the board's majority in December and restricted to desk duty ever since.

"Either these are allegations that are true, or these are allegations that are false. I want their names cleared," Ms. Birk said. "I want them back to work doing what they are hired to do. I cannot sit here ... as an elected official with a clear conscious and say, 'Put them back on the street tomorrow,' when there are allegations of misrepresentation."

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Ms. Birk, who missed the December meeting when the board dropped the charges, originally said she supported that decision. She said she changed her mind after discussing the issue with the village's labor attorney and, since then, has consistently voted with Mayor Teller to hold the disciplinary hearings and rescind four resolutions that demand internal records from the police department.

"My opposition says they want more information about the hearing," said Ms. Birk, noting that her fellow board members, which includes mayoral challenger Hank Tucker, never asked the Suffolk County Internal Affairs Bureau for more information about the investigation that led to the charges. "I don't know what additional information they need."

If reelected, Ms. Birk said that restoring the image of the village, and its police department, will be a challenge. She said that holding the hearings and resolving internal issues with the police department will help move day-to-day business forward.

"Until the negativity and the impasse gets worked through, we're not going anywhere," she said.

Ms. Birk said she will continue working to maintain the village's amenities, namely its two beaches, and make sure that the streets are cleaned and the roads plowed. Ms. Birk, whose family owns Bike n' Kite on Potunk Lane, says she wants to improve communication with the village's business owners, noting that she understands the challenges of operating a business in a summer resort town.

As for the withdrawn application for the eruv, the invisible religious boundary proposed by the Hampton Synagogue, Ms. Birk said that her position has not changed: she still opposes it. She also noted that the withdrawn application, which was pulled by the synagogue more than two years ago when it was clear that the board would not support it, said the issue is being used by her opponent, trustee candidate Charlie Palmer, to scare residents.

"I am very surprised to see it back again," she said. "I'm very disappointed that the fear factor is back."

Ms. Birk has been a member of the Westhampton War Memorial Ambulance for about 10 years, and sits on the company's Board of Directors. Her husband, Bart, volunteers with the Westhampton Beach Fire Department. Ms. Birk, who has two school-age children, is involved with the Westhampton Beach Elementary School Parent Teacher Association and serves as secretary of the Westhampton Beach Lacrosse Club.

Exhibit H

Introducing the bigger, four-door, all-wheel drive models available for immediate delivery.

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Sue Farrell makes first bid for public office in Westhampton Beach

Publication: The Southampton Press
By Halie D. Martin Jun 16, 2010 12:50 PM



Sue Farrell



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Leola "Sue" Farrell says she always kept tabs on what happens at Westhampton Beach Village Hall, though it wasn't until January, when three trustees walked out of a board meeting forcing its cancellation, that she decided it was time for a change.

"It put me over the edge," she said, referring to the actions that night of Village Board members Hank Tucker, Jim Kametler and Joan Levan. "I thought to myself, 'This is not OK.'"

Ms. Farrell, 67, said it was unprofessional of them to walk out, explaining that their decision weighed on her mind when she was approached by her future running mates, Mayor Conrad Teller and Trustee Toni-Jo Birk, about making a bid for trustee as a member of their Village Unity Party. Mayor Teller and Ms. Birk were forced to cancel the meeting after the walk-out.

Ms. Farrell said she agreed to make her first run for office because she believes the village must hold disciplinary hearings for Westhampton Beach Police Officers Michael Brutsch and Joseph Pesapane, who were suspended in October by Mayor Teller before being called back to work by the board's majority in December. They were suspended after a Suffolk County Police report concluded that they lied to investigators after a fellow officer's handgun went missing.

"It's tearing us apart as a village," she said of the board's refusal to hold hearings. "That's the reason

own clothing manufacturing company in Manhattan. She is director of business development for Conference Direct, a meeting planning company, and serves on the advisory board of Human Resources of the Hamptons. Previously, she owned her Ms. Farrell bought her home in Westhampton Beach in 1978 and moved here full time in 1997. One of the biggest challenges she will face, if elected, is helping restore peace and order to Village Hall, she said.

Ms. Farrell said she would not support the creation of an eruv in Westhampton Beach if the Hampton Synagogue ever decides to resubmit an application. She said the community has made it clear that it opposes the idea. Ms. Farrell said she would work to ensure that the village remains financially stable and that taxes do not spiral out of control. She said she would also focus on quality of life issues, pointing to a request made by a homeowner asking if the village can install a four-way stop sign on the Rogers Avenue Extension to slow drivers looking to bypass the traffic light at the intersection on Old Riverhead Road and Montauk Highway. If elected, Ms. Farrell said she would work to ensure that the village remains financially stable and that taxes do not spiral out of control. She said she would also focus on quality of life issues, pointing to a request made by a homeowner asking if the village can install a four-way stop sign on the Rogers Avenue Extension to slow drivers looking to bypass the traffic light at the intersection on Old Riverhead Road and Montauk Highway.

Ms. Farrell said she supports the suggestion made by Village Attorney Richard Haefeli that the village look into possibly closing the cement plant after learning that residents have complained about it. "If that can get done ... and those people could open those windows," Ms. Farrell said, "I would feel that I have done something."

Ms. Farrell said she supports the suggestion made by Village Attorney Richard Haefeli that the village look into possibly closing the cement plant after learning that residents have complained about it. "If that can get done ... and those people could open those windows," Ms. Farrell said, "I would feel that I have done something."

Ms. Farrell, a practicing Catholic and parishioner of Immaculate Conception Church in Quogue, said that, because of her faith, she takes issue with those accused of lying. "I've been saying since then, 'When did it become OK to lie?'" she said. "How do you tell your kid ... that you shouldn't lie, but a policeman did, and that's OK?" If elected to a two-year term, Ms. Farrell said that she'd take steps to close the cement plant on Hazelwood Avenue. She noted that while knocking on doors earlier this month, she visited the residents who live near the plant and was shocked to learn that they had to keep their windows closed at all times because of dust and debris. "I was dumbstruck," she said. "The home is immaculate, it's lovely, and they are sitting there on a gorgeous Saturday with the windows closed. Their quality of life is zip with [the cement plant]."

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Exhibit I



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Hank Tucker seeks to unseat mayor in Westhampton Beach

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Publication: The Southampton Press

By Hallie D. Martin [View our archive](#) [Contact Us](#) [Feedback](#)



Hank Tucker

Hank Tucker said he decided to challenge incumbent Mayor Conrad Teller because he believes it is time to change the way Westhampton Beach Village conducts its business.

"I just felt that it was time for a fresh look at things," he said.

Mr. Tucker, 49, has lived in the village for the past 15 years and was first elected to the Village Board in 2007. If elected mayor, Mr. Tucker, who enjoys a safe run this year because his trustee term does not expire until 2011, said he wants to maintain the character of the village, namely its quaint shops and clean beaches.

The owner of Holey Moses Cheesecakes in Westhampton says all the recent negative press about Westhampton Beach and, specifically, its police department, makes him want to help restore the municipality's image.

"I think we can get back to getting the Village of Westhampton Beach to a place where we can all be proud of and not embroiled in controversy," he said.

To accomplish that, Mr. Tucker said he would clean up the Westhampton Beach Police Department by first subjecting it to a "thorough and extensive review," including an examination of procedures and operations. He noted that the department's rules and procedures date back to 1964 and most have never



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been updated. He also wants to get the force on the path to state accreditation.

Mr. Tucker, who has served as the Village Board's liaison to the police department for the past year, pointed out that the department consumes nearly one-third of the village's \$9.2 million annual budget. As mayor, he said his goal for the next two years would be "getting the police department working properly so residents get value for their money."

Though he has blocked every attempt by Mayor Teller to hold them, Mr. Tucker said he would support disciplinary hearings for Officers Michael Bruetsch and Joseph Pesapane if he believed that they would be "fair and just." The officers were suspended with pay by the mayor in October after an outside police agency concluded that they lied to supervisors about the circumstances surrounding a fellow officer's missing handgun. Mr. Tucker voted to reinstate the officers in December, though the mayor has since assigned them to desk duty.

Mr. Tucker, who will get to appoint someone to fill his vacant seat if he wins election Friday, supports four resolutions that demand internal records from Westhampton Beach Police Chief Ray Dean. The mayoral hopeful says that those documents, which Chief Dean has refused to release, must be examined before the board decides whether or not to go forward with the hearings.

Mr. Tucker says there are too many unanswered questions regarding last year's missing gun incident to simply hold hearings. "I made a decision that I felt was best for every resident in the village," he said. "I want justice, but it was to be fair justice."

As for the possibility of outsourcing the police department, Mr. Tucker said the first action should not be to abolish it. Instead, he wants to examine procedures and protocol.

As he did during his successful reelection campaign last June, Mr. Tucker is raising questions about the eruv, an invisible boundary that was proposed by the Hampton Synagogue. Mr. Tucker said the eruv remains an issue because the synagogue can always refile its application, even though more than two years have lapsed since the resolution was officially withdrawn.

Unlike his opponent, Mr. Tucker said he would be consistent in his opposition to the eruv application. "It's only dead until someone revives it," he said. "And the eruv will never happen under my watch."

If he's elected mayor, Mr. Tucker, who also serves on the Westhampton Free Library's Board of Directors, said he would make sure that the monthly Village Board meetings are not conducted in a "circus-like" atmosphere, so business can get done. Lately, board meetings have been contentious with residents confronting board members and making accusations.

"It's how meetings should be run," he said of conducting controlled meetings. "The Board of

Trustees is allowed to disagree with the mayor; however, they need to come out unified in not how they vote, but how they portray the village. [That's] very important."

Mr. Tucker said he would make it easier for residents to conduct their business here, especially in the Building Department, by clarifying applications and procedures. Mr. Tucker said he would continue to be fiscally conservative and wants to work with federal agencies to secure grant money for the village.

He and his wife, Patty, have four school-aged children: Bret, Molly, Ben and Will.

Even since winning election in 2007, Mr. Tucker said he has been someone who listens to people. He said he will continue to do that as mayor. "I always kept the interests of the residents first," he said. "I always have."

Exhibit J

JOAN LEVAN

631-355-0619

Re-Elect

HANK TUCKER

516-359-3506

PROVEN CANDIDATES FOR WESTHAMPTON BEACH TRUSTEES

WHAT WE HAVE DONE

ERLW: We fought hard to ensure the residents have the right to oppose the levy. We voted for a public meeting so residents would be informed and your voices could be heard. We defeated the Mayor's effort to approve the levy.

WALDBAUM'S: We have taken a leadership role in finally getting the Mayor's to start doing the right thing for our community: repairing drains, repaving the parking lot, as well as cleaning up and improving the interior of the store.

FISCAL RESPONSIBILITY: We have been proactive in trimming unnecessary spending, have fought for tighter controls in every area of our budget, and have been deeply involved in two of the tightest budgets in many years. Uncovered and challenged 280 hours of improper overtime taken by the Police Chief, stood up to the Mayor, and now taking action to recoup over \$30,000 of taxpayer money.

MAINTAINED THE CHARACTER OF THE VILLAGE: Joan took over as the head of the Beautification Committee, added new members, and has made sure that the village looks better than ever, not only in Spring and Summer, but also during the holiday seasons. Hank has worked with our Village Boards and Village Planner to amend our laws and to insure that design standards for new projects are consistent with the character of the Village.

PROTECTED YOUR PROPERTY RIGHTS AND NATURAL RESOURCES: Challenged the concrete plant that encroached on Village streets and won a court judgment that returned our property to us. Filed a lawsuit to force the asphalt plant to comply with our zoning laws and thereby protect the quality of our air. Made a variety of improvements at Rogers and Leashoy beaches, and instituted new procedures to make them cleaner.

WHAT WE WILL DO

ERLW: We will vigorously oppose any effort to obtain an annex proclamation from any government official or entity outside of our Village. We will continue to make certain you have an opportunity to express your views, and will defend your right to oppose the levy.

WALDBAUM'S: We will continue to monitor the store in all respects, including its pricing policies in Westhampton Beach vs. other locations. We will be relentless in letting them know we want and expect a modern, clean, functioning supermarket.

FISCAL RESPONSIBILITY: We will continue our vigilance in keeping a tight rein on expenses and streamlining budgets. We will protect the interests of Village taxpayers in negotiations with the Police Chief, the PBA and the Highway department.

MAINTAIN THE CHARACTER OF THE VILLAGE: We will continue to upgrade our design standards, review and update our codes, and simplify residents' dealings with the various Village Boards. We will complete the second new public park in the Village on the Olovers Lane property that we helped the Village obtain from the Community Preservation Land Fund.

PROTECT YOUR PROPERTY RIGHTS AND NATURAL RESOURCES: Our beaches are one of our most valuable assets. We have initiated a mandatory cleaning schedule which will continue to keep them clean, safe and beautiful.

OUR BUSINESS COMMUNITY: Our Village merchants are important to our local economy. We will work closely with them on issues of concern.

**SUPPORT US ON FRIDAY, JUNE 19TH AT VILLAGE HALL
VOTE LEVAN & TUCKER— VOTE ROW C**

Exhibit K



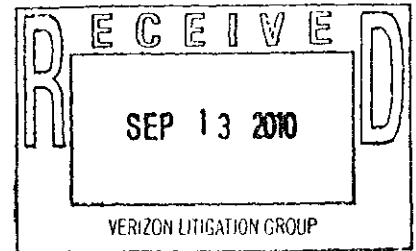
PETER SARTORIUS
Mayor

MARCIA ROSE KOZIARZ
Village Clerk

Village of Quogue, N.Y.

P.O. Box 926
Quogue, New York 11959-0926

(631) 653-4498 Fax (631) 653-4776



September 9, 2010

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Long Island Power authority
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Re: Possible Eruv in Quogue and other Locations

Dear Mr. Balcerski and Ms. Nicolino,

I know by various pieces of correspondence that have been furnished to me that you are aware of steps taken by the East End Eruv Association toward possible establishment of an eruv that apparently would encompass parts of several municipalities, including part of the Village of Quogue. At this time, the Village of Quogue has not received any application for establishment of an eruv.

The purpose of this letter is to advise you that Chapter 158 of the Quogue Village Code, which is available at www.villageofquogue.com, prohibits any encroachments or projections (as those terms are defined) in any public right-of-way. Thus, any attachment of a non-utility device to any utility pole located in the right-of-way would be prohibited.

In any event, I understand that the position of Verizon with regard to attachment of a device to any pole (taken in connection with Westhampton Beach) is that local municipal approval is required. To my knowledge LIPA has not communicated a position but would appreciate being notified if it does so.

Sincerely,

Peter S. Sartorius
Mayor

Exhibit L

767 Fifth Avenue
New York, NY 10153-0119
+1 212 310 8000 tel
+1 212 310 8007 fax

Weil, Gotshal & Manges LLP

Robert G. Sugarman
+1 212 310 8184
robert.sugarman@weil.com

BY MAIL

October 4, 2010

East End Eruv Association, Inc.
c/o Marvin Tenzer, Esq.
1775 Broadway, Suite 608
New York, NY 10019

Re: East End Eruv Association

We have reviewed the September 9, 2010 letter of Quogue Mayor Peter S. Sartorius ("Sartorius Letter") regarding the possible eruv in Quogue. That letter references Chapter 158 of the Quogue Village Code ("Chapter 158"), which states that "no encroachment or projection upon, into or over any public road or street in the village of Quogue shall be made or maintained." Quogue Village Code § 158-1. For the reasons explained below, we are of the opinion that affixing lechis to poles as part of the construction of an eruv presents no violation of this Code provision.

There are at least three reasons why affixing lechis to poles does not violate Section 158. First, because the lechis are so small in size, Chapter 158 is inapplicable to them under the plain language of the ordinance. The lechis, which are smooth, sanded soft wood strips will be no larger than 1"x 4"x 40". See Lechi Specifications, attached hereto as Exhibit A. Because the lechis are only one inch deep, it is physically impossible for them to be "upon, into or over any public road or street." The Sartorius Letter refers to a prohibition against any attachments "in the right-of-way." We assume that he uses that term because "public road or street," is defined in the ordinance as "the area between the extreme lines of any public right-of-way in this Village, including any state or county road or highway as well as a Village road or street." Quogue Village Code § 158-2. It makes no difference which term is used because, here, there is no crossing of the plane of any "public road or street" or right-of-way.

Second, the village of Quogue does not presently enforce Chapter 158. Many utility poles throughout Quogue are covered with signs and other objects that are larger and more visible than the lechis would be. For example, Quogue has allowed the attachment of signs and other objects to utility poles at Quogue Street and Montauk Highway, Montauk Highway and Foster Road, 12 Post Lane, 75 Dune Road, and many other locations throughout the village. See selected photos of Quogue utility poles, attached hereto as Exhibit B. Because the village of Quogue does not uniformly enforce Chapter 158, it cannot do so to prevent the construction of an eruv. See *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002) (holding that ordinance which would have prevented the placement of lechis on utility poles could not be enforced because it had not been previously enforced against others).

Third, under U.S. Supreme Court jurisprudence that has construed similar provisions, Chapter 158 cannot prohibit the placement of the lechis because ordinances such as Chapter 158 “cannot be construed to prohibit putting upon a street any object without regard to its effect on the use of the street.” *Wolff v. District of Columbia*, 196 U.S. 152 (1905). In *Wolff*, the U.S. Supreme Court held that no duty of the District of Columbia was violated by permitting a stepping stone to remain on a public sidewalk because the stepping stone “was not, in view of its size and location, an unlawful obstruction, or a nuisance.” *Wolff* at 154. The court further held that Section 222 of the Revised Statutes of the District of Columbia¹ could not be construed to prohibit putting upon a street “any object without regard to its effect on the use of the street,” *Id.* at 155, and noted that “the sweeping character of such a construction need not be pointed out.” *Id.* The small wooden lechis used here will have no effect on the use of the streets of Quogue, and therefore cannot be prohibited under the terms of the Chapter 158. Moreover, the lechis will not cross into the street line, and therefore cannot be said to interfere with any public right-of-way. See, e.g., *Green v. Miller*, 249 N.Y. 88 (1928) (holding, with respect to an action regarding a stoop and a bay window, that a contention that the slightest encroachment over the street line is a public nuisance cannot be sustained).

Even assuming, *arguendo*, that the lechis did fall under the purview of Chapter 158, that ordinance would still be inapplicable because the construction of the lechis would not constitute an “encroachment” as that term is defined in the Village Code. The Village Code defines an “encroachment” as:

Any private use of any portion of a public right-of-way through any structure or device, whether upon, above or under said right-of-way; but nothing herein contained shall be construed to apply to any vehicle or any easement now legally owned by any public service corporation. The term “encroachment” also includes any private use of any portion of a public right-of-way for the display and sale of any products, goods, wares or merchandise.”

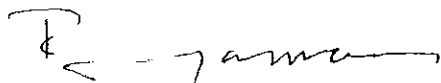
Quogue Village Code § 158-2. The lechis, however, would not be placed “upon, above or under” any right of way. Instead, they will be affixed directly to the utility poles and will not obstruct, interfere with or cross into any public right-of way. Further even if it could be shown that the lechis did fall under the purview of Chapter 158 and that they constituted an encroachment, the code provision would still be inapplicable under the exception in Chapter 158, which provides that “nothing herein contained shall be construed to apply to any vehicle or any easement now legally owned by any public service corporation.” The lechis would be placed onto the utility poles pursuant to written agreements that the East End Eruv Association has entered into with Verizon and LIPA, and their placement would be protected as an easement legally owned by a public service corporation.

¹ Section 222 provided that, “no open space, public reservation, or other public grounds in the city of Washington, nor any portion of the public streets and avenues of said city, shall be occupied by any private person or for any private purpose whatever,” *Wolff* at 155.

Likewise, even if there were lechis that could be considered "upon, into or over" a street, the placement of the lechis is nonetheless permitted because they do not constitute a "projection" under Chapter 158. The Village Code defines a "projection" as "any part of any building, structure or device erected upon private property or attached to any structure or device erected upon private property." Quogue Village Code 158-3. This language, however, is so broad as to render the provision unenforceable. See, e.g., *Lanzetta v. New Jersey*, 306 U.S. 451 (1939) (reversing conviction under statute making it a penal offense to be a "gangster," and noting that life, liberty, and property could not be taken by virtue of a statute whose terms were "so vague, indefinite and uncertain" that one cannot determine their meaning). It would appear that almost anything could be classified as a projection under the ordinance, and it is nearly impossible to determine what is and is not allowed under Chapter 158. *Id.* Indeed, the provision's unenforceability is evidenced by the fact that the village has never enforced it. As has been noted, the village is permitting the attachment of signs and other objects to the utility poles throughout Quogue. Just as the village does not enforce Chapter 158 to prevent the attachment of these objects, neither can it enforce this provision to prevent the attachment of lechis. See *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002)

We are therefore of the opinion that the construction of an eruv in Quogue would present no violation of Chapter 158 or any other provision of the Quogue Village Code. Please do not hesitate to contact me if you have any questions.

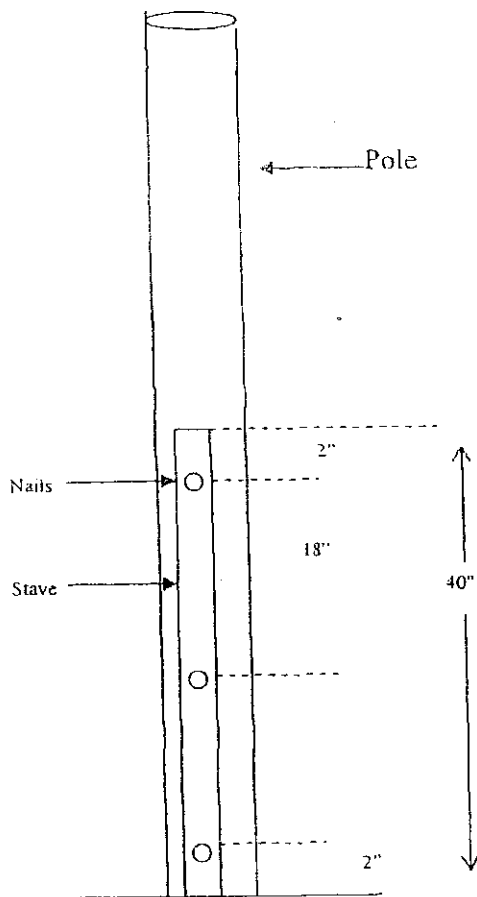
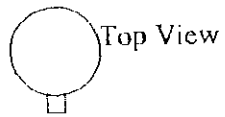
Sincerely,



Robert G. Sugarman

Exhibit A

EXHIBIT A

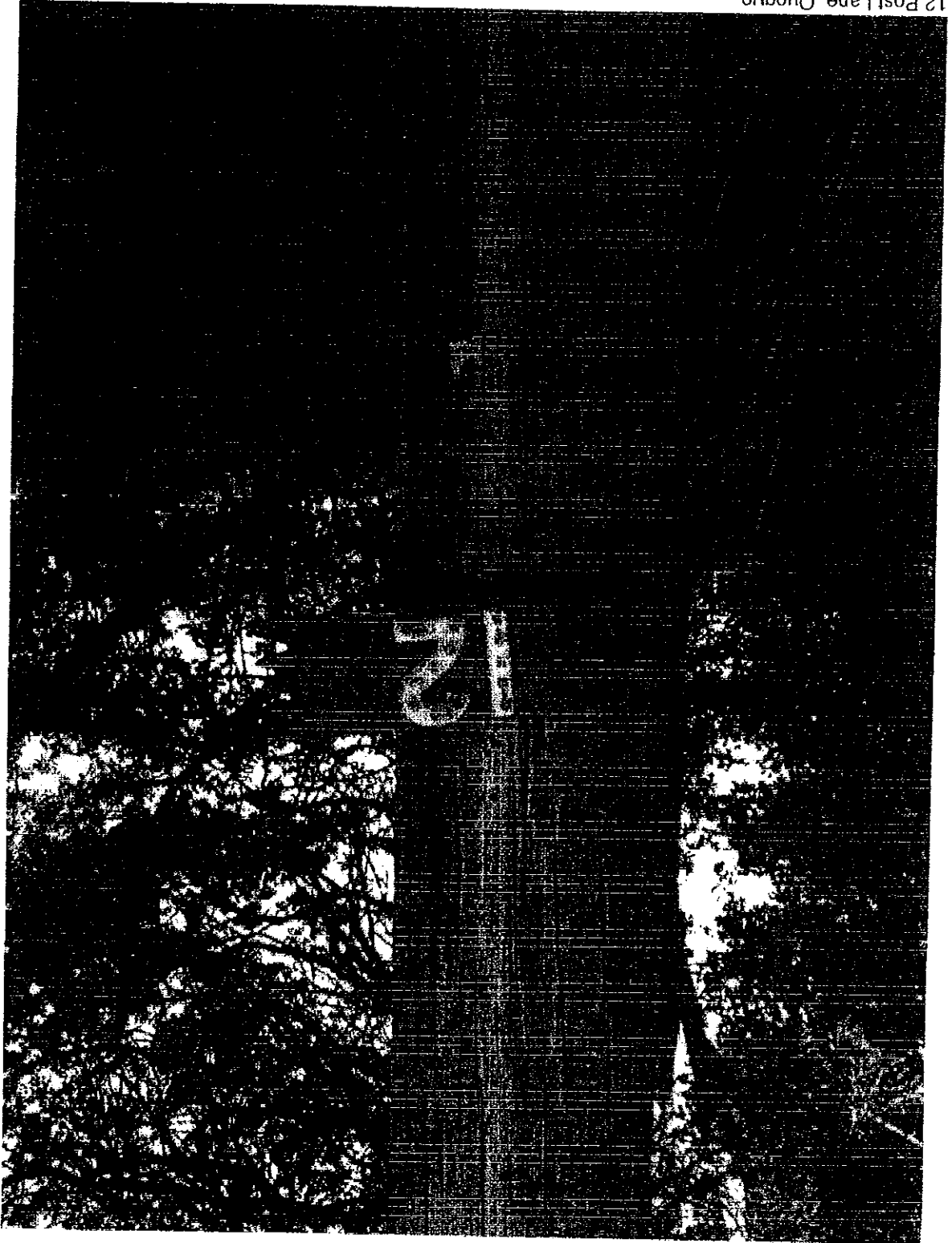


SPECIFICATIONS

1. 1"x2"x40" long
Smooth sanded wood staves painted with wood preservative
2. Fasten securely with B penny galvanized common nails with minimum spacing as shown
3. Wood staves will not be placed where they may interfere with existing attachments

Exhibit B

12 Post Lane, Quogue

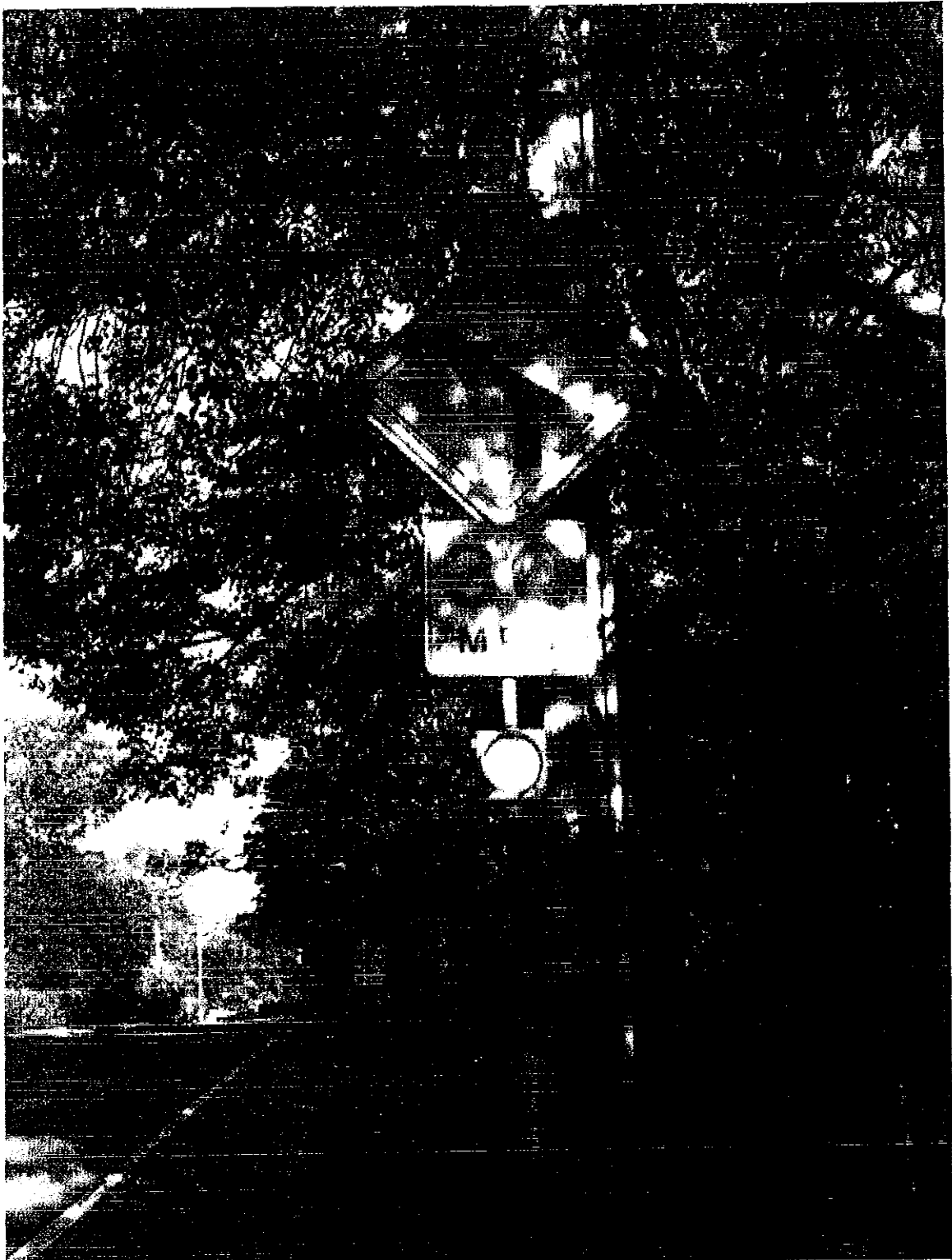




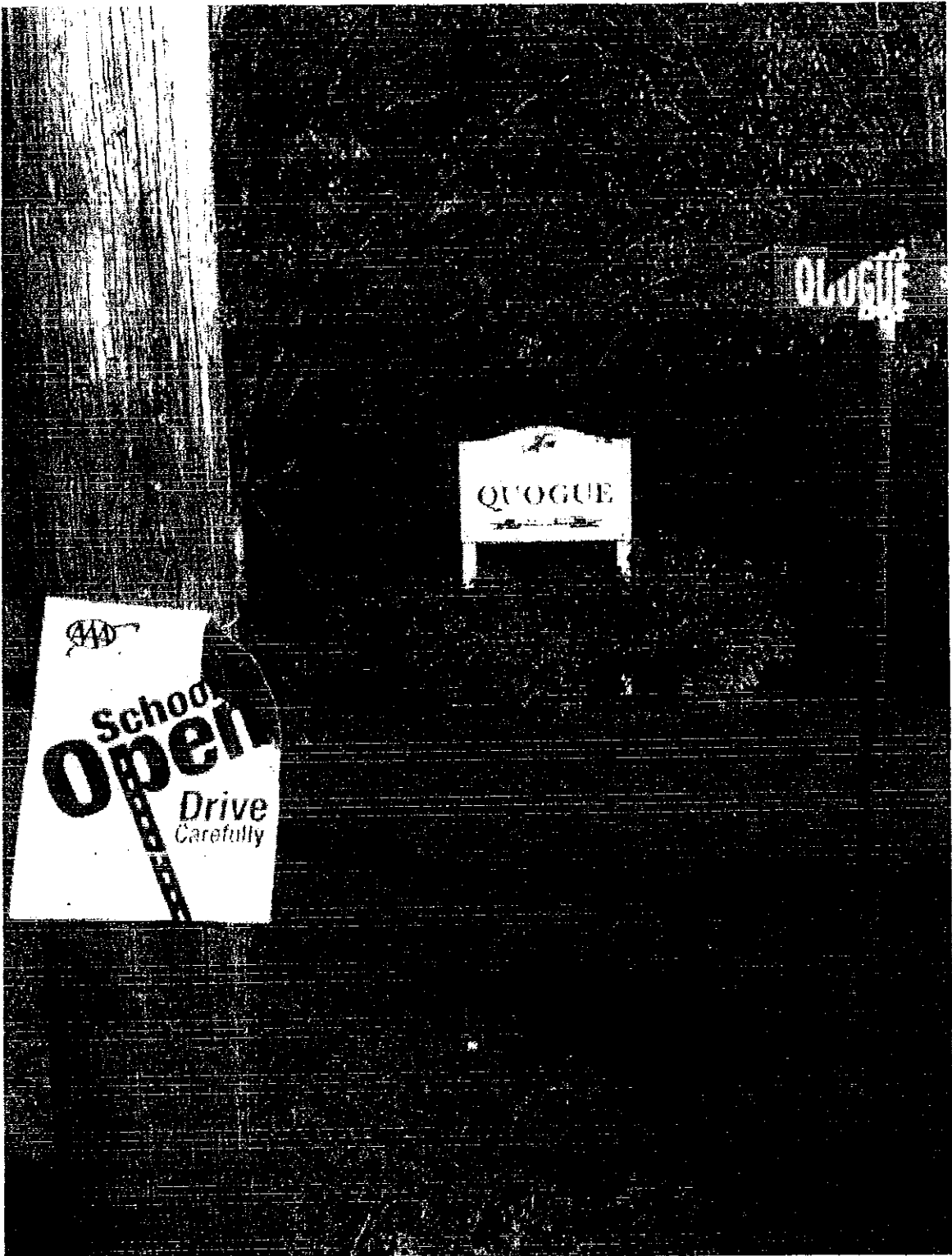
75 Dune Rd., Quogue



Montauk Highway & Foster Rd., Quogue

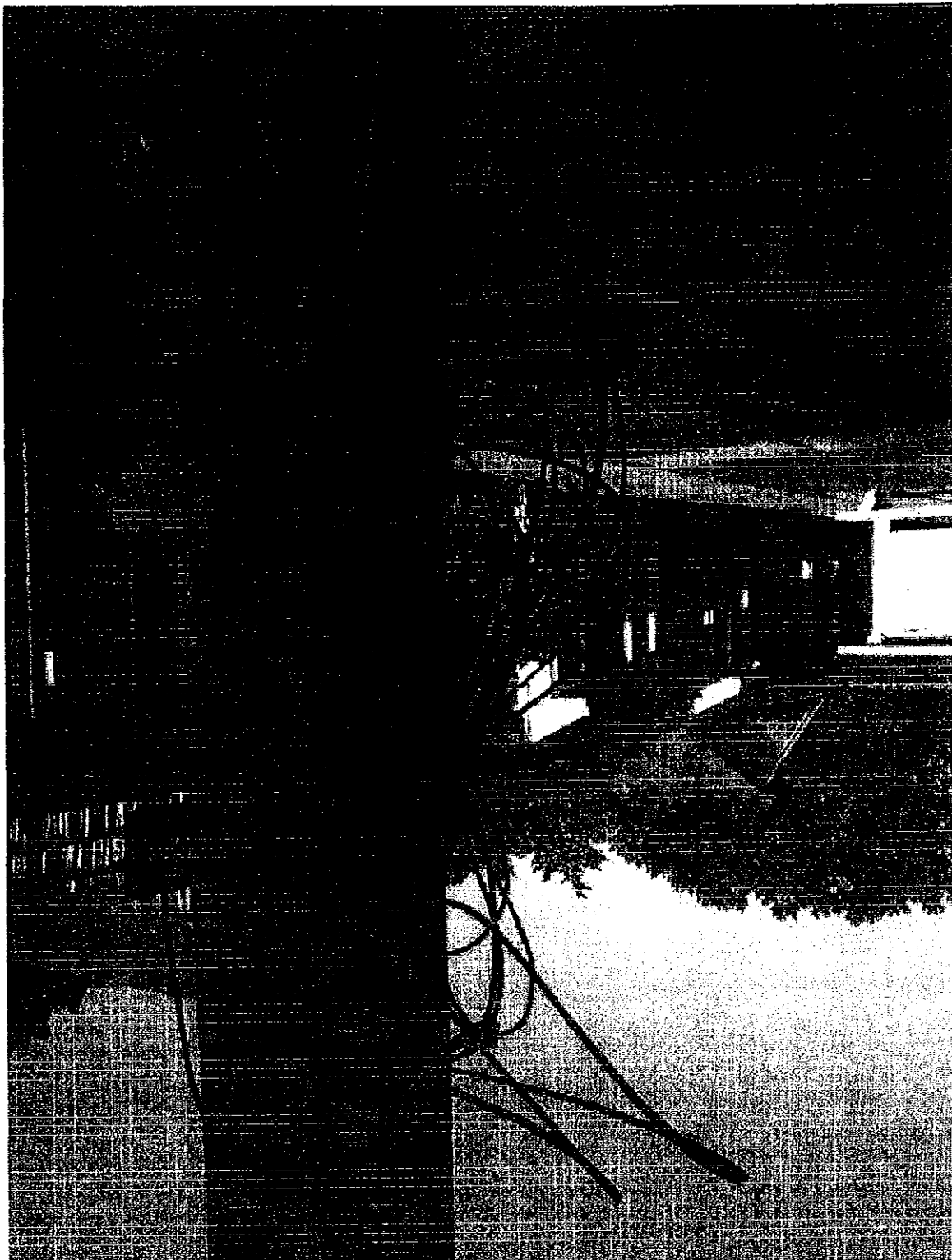


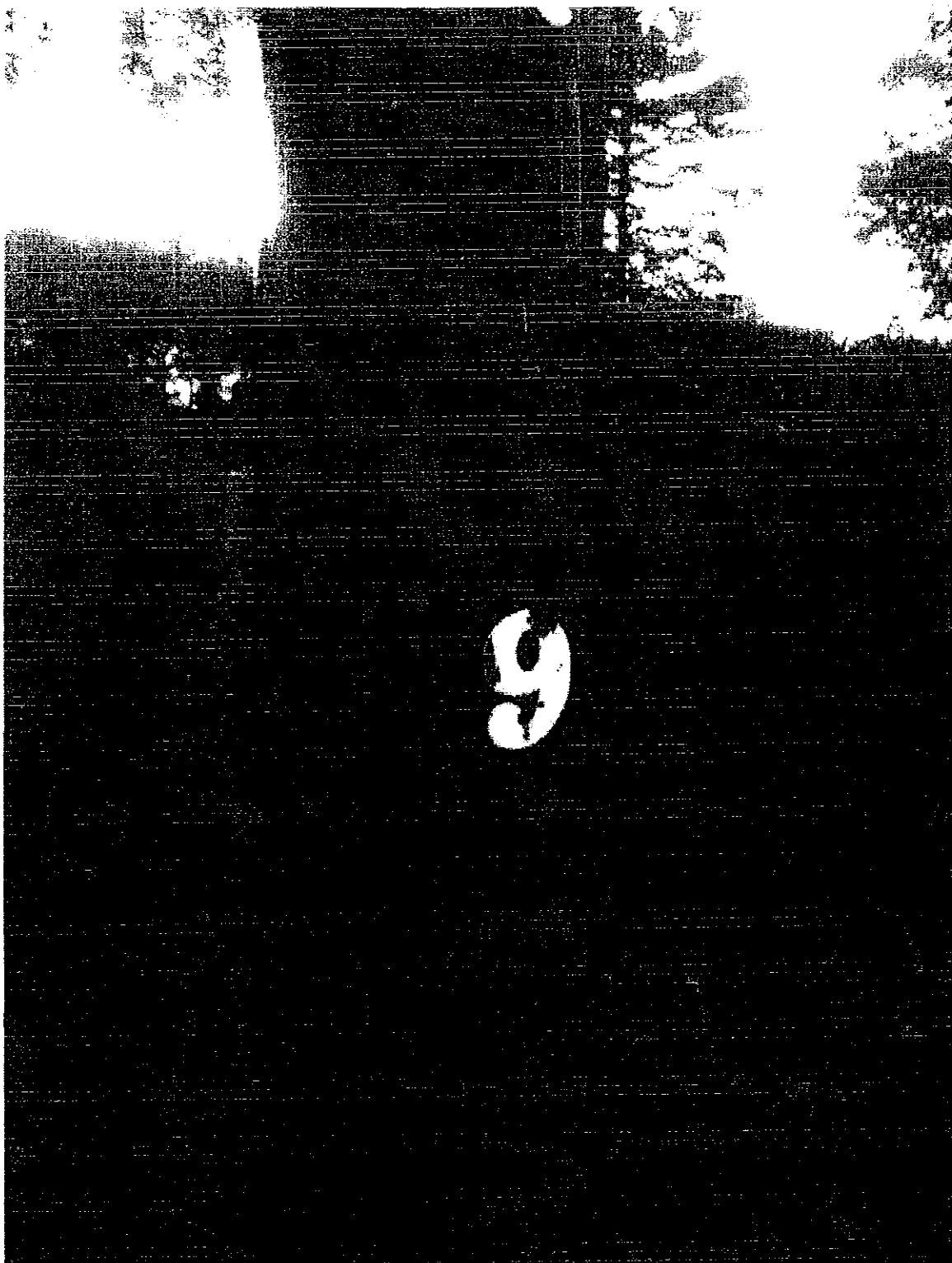
Montauk Highway & Foster Rd., Quogue



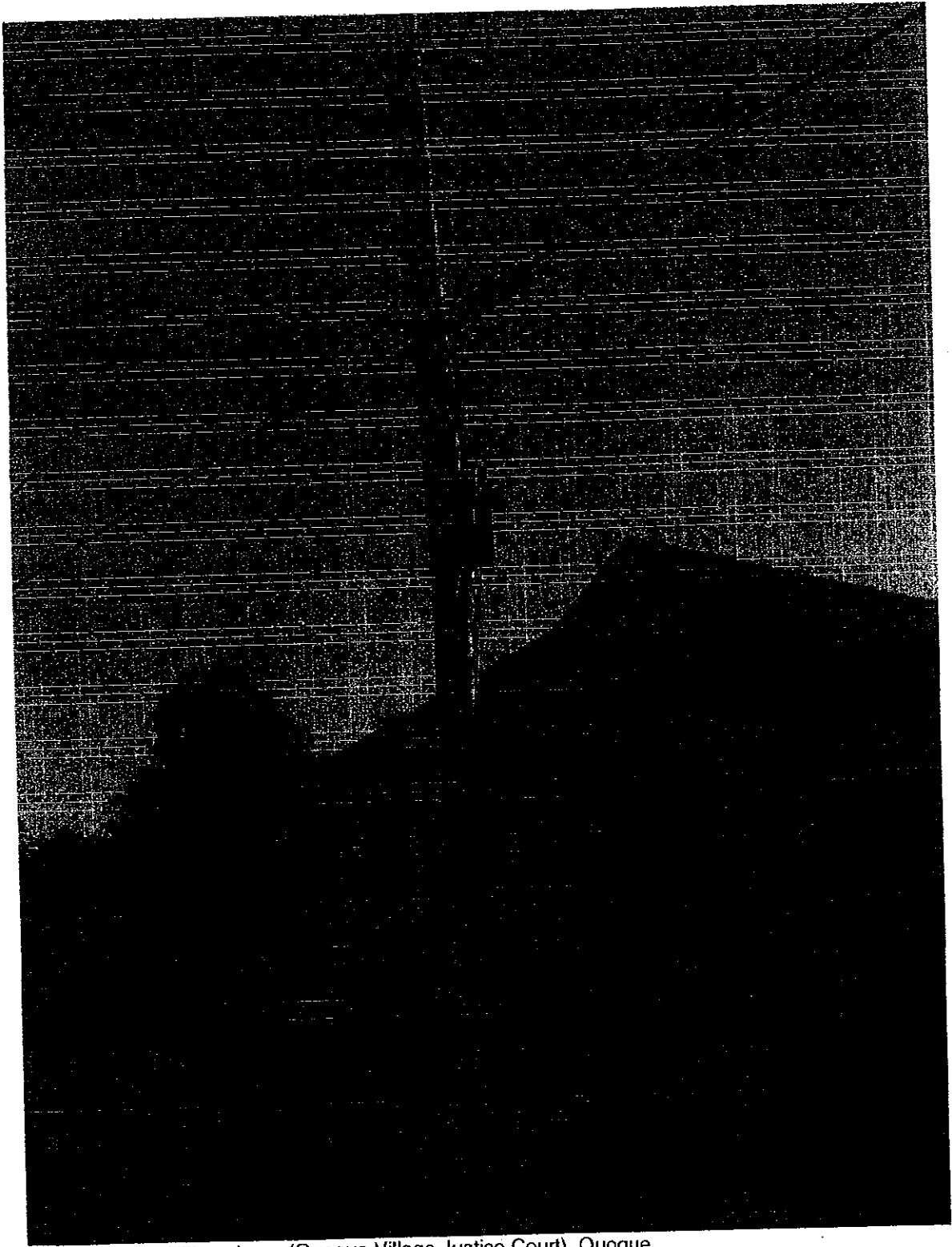
Quogue St. & Montauk Highway, Quogue

Midland St. (Quogue Post Office)

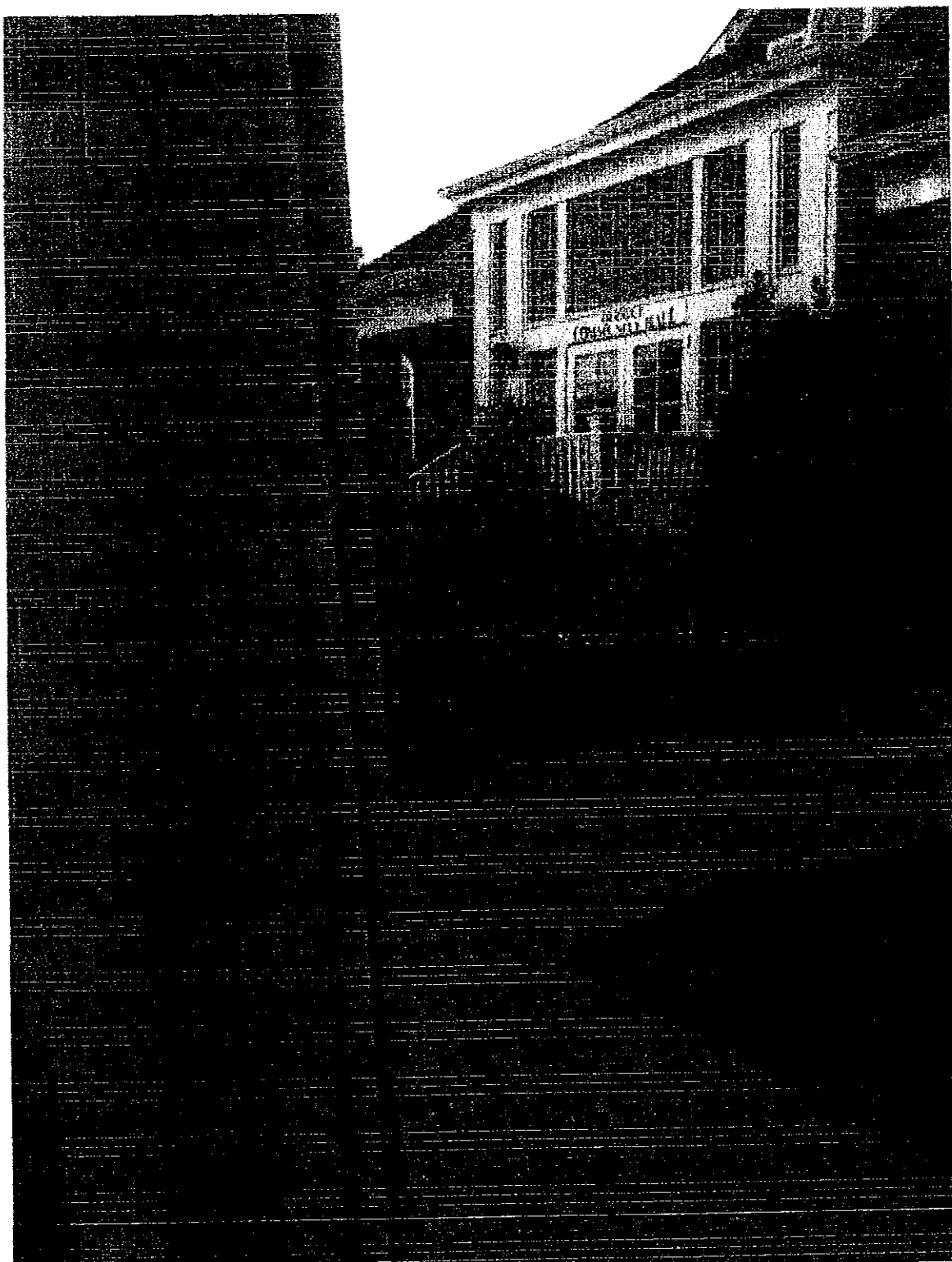




9 Post Lane, Quogue



Jessup Ave. & Village Lane (Quogue Village Justice Court), Quogue



Jessup Ave. & Village Lane (Quogue Village Justice Court), Quogue

107 Montauk Highway, Quogue

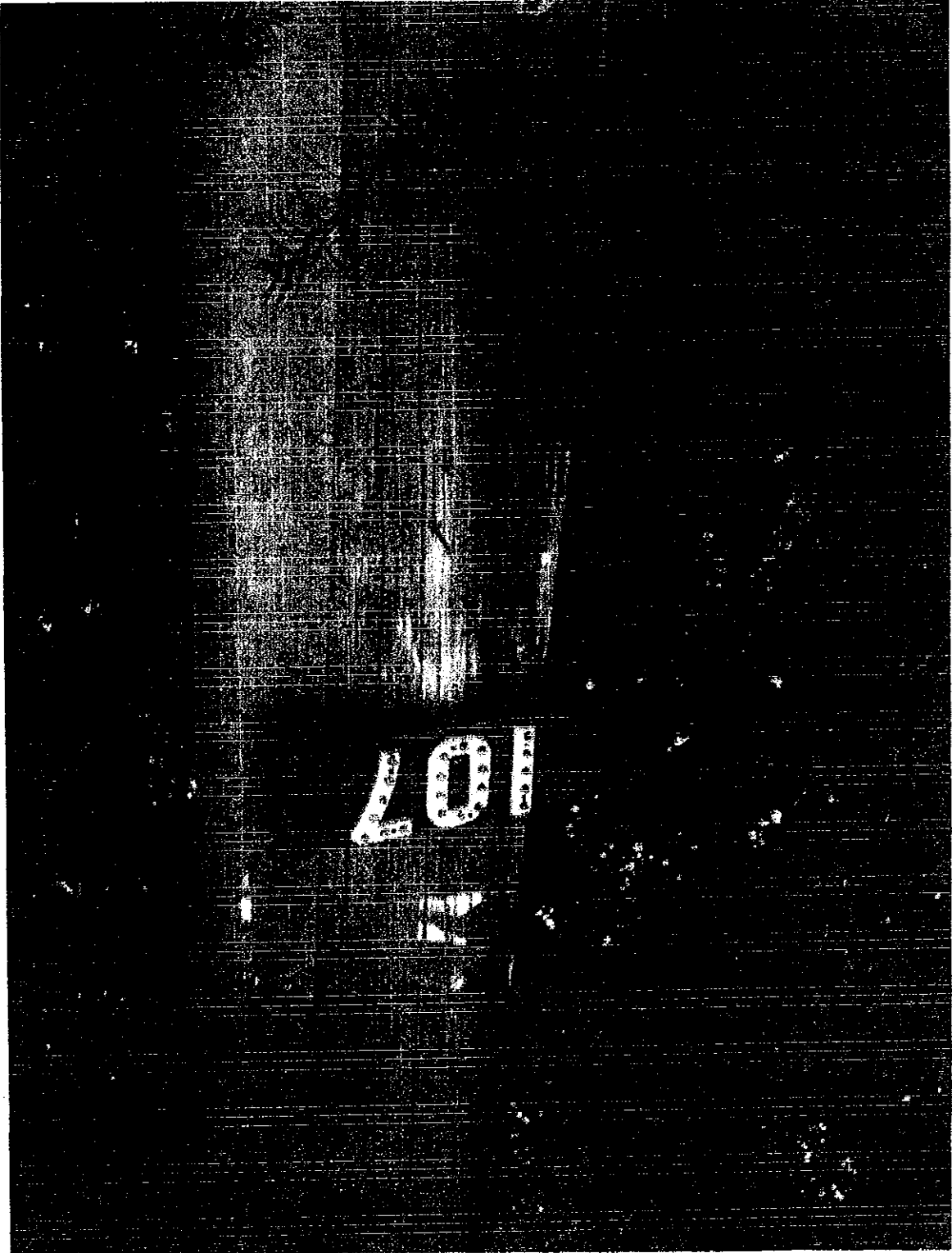
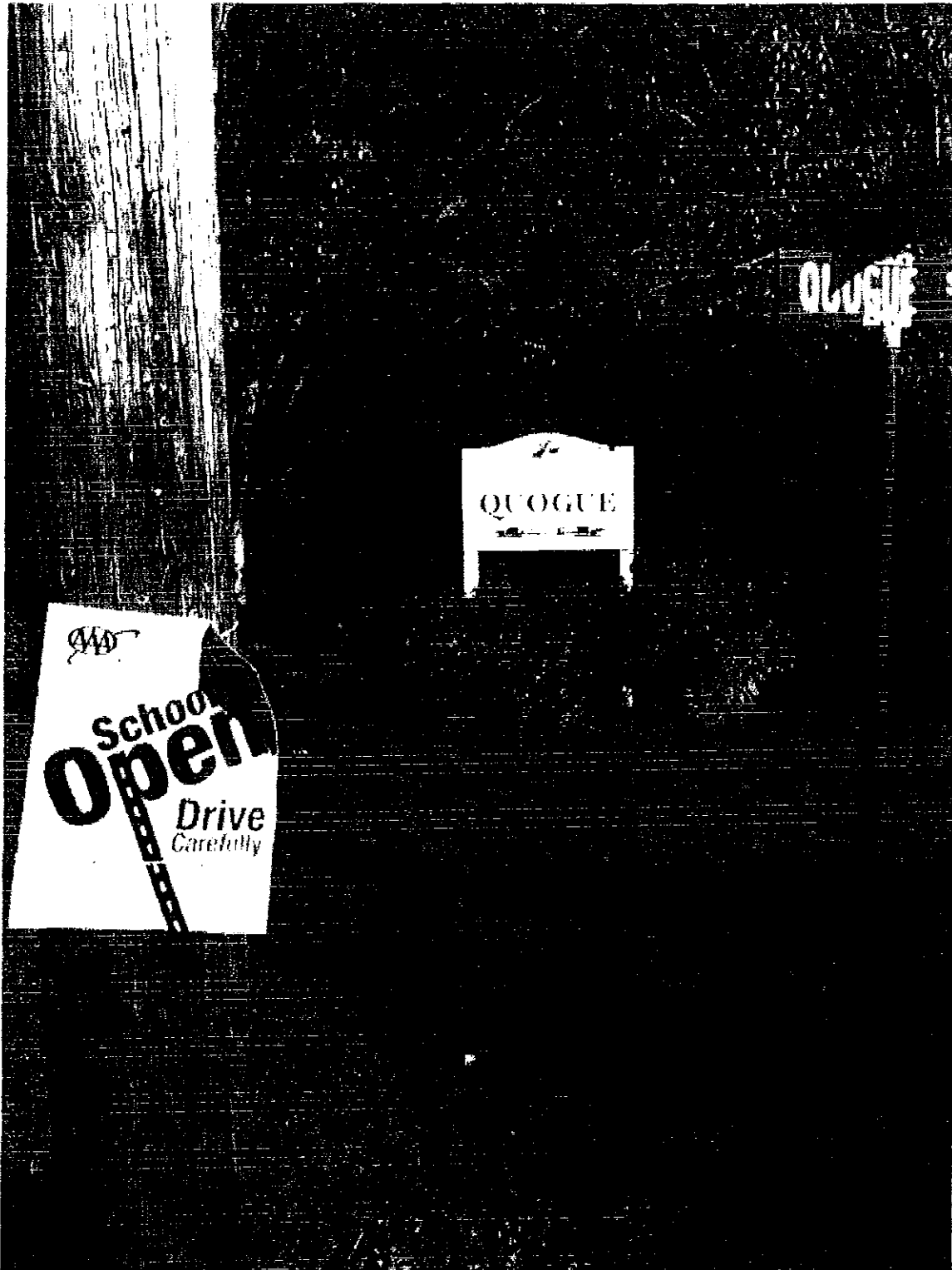


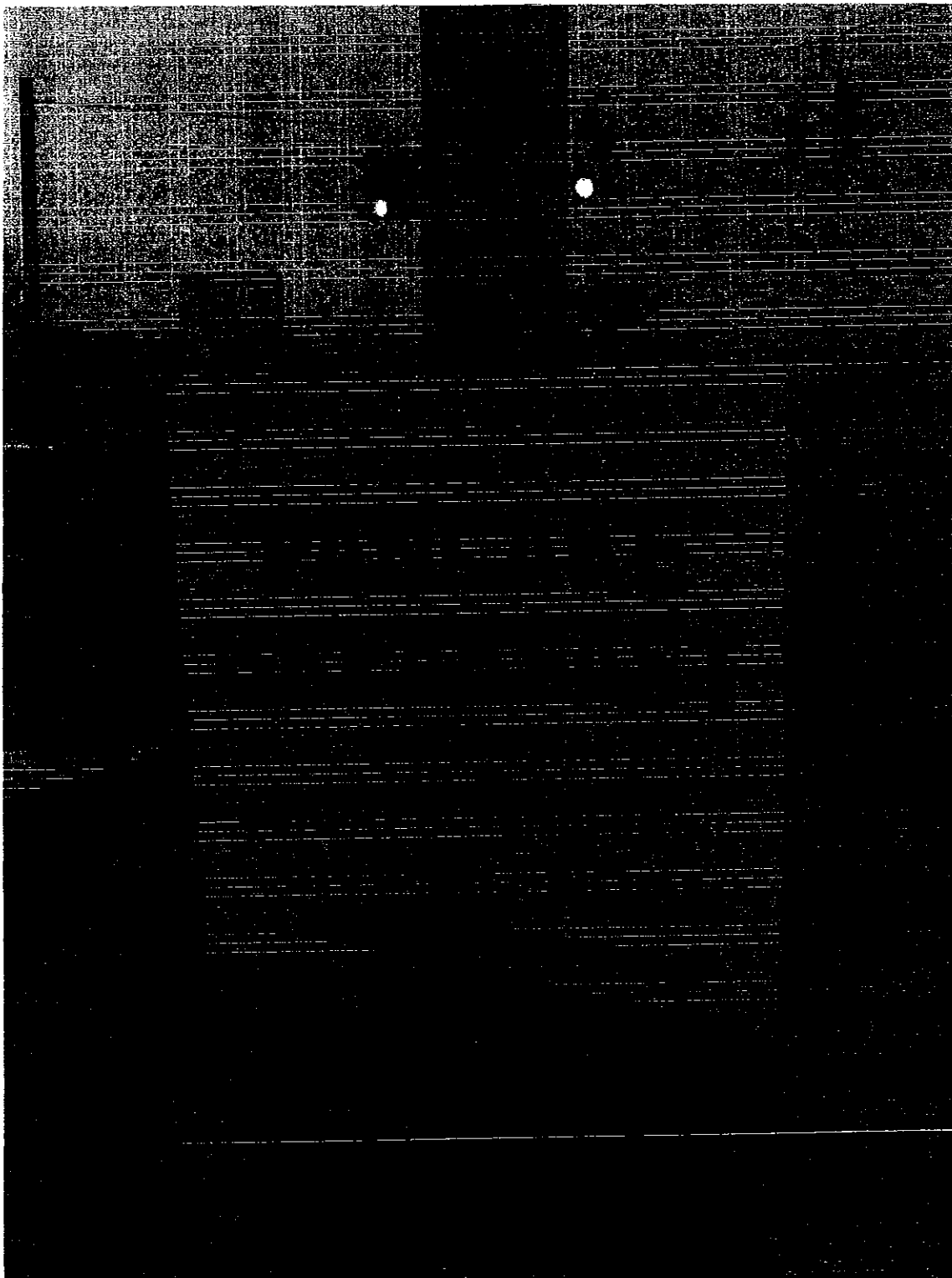
Exhibit R



Quogue St. & Montauk Highway, Quogue



Montauk Highway & Foster Rd., Quogue



Montauk Highway and Jessup Lane

Exhibit M



Village of Quogue, N.Y.

P.O. Box 926
Quogue, New York 11959-0926

(631) 653-4498 Fax (631) 653-4776

PETER SARTORIUS
Mayor

MARCIA ROSE KOZIARZ
Village Clerk

TO: Mayor Sartorius

FROM: Richard E. DePetrìs, Village Attorney
Marc A. Hamilton, Special Counsel

RE: East End Eruv Association (the "Association")

DATE: November 19, 2010

This memorandum is intended as a response invited by the last paragraph of the letter of Verizon's Assistant General Counsel to you dated October 26, 2010 pertaining to the Association.

It appears that the Association seeks or intends to seek licenses from Verizon and LIPA for the attachment of lechis to Verizon and LIPA utility poles located on Village streets for the purpose of establishing an eruv. Although the Association suggests that permission from the Village is not necessary, the opinion letter of the Association's attorney does not address the applicable New York statutory provisions relating to permission from the Village and only superficially addresses Chapter 158 of the Village Code. Moreover, the Association ignores the constitutional implications of government endorsement of the Association's desire to establish boundaries that are determined by religious identity or doctrine.

Pursuant to §6-602 of the Village Law, the streets of the Village are under the "exclusive control and supervision" of the Village Board of Trustees. Pursuant to §4-412(3)[6] of the Village Law, the Village Board of Trustees has the power to grant rights and franchises or permission to use the Village streets or any part thereof or the space above or under them for any specific purpose upon such terms and conditions as the Village Board of Trustees may deem proper and as may be permitted by law.

The attachment of lechis to utility poles located on Village streets for the purpose of establishing an eruv involves use of the Village streets.¹ Pursuant to §6-602 and §4-412(3)[6] of the Village Law, permission from the Village Board of Trustees is required.

¹ Utility poles located on Village streets are obviously located in part in the space above or over Village streets. Thus lechis attached to the utility poles would obviously be located in the space above or over Village streets. The apparent contrary suggestion in the opinion letter of the Association's attorney is not comprehensible.

Electric and telephone corporations are types of transportation corporations under the Transportation Corporations Law. The powers of an electric corporation in relation to public streets are set forth in §11 of the Transportation Corporations Law. The powers of a telephone corporation in relation to public streets are set forth in §27 of the Transportation Corporations Law. The powers of LIPA are set forth in Title 1-A of the Public Authorities Law (see, e.g., §§ 1020-f, 1020-g and 1020-h). There is no statutory provision which empowers an electric corporation, a telephone corporation or LIPA to use (or grant a license to use) utility poles located on Village streets for a use which is not related to electric or telephone or other utility purposes. Accordingly, the Association is asking Verizon and LIPA to provide what they do not have the power to provide in the absence of Village approval. Any license by Verizon and/or LIPA to the Association would therefore have to be conditioned upon obtaining permission from the Village Board of Trustees.

By way of analogy, although the Metropolitan Transportation Authority and the Long Island Railroad are generally exempt from local regulation when performing their transit functions, such exemption is not applicable to facilities that are devoted to purposes other than transit purposes. (*People v. Witherspoon*, 52 Misc2d 320 (Dist. Ct., Suffolk Co., 1966)).

Matter of Green v. Miller (249 NY 88 [1928]), cited by the Association's attorney, was an action by a citizen/taxpayer to compel a city official to remove certain alleged street encroachments on the ground that they constituted a public nuisance. The Court of Appeals did find that the encroachments involved were not a public nuisance, but that was entirely because the city had given its permission for them to be there. The court stated unequivocally that an unauthorized private use of city streets is illegal while also affirming the power of the city to give permission for the private use. The case does not support the Association's suggestion that no permission from the Village is required for the attachment of lechis to utility poles located on Village streets. Indeed, the decision stands for the opposite conclusion: that permission from the Village Board of Trustees is necessary.

Wolff v. District of Columbia (196 U.S. 152 [1905]), cited by the Association's attorney, also does not support the Association's suggestion that permission from the Village is not required for the attachment of lechis to utility poles located on Village streets for the purpose of establishing an enrv. In *Wolff*, the plaintiff was injured as a result of falling over a stepping stone located on the sidewalk and sought to recover damages from the District. The United States Supreme Court simply rejected the plaintiff's contention that permitting the stepping stone to remain on the sidewalk subjected the District to liability.

Chapter 158 of the Village Code prohibits encroachments upon, into or over public streets and defines the term "encroachment" as including any private use of any portion of a public right-of-way through any structure or device, whether upon, above or under the public right-of-way. The use of "upon, above or under" is consistent with the New York statutory

language, and the definition of encroachment is consistent with the language of the court in Matter of Green v. Miller. There is no basis to conclude that it is so vague as to be unenforceable, as the Association's counsel suggests. Chapter 158 provides the basis for prosecution of a Village Code violation. However, an unauthorized encroachment would still constitute an illegal private use of public streets even if Chapter 158 did not exist.

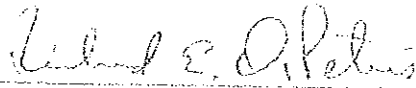
The exception cited by the Association's counsel in the definition of "encroachment" for easements owned by any public service corporation would not be applicable in the absence of the existence of a legal easement that allowed use for both utility and non-utility purposes. The right granted by statute of a utility company to erect utility poles on a public street (such as rights granted by Sections 11 or 27 of the Transportation Corporations Law) is not an interest in real property (an easement) but rather a license or privilege for the use of the public streets for such purpose (see, e.g., New York Telephone Company v. Town of North Hempstead, 41 NY2d 691, 699-700 [1977]).

The Association also attempts to create the impression that the Village is foreclosed from considering an application to create an eruv because the grant of it is mandated by law. Yet, there is no case that supports the Association's attempt to make an end run around Village procedures. The court in Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly (309 F.3d 144 [3d Cir. 2002]) decided the case on its particular facts and did not hold that there is an independent constitutional right to erect an eruv. No case has reached such a holding despite the Association's intimations. The photographs accompanying the opinion letter of the Association's attorney, which depict traffic and public safety signs specifically authorized by law, utility company wiring and a few unauthorized street numbers (since removed), hardly make out a case of discriminatory enforcement that was found to exist in Tenafly.

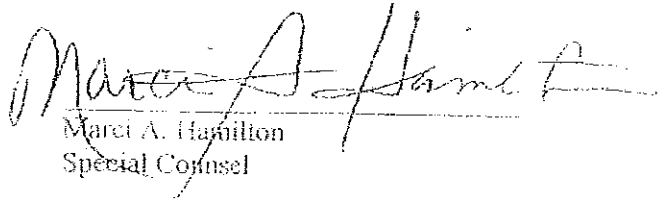
At the very least, grant of permission by a governmental body to create an eruv presents substantial constitutional questions. The more relevant case on these issues is Board of Education of Kiryas Joel Village School District v. Grumet (512 U.S. 687 [1994]), in which the United States Supreme Court held that the Establishment Clause of the First Amendment prohibited the State of New York from drawing a school district boundary according to the perimeter of a religious enclave. Based on that holding, the Establishment Clause does not permit a government to demarcate geographical boundaries dictated by religious belief or doctrine. For this reason, it is a mistake to assume that the Village must grant permission for the creation of a religiously-defined enclave through the use of public rights of way.

The United States Supreme Court has also held that a municipality may constitutionally prohibit the posting of signs on public streets (including signs attached to utility poles located on public streets) and that such prohibition is constitutional as applied to political signs (Members of City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 [1984]). The posting of signs on public streets by individuals involves private use of a portion of a public right-of-way through a structure or device.

For the foregoing reasons, in our opinion permission from the Village Board of Trustees is required for the attachment of lechis to utility poles located on Village streets for the purpose of establishing an env



Richard E. DePetrìs
Village Attorney
Village of Quogue



Marci A. Hamilton
Special Counsel

Exhibit N



Shalom, Shalom, Shalom
The Village of East End Eruv
Association, Inc.
1100 East End Avenue
New York, NY 10021
Tel: 212-666-1100
Fax: 212-666-1101
www.eastend-eruv.org

December 17, 2010

William J. Balcerski, Esq.
Assistant General Counsel
Verizon Corporation
One Verizon Way
Basking Ridge, New Jersey 07920-1007

Dear Mr. Balcerski:

I received your communication of December 1, 2010 in which you forwarded without comment another letter from counsel for the East End Eruv Association, Inc. While I think that a volley of legal opinion letters is not particularly fruitful, I have discussed the latest letter with our counsel and therefore will make a few short points.

The claim that the Religious Land Use and Institutionalized Persons Act ("RLUIPA") is relevant to creation of an eruv is not supported by the statutory language. RLUIPA is only triggered by imposition or implementation of a "zoning or landmarking law" where the claimant has a property interest in the regulated land. Neither circumstance applies in this instance.

Although the Association attempts to make it sound as though the serious establishment clause concerns raised by its demands are settled, the cases cited do not address the full range of arguments under the establishment clause. No federal court of appeals, let alone the United States Supreme Court, has addressed the permissibility of an eruv.

The Village assiduously polices its rights of way and removes unauthorized signs and other private encroachments. No government can achieve 100% compliance at all times. There is no basis for a claim of discriminatory enforcement, and in any event that is most certainly not a judgment that Verizon is authorized to make.

Page 2

As you know from prior correspondence, Chapter 158 of the Quogue Village Code applies to the entire right of way, not just the pavement. Section 6-602 of the New York Village Law applies to both streets and public grounds. The notion asserted by the Association that there is no regulation because the poles are not on the pavement is absurd.

In short, there are laws that we believe clearly prohibit the attachment of leeches to utility poles without the Village's permission, and we will enforce them against Verizon and TPA as the owners of the poles. The Village's ordinance provides for fines of \$1,000 per day and other penalties.

Should you wish to discuss this matter, feel free to call me or our Village Attorney or special counsel.

Sincerely,



Peter Sartorius
Mayor

cc:

Supervisor Anna Throne-Holst, Town of Southampton
Mayor Conrad W. Teller, Village of Westhampton Beach
Michelle Pincus, Esq.
Richard E. DePetrís, Esq.
William W. Esseks, Esq.
Marci A. Hamilton, Esq.

Exhibit O

TOWN OF SOUTHAMPTON

Office of the Town Attorney
116 HAMPTON ROAD
SOUTHAMPTON, NY 11968

Phone: (631) 287-3065
Fax: (631) 287-3662



ANNA THRONE-HOLST
TOWN SUPERVISOR

MICHAEL C. SORDI
TOWN ATTORNEY
KATHLEEN MURRAY
DEPUTY TOWN ATTORNEY
JOSEPH LOMBARDO
SENIOR ASSISTANT TOWN ATTORNEY
KARA BAK
JOSEPH M. BURKE
KATHRYN V. GARVIN
MICHAEL SENDLENSKI
ELIZABETH E. VAIL
ASSISTANT TOWN ATTORNEYS

November 16, 2010

William J. Balcerski, Esq.
Verizon
One Verizon Way
VC54N070A
Basking Ridge, New Jersey 07920-1097

RE: EAST END ERUV ASSOCIATION

Dear Mr. Balcerski:

This will confirm our telephone conversation of yesterday. I called you after seeing reports in the local news media concerning the captioned matter. As I explained, previous reports in the media had indicated that the proposed Eruv was to be located wholly within the confines of an Incorporated Village situate within the Town of Southampton. However, recent reports suggested that the Eruv was now proposed to be located outside of the boundaries of the Incorporated Village and within the geographical limits of the Town. You confirmed this fact and, further, you were kind enough to forward to me your letter to the Village of Quogue dated October 26, 2010, together with the October 5, 2010 letter from the East End Eruv Association, and a copy of the opinion letter of October 4, 2010 from Weil, Gotshal & Manges, LLP.

I point out, at the outset, that the letter from the East End Eruv Association would imply that "the towns" have not submitted any opinion. The Town of Southampton has thus far not entertained any position with regard to this matter as up to this point, the matter was not within our jurisdictional realm. That is, as expressed above, we were under the impression that this matter was confined to the jurisdictional limits of the Incorporated Villages, hence we would have no opinion to offer.

As I understand it now, following our telephone conversation, the proposed Eruv would extend beyond the boundaries of the Village, thereby entering into the jurisdiction of the Town of Southampton. If I am incorrect in this belief, I thank you to correct me.

Assuming, however, that the proposed Eruv is intended to extend to the jurisdiction of the Town of Southampton, I am compelled to notify you regarding the laws of the Town of Southampton which apply in this instance. The Code of the Town of Southampton provides that:

§330-203(B) Prohibited signs. The following signs shall not be permitted within the Town of Southampton:

(10) Temporary or permanent signs resting on, attached to or inside any vehicles, buildings, fences, telephone poles or any other structures or means of support or otherwise displayed in any manner designed to circumvent the restrictions in this article;

Base upon the definitions of our sign law, and based upon the specification you provided to us with your letter, I am compelled to conclude that the lechis constitute a "sign" within the meaning and intendment of our Statute. Accordingly, the same are prohibited.

I must emphasize that our law is content neutral, it makes the owner of the pole legally responsible, and it provides for various penalties including fines of a continuous nature for every day the violation remains.

At this juncture, we have only read reports in the media so we do not know with certainty whether this matter falls within our jurisdiction. We do know, however, that no one, including your organization, has requested permission from the Town of Southampton, nor has anyone filed a required sign application with the Town of Southampton regarding the installation of the said lechis. Since you have indicated to me via telephone that your company was preparing to issue license agreements to permit the installation of lechis, I believe it incumbent upon my Office to advise you, in advance, that should the same be installed within the Town of Southampton, and outside of the geographic boundaries of the Incorporated Villages, it is our opinion that the same would be in contravention of our local laws which we shall endeavor to enforce lest they become meaningless.

I would greatly appreciate the favor of your reply hereto informing us of the exact prospective locations of the lechis, whether they are intended to be located in whole, or in part within any unincorporated areas of the Town of Southampton, as well as your position in light of our specific local law.

Very truly yours,

Michael C. Sordi
Southampton Town Attorney

cc. Hon. Peter S. Sartorius
Hon. Conrad Teller
Michelle Pincus, Esq.
East End Eruv Association, Inc.

Exhibit P

767 Fifth Avenue
New York, NY 10153-0119
+1 212 310 8000 tel
+1 212 310 8007 fax

Weil, Gotshal & Manges LLP

Robert G. Sugarman
+1 212 310 8184
robert.sugarman@weil.com

November 18, 2010

BY MAIL

East End Eruv Association, Inc.
c/o Marvin Tenzer, Esq.
1775 Broadway, Suite 608
New York, NY 10019

Re: East End Eruv Association

To Whom It May Concern:

We have reviewed the November 16, 2010 letter from Southampton Town Attorney Michael C. Sordi to William J. Balcerski ("Sordi Letter") regarding the possibility of an eruv in unincorporated areas of the Town of Southampton. The Sordi Letter references section 330-203(B) of the Code of the Town of Southampton (the "Code"), which states that "[t]emporary or permanent signs resting on, attached to or inside any vehicles, buildings, fences, telephone poles or any other structures or means of support or otherwise displayed in any manner designed to circumvent the restrictions in this article" shall not be permitted within the Town of Southampton (the "Sign Law"). For the reasons explained below, we are of the opinion that affixing lechis, described below, to poles as part of the construction of an eruv presents no violation of this Code provision.

As part of the East End Eruv, lechis will be attached to certain of the poles owned by Verizon and the Long Island Power Authority. The lechis, which are smooth, sanded soft wood strips will be no larger than 1"x4"x40" and will be affixed vertically to the poles. See Lechi Specifications, attached hereto as Exhibit A.

There are at least five reasons why affixing lechis to poles does not violate the Sign Law. First, because the lechis cannot properly be classified as "signs" under the definition set forth in the ordinance, the Sign Law is inapplicable to them. Section 330-201 of the Code defines a sign as:

Any material, device or structure displaying or intending to display, one or more messages visually and used for the purpose of bringing such messages to the attention of the public, but excluding any lawful display of merchandise. The term "sign" shall also mean and include any display of one or more of the following:

A. Any letter, numeral, figure, emblem, picture, outline, character, spectacle, delineation, announcement, trademark, or logo; and

B. Colored bands, stripes, patterns, outlines or delineations displayed for the purpose of commercial identification.

Code § 330-201. The lechis in question simply cannot be classified as “signs” under this definition. The smooth, sanded soft wood strips which would be affixed to the poles do not display or intend to display any message. Indeed, in *Tenafly Eruv Ass’n v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002), the court held that “there is no evidence that Orthodox Jews intend or understand the eruv to communicate any idea or message.” *Id.* at 164. Moreover, the definition’s more specific sub-parts are similarly inapplicable to the lechis in question because they do not consist of “any letter, numeral, figure, emblem, picture, outline, character, spectacle, delineation, announcement, trademark, or logo,” and are not in any way used for “the purpose of commercial identification.” Code § 330-201.

Second, the Sign Law’s own statement of purpose makes clear that the law is not intended to apply to the lechis. It states that “the purpose of this article is to promote the public healthy, safety and welfare through a comprehensive system of reasonable, effective, consistent, content-neutral, and nondiscriminatory sign standards and requirements,” and goes on to list ten more specific “purposes” that the Sign Law is meant to address. Of the ten stated “purposes,” two address business district signage and/or business identification concerns and seven address aesthetic or public safety concerns. As noted above, the lechis serve no business purpose. Additionally, these small strips of sanded wood, which will be firmly affixed to certain telephone poles and nearly impossible to detect, present no aesthetic or public safety concerns.

Third, the Sign Law must be deemed to be inapplicable to the lechis because to hold otherwise would implicate serious constitutional concerns. The U.S. Supreme Court has held that “where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.” *DeBartolo corp. v. Florida Gulf Coast Trades Council*, 485 U.S. 568, 575 (1988). The Appellate Division, Second Department has held that the ability to construct and maintain an eruv is a “valid accommodation to religious practice” under the Free Exercise Clause of the First Amendment to the United States Constitution. *Smith v. Community Bd. No. 14*, 128 Misc. 2d 944, 947 (N.Y. Sup. Ct. 1985) *aff’d* 133 A.D.2d 79 (N.Y. App. Div. 2d Dep’t 1987). Thus, because application of the Sign Law to the lechis would raise “serious constitutional problems” it must be found to be inapplicable.

Fourth, should the Town of Southampton continue to improperly construe the Sign Law to prohibit the construction and maintenance of an eruv, the Town would be in violation of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). RLUIPA provides that “[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person.” 42 U.S.C.S. § 2000cc(a)(1). Although the Sordi Letter notes that the sign law is “content neutral,” such a standard is inapplicable to a RLUIPA claim, which requires that the government must demonstrate that the burdensome law in question is in furtherance of a compelling governmental interest

and the least restrictive means of furthering that interest. *Id.* Southampton cannot meet such a high standard. *See, e.g., Westchester Day Sch. v. Vill of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007) (holding that village zoning board's refusal to issue permit for expansion of a religious school violated RLUIPA and that the board's general interest in enforcing zoning and safety laws was not a compelling interest which justified imposing the burden on the school's free exercise of religion and noting that the board acted out of "undue deference" to the opposition of a small group of neighbors of the school).

Finally, Southampton does not presently enforce the Sign Law. Many utility poles throughout Southampton are covered with signs and other objects that are larger and more visible than the lechis would be. For example, Southampton has allowed signs to be attached to utility poles at Montauk Highway and Seabreeze Avenue, Beaver Lake West and Old Country Road, and many other locations. *See* selected photos of Southampton Utility Poles, attached hereto as Exhibit B. These signs clearly fall within the definition of the Sign Law, unlike the lechis, in that many of them contain words and messages. *Id.* Because Southampton does not uniformly enforce the Sign law, it cannot do so to prevent the construction of an eruv. *See Tenafly*, 309 F.3d at 144 (holding that ordinance which would have prevented the placement of lechis on utility poles could not be enforced because it had not been previously enforced against others).

We are therefore of the opinion that affixing lechis to poles in Southampton would present no violation of the Sign Law or any other provision of the Code. Please do not hesitate to contact me if you have any questions.

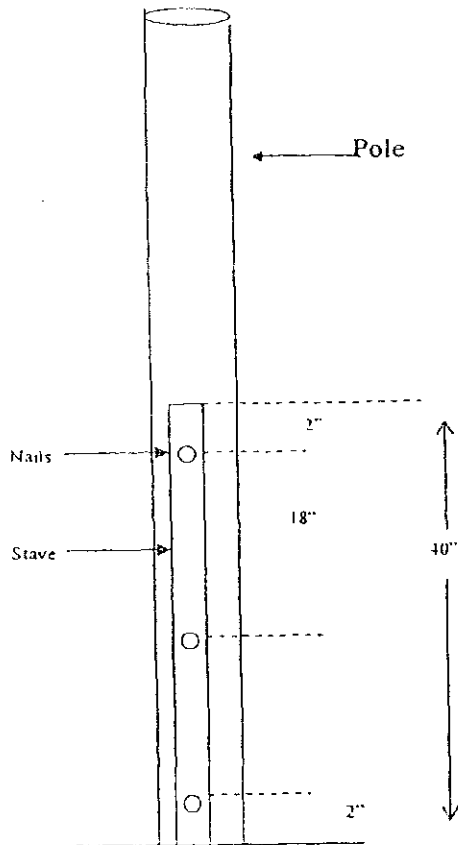
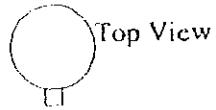
Sincerely,

A handwritten signature in cursive script that reads "Robert G. Sugarman/cr".

Robert G. Sugarman

Exhibit A

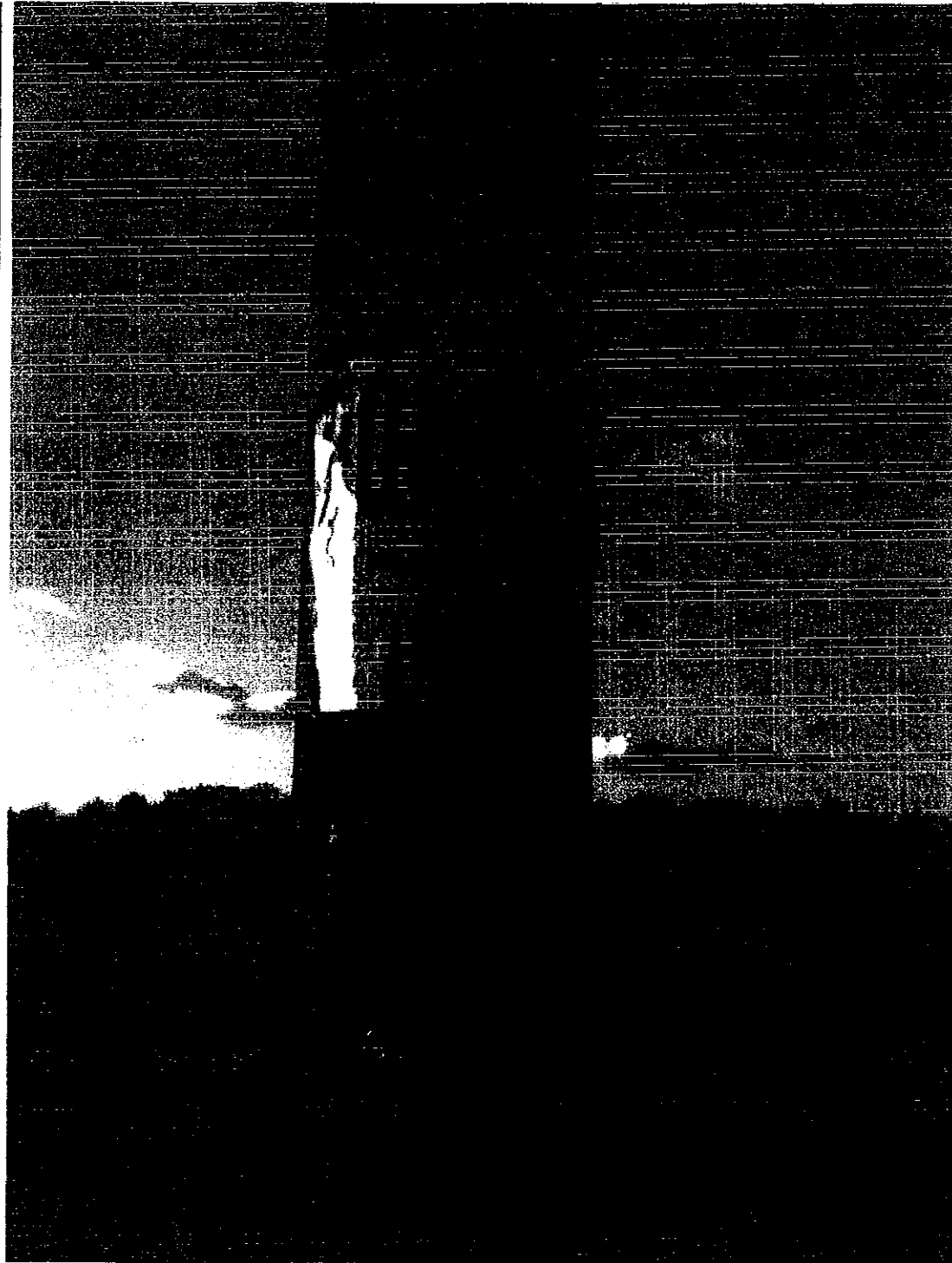
EXHIBIT A



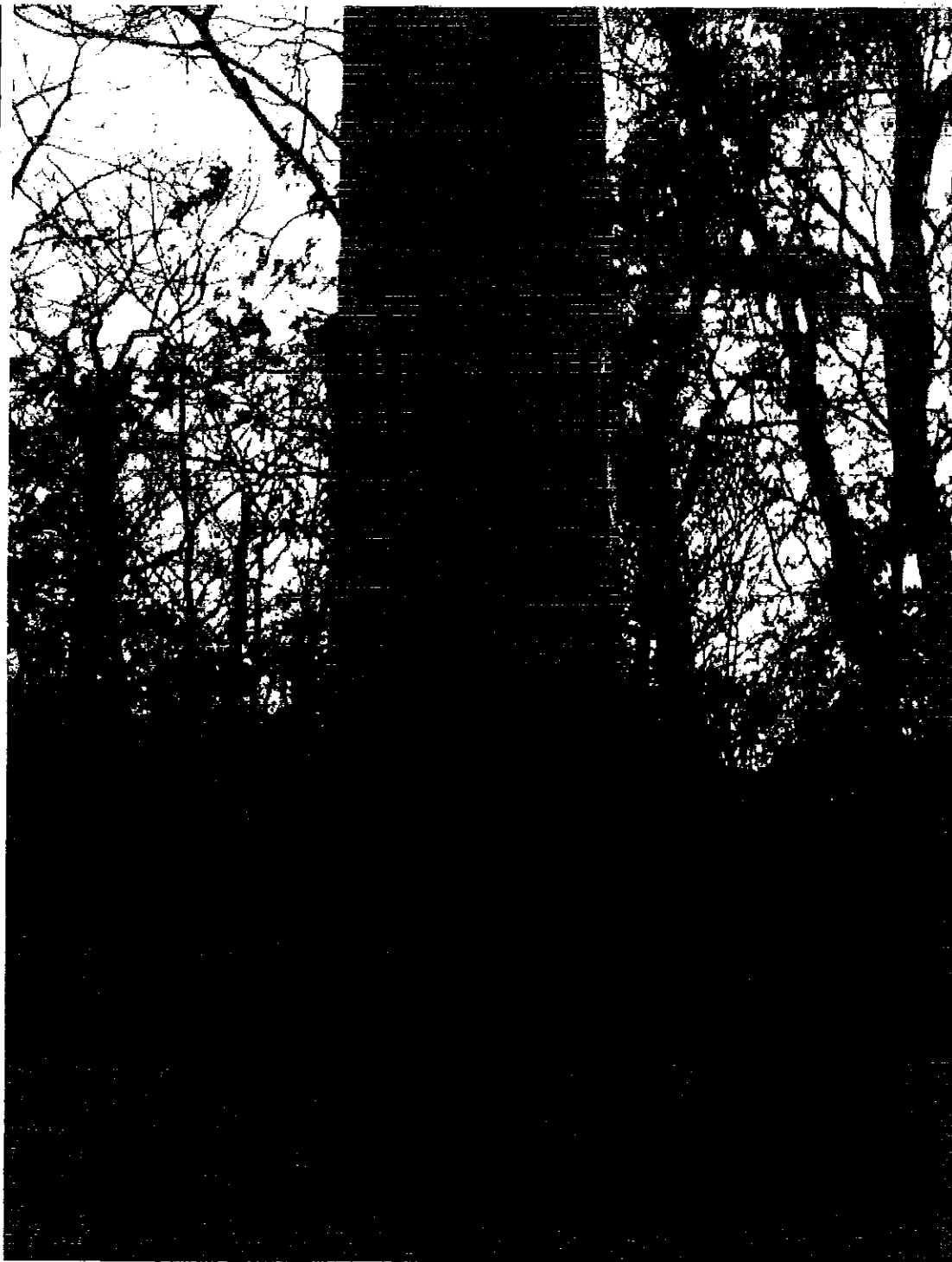
SPECIFICATIONS

1. 1"x2"x40" long
Smooth sanded wood staves painted with wood preservative
2. Fasten securely with B penny galvanized common nails with minimum spacing as shown
3. Wood staves will not be placed where they may interfere with existing attachments

Exhibit B

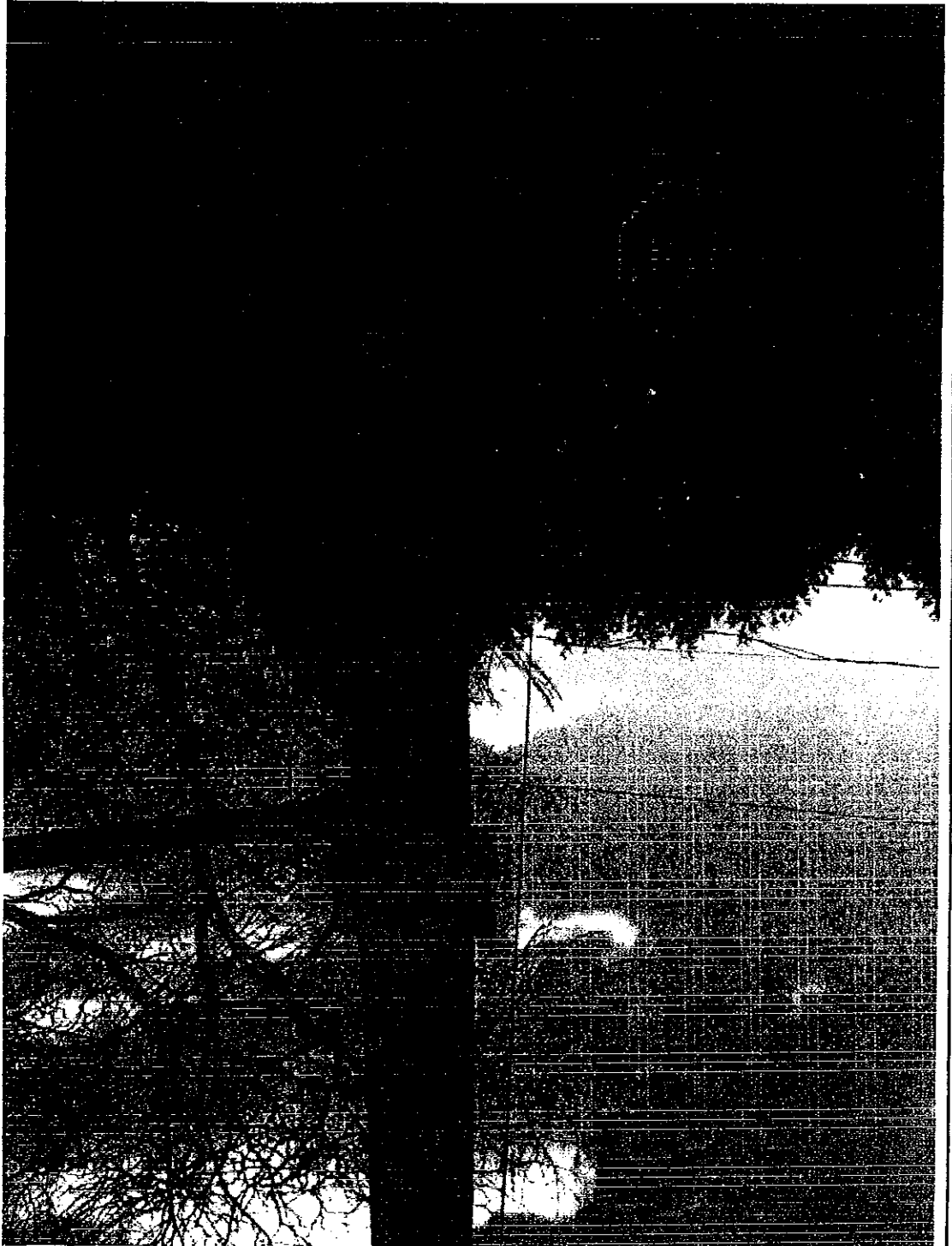


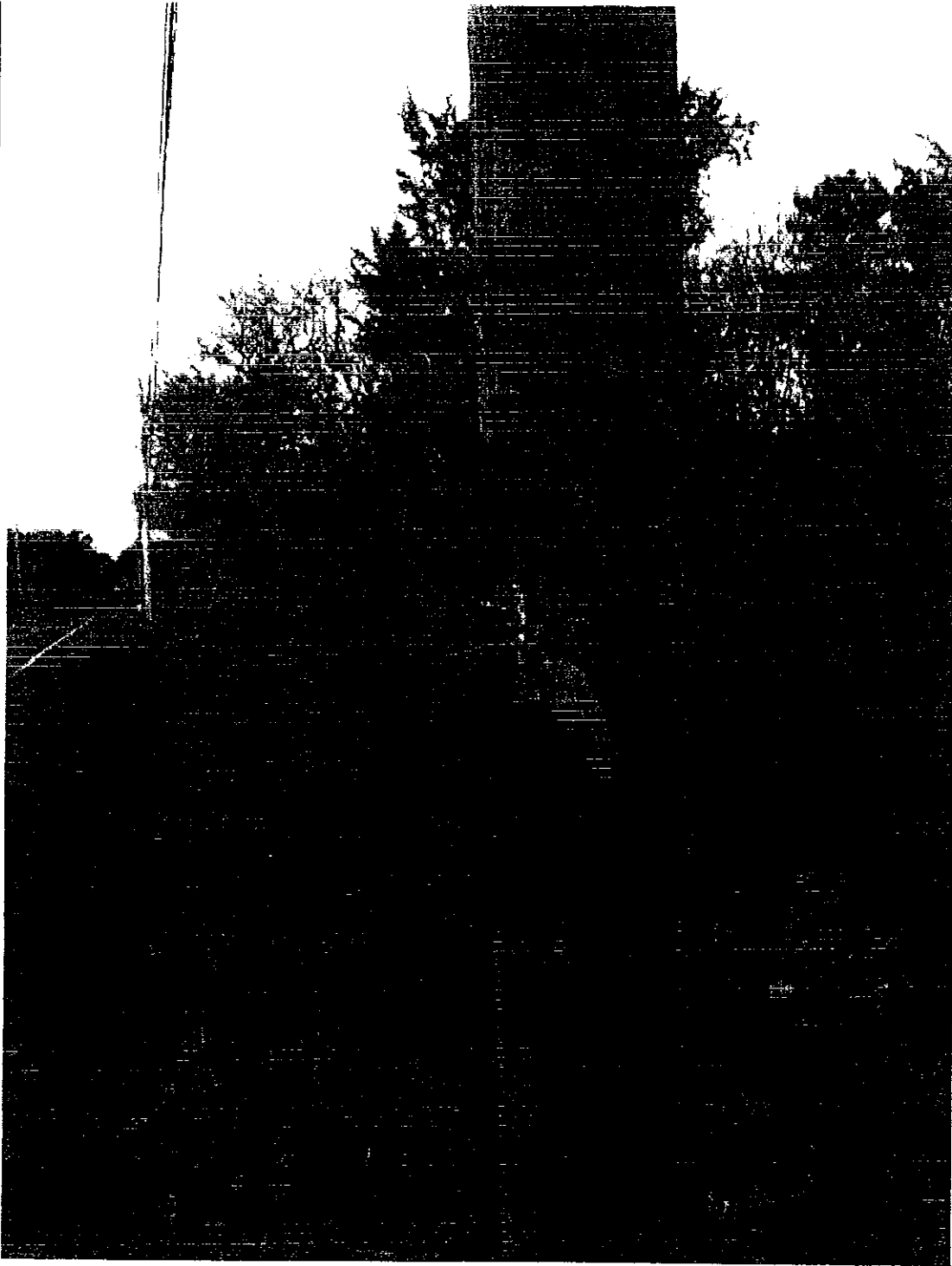
Sent from my iPhone



Sent from my iPhone

Sent from my iPhone





Sent from my iPhone