

EXHIBIT H

Weil, Gotshal & Manges LLP

BY E-MAIL

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Yehudah L. Buchweitz

July 19, 2017

Mayor Michael Ghassali
12 Mercedes Drive
Montvale, NJ 07645
mghassali@montvaleboro.org

Re: *Chestnut Ridge Eruv Association*

Dear Mr. Mayor:

We represent the Chestnut Ridge Eruv Association (“CREA”), a not-for-profit company being incorporated for the purpose of coordinating efforts to expand an eruv in parts of Montvale Borough. I write regarding your recent directive to Borough police officers to stop their ongoing work with the CREA, and your suggestion that you *may* (but not necessarily will) raise the issue of an eruv in Montvale at the Borough’s upcoming council meeting, which is not scheduled to take place until the end of the month.

For your reference, an eruv is a virtually invisible unbroken demarcation of an area which may be established by the attachment of wooden or plastic strips, called “lechis,” to telephone or utility poles. Jewish law prohibits the carrying or pushing of objects from a private domain, such as a home, to the public domain on the Sabbath and Yom Kippur. Based on the sincerely-held religious belief of certain observant Jews, without an eruv, they are unable to leave their homes on these days to attend services at synagogue or be with family and friends if they are, for example, pushing a baby stroller or wheelchair, or carrying things such as prayer books, keys, or medications. Thus, absent an eruv, observant Jews are deprived of the opportunity to participate in mandatory communal prayers and observances. Accordingly, a multitude of eruvin (the plural of “eruv”) have been established statewide and nationwide.¹

¹ The first eruv in the United States was established in 1894 in the city of St. Louis, Missouri. Since then at least twenty-eight out of the fifty states now contain one or more municipalities with an eruv. These include, among many others: Cherry Hill, East Brunswick, Englewood, Fort Lee, Maplewood, Paramus, Passaic-Clifton, Rutherford, Teaneck, Edison, West Orange, Long Branch, Tenafly, and Ventnor, New Jersey; Westhampton Beach, Southampton, Quogue, Huntington, Stony Brook, Patchogue, East Northport, Merrick, Mineola, North Bellmore, Plainview, Great Neck, Valley Stream, West Hempstead, Long Beach, Atlantic Beach, Lido Beach, Roslyn, Searingtown, Forest Hills, Kew Gardens, Belle Harbor, Holliswood, Jamaica Estates, New Rochelle, Scarsdale, White Plains, Albany, and Manhattan, New York; Bridgeport,

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As you may know, any legal question regarding *eruv* has been conclusively settled, as *every* court to have considered the matter, including the Third Circuit Court of Appeals (governing New Jersey), has determined that the creation of an eruv is a reasonable accommodation of religious practice under the Free Exercise Clause. *See Tenaflly Eruv Ass'n v. Borough of Tenaflly*, 309 F.3d 144, 176 (3d Cir. 2002); *ACLU of N.J. v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987). Following its successful *pro bono* representation of eruv proponents in Tenaflly, this law firm recently represented an eruv association in multi-year litigation against the municipalities of Westhampton Beach, Quogue, and Southampton, NY. There, New York state and federal courts, including the Second Circuit Court of Appeals, ruled in favor of the eruv association, finding, among other things, that municipal non-interference with the creation of an eruv is a constitutional exercise of religious freedoms and “[n]eutral accommodation of religious practice,” (*see Jewish People for the Betterment of Westhampton Beach v. Vill. of Westhampton Beach*, 778 F.3d 390, 395 (2d Cir. 2015)); that utility companies have the authority under state law to enter into contracts for the attachment of lechis to poles (*see Verizon New York, Inc., et al. v. The Village of Westhampton Beach, et al.*, 11-cv-00252 (E.D.N.Y. Jun. 16, 2014)); and that lechis are not signs for the purpose of town sign ordinances, and municipalities have affirmative duties to accommodate religious uses of utility poles (*see East End Eruv Ass'n v. Town of Southampton, et al.*, No. 14-21124, 2015 WL 4160461 (Sup. Ct. Suffolk Cty., Oct. 24, 2014)). An eruv has now been up in these municipalities for almost two years, without further dispute or controversy.

In fact, in the days following the Second Circuit’s unanimous decision in January 2015 in a case that I argued, your predecessor Mayor Fyfe issued a public statement recognizing that an eruv is constructed “so as to be unobtrusive and nearly invisible to the general public,” and that it “has been universally held that the construction of an eruv serves ‘the secular purpose of accommodation’ and does not violate the separation of Church and State.” As that statement correctly noted, “[a]bsent any compelling safety

Hartford, Norwalk, Stamford, New Haven, and Waterbury, Connecticut; Boston, Cambridge, Springfield, and Worcester, Massachusetts; Providence, Rhode Island; Berkeley, La Jolla, Long Beach, Los Angeles, Palo Alto, San Diego, and San Francisco, California; Pittsburgh, Philadelphia, and Lower Merion, Pennsylvania; Chicago, Buffalo Grove, Glenview-Northbrook, and Skokie, Illinois; Ann Arbor, Southfield, Oak Park, and West Bloomfield Township, Michigan; Baltimore, Potomac, and Silver Spring, Maryland; Charleston, South Carolina; Birmingham, Alabama; Atlanta, Georgia; Las Vegas, Nevada; Miami, Ft. Lauderdale, Boca Raton, Boyton Beach, Deerfield Beach, Delray Beach, and Jacksonville, Florida; Denver, Colorado; Cleveland, Cincinnati, and Columbus, Ohio; Portland, Oregon; Memphis and Nashville, Tennessee; New Orleans, Louisiana; Dallas, Houston, and San Antonio, Texas; Richmond, Virginia; Seattle, Washington; Phoenix, Arizona; and Washington, D.C. Most recently, eruvim have been established in Plano and Austin, Texas; Scottsdale, Arizona; and Omaha, Nebraska. On the occasion of the inauguration of the first eruv in Washington, D.C., President George H.W. Bush wrote a letter to the Jewish community of Washington in which he stated: “there is a long tradition linking the establishment of eruvim with the secular authorities in the great political centers where Jewish communities have lived. . . . Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. G-d bless you.” *See* 1990 Letter from George Bush to Congregation Keshet Israel, attached hereto as Exhibit A.

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concerns, there is little role for Montvale to play in what amounts to a private negotiation between Orange and Rockland and the community that requested the eruv.” *See* Eruv Statement by Mayor of Montvale, attached hereto as Exhibit B.

We were therefore very surprised to learn that you had recently ordered the cessation of privately-negotiated work to attach lechis to a few utility poles in Montvale. These few remaining lechis represent the last step in an eruv expansion project that has been ongoing with appropriate coordination from, and the approval of, Montvale police. Notably, significant funds have already been expended by representatives of the CREA in connection with this project.

By way of further background, over the past five months, an eruv has been created in parts of Mahwah and Upper Saddle River, New Jersey, by attaching over 200 lechis to utility poles pursuant to licenses negotiated between community members using the eruv and Orange and Rockland. In each of Mahwah and Upper Saddle River, the municipalities were aware of and voiced no opposition to the Jewish community’s efforts to create the eruv, and worked collaboratively with Rabbi Chaim Steinmetz, who in turn complied with all paperwork and safety measures that were requested. The eruv in Mahwah and Upper Saddle River is an extension of an eruv that begins in Suffern, NY, and serves thousands of observant Jewish families. Without further expansion, however, at least 250 families who are residents of Montvale, Chestnut Ridge, and parts of Upper Saddle River and who would benefit from the eruv currently fall outside of it.

Accordingly, Rabbi Steinmetz met with Montvale police officers to discuss plans to expand the existing eruv by attaching 27 lechis to utility poles within Montvale. Rabbi Steinmetz spoke multiple times to Montvale police officers, including Captain Joseph Sanfilippo, regarding the safe installation of the lechis,² and he was advised that CREA should retain a certified flagman for the lechis, and to hire the requisite police officers for an intersection where six of the lechis would be put up. Following the instructions received from the police, Rabbi Steinmetz and members of the CREA invested in obtaining certification for a flagman, paid for the police presence, and rented the necessary equipment, only to learn on Monday, July 12 that you ordered Captain Sanfilippo to cease any work on the project. When Rabbi Steinmetz requested a meeting with you to discuss the stop work order, he was initially told that

² We have reviewed the Borough’s ordinance regulating signs (Montvale Borough Code §128.9.7A.1) and find no prohibition on lechis – plain, plastic or wooden strips painted to blend in with poles, which do not meet the definition of a “sign,” therein. *See* Borough Code § 128.9.7A.2 (defining “sign” as “any device either freestanding or attached to ... any building or structure, including telephone poles, which displays, reproduces or includes any letter, word, name, number, model, insignia, emblem, design, device or representation used for one or more of the following purposes: to identify the premises or occupant or owner of the premises; to advertise any trade, business, profession, industry, service or other activity; to advertise any product or item; to advertise the sale or rental or use of all or part of the premises, including that upon which it is displayed; to direct vehicular or pedestrian traffic, other than state, county or municipal highway and roadway markers; and shall include any announcement, declaration, demonstration, display, illustration, insignia or any representation used to advertise or intended to advertise or promote the interests of any person.”).

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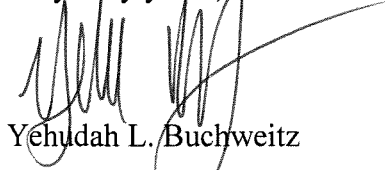
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you were not available, and only after reiterating the importance of the eruv to the hundreds of families who are being left out of the eruv was a meeting granted on Tuesday, July 11. We understand that you ended the July 11 meeting by stating that you would consider (but not commit to) bringing the issue up at the next Borough Council meeting, which is not until July 25.

This is extremely problematic because observant Jewish members of the Montvale community and neighboring areas suffer practical difficulties and hardships each and every week that passes without an eruv, as the elderly, disabled, and families of young children are confined to their homes and thus separated from family members and the rest of the community. We remind you that municipal intransigence in accommodating sincerely-held religious beliefs of these community-members by obstructing the creation of an eruv can constitute constitutional injury, and has given rise in other cases to claims for violation of, among other things, individuals' First Amendment Free Exercise Clause rights and 42 U.S.C. § 1983. Each week that you delay by issuing a stop work order only further compounds the ongoing harm to these families. We also note that Montvale's neighboring municipalities have each rightly declined to obstruct the construction of an eruv (which would be a costly and assuredly unsuccessful endeavor).

For all of these reasons, we respectfully request that you immediately rescind the stop-work order, and permit the Montvale police to reengage with Rabbi Steinmetz and the CREA forthwith. Although we believe any legal issues associated with eruvim to have been conclusively settled by the federal courts, as Montvale itself has previously and publicly recognized, we are available at your earliest possible convenience to discuss any questions or concerns with the Borough. We reserve all of our client's legal rights.

Very truly yours,



Yehudah L. Buchweitz

cc: Philip-N. Boggia, Esq.
Yitzchok Altman
Joel Friedman
Abraham Rosenwasser
Rabbi Chaim Steinmetz
Robert G. Sugarman, Esq.
David Yolcut, Esq.
Jessie B. Mishkin, Esq.

Exhibit A

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THE WHITE HOUSE
WASHINGTON
Eruv Sabbath, 1990

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

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

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

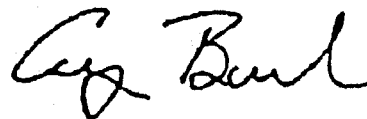


Exhibit B

Message From the Mayor

Several residents have recently brought to my attention the placement of what is known as an *eruv* on utility poles owned and operated by Orange and Rockland in the area of Lark Lane bordering on Chestnut Ridge, New York. In response to these inquiries, I contacted Orange and Rockland and consulted with our municipal attorney. I wanted to briefly address this issue to provide some background information concerning the *eruv* and the way that our courts have handled prior disputes on this issue.

For those who are unfamiliar with the term, an *eruv* is a ritual enclosure that allows members of certain Jewish communities to carry objects and move more freely in their neighborhood on the Sabbath. An *eruv* typically consists of a network of thin wires and posts that are attached to the top of utility poles. Ordinarily, an *eruv* is constructed in a way so as to be unobtrusive and nearly invisible to the general public. For example, they are located all throughout Manhattan, and I personally have never noticed one in all my time in the City.

Courts in both New York and New Jersey have addressed lawsuits filed to either block or permit the construction of an *eruv*. Most recently, in a decision issued on January 6, 2015, the United States Court of Appeals for the Second Circuit dismissed a lawsuit seeking to prohibit an *eruv* in the Long Island community of Westhampton. The Second Circuit relied upon a 2002 Federal decision concerning Tenafly, New Jersey, which affirmed the right to place an *eruv* on utility poles in the municipality with the permission of the utility. In these and other cases, it has been universally held that the construction of an *eruv* serves the “secular purpose of accommodation” and does not violate the separation of Church and State. Absent any

compelling safety concerns, there is little role for Montvale to play in what amounts to a private negotiation between Orange and Rockland and the community that requested the *eruv*.

I understand that members of the public may have additional questions, and I would be happy to discuss this matter further. If you would like to speak to me about this issue, or about any other issue concerning the Borough, please feel free to contact me at mayorfyfe@montvaleboro.org or to attend one of our council meetings which are held on the second and last Tuesday of every month.
