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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

**SUPPLEMENTAL DECLARATION
OF
ROBERT T. REGAN, ESQ.**

I, Robert T. Regan, Esq., declare under penalty of perjury:

1. I am Borough Attorney for the Borough of Upper Saddle River ("USR").

**PROCEDURE FOR SEEKING RELIEF
FROM ORDINANCES IN NEW JERSEY**

2. I have served as a municipal attorney for various Bergen County communities since 1979. In my experience, generally, New Jersey Ordinances do not have a specific process for seeking a waiver from the applicable municipal officials in connection with an ordinance.

3. There are many examples of ordinances that permit or require waivers or exceptions under certain circumstances, but do not address the procedure for such waiver or exception within the ordinance itself. To list just two examples:

a. Chapter 31 of the Upper Saddle River Borough Code, Alcoholic Beverages, establishes (at §31-4) hours of sale. A party could request approval of the Mayor and Council to vary the hours of sale on special occasions or when special events are scheduled. I recall that for New Year's celebration of the year 2000 several municipalities granted exceptions pertaining to the hours that alcoholic beverages could be served.

b. Chapter 98 establishes hours for use of parks and playgrounds. I recall that groups have requested an exception or modification from the hours of use provision, §98 -3.

These are just a few examples of Code provisions from which an exception may be granted upon application to the Mayor and Council. Most Ordinances do not detail an administrative process to obtain an exception or modification.

4. Accordingly, Plaintiffs disregard that seeking exception or modification from a municipal government is the default procedure for seeking relief from, modification of or exception to a municipal ordinance.

ORDINANCE 16-15

5. Plaintiffs are incorrect in stating USR could have regulated the attachment of political signs to utility poles throughout the entire town pursuant to USR Code §150-21 (the sign ordinance).

6. The USR Code prohibits the attachment of signs to trees, poles, buildings or structures. USR Code §150-21 prohibits affixing signs to both utility poles and standalone poles within USR's right of way in certain zoning districts. See Ex. A, Declaration of Theodore Preusch ("Preusch Decl.").

7. USR Code §76-46 specifically prohibits the posting of garage sale signs on utility poles regardless of zoning districts. Ex. C, Preusch Decl. This code provision does not regulate political signs.

8. The USR Code did not regulate posting political signs to utility poles throughout USR. Moreover, the USR Code did not regulate the affixing of devices and other matter to utility poles (including, but not limited to, house numbers and mailboxes) in any zoning districts. Therefore, the Council passed Ordinance 16-15 to address this gap in regulation.

9. Nonetheless, Plaintiffs distract from the reality of this regulation. Political signs were the inciting force which caused USR to recognize much larger issues that it was, and is, empowered to address through its police powers. Foremost, USR sought to address public safety concerns (e.g., preventing the obstruction of motorists' vision, preventing the affixing of devices and/or other matter that might inhibit utility companies from performing maintenances to local utilities, and other similar concerns) as well as visual pollution (nuisances).

UNDERGROUND UTILITIES

10. Plaintiffs’ brief in opposition to USR’s motion to dismiss and in further support to their motion for preliminary injunction (“Pa. Opp. Br.”) alleges the Borough Council “met in closed session to discuss “the possibility of installing the town’s infrastructures underground” (i.e., eliminating all utility poles throughout USR).” Pa. Opp. Br., 13-4. Plaintiffs’ misinterpret and exaggerate the contents of the closed session minutes, which read “[d]iscussion took place on the possibility of installing the town’s infrastructures underground which would eliminate black-outs during severe storms and the need to construct sidewalks for safety reasons.” See Ex. M, Reply Declaration of Yehudah L. Buchweitz. These minutes make clear that this brief conversation did not relate in any way related to the *eruv*. Nor do the minutes establish that the Council was even seriously considering a multi-million dollar project to move all existing utility poles underground that would create huge dislocations throughout the community. The Council never took the idea of moving USR’s utilities underground seriously, and no action has been taken by either the Borough Engineer or the Council to implement such a plan. Plaintiffs’ conclusions about this proposal are misplaced and incorrect.

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

By: Robert T. Regan
Robert T. Regan, Esq.
Borough Attorney, Borough of Upper
Saddle River

Executed on: December 12, 2017