

2/23/18

Update on Eruv Litigation: Oral argument on the Borough's case involving the eruv was scheduled to be held on January 9, 2018 before U.S. District Court Judge John Michael Vazquez. However, before argument was to begin, Judge Vazquez asked counsel to chambers to discuss the matter and stressed that he believed the case should be mediated or the parties should engage in settlement discussions. He noted that both Mahwah and Montvale, who face similar cases filed before him, were engaged in similar discussions. ***As of this writing, both Mahwah and Montvale have settled to allow the eruv, or lechis, to remain in the layout originally planned by the Rockland Eruv Association with a change in the lechis from white PVC pipe to black plastic. These agreements increase the pressure on USR to settle as well.***

USR made an extensive and compelling case for its right to keep its poles bare of signs and the PVC pipe lechis used to identify the eruv. These papers, including eight affidavits from various Borough officials, showed that the eruv association did not obtain proper approvals and that USR has worked extensively to keep items off its poles in the past.

However, the Judge's preliminary determination was that, at least for the time being, pending a trial, a 2015 Ordinance relied upon by the Borough may have been approved as part of an effort to keep the eruv from being constructed in USR. ***If he found against the Borough he would sign a Preliminary Injunction that would allow the full eruv to be completed along Old Stone Church and Weiss Roads while the rest of the litigation continued.*** USR completely disagrees with this preliminary conclusion and was prepared to ask for a hearing or seek a trial, but the ***odds of success are not especially promising based upon the judge's initial comments.***

Judge Vazquez stated, "This matter focuses on the First Amendment, which has two requirements: One, that as it applies to the states through the 14th Amendment due process clause, that the Government cannot establish a religion, but at the same time the Government cannot prohibit the free exercise of religion." He again strongly urged the parties to reach a settlement. As a result of the judge's comments, and with the advice of the attorneys, the council agreed to attempt to seek a mutually agreed upon settlement.

These types of federal cases have a statutory fee component so that plaintiff can recoup their legal fees, in addition to damages. The eruv plaintiffs retained one of the largest and most expensive firms in Manhattan, and they claim that they have billed more than \$1 million in the USR case. They have stated that if we settle now they would largely waive their fees.

Another consideration, the settlement with USR would, after a short period, push the eruv back toward the border, eliminating about half of the eruv's coverage in USR. If the case is litigated and USR loses, the eruv would be placed as originally planned covering a much larger area of town.

Unfortunately, comments made by residents of the three towns at public meetings and on social media have poisoned the Borough's litigation which focuses solely on local ordinances

and zoning rather than religion. The public outcry quickly drew the attention of the media, politicians and law enforcement. Mahwah was sued by the NJ Attorney General, Division of Civil Rights, for perceived bias and faces repaying \$3.2 million of Green Acres funding. These factors along with an op-ed piece written by Governor Phil Murphy condemning what he perceives to be anti-Semitism, (<http://jewishstandard.timesofisrael.com/its-time-to-urgently-speak-out-against-anti-semitism-in-all-forms/>) and an op-ed co-authored by Congressman Josh Gottheimer and Senator Cory Booker, (<https://www.northjersey.com/story/opinion/contributors/2017/11/03/opinion-anti-semitism-has-no-home-new-jersey/827372001/>), have certainly made a positive outcome less likely.

At this time, settlement negotiations are still ongoing. A special council meeting was held on Wednesday, February 21st to continue discussions. Although further discussions will continue at the March 1st meeting, the Borough has entered into a tentative settlement with the Eruv Plaintiffs. While the full set of terms will be released to the public (negotiations are continuing), in the interim the Borough allowed plastic strips (lechis) to be installed on approximately seven utility poles along Old Stone Church Road the week of February 19, 2018, including the repair of certain existing lechis that had previously been vandalized, all on a **TEMPORARY BASIS**. Under this tentative settlement, in the weeks to come, the lechis will be removed from poles along Old Stone Church Road and most of Weiss Road and the eruv will be rerouted as close to the New York border as geography will allow. All newly installed lechis will be black plastic, rather than white PVC pipe with silver brackets.