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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF
ROSEN, AND TZVI SCHONFELD,

Plaintiffs,

v.

THE BOROUGH OF UPPER SADDLE
RIVER,

Defendant.

Civil No.: 2:17-CV-05512-JMV-
CLW

Civil Action

**DECLARATION OF
JAMES DOUGHERTY**

I, James Dougherty, declare under penalty of perjury:

1. I am an employee of the Borough of Upper Saddle River (USR).
2. I currently serve as a full-time Code Official with the USR's Building Department and have done so for approximately 14 years.
3. Accordingly, I have both personal and institutional knowledge with respect to the USR's enforcement of its policy and

code provisions prohibiting the placement and installation of unauthorized signs and devices on utility poles within USR.

4. This prohibition has been consistently enforced and uniformly and without regard to the content of the signs or devices at issue.

5. It has been the responsibility of the USR's Police Department (USR PD) and the Department of Public Works (DPW) to enforce this prohibition by removing unauthorized signs and devices placed on utility poles.

6. If a sign, device, or other matter that violated the law is within a USR PD officer's reach and can be safely removed by the officer, the unauthorized sign, device, or other matter would be removed by a USR PD officer without regard to the content of the sign, device, or other matter.

7. If an sign, device, or other matter that violates the law is out of reach or affixed in a manner that prevents an officer from safely removing the unauthorized sign, device, or other matter with his or her hands, then the officer would (1) notify the property owner and have the property owner remove the unauthorized sign, device, or other matter; or (2) the DPW would be notified and a DPW staff member would be dispatched to remove the unauthorized sign, device, or other matter using a truck or other device that could safely reach the item. This is also done without regard to the content of the item.

8. If the owner of the removed unauthorized sign, device, or other matter is clear from the face of the item removed, then the owner is notified that the sign, device, or other matter is at the USR PD. However, if the owner fails to retrieve the sign, device, or other matter it would be discarded.

9. USR has consistently enforced and continues to consistently enforce this prohibition, even against extensions of its own government.

10. For example, in or around 2013 or 2014, an USR employee even caused the USR Fire Department's signs, advertising a car show fundraiser, to be removed from utility poles.

11. It has been my experience that USR has consistently enforced its policy and code provisions prohibiting the attachment of unauthorized signs, devices, and other matter to utility poles.

12. In fact, I remember on many occasions observing piles of signs, devices, or other matter removed from utility poles piled behind the USR PD building.

13. Further, in a concerted effort to continue uniform application of this policy and USR's code provisions, members of the USR Building Department, myself included, continue to identify unauthorized signs, devices, or other matter affixed to utility poles and notify USR's enforcement agents (i.e., the USR PD and DPW) to ensure removal.

THE ERUV

14. On June 12, 2017, I was contacted by the USR PD and advised that police officers observed persons installing items on utility poles possibly without a permit.

15. I proceeded to the area of the intersection of West Saddle River Road and Sparrowbush Road where I came upon a USR PD Officer who appear to have stopped several persons, and a bucket truck, who were installing objects on utility poles.

16. I located these unknown individuals, who I now believe to be members of the Vaad haEruv, and inquired what they were doing and with whose authority. I was presented with a single page, undated vague letter from Orange and Rockland ("O & R"), the local electric utility company that owns some, but not all, of the utility poles in USR, which stated that the Vaad haEruv has authority to "install and maintain attachments on poles owned by [O & R] in Rockland and Bergen counties." See Declaration of Rabbi Chaim Steinmetz ("Steinmetz Decl."), Exhibit A, page 1.

17. I called and left a message with Michelle Damiani of O & R that informed her that USR did not give the Vaad haEruv permission to attach lechis on utility poles within USR.

18. After this, I contacted Scott Meier, also of O & R, to determine if the Vaad haEruv had permission from O & R to place objects on utility poles. Mr. Meier informed me that he did not believe the Vaad haEruv had permission and he was on his way to meet me where I had located the Vaad haEruv members. When Mr. Meier

arrived, he also reviewed the letter referred to in paragraph 17, above, and informed me that it appeared the Vaad haEruv had O & R's permission to install the lechis.

19. At this time, it was still not clear to me that the Vaad haEruv had obtained consent to install the eruv from USR itself. Accordingly, after a brief discussion with Mr. Meier, the Vaad haEruv members and I collectively determined that the best course of action would be for the Vaad haEruv members to discontinue their work. Accordingly, the Vaad haEruv members discontinued their work.

20. I have reviewed the Steinmetz Decl., submitted by Plaintiffs in support of their motion for a preliminary injunction. Contrary to what is said there, I never advised anyone that the Vaad haEruv members were to discontinue their work "by order of Upper Saddle River Mayor Joanne Minichetti." Steinmetz Decl., ¶ 11.

21. Also contrary to the Steinmetz Decl., I recall my next interaction with the Vaad haEruv was on June 15, 2017 not "the next day." Steinmetz Decl., ¶ 12. On June 15, 2017, I met with two members of the Vaad haEruv, along with Steven Forbes, who is an employee of USR. As Rabbi Steinmetz has admitted, I made clear at that meeting that USR was still evaluating whether the attachment of lechis to utility poles violated any laws or required action by USR. Id.

22. During this meeting, the Vaad haEruv members discussed at length the purpose of an eruv and the installation/inspection of lechis. The members of the Vaad haEruv explained that lechis were placed on poles as a directional sign that communicated to the observer the direction of the outer limits of the eruv. For example, if an observer approaches a three-way intersection and the eruv proceeds in only two directions, there would be lechis on two sides of the utility pole indicating what directions the eruv goes.

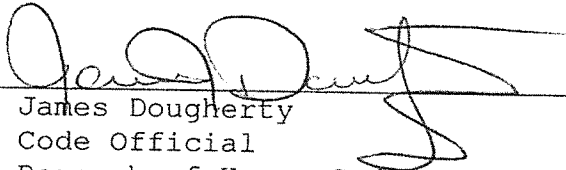
23. Eventually, I excused myself without stating where I was going. I went to speak with Theodore Preusch, the Borough Administrator, and not the Mayor as the Steinmetz Decl. erroneously surmises. Steinmetz Decl., ¶ 13. I advised Mr. Preusch that members of the Vaad haEruv were meeting with Mr. Forbes and I and that the members of the Vaad haEruv wanted to know what they needed to do to proceed with installing an eruv by attaching lechis to utility poles. At the conclusion of our discussion, I understood Mr. Preusch to have told me that I should direct the Vaad haEruv representatives to the USR PD, which enforces the sign ordinance. Additionally, I was told the Vaad haEruv could temporarily install lechis pending approval of USR, so long as its members met with the USR PD and followed all of the USR PD guidelines for construction, and notified it of when and where the Vaad haEruv would be working. Further, regardless of what was said, the

ordinances are clear, neither Mr. Preusch nor I have authority to give the Vaad haEruv permission to install these lechis - to suggest otherwise is disingenuous.

24. When I returned to the Vaad haEruv and Mr. Forbes, I told the Vaad haEruv representatives they could continue their work temporarily, but were to comply with all USR PD requirements and I suggested they have a pre-construction meeting with the Chief of Police.

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

By:


James Dougherty
Code Official
Borough of Upper Saddle River
Building Department

Executed on: November 1, 2017