

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

January 16, 2012

BY FEDEX

The Board of Trustees of the Village of Quogue
c/o Marcia Rose Koziarz, Village Clerk
7 Village Lane
P.O. Box 926
Quogue, New York 11959

To the Honorable Trustees of the Village of Quogue (the “Board”):

We are *pro-bono* counsel to the East End Eruv Association (“EEEE”).¹ This submission provides the information set forth in the Memorandum of Village Attorney Richard E. DePetris to Mayor Peter S. Sartorius, dated December 22, 2011 (attached hereto as Exhibit A) (the “Memorandum”), in connection with the placement by EEEA of lechis—i.e., staves—on utility poles located in the right-of-way in the Village of Quogue (“Quogue” or the “Village”) for the purpose of establishing an eruv in part of the Village.

What is an eruv?

An eruv, under Jewish law, is a virtually invisible demarcation of an area, which represents an extension of the home. It is a convention that has been in place for over 2000 years to permit observant Jews to carry and push objects on Shabbat and Yom Kippur when traveling between their homes and the synagogue and other people’s homes. There are hundreds of eruvim throughout the United States and scores in New York State alone, including in Nassau, Suffolk, and Westchester Counties. These include: Huntington, Stony Brook, Patchogue, East Northport, Merrick, North Bellmore, 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. Eruvim also exist throughout the country—in Englewood, Fort Lee, Teaneck, Edison, Long Branch, and Tenafly, New Jersey; Hartford, Stamford, and New Haven, Connecticut; Beverly Hills, California; Philadelphia, Pennsylvania; Baltimore, Maryland; Charleston, South Carolina; Las Vegas, Nevada; Miami, Ft. Lauderdale, and Jacksonville, Florida, as examples. An

¹ EEEA is a Type B not-for-profit corporation organized pursuant to Section 201 of the New York Not-for-Profit Corporation Law. The primary purpose for which EEEA was established is to “coordinate efforts toward the promotion and construction of an eruv (a symbolic boundary which permits observant Jews to carry outside their homes on the Sabbath [and Yom Kippur]) in certain parts of Suffolk County, New York,” including the Village. A copy of EEEA’s Certificate of Incorporation is attached hereto as Exhibit B. Members of EEEA include observant Jewish residents of the Village. Additionally, EEEA represents the interests of other, non-member observant Jews residing in the Village.

eruv in Plano, Texas was established in June 2011. The eruv in Washington, D.C. encompasses the White House and the United States Supreme Court.

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 C.

The existence of an eruv in Quogue will yield significant benefits to observant Jews who cannot otherwise carry outside their homes on the Sabbath. Without an eruv, observant Jews are unable to carry ordinary objects, such as water, house keys, or glasses, as well as more important items, such as identification, medicine, canes, or crutches, and are prohibited from pushing wheelchairs or strollers. As a result, men or women who must carry or push such objects cannot attend Sabbath services. On the Sabbath and other special occasions, including the memorial anniversary of loved ones, many observant Jews recite prayers that can only be said with a *minyan* (a quorum of Jewish adults). Without an eruv, observant Jews who use wheelchairs or have children who must ride in strollers are confined to their homes and are therefore unable to participate in these traditions or fulfill many of their other ritual obligations. For example, one Quogue resident who cannot walk the distance between his home and the synagogue because of injuries sustained in an automobile accident is forced to either remain at home on the Sabbath and Yom Kippur, or to go against the full observance of his religious beliefs and drive to the synagogue, where he serves as a lay leader. An eruv in Quogue would avoid the necessity of observant Jews who use wheelchairs being home-bound on the Sabbath and would also allow observant Jews to push their children in strollers on the Sabbath, enabling young families to celebrate and observe the Sabbath together. It would also make those observances safer, by allowing individuals to carry medicines, water, and house keys.

The establishment of an eruv in Quogue will have absolutely no effect on non-Jews and non-observant Jews. They will be deprived of no rights or privileges and will be able to lead their lives exactly as they did before.

Nature of the eruv in Quogue

The eruv being sought will be unobtrusive and unnoticeable to a layperson. After consulting with rabbinic authorities, EEEA has determined that the most feasible and unobtrusive way to establish an eruv in part of Quogue is to attach one or two lechis to a total of forty-eight (48) of the thousands of utility poles within the Village. Of these forty-eight poles, EEEA intends to attach two staves to each of forty-six of the poles; the remaining two poles would only bear one lechi each. A chart identifying the precise location of each designated utility pole, as well as whether EEEA intends to attach one or two staves to a given pole, is attached hereto as Exhibit D.

The lechis that EEEA plans to affix to these poles—which have been approved by Verizon New York, Inc. (“Verizon”) and Long Island Lighting Co., d/b/a Long Island Power Authority (“LIPA”), the owners of the utility poles in question—are 5/8-inch deep, half-round strips of PVC (that can be painted any color to blend in with surroundings) that would measure no more than ten (10) to fifteen (15) feet long. Each lechi will be securely fastened to the utility pole using galvanized common nails. Pursuant to Verizon’s safety specifications, the lechis would run from the ground to no closer than three inches (3”) from the lowest cable on the pole. The cable-side end of each lechi will be capped with a white rubber or plastic tip. See “Lechi Example,” containing Verizon’s required safety specifications for lechis, attached hereto as Exhibit E. The lechis would be almost invisible to an average observer, and as stated above, would have no impact on any member of the community except for those individuals who would be able freely to practice their religion as a result of the construction and maintenance of the eruv. As EEEA’s proposed eruv cannot exist without the attachment of lechis to utility poles, EEEA seeks to attach and maintain lechis on the aforementioned forty-eight designated utility poles for an indefinite and unlimited period of time.

EEEA will, for its part, conduct weekly maintenance and inspection of the lechis to ensure that they remain securely fastened to the forty-eight utility poles. Specifically, a local rabbi will travel along the route of the lechis in Quogue every Friday afternoon to confirm that the lechis remain attached to the utility poles, and that the eruv is therefore functional for the coming Sabbath. Additionally, EEEA will maintain the lechis in accordance with Verizon’s standard maintenance instructions for lechis, which are memorialized in the official form “Lechi Example,” attached hereto as Exhibit E. EEEA will similarly abide by LIPA’s maintenance and safety requirements for pole attachments, as set forth in the License Agreement, dated July 27, 2010, between EEEA and LIPA, attached hereto as Exhibit F.

As noted, the utility poles in question are owned by Verizon and LIPA. Of the forty-eight utility poles in the Village that EEEA has designated for placement of lechis, thirty-one (31) are owned by LIPA, while the remaining seventeen (17) are owned by Verizon. See Quogue Eruv Route Chart, attached hereto as Exhibit D (identifying whether a given utility pole is “electric,” belonging to LIPA, or “telephone,” belonging to Verizon). In New York State, utility poles are the personal property of the public utility corporations that erected them, and no prior municipal approval is required for utilities to permit third-party attachments on their poles. See *N.Y. Tel. Co. v. Town of North Hempstead*, 41 N.Y.2d 691, 699 (1977) (“The town concedes, as it must, that the utility poles themselves are personal property.”); *N.Y. Tel. Co. v. Town of North Hempstead*, 86 Misc.2d 487, 493 (Sup. Ct., Nassau Cnty. 1975), *mod. on other grounds*, 41 N.Y.2d 691 (“[T]he plaintiff [public utility] possesses the right to enter into contractual arrangements with others for the use of space on its poles pursuant to the powers granted in Section 202(a) of the Business Corporation Law.”).²

² Both Verizon and LIPA are authorized under New York law to erect the forty-eight utility poles involved in the present application. As a New York public telephone corporation, Verizon has the right, pursuant to Section 27 of the Transportation Corporations Law, to “erect, construct and maintain the necessary fixtures for its lines upon, over or under any of the public roads, streets and highways.” N.Y. Transp. Corp. Law § 27 (McKinney 2011). This grant of authority assigns substantive rights to public utility corporations to lay and maintain their lines in public thoroughfares, without requiring advance permission from the municipality. *City of New York v. Verizon New York, Inc.*, No. 402961/03, 2008 N.Y. Misc. LEXIS 4572, at *18-*19 (Sup. Ct., N.Y. Cnty. July 7, 2008).² Likewise, LIPA has the authority to construct and erect utility poles within the Village pursuant to Section 1020-g of the Public Authorities Law, which empowers LIPA “to acquire, construct, improve, rehabilitate, maintain and operate such generating, transmission and related facilities as the authority deems

EEEE has entered into agreements with Verizon and LIPA in which each utility has agreed to issue licenses allowing for the installation of the lechis on its telephone or electric poles within the Village. Each of Verizon and LIPA have indicated that they are ready and willing to issue the required licenses pursuant to the terms of contracts with EEEA—but for opposition from Quogue to the installation of the lechis, including threats of fines, as indicated in letters to Verizon from Mayor Peter Sartorius. *See* Statement By Verizon New York Inc. and Long Island Lighting Company d/b/a LIPA In Connection With Plaintiffs’ Motion For The Issuance Of A Preliminary Injunction (Docket No. 57), at 2-3, attached hereto as Exhibit G; June 15, 2011, Hearing Transcript, attached hereto as Exhibit H, at 60:14-65:13 (testimony by Verizon Assistant General Counsel William Balcerski that the reason Verizon has not issued licenses to EEEA is because “[t]here was opposition from a number of the towns to the installation of the lechis, as indicated in letters that I received,” including letters from Mayor Sartorius).

EEEE requests a statement from the Board that Chapter 158 of the Village Code does not apply to the lechis, or alternatively, for permission to attach lechis to certain utility poles within the Village

As an initial matter, EEEA has long taken the position that nothing in the Quogue Village Code (the “Village Code”), nor the New York Village Law, requires EEEA to apply to the Board for permission to attach lechis to utility poles within the Village. EEEA maintains that the grant of power to village boards of trustees in Section 4-412(3)(6) of the New York Village Law to “grant rights and franchises or permission to use the streets, highways, public places or any part thereof or the space above or under them or any of them for any specific purpose” does not impose any affirmative requirement on EEEA to make an application to the Village, especially where, as here, EEEA is not seeking to affix objects to public property, but rather to the personal property of public utility corporations.

Further, to the extent that state law does give villages the power to control their rights of way, the Village exercised that power by enacting Chapter 158 of the Village Code, and as discussed below, Chapter 158 does not apply to the lechis. Because Chapter 158 does not apply and there is no other provision of Quogue’s local laws that prohibits lechis from being attached to utility poles within the Village, there is no need for the Board to take any affirmative action, and there is therefore no violation of the Establishment Clause of the U.S. Constitution. Even if the Board did take affirmative action, as discussed further below, that action would not be a violation of the Establishment Clause, but rather a permissible accommodation. Further, pursuant to the Free Exercise Clause of the First Amendment, which provides that “Congress shall make no law . . . prohibiting the free exercise [of religion],” acts by the Board refusing to permit establishment of the eruv will violate applicants’ fundamental constitutional and civil rights. EEEA therefore requests a resolution from the Board declaring that Chapter 158 does not apply to the lechis described herein, or, if Chapter 158 does apply, a resolution that the Board grants permission to attach the lechis, and further, that Quogue will take no action against Verizon and LIPA if Verizon and LIPA allow the placement of the lechis on their respective poles.

necessary or desirable to maintain an adequate and dependable supply of gas and electric power within the service area.” N.Y. Pub. Auths. Law § 1020-g(a) (McKinney 2011).

(i) *Chapter 158 of the Village Code Does Not Apply Because Lechis Are Not Encroachments or Projections*

The Village, through its counsel, has previously asserted the position that the lechis fall within the purview of Chapter 158 of the Village Code, which prohibits “encroachments” or “projections” made or maintained “into or over any public road or street.” Quogue, N.Y., Village Code § 158-1. The legislative purpose stated in the Village Code is specifically related to the physical appearance of the Village, and the prevention of distractions that could cause traffic accidents. *See id.* § 194-40. EEEA notes that the Memorandum does not reference Chapter 158 of the Village Code, presumably in recognition of the fact that the lechis that EEEA seeks to attach to utility poles within the Village of Quogue are 5/8-inch half-round strips of PVC that would be no more than fifteen feet long, and are permissible under any reasonable reading of Quogue’s relevant ordinances. An “encroachment” under Chapter 158 of the Village Code is defined as “[a]ny 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.” *Id.* § 158-2. A “projection” is defined as “[a]ny part of any building, structure or device erected upon private property or attached to any structure or device erected upon private property.” *Id.*

EEEA’s proposed lechis are neither “encroachments” nor “projections” within the meaning of Chapter 158. The lechis are a mere 5/8-inch deep; because of their size, they will not project or encroach “into or over any public road or street” or “upon, above or under” the public right-of-way. *See id.* § 158-1.³ The lechis will have no effect on the use of any street or public right-of-way: they will be plain, slim, staves—not unlike thin sticks—which would blend in with the utility poles to which they are attached. The lechis have been designed to be virtually invisible, a fact that is all the more evident when viewing a lechi from more than ten feet away. Indeed, a casual observer who passed a utility pole with a lechi on it would likely be unable to distinguish it from the utility company’s own pole attachments. The lechis, therefore, cannot qualify as “encroachments” or “projections” under Chapter 158.⁴

³Courts have held that 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, 155 (1905); *see also Green v. Miller*, 249 N.Y. 88, 92, 96 (1928) (holding that the contention that the slightest encroachment over a street constitutes a public nuisance cannot be sustained).

⁴ In the federal court litigation *East End Eruv Association, Inc., et al. v. Village of Westhampton Beach, et al.*, Case No. 11-0213 (LDW) (E.D.N.Y.), the Honorable Leonard D. Wexler, United States District Judge for the Eastern District of New York, expressed doubt that Chapter 158 is applicable to the lechis. In his Memorandum and Order of November 3, 2011 (Docket No. 121), attached hereto as Exhibit I, Judge Wexler observed that “the applicability of Quogue’s sign ordinance (governing encroachments and projections on its rights-of-way) to the attachment of lechis to utility poles appears questionable.” *See id.* at 25. Moreover, the Village Code itself expressly provides as follows with respect to Quogue’s zoning laws:

Purpose. *The purpose of this article is to promote and protect the public safety and welfare by regulating signs of all types and in all districts. The regulation of signs will enhance and protect the physical appearance of the Village of Quogue, preserve its scenic and natural beauty and provide a more enjoyable and pleasing community. The regulation of signs will also protect property values, provide a more attractive economic and business climate and provide a more attractive residential environment. The regulation of signs will also promote public safety by reducing sign or advertising distractions and obstructions that may contribute to traffic accidents.*

(ii) *Granting the Present Application
Would Not Violate the Establishment Clause*

If the Board decides that Chapter 158 applies, the Board's approval of EEEA's plans to attach lechis to utility poles would not violate the First Amendment's Establishment Clause. *See* U.S. Const., amend. I ("Congress shall make no law respecting an establishment of religion . . ."). The Establishment Clause is meant to prevent "active involvement of the sovereign in religious activity," *Walz v. Tax Comm'n*, 397 U.S. 664, 668 (1970), and there is "ample room under the Establishment Clause for 'benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.'" *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334 (1987) (quoting *Walz*, 397 U.S. at 673)). As the Supreme Court has noted, "government may (and sometimes must) accommodate religious practices and . . . may do so without violating the Establishment Clause." *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 144-45 (1987).

The only cases to have addressed the issue have held that government approval of lechis does not violate the Establishment Clause. *See, e.g., Tenaflly Eruv Ass'n v. Borough of Tenaflly*, 309 F.3d 144, 176 (3d Cir. 2002); *ACLU v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987); *Smith v. Cmty. Bd. No. 14*, 491 N.Y.S.2d 584, 586-88 (Sup. Ct., Queens Cnty. 1985), *aff'd*, 518 N.Y.S.2d 356 (2d Dep't 1987). In each of these cases, the courts held that government authorization of an eruv does not violate the Establishment Clause, but rather is a reasonable accommodation of religious exercise. *See, e.g., Smith*, 491 N.Y.S.2d at 585 ("[T]he court determines that the actions of the City agencies

Village Code at § 194-40 (emphasis added). The plain language of the Village Code itself therefore indicates that such ordinance was not intended to restrict slim, unobtrusive pole attachments such as lechis. Further, at the preliminary injunction hearing held on June 15, 2011, in the related federal litigation, Mayor Peter Sartorius testified that the purpose of Chapter 158 is:

to keep the right-of-way free of, as it says, encroachment, and that there could be any number of reasons. One is aesthetics. Another is public safety, things that can get in the right-of-way. And then there's the principle—it's village property, although we hold it subject to public rights. The village has property rights in the right-of-way, and if something is not permitted, it would be trespassing, essentially.

See June 15, 2011, Hearing Transcript, attached hereto as Exhibit H, at 107:4-13. Mr. Sartorius acknowledged that the only provision of the Village Code he was aware of that could possibly prohibit the lechis is Chapter 158. *Id.* at 116:1-15; *see also id.* at 130:24-131:3 (Mr. Sartorius testifying that the lechis are not governed by the Village's sign ordinance). Mr. Sartorius also testified that he did not know whether the placing of a 5/8-inch PVC lechi would have an adverse impact on public safety in the Village. *Id.* at 117:11-20; 117:22-118:2. Moreover, while Mr. Sartorius speculated that lechis "could be" a distraction, he admitted that the Village has permitted, for example, a "Pancake Breakfast" sign to remain up on a utility pole in the Village for "a time," even though "it could be a distraction." *See id.* at 119:14-121:5. Mr. Sartorius's only explanation for why the Village would countenance a distraction like the "Pancake Breakfast" sign on a utility pole was that it "has a public purpose" because "the pancake breakfast is for the community to attend and also has a fund-raising function for the fire department." *See id.* When asked whether an eruv in Quogue might have a public purpose, however, Mr. Sartorius could only testify, "I don't have a view on that." *Id.* at 121:2-5. President Bush's letter to the Jewish Community of Washington, D.C., quoted above, clearly establishes the public purpose of an eruv: "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."

[which granted permission for plaintiffs to use city lamp poles and to extend the height of sea fences to create an eruv] did not establish religion but were a valid accommodation to religious practice.”). In *Tenafly*, where the plaintiff eruv association filed an application with the Borough “asking the Council not to remove or order the removal of the lechis,” the U.S. Court of Appeals for the Third Circuit concluded that “[n]o reasonable, informed observer would perceive the decision of the plaintiffs to affix *lechis* to utility poles owned by Verizon and to do so with Cablevision’s assistance as ‘a choice attributable to the State.’”⁵ 309 F.3d at 177 (citing *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 311 (2000)). Moreover, many cases have held that even overt actions to accommodate Sabbath observance and other religious obligations do not violate the Establishment Clause. *See, e.g., Shrum v. City of Coweta*, 449 F.3d 1132, 1143-44 (10th Cir. 2006) (affirming that plaintiff’s claim that his superior failed to accommodate his religious commitments to Christian observance of the Sabbath established a violation of his clearly established constitutional rights under the Free Exercise Clause); *Ford v. McGinnis*, 352 F.3d 582, 590-91 (2d Cir. 2003) (holding that plaintiff Muslim prisoner stated a colorable Free Exercise claim where he alleged that prison authorities failed to accommodate his observance of the Muslim celebration of Eid ul Fitr); *Jackson v. Mann*, 196 F.3d 316, 320-21 (2d Cir. 1999) (similar case involving a plaintiff Jewish prisoner); *see also McEachin v. McGuinnis*, 357 F.3d 197, 203 n.7 (2d Cir. 2004) (collecting cases).

The present application involves precisely the sort of governmental accommodation of religious practice that does not violate the Establishment Clause. EEEA is not seeking material or financial assistance from the Village to establish the eruv, nor a proclamation or resolution endorsing the religious beliefs or practices of EEEA or its members. The cost of attaching and maintaining the lechis on Verizon’s and LIPA’s respective utility poles will be borne solely by EEEA. At most, the Board would be allowing lechis to be attached to forty eight poles—far less than the New York Court in *Smith* held to be “a valid accommodation to religious practice.”

(iii) *The Board’s Denial of the Present Application Would Violate Applicants’ Constitutional and Civil Rights to Freely Exercise Their Religion*

EEEA has a constitutional right to establish the eruv. Cases that have addressed the issue have uniformly upheld the constitutional right to establish an eruv as a “valid accommodation to religious practice” under the Free Exercise Clause. *See Smith*, 128 Misc. 2d at 947. In *ACLU v. Long Branch*, for example, the New Jersey district court upheld the right of the plaintiffs to establish an eruv and observed that: “[c]ertain accommodations by the state will always be necessary in order to insure that people of all religions are accorded the rights given to them by the free exercise clause of the First Amendment.” 670 F. Supp. at 1295; *see also Tenafly*, 309 F.3d at 176-77. The eruv that EEEA seeks to establish here is no different from the eruv upheld in *Smith*, *Long Branch*, and *Tenafly*.

Conversely, because EEEA’s members and other observant Jewish residents of Quogue have a constitutional right to create an eruv, a denial of the present application by the Board would violate the

⁵ *See also County of Allegheny v. ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573, 632 (1989) (“In cases involving the lifting of government burdens on the free exercise of religion, a reasonable observer would take into account the values underlying the Free Exercise Clause in assessing whether the challenged practice conveyed a message of endorsement.”) (O’Connor, J., concurring).

Free Exercise Clause. *See* U.S. Const., amend I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”); *Emp’t Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 893 (1990) (noting that the Free Exercise Clause “applies to the States by incorporation into the Fourteenth Amendment”) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940)). It is firmly established that “the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). Thus, “if [a] law is not neutral (*i.e.*, if it discriminates against religiously motivated conduct) or is not generally applicable (*i.e.*, if it proscribes particular conduct only or primarily when religiously motivated), strict scrutiny applies and the burden on religious conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest.” *Tenaflly*, 309 F.3d at 165 (citing *Lukumi*, 508 U.S. at 532, 542).⁶

Because, as noted above, Quogue has no law that could apply to prohibit affixation of the lechis to Verizon’s and LIPA’s poles, or if the Board were to decide that Chapter 158 applies, the Board has nonetheless permitted much more obtrusive attachments to the poles, any decision by the Board denying the present application would not be a facially neutral application of the law, but rather a discriminatory action against religiously motivated conduct.

Any action by the Board obstructing the eruv would also violate the civil rights of EEEA and its members under 42 U.S.C. § 1983 and 42 U.S.C. § 1985, and could subject the Village to being required to pay plaintiffs’ legal fees and expenses. In the *Tenaflly* case, in which Weil represented the Tenaflly Eruv Association, *pro bono*, the Borough of Tenaflly paid \$300,000 toward plaintiff’s legal fees and expenses.

Submission of Requested Documentation

As requested in the Memorandum, EEEA is submitting herewith copies of the following documents:

- (a) A map depicting the location of each utility pole (including the name of the street on which such pole is located) involved in the application, attached hereto as Exhibit J;
- (b) A chart entitled “Quogue Eruv Route,” attached hereto as Exhibit D, listing the location of each utility pole involved in the present application; whether a given utility pole is for electric or telephone transmission; and the number of lechis to be attached to each pole (either one or two);
- (c) Copies of the Pole Attachment Agreement For Miscellaneous Attachments, dated June 13, 2011, between EEEA and Verizon, and the License Agreement, dated July 27, 2010, between EEEA and LIPA, are attached hereto as Exhibits K and F, respectively, in satisfaction of the Memorandum’s

⁶ *See also Lukumi*, 508 U.S. at 531 (Free Exercise Clause “extends beyond facial discrimination” and “forbids subtle departures from neutrality, and covert suppression of particular religious beliefs . . . [t]he Free Exercise Clause protects against governmental hostility which is masked as well as overt.”); *Santa Fe*, 530 U.S. at 307 (even if policy language were facially neutral, “the Establishment Clause forbids a State to hide behind the application of formally neutral criteria and remain studiously oblivious to the effects of its actions”).

request for a written authorization from the owner of each utility pole involved in the present application.

(d) Both Verizon and LIPA have informed EEEA that none of their respective poles in the Village exist pursuant to a franchise agreement. Accordingly, EEEA is not attaching any such franchise agreements to the present application.

* * *

In consideration of the foregoing submissions and the enclosed documentation, EEEA requests that the Board issue a statement (1) indicating that neither Chapter 158 nor any other provision of law applies to prohibit EEEA's plans to attach lechis to certain of Verizon's and LIPA's utility poles situated within the Village, or in the alternative, grant permission to EEEA to affix lechis to the designated poles; and (2) that Verizon and LIPA may allow EEEA to affix lechis to the designated poles. EEEA further requests that the Board meeting at which this issue will be discussed take place any time Monday through Thursday, or Friday morning, during the week of February 27. If the week of February 27 is not available, EEEA requests that such Board meeting take place any time Monday through Thursday, or Friday morning, during the week of February 20.

Respectfully,



Robert G. Sugarman

Enc.

cc: Richard E. DePetris, Esq.
Jeltje deJong, Esq.