

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EAST END ERUV ASSOCIATION,
INC., et al.,

: CV 11-0213

Plaintiffs,

: United States Courthouse
Central Islip, New York

-against-

THE VILLAGE OF WESTHAMPTON
BEACH, et al.,

: June 28, 2011
9:30 a.m.

Defendants.

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TRANSCRIPT OF HEARING
THE HONORABLE LEONARD D. WEXLER
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs:

WEIL GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
By: ROBERT G. SUGARMAN, ESQ.
JESSIE B. MISHKIN, ESQ.
CHRISTOPHER LUISE, ESQ.
JOSHUA SCHLENGER, ESQ.
YEHUDAH L. BUCHWEITZ, ESQ.

For the Defendants:

DEVITT SPELLMAN BARRETT, LLP
50 Route 111
Smithtown, NY 11787
By: THOMAS J. SPELLMAN, JR., ESQ.
For Village of Quogue
-and-
MARC I HAMILTON, ESQ.
Benjamin Cardozo School of Law

SOKOLOFF STERN LLP
355 Post Avenue
Westbury, NY 11590
By: BRIAN S. SOKOLOFF, ESQ.
LEO DORFMAN, ESQ.

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JASPAN SCHLESINGER, LLP
300 Garden City Plaza
Garden City, NY 11530
By: MAUREEN LICCIONE, ESQ.
ROBERT V. GUIDO, ESQ.

Court Reporter: OWEN WICKER, RPR
100 Federal Plaza - Suite 1180
Central Islip, New York 11722
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Proceedings recorded by mechanical stenography;
transcript produced by computer aided transcription

1 (Case called.)

2 THE COURT: Call your next witness, please.

3 MR. BUCHWEITZ: We call Clint Greenbaum.

4

5 **C L I N T O N G R E E N B A U M,**

6 called as a witness, having been first

7 duly sworn, was examined and testified

8 as follows:

9 THE WITNESS: My name is Clint, C-L-I-N-T. My
10 full name is Clinton Greenbaum, G-R-E-E-N-B-A-U-M.

11 THE COURT: Spell the last name again.

12 THE WITNESS: G-R-E-E-N-B-A-U-M.

13 DIRECT EXAMINATION

14 BY MR. BUCHWEITZ:

15 Q Where do you reside?

16 A I live in Westhampton Beach, and I've lived there
17 17 years.

18 Q Are you a full-time or part-time resident?

19 A Full-time.

20 Q Have you been involved in any civil activities in
21 Westhampton Beach?

22 A I was an elected member of the Westhampton Beach
23 school board. I served from 2005 to 2010, when I resigned
24 from my position. The term ended, and I decided not to
25 run for reelection.

1 And I'm also a member of the Westhampton Rotary
2 Club, where I was an award winner for community service, a
3 Paul Harris fellowship.

4 As a school board member, before that, I was a
5 recipient of the Westhampton Teachers Association award
6 for community service in terms of the building of the
7 schools, leading the campaign to build the school's
8 auditorium.

9 I'm a member of the Hampton Interfaith Counsel,
10 where I've served since 2007.

11 I have also been president or treasurer of the
12 Westhampton Beach BOCES learning center special education
13 PTA.

14 Q Thank you.

15 From time to time have you taken some
16 photographs of poles in Southampton, Westhampton Beach and
17 Quogue?

18 A Yes.

19 MR. BUCHWEITZ: I'm going to approach the
20 witness with a series of photographs that we'll go
21 through, hopefully quickly, one at a time (handing).

22 THE COURT: Are they in evidence?

23 MR. BUCHWEITZ: These are not yet in evidence.
24 They are all exchanged and are in your Honor's binder, and
25 I'll refer to the exhibit numbers.

1 THE COURT: Okay. Thank you.

2 MR. BUCHWEITZ: I also have little stickers, for
3 the convenience of the Court and for the witness and for
4 all parties, which indicate the date the photograph was
5 taken and the location.

6 If I may approach.

7 THE COURT: Well, have you showed it to them?

8 Any objections to the photos coming in?

9 MR. SPELLMAN: Your Honor, on behalf of Quogue,
10 I would object to any reference to the photographs. The
11 case against Quogue has been closed. The mayor is no
12 longer in the courtroom --

13 THE COURT: You're here, and you ask questions.
14 But that's different.

15 MR. SPELLMAN: That's different.

16 THE COURT: So you object?

17 MR. SPELLMAN: I do, sir.

18 THE COURT: Okay.

19 How about you?

20 MR. SOKOLOFF: These are marked exhibits?

21 MR. BUCHWEITZ: The photographs are. And we'll
22 go through them one at a time, and we'll give you the
23 exhibit number.

24 MR. SOKOLOFF: I can't say right now if I object
25 to them. I have to see them when they are done.

1 THE COURT: Did you give them to them?

2 MR. BUCHWEITZ: Yes.

3 THE COURT: I'm trying to save time.

4 Show it to him.

5 MR. BUCHWEITZ: Yes.

6 MS. LICCIONE: I'd be interested -- when they
7 were taken, but I'm sure that will be part of the
8 foundation.

9 MR. BUCHWEITZ: He will testify about that.

10 THE COURT: We can't save time.

11 Move ahead.

12 MR. BUCHWEITZ: Your Honor, here's the photos.
13 I'll do it very fast.

14 THE COURT: To the nonlawyers, they were
15 supposed to go through all the exhibits and mark those
16 coming into evidence and those that aren't. It speeds it
17 up.

18 Of course, it wasn't done by either side, by the
19 parties.

20 BY MR. BUCHWEITZ:

21 Q Mr. Greenbaum, directing your attention to
22 Plaintiffs' Exhibit 16 for identification, do you
23 recognize Exhibit 16 for identification?

24 A Yes.

25 Q What do you remember Exhibit 16 for identification to

1 be?

2 A I took this photograph at 75 Dune Road in the Village
3 of Quogue on September 20, 2010.

4 Q Do you see a sticker corresponding to 75 Dune Road,
5 September 20, 2010?

6 A Yes.

7 Q Can you place that sticker as Exhibit 17 for
8 identification?

9 A Yes.

10 THE COURT: I move that into evidence.

11 MR. SPELLMAN: I object.

12 THE COURT: Overruled.

13 (Whereupon, Plaintiff Exhibit 16 was received in
14 evidence.)

15 BY MR. BUCHWEITZ:

16 Q Please turn to that exhibit, Plaintiffs' Exhibit 17.

17 A Yes, I took that photograph.

18 Q What do you recognize Plaintiffs' Exhibit 17 for
19 identification to be?

20 A Taken on Montauk Avenue and Jessup Avenue in the
21 Village of Quogue on November 23, 2010.

22 Q Do you see a sticker corresponding to that address
23 and date?

24 A Yes.

25 Q Please place it on the exhibit.

1 MR. BUCHWEITZ: Your Honor, I move Plaintiffs'
2 Exhibit 17 in evidence.

3 MR. SPELLMAN: Same objection.

4 THE COURT: In evidence.

5 (Whereupon, Plaintiff Exhibit 17 was received in
6 evidence.)

7 BY MR. BUCHWEITZ:

8 Q Directing your attention to Plaintiffs' Exhibit 22
9 for identification.

10 Do you recognize Plaintiffs' Exhibit 22?

11 A Yes.

12 Q What do you recognize it to be?

13 A This photograph was taken by me at South Road and
14 Oneck, O-N-E-C-K, Lane.

15 THE COURT: What exhibit is this?

16 MR. BUCHWEITZ: 22, your Honor, in the binder we
17 gave you yesterday.

18 THE WITNESS: The photograph was taken on
19 September 17, 2010.

20 BY MR. BUCHWEITZ:

21 Q Please place the exhibit sticker on the photograph.

22 A Yes.

23 MR. BUCHWEITZ: We offer that in evidence.

24 MR. SOKOLOFF: May I voir dire?

25 THE COURT: Sure.

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VOIR DIRE EXAMINATION

BY MR. SOKOLOFF:

Q This is a photograph that depicts what?

MR. BUCHWEITZ: Objection.

THE COURT: Overruled.

A This is a sign for a tag sale that was to be held on Tanner's Neck Lane, which is in the Town of Southampton.

Q What is the date that you took this photo?

A September 17th, 2010.

Q So you took this a day before the scheduled tag sale?

A Correct.

Q You don't have any idea, do you, how long this piece of paper was on this pole, do you?

A No.

Q And you have no idea, do you, who put it up?

A No.

MR. SOKOLOFF: Your Honor, I object to the exhibit.

THE COURT: Overruled.

MR. BUCHWEITZ: 22 in evidence?

THE COURT: In evidence.

(Whereupon, Plaintiff Exhibit 22 was received in evidence.)

DIRECT EXAMINATION (Cont'd)

1 BY MR. BUCHWEITZ:

2 Q Directing your attention to Plaintiffs' Exhibit 23
3 for identification.

4 Do you recognize Plaintiffs' Exhibit 23?

5 A Yes.

6 Q What do you recognize Plaintiffs' Exhibit 23 to be?

7 A This is a photograph that I take on Mill Road and
8 Sunset Avenue on September 17, 2010.

9 Q Do you see a sticker corresponding to that address
10 and date?

11 A Yes.

12 Q Please place it on the exhibit.

13 MR. BUCHWEITZ: I move 23 in evidence.

14 MR. SOKOLOFF: May I voir dire?

15 THE COURT: Sure.

16 VOIR DIRE EXAMINATION

17 BY MR. SOKOLOFF:

18 Q This is a photograph of a pole that contains the same
19 advertisement for a tag sale the next day?

20 A Correct.

21 Q You don't know how long this thing was up on the
22 pole, do you?

23 A No.

24 Q You don't know if it was put up ten minutes before
25 you took the photo, do you?

1 A No.

2 Q And you don't know if it came off five minutes after?

3 A No.

4 Q You don't know who put it up on the pole, do you?

5 A No.

6 MR. SOKOLOFF: Your Honor, I object to the
7 exhibit.

8 THE COURT: Overruled.

9 MR. SUGARMAN: 23 in evidence, your Honor?

10 THE COURT: Yes.

11 (Whereupon, Plaintiff Exhibit 23 was received in
12 evidence.)

13 DIRECT EXAMINATION (Cont'd)

14 BY MR. BUCHWEITZ:

15 Q Mr. Greenbaum, directing your attention to
16 Plaintiffs' Exhibit 24 for identification.

17 Do you recognize Plaintiffs' Exhibit 24?

18 A Yes.

19 Q What do you recognize Plaintiffs' Exhibit 24 to be?

20 A I took this photograph on Main Street west of the
21 village, Westhampton Beach, between Glovers Lane and
22 Library Avenue. The picture was taken November 8, 2010.

23 Q Do you see a sticker on your sheet that corresponds
24 to that address and date?

25 A Yes.

1 Q Could you please place it on the exhibit?

2 A (Witness complies.)

3 THE COURT: Unless I'm missing something, I
4 don't see a sign on the pole.

5 THE WITNESS: This. This is a banner.

6 THE COURT: Oh, the banner.

7 THE WITNESS: It's suspended from a wire.

8 THE COURT: I was looking at the pole, and I
9 didn't see anything on the pole. All right.

10 MR. BUCHWEITZ: Your Honor, I move Plaintiffs'
11 Exhibit 24 for identification into evidence.

12 MR. SOKOLOFF: May I voir dire?

13 THE COURT: Yes.

14 VOIR DIRE EXAMINATION

15 BY MR. SOKOLOFF:

16 Q Do you know who put this banner up?

17 A No.

18 Q Do you know how long this was there?

19 A Yes.

20 Q How long?

21 A My daughter was in the play.

22 Q I asked you how long it was up.

23 A It was up for another week.

24 Q And do you know whether this banner was authorized or
25 not authorized by the village?

1 A No.

2 Q When you saw this banner on the pole, did you call
3 code enforcement of the village?

4 THE COURT: It wasn't on the pole, was it?

5 BY MR. SOKOLOFF:

6 Q Oh, the banner is not on the pole?

7 A The banner is suspended from a wire on the pole.

8 THE COURT: He's right; I'm wrong.

9 Go ahead, Counsel.

10 BY MR. SOKOLOFF:

11 Q When you saw this, did you call the village to say it
12 is not authorized, it's a violation?

13 A No.

14 MR. SOKOLOFF: I object to the exhibit.

15 THE COURT: Overruled.

16 MR. BUCHWEITZ: 24 in evidence?

17 (Whereupon, Plaintiff Exhibit 24 was received in
18 evidence.)

19 DIRECT EXAMINATION (Cont'd)

20 BY MR. BUCHWEITZ:

21 Q Directing your attention to Plaintiffs' Exhibit 25,
22 Mr. Greenbaum.

23 Do you recognize Plaintiffs' Exhibit 25?

24 A Yes.

25 Q What do you recognize Plaintiffs' Exhibit 25 to be?

1 A I took a picture of this pole at 32 Seafield on
2 November 17, 2010.

3 Q Do you see a sticker on the sheet corresponding to
4 the address and date?

5 A Yes.

6 Q Will you place it on the exhibit?

7 A (Witness complies.)

8 MR. BUCHWEITZ: We move Plaintiffs' Exhibit 25
9 in evidence.

10 MR. SOKOLOFF: May I have a voir dire?

11 THE COURT: Before the voir dire...

12 Why are you offering this picture? What am I
13 supposed to see here?

14 MR. BUCHWEITZ: Things on the pole that are
15 similar or larger than the lechis which have not been
16 removed by any village or town official.

17 THE COURT: What things are on the pole?

18 MR. BUCHWEITZ: There's a black strip on the
19 right, a gray strip in the middle, a reflector towards the
20 middle, some wiring on the side, all of which are larger
21 and more intrusive --

22 THE COURT: Go ahead.

23 MR. SOKOLOFF: May I have a voir dire?

24 THE COURT: Yes.

25 VOIR DIRE EXAMINATION

1 BY MR. SOKOLOFF:

2 Q When did you take this picture?

3 A November 17, 2010.

4 Q And is this pole on private property?

5 A No, this pole is on the strip of land between the
6 street and the privet. And I live on the street, and I
7 understand that that -- for example, the trees that are on
8 that street --

9 Q I'm just asking about that pole. Was it on private
10 property; yes or no?

11 A It's right alongside the drive.

12 Q And there's an American flag that looks like it is
13 not permanently attached to the pole, right?

14 A Correct. I live at 61 --

15 Q I didn't ask you where you lived. I'm just asking
16 you about the flag.

17 THE COURT: Can you please ask questions nicely?
18 You are angry at the gentleman. I don't know what he has
19 done wrong so far.

20 BY MR. SOKOLOFF:

21 Q That flag is not permanently attached to the pole, is
22 it?

23 A No.

24 Q And you don't know whether any of the attachments to
25 the pole were authorized by Verizon, do you?

1 A No.

2 Q By the way, is this a Verizon pole or a LIPA pole or
3 some other kind of pole?

4 A I do not know.

5 Q And you don't know, do you, whether these attachments
6 serve any function in connection with the pole; in other
7 words, for support or to -- in relation to any wires on
8 the pole --

9 THE COURT: Sustained.

10 That's for cross-examination, not whether the
11 picture comes in or not. You can cross-examine him on
12 that during your case.

13 He's offering a picture; you are attacking the
14 picture. You can't go into cross-examination on your case
15 in theory.

16 MR. SOKOLOFF: Well, no, I'm going into it on
17 relevance.

18 THE COURT: Sustained. That's a question for
19 cross-examination - relevance - not at this point. The
20 picture.

21 MR. SOKOLOFF: Well, as your Honor's initial
22 questions to the witness indicated, I object to this photo
23 on relevance.

24 THE COURT: Overruled.

25 Go ahead.

1 MR. BUCHWEITZ: Exhibit 25 in evidence.

2 (Whereupon, Plaintiff Exhibit 25 was received in
3 evidence.)

4 DIRECT EXAMINATION (Cont'd)

5 BY MR. BUCHWEITZ:

6 Q Directing your attention to Plaintiffs' Exhibit 26
7 for identification.

8 Do you recognize Plaintiffs' Exhibit 26?

9 A Yes.

10 Q What do you recognize Plaintiffs' Exhibit 26 to be?

11 A I took a picture of the St. Patrick's parade banner
12 on Main Street in the Village of Westhampton Beach between
13 Glover's Lane and Library Avenue on March 2, 2011.

14 Q And do you see a sticker on your sheet that
15 corresponds with that address and date?

16 A Yes.

17 Q Can you put it on the exhibit?

18 A (Witness complies.)

19 MR. BUCHWEITZ: Plaintiff moves 26 in evidence.

20 MR. SOKOLOFF: May I voir dire?

21 THE COURT: Yes.

22 VOIR DIRE EXAMINATION

23 BY MR. SOKOLOFF:

24 Q Is there anything on this photo that shows this to be
25 a St. Patrick's Day banner?

1 A If you do a close examination, you absolutely would
2 be able to tell that that is a St. Patrick's Day banner.

3 Q Can you read that on the photo, "St. Patrick's Day"?

4 A We all have digital equipment that would be able to
5 do so.

6 Q I'm asking you if you could see that on this photo.

7 A If you can see a St. Patrick's Day clover -- the
8 quality of this print is not great, but, yes, you would be
9 able to read it.

10 Q My question is, can you yourself see on this photo as
11 a marked exhibit the words "St. Patrick's Day"?

12 THE COURT: Sustained.

13 You didn't ask that question. You asked if he
14 could tell whether there was a St. Patrick's symbol on
15 there, and he said yes. Now you are asking another
16 question, whether St. Patrick's is there.

17 BY MR. SOKOLOFF:

18 Q What do you see on this photo that shows that it is a
19 St. Patrick's Day banner?

20 A (Perusing) Excuse me. I can read the word
21 "parade" -- I mean "day" at the very right where you see a
22 four-leaf clover.

23 Do you see the four-leaf clover and the word
24 "day"?

25 MR. SOKOLOFF: Your Honor, may I look at his

1 exhibit? Because mine doesn't have the word "day," and my
2 glasses are fine.

3 Thank you.

4 This is a better picture than the one we got.

5 BY MR. SOKOLOFF:

6 Q Do you know who was responsible for putting up that
7 banner?

8 A The Westhampton Beach committee.

9 Q How do you know that?

10 A Because I know the organizer.

11 Q How long was it up?

12 A I can tell you I took the picture on March 2nd, and
13 the parade, which I rode in with my son, was on
14 Saturday -- it wasn't on St. Patrick's Day. It was before
15 St. Patrick's Day, because the Saturday before St.
16 Patrick's Day was about a week. So St. Patrick's Day was
17 on the 17th of March, so it was approximately March 10th.

18 Q My question was, how long it was up?

19 A So I can just tell you from this picture, March the
20 10th, at least eight days.

21 MR. SOKOLOFF: We object to the exhibit.

22 THE COURT: What is your objection?

23 MR. SOKOLOFF: Relevance.

24 We're not claiming in this case, Judge, that a
25 sign ordinance in the village prevents lechis from going

1 up. Therefore, to show that the village allowed signs
2 really is a red herring. They may have that claim against
3 the other two villages, but not against us.

4 THE COURT: Overruled.

5 DIRECT EXAMINATION (Cont'd)

6 BY MR. BUCHWEITZ:

7 Q Directing your attention to Exhibit 31 for
8 identification.

9 A Yes.

10 Q Do you recognize Plaintiffs' Exhibit 31 for
11 identification?

12 A Yes.

13 Q What do you recognize Plaintiffs' Exhibit 31 to be?

14 A This is a picture of a pole that I took in the Town
15 of Southampton. It's at the intersection Apaucuck Point
16 Lane and South Country Road, and I took the picture on
17 September 17, 2010.

18 Q Do you see a sticker on your sheet with that location
19 and date?

20 A Yes, I do.

21 Q Can you please place it on the exhibit?

22 A (Witness complies.)

23 MR. BUCHWEITZ: Plaintiffs moves 31 in evidence.

24 MS. LICCIONE: May I voir dire, please?

25 THE COURT: Go ahead.

1 VOIR DIRE EXAMINATION

2 BY MS .LICCIONE:

3 Q Mr. Greenbaum, you took this picture in September.

4 Do you have any idea whether it is still there?

5 A It is not still there. I drove by yesterday.

6 MS. LICCIONE: Thank you.

7 Q How high up is that sign, approximately?

8 A It is a good question. I stood up on my van. It was
9 reachable from the top of my van.

10 Q Did you call the Town of Southampton code enforcement
11 when you saw this sign?

12 THE COURT: Sustained.

13 He doesn't have to call anybody. He's just
14 offering a picture. If you want to use that in
15 cross-examination, you may.

16 MS. LICCIONE: I object to this exhibit.

17 THE COURT: Overruled.

18 (Whereupon, Plaintiff Exhibit 31 was received in
19 evidence.)

20 DIRECT EXAMINATION (Cont'd)

21 BY MR. BUCHWEITZ:

22 Q Directing your attention to 32 for identification.

23 A Yes, I took a picture of this pole at the same
24 location in the Town of Southampton, at the intersection
25 of Apaucuck Point Lane and South Country Road. And the

1 date was November 17th, 2010.

2 Q Do you see a sticker on your sheet corresponding to
3 that date and location?

4 A Yes.

5 Q Please place it on the exhibit.

6 MR. BUCHWEITZ: Plaintiffs' move Exhibit 32 in
7 evidence.

8 MS. LICCIONE: Voir dire, your Honor?

9 VOIR DIRE EXAMINATION

10 BY MS. LICCIONE:

11 Q Do you have any idea if this sign is still up?

12 A It's the same sign as the previous picture, and the
13 answer is the same: Yes, it is down.

14 Q And when did you check to see if it was down?

15 A Yesterday.

16 Q And did you ever call LIPA or Verizon about this
17 sign?

18 MR. BUCHWEITZ: Objection.

19 THE COURT: Sustained.

20 MS. LICCIONE: I object to this Exhibit 32, your
21 Honor.

22 THE COURT: Overruled.

23 (Whereupon, Plaintiff Exhibit 32 was received in
24 evidence.)

25 DIRECT EXAMINATION (Cont'd)

1 BY MR. BUCHWEITZ:

2 Q Directing your attention to Plaintiffs' Exhibit 33
3 for identification.

4 Do you recognize Plaintiffs' Exhibit 33?

5 A Yes.

6 Q What do you recognize Plaintiffs' Exhibit 33 to be?

7 A I took a picture of this pole in the Town of
8 Southampton at the intersection -- again, at the same pole
9 on a different date. So it is at the corner of the
10 intersection of Apaucuck Point Lane and South Country
11 Road, and this picture was taken on May 10, 2010.

12 Q Mr. Greenbaum, are the signs and poles depicted in
13 31, 32 and 33 the same sign over a period of eight months?

14 A Yes.

15 THE COURT: Counsel -- go ahead, I'm sorry. I
16 jumped. Go ahead.

17 Q Do you see a sticker with the location and the date
18 of Exhibit 33 on your sheet?

19 A Yes.

20 Q Please place it on the exhibit.

21 A Yes.

22 MR. BUCHWEITZ: Plaintiffs move Exhibit 33 in
23 evidence.

24 THE COURT: Counsel, if you will ask the same
25 questions, I will rule against you.

1 MS. LICCIONE: May the record reflect that I'm
2 asking the same questions on voir dire, your Honor, and I
3 would like to ask one additional question?

4 THE COURT: Go ahead.

5 VOIR DIRE EXAMINATION

6 BY MS. LICCIONE:

7 Q Did you ever call the phone number on here and ask to
8 take the sign down?

9 THE COURT: Sustained.

10 MS. LICCIONE: I object.

11 THE COURT: Same ruling.

12 (Whereupon, Plaintiff Exhibit 33 was received in
13 evidence.)

14 DIRECT EXAMINATION (Cont'd)

15 BY MR. BUCHWEITZ:

16 Q To make the record clear, what was the date on 33?

17 A 33 was May 10, 2011.

18 Q Thank you.

19 Mr. Greenbaum, directing your attention to
20 Plaintiffs' Exhibit 34 for identification.

21 A Yes.

22 Q Do you recognize Plaintiffs' Exhibit 34 for
23 identification?

24 A Yes.

25 Q What do you recognize Plaintiffs' Exhibit 34 to be?

1 A I took a picture of this pole. This pole -- the
2 picture was taken in the Town of Southampton, on the
3 corner of Montauk Highway and Mill Road. The picture was
4 taken on November 17, 2010.

5 Q And do you see a sticker corresponding to that
6 location and date on your sheet?

7 A Yes.

8 Q Please place it on the exhibit.

9 MR. BUCHWEITZ: Plaintiffs move Exhibit 34 into
10 evidence.

11 MS. LICCIONE: Voir dire, your Honor?

12 THE COURT: Same questions?

13 .MS. LICCIONE: It is different, your Honor.

14 THE COURT: Okay.

15 VOIR DIRE EXAMINATION

16 BY MS. LICCIONE:

17 Q The "seasoned firewood" sign at the top, can you tell
18 me approximately how high up that is?

19 A That was quite high. I would guess that that would
20 be 20 feet high.

21 Q It's pretty much aligned with the wires at the top of
22 the pole?

23 A Quite high.

24 Q And did you call code enforcement?

25 THE COURT: Pardon?

1 MS. LICCIONE: Did you call code enforcement?

2 MR. BUCHWEITZ: Objection.

3 THE COURT: Sustained.

4 BY MS. LICCIONE:

5 Q Did you call the town at the time?

6 THE COURT: Sustained.

7 You still want to ask the same questions, so you
8 are wasting time.

9 MS. LICCIONE: I object to Exhibit 34, your
10 Honor.

11 THE COURT: Overruled.

12 (Whereupon, Plaintiff Exhibit 34 was received in
13 evidence.)

14 DIRECT EXAMINATION (Cont'd)

15 BY MR. BUCHWEITZ:

16 Q Directing your attention to Plaintiffs' Exhibit 35,
17 Mr. Greenbaum.

18 Do you recognize 35?

19 A Yes.

20 Q What do you recognize Exhibit 35 to be?

21 A This is a pole I took a picture of, the same pole as
22 Exhibit 34. It is on the intersection of Mill Road and
23 Montauk Highway in the Town of Southampton. The picture
24 was taken on May 10, 2011.

25 Q So eight months later, the same sign, it is still

1 there?

2 A Yes.

3 Q Do you see a sticker and location on your sheet for
4 Exhibit 35?

5 A Yes.

6 Q Please place it on the exhibit.

7 MR. BUCHWEITZ: Your Honor, we offer Exhibit 35
8 into evidence.

9 MS. LICCIONE: In the interest of time, your
10 Honor, the same voir dire.

11 THE COURT: Thank you.

12 MS. LICCIONE: And I object to Exhibit 35.

13 THE COURT: Overruled.

14 (Whereupon, Plaintiff Exhibit 35 was received in
15 evidence.)

16 BY MR. BUCHWEITZ:

17 Q Directing your attention to 36, Mr. Greenbaum.

18 THE COURT: Can we stipulate as to the balance
19 or do we have to go through this?

20 MR. SOKOLOFF: If there are no more Westhampton
21 Beach exhibits?

22 MR. BUCHWEITZ: The rest are Southampton, and
23 one Quogue.

24 THE COURT: How about Southampton?

25 MS. LICCIONE: I will stipulate to the same voir

1 dire.

2 THE COURT: And it is overruled.

3 And that leaves one only for the Village of
4 Westhampton?

5 MR. BUCHWEITZ: No, to Quogue.

6 THE COURT: To Quogue.

7 MR. BUCHWEITZ: May I identify the ones we're
8 offering?

9 THE COURT: Yes.

10 MR. BUCHWEITZ: 36, 37, 38, 39 and 40 into
11 evidence, all in the Town of Southampton.

12 MR. SPELLMAN: I'm sorry, your Honor, I don't
13 have the pictures, but I have the sheet.

14 MR. BUCHWEITZ: That's fine.

15 BY MR. BUCHWEITZ:

16 Q Mr. Greenbaum, can you identify the date and location
17 on 36?

18 A I took a picture of this pole at South Phillips
19 Avenue and Montauk Highway in the Town of Southampton on
20 May 10, 2011.

21 Q Can you identify the location and date on Exhibit 37,
22 Mr. Greenbaum?

23 A Yes. It's at the exact same pole, and it is South
24 Phillips Avenue and Montauk Highway in the Town of
25 Southampton. This was taken on June 7, 2011.

1 And let me say that it was on Exhibit 36, that
2 it was 2011.

3 Q And the location and date on Exhibit 38,
4 Mr. Greenbaum?

5 A On 38, this picture was taken by me at a pole on
6 Montauk Highway by Nadine Drive, taken on April 27, 2011.

7 THE COURT: Do you know how long this sign was
8 up?

9 THE WITNESS: Exhibit 38?

10 THE COURT: Yes.

11 THE WITNESS: That picture, I do not know.

12 THE COURT: Okay.

13 BY MR. BUCHWEITZ:

14 Q Are you done with 39, Mr. Greenbaum?

15 A No, I have not done 39.

16 39 was taken by me. This pole is in the Town of
17 Southampton. It's on Mill Road off of John Way, and it
18 was taken on April 27, 2011.

19 THE COURT: Do you know how long this sign was
20 up?

21 THE WITNESS: I'm sorry?

22 THE COURT: Do you know how long this sign was
23 up?

24 THE WITNESS: No, I don't, Judge.

25 THE COURT: Okay.

1 BY MR. BUCHWEITZ:

2 Q Can you identify the location and date on Exhibit 40,
3 Mr. Greenbaum?

4 A Sure. I took the picture of this pole. This picture
5 was taken in the Town of Southampton, South Country Road
6 and Club Lane. The picture was taken on May 10, 2011.

7 Q Have you put stickers on all of the exhibits through
8 number 40?

9 A Correct.

10 THE COURT: Wait a while.

11 When was this picture taken?

12 THE WITNESS: May 10, 2011.

13 THE COURT: The second sign says May 7th.

14 THE WITNESS: Yes.

15 THE COURT: All right.

16 MR. BUCHWEITZ: So I think after the exhibits of
17 Town of Southampton, we've accepted all of them through
18 Exhibit 40 into evidence?

19 THE COURT: In evidence.

20 MR. BUCHWEITZ: Thank you.

21 (Whereupon, Plaintiff Exhibits 36, 37, 38, 39
22 and 40 were received in evidence.)

23 BY MR. BUCHWEITZ:

24 Q And the last exhibit --

25 MR. BUCHWEITZ: The last exhibit was from The

1 Village of Quogue, Exhibit 66 in the book.

2 Q Directing your attention to Plaintiffs' Exhibit 66.

3 Do you recognize Exhibit 66?

4 A Yes.

5 Q What do you recognize it to be?

6 A I took a picture of this pole. It is on Montauk
7 Highway off of Quogue Street in The Village of Quogue.

8 The picture was taken on June 15, 2011.

9 Q Do you have a sticker to place on that exhibit?

10 A Yes.

11 Q And please place it on the document.

12 MR. BUCHWEITZ: I'd like to move Plaintiffs'
13 Exhibit 66 in evidence.

14 THE COURT: Any objection?

15 MR. SPELLMAN: I don't have any objection to the
16 picture except what I said previously, and I'll attend to
17 it during cross-examination.

18 THE COURT: Yes. In evidence.

19 (Whereupon, Plaintiff Exhibit 66 was received in
20 evidence.)

21 MR. SPELLMAN: May I inquire? I may have missed
22 one. I think counsel did tell me.

23 Montauk Highway and Jessup Lane in Quogue, is
24 that number 17?

25 MR. BUCHWEITZ: Yes.

1 THE COURT: 17?

2 MR. SPELLMAN: Yes, the top right of that.

3 THE COURT: Yes, okay.

4 MR. BUCHWEITZ: I have nothing further.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. SOKOLOFF:

8 Q Mr. Greenbaum, you are a named plaintiff in this
9 lawsuit, aren't you?

10 A Yes.

11 Q When did you learn that you would be a named
12 plaintiff in this lawsuit?

13 A I asked to be a plaintiff. And, let's see, it would
14 have been the early part of 2011.

15 Q And are you a member of the East End Eruv
16 Association?

17 A No.

18 Q How did you come to be a plaintiff?

19 A Yes. Well, I am a member of the synagogue, I'm a
20 community leader, and I thought that having an eruv would
21 be a good thing for the community.

22 Q So you yourself are not connected to any organized
23 effort to establish an eruv; is that correct?

24 MR. BUCHWEITZ: Objection. It's the plaintiffs'
25 lawsuit.

1 THE COURT: I'll allow it.

2 A No.

3 BY MR. SOKOLOFF:

4 Q Yes, you are, or --

5 A If it means an organized effort, and I'm a plaintiff
6 for the lawsuit, in my definition of that, I guess the
7 answer would be yes.

8 Q Before this lawsuit was filed, you were not part of
9 any organized effort to establish an eruv; isn't that
10 correct?

11 A I've been interested in establishing an eruv since
12 2008.

13 Q I didn't ask you about your own individual interest.
14 My question is a different one.

15 Before this lawsuit was filed, you yourself were
16 not part of any organized effort to establish an eruv,
17 correct?

18 A I don't understand your question.

19 Q You were not a member of any organization that sought
20 to establish an eruv, correct?

21 A Well, I've spent countless hours working on this, so
22 I don't know what else I can tell you.

23 Q You could tell me if before you were a plaintiff in
24 this lawsuit --

25 THE COURT: Sustained. Asked and answered.

1 BY MR. SOKOLOFF:

2 Q Have you -- before this lawsuit was filed, did you
3 see any proposed or envisioned map of an eruv that would
4 cover where you live?

5 A Yes.

6 Q Where did you see that?

7 A On the village website of Westhampton Beach.

8 Q And when was that?

9 A 2008.

10 Q Who put it on the village website?

11 A I do not know.

12 Q And was the eruv -- withdrawn.

13 There was a map depicted on the village website?

14 A There was one other depiction taken from the village
15 website, a protest poster against the eruv, a window where
16 the area of the enclosed -- what would be parlayed inside
17 was marked in red.

18 Q Was there a map on the village website; yes or no?

19 MR. BUCHWEITZ: Objection.

20 A Yes.

21 MR. SOKOLOFF: Yes?

22 THE COURT: He said yes.

23 BY MR. SOKOLOFF:

24 Q Was the map depicted on the website -- did it depict
25 the same area on the map on the easel that is Plaintiffs'

1 Exhibit 1 in this hearing?

2 A Not the same.

3 Q Show us how the map that was on the village website
4 at that time was different.

5 You can go over to the map and outline it for
6 the Judge. And if you can also, with words, describe what
7 you are pointing to.

8 MR. BUCHWEITZ: Your Honor, this is totally
9 outside the scope of the very narrow direct.

10 THE COURT: Overruled.

11 A Well, it would be an approximate.

12 BY MR. SOKOLOFF:

13 Q All right. Do the best you can.

14 A (Indicating.)

15 Q So the written record has a depiction what you did,
16 can you describe it in words?

17 A Mostly, I think it mostly encompassed the major part
18 of Westhampton Beach.

19 Q Can you describe with words where you pointed?

20 A So we're talking about from the western part of
21 Westhampton Beach. I think it fell through parts of
22 Westhampton -- I don't think it went up to Montauk
23 Highway -- I don't think it went beyond Montauk Highway --
24 and back down towards this area. But I don't think it
25 enclosed any part of Quogue. But again, that is an

1 approximate.

2 Q Now, is the eruv that you yourself are seeking as a
3 plaintiff in this lawsuit, does that map that you are
4 standing next to accurately depict the eruv that you are
5 seeking?

6 A No.

7 When you say "map," it encloses -- the eruv
8 we're talking about now -- everything that would be part,
9 I think, of the new eruv would have been part of the old.

10 Q But my question is, do you see a red outline on
11 Plaintiffs' Exhibit 1 that other witnesses have testified
12 about? Do you see the red outline?

13 A Uh-huh.

14 Q Does that red outline accurately depict the perimeter
15 of the eruv that you, as a plaintiff in this lawsuit, are
16 now seeking?

17 MR. BUCHWEITZ: Objection, your Honor.

18 THE COURT: Overruled.

19 If he knows.

20 A Approximately everything that was in the eruv in 2007
21 now would be enclosed by the current proposed area.

22 BY MR. SOKOLOFF:

23 Q What do you mean "approximately," that this map, this
24 red perimeter on the map, approximately depicts the eruv
25 you are seeking as a plaintiff? What do you mean,

1 "approximately"?

2 A Just exactly what the word "approximately" means?

3 Q Where, if anywhere, is that map an inaccurate
4 depiction of the eruv that you, as a plaintiff, are
5 seeking?

6 A I never held myself out as an expert on the exact
7 particulars of the location of the eruv.

8 Q That map was provided by your lawyers to the
9 defendants as a depiction of the eruv that you are
10 seeking, correct?

11 A Correct.

12 Q And did you review the map that your lawyers sent to
13 the defendants and submitted to this Court in connection
14 with your being a plaintiff in the lawsuit?

15 A Yes.

16 Q And that's the map that you reviewed, correct?

17 A Yes.

18 Q And before your lawyers sent that map to the
19 defendants, it was your view that that's the eruv you are
20 seeking, right?

21 THE COURT: Sustained. Asked and answered.

22 Q As a plaintiff in this lawsuit, were you part of any
23 decision to change the dimensions of the lechis that the
24 plaintiffs are seeking here?

25 A No.

1 Q What size lechi are you seeking?

2 A I'm seeking the size of a lechi that would be
3 rabbinically correct and permissible under the law.

4 Q And do you know what that is?

5 A No.

6 Q Did you ascertain what that is before a complaint was
7 filed in your name, describing what you needed
8 rabbinically?

9 A I heard conversations, and I know that the required
10 length of the lechi was to be increased.

11 Q Who did you hear those conversations with?

12 MR. BUCHWEITZ: Objection.

13 THE COURT: I'll allow it.

14 A As a plaintiff and in the documents that were
15 provided me.

16 BY MR. SOKOLOFF:

17 Q Excuse me. My question is -- you said you heard
18 conversations about the change in the size of the lechis.

19 And my only question right now is, who was part
20 of the conversations that you heard?

21 MR. BUCHWEITZ: Objection.

22 THE COURT: Overruled.

23 A As a plaintiff -- there are other plaintiffs who are
24 on the EEA -- I'm sorry, the EEEA. And as part of the
25 documents --

1 BY MR. SOKOLOFF:

2 Q I didn't ask you about documents.

3 My question is, can you identify, please, who
4 you heard speaking about changes in the size of the
5 lechis?

6 A I can tell you if I use the word "heard." I live in
7 Westhampton Beach. We do not have physical meets. We do
8 not have even -- very, very rarely, even, conference
9 calls. Everything here was transmitted through e-mail and
10 documentation.

11 Q So when you said before you heard conversations, are
12 you now saying that wasn't accurate?

13 A I think the answer to that would be correct.

14 Q If you didn't hear conversations about the changes in
15 lechis size, why did you testify a moment ago that you
16 heard conversations?

17 MR. BUCHWEITZ: Objection.

18 THE COURT: Sustained.

19 BY MR. SOKOLOFF:

20 Q Who were part of the e-mails that you read pertaining
21 to the change in the lechi size?

22 A Just the members of the plaintiffs.

23 Q Who specifically?

24 A The e-mails go out to the entire group.

25 Q Which e-mails -- withdrawn.

1 Who wrote the e-mails that you are talking about
2 that pertained to the change in lechi size?

3 MR. BUCHWEITZ: Objection. We went over this
4 with Mr. Tuchman.

5 MR. SOKOLOFF: Judge, he's a different witness.
6 He's a plaintiff.

7 THE COURT: Are you two finished arguing amongst
8 yourselves?

9 MR. BUCHWEITZ: Yes.

10 THE COURT: Overruled.

11 Go ahead, but not much longer. I'll put a limit
12 on it, Counsel.

13 MR. SOKOLOFF: I'm just trying to get answers.

14 THE COURT: I'm trying to move the case along.

15 BY MR. SOKOLOFF:

16 Q Who wrote the e-mails that you read about the change
17 in size of the lechis?

18 A The only information I have regarding the different
19 size of the lechis is everything that was proscribed
20 through documentation for the plaintiffs within the
21 purview of this case.

22 Q Who wrote the e-mails --

23 A Well, I got it --

24 MR. SOKOLOFF: Excuse me. Judge --

25 THE COURT: He was just about to answer you.

1 MR. SOKOLOFF: I didn't finish the question.

2 THE COURT: He was answering the prior question.

3 MR. SOKOLOFF: Oh, you are. Then be my guest.

4 THE COURT: Thank you.

5 A These e-mails were sent to me by what I call the eruv
6 attorneys at Weil Gotshal.

7 BY MR. SOKOLOFF:

8 Q So you are saying that that's how you learned that
9 the lechis would be a different size, from some e-mail
10 from a Weil Gotshal attorney?

11 MR. BUCHWEITZ: Objection.

12 THE COURT: Overruled.

13 A Again, I'm not a member of the group that made that
14 determination. I think the answer to that is yes.

15 BY MR. SOKOLOFF:

16 Q And when did you get the e-mail or e-mails from the
17 Weil Gotshal attorney about the change in size of the
18 eruv?

19 THE COURT: Can we move ahead, Counsel?

20 MR. SOKOLOFF: May I just get an answer to that
21 question, please?

22 THE COURT: Then you'll ask another question on
23 it, and I want to move ahead. It's not relevant.

24 MR. SOKOLOFF: It's not relevant?

25 THE COURT: As to the exact time that he

1 received it, yes, it's not relevant. He admits he
2 received it from the law firm, and it was before it was
3 used.

4 MR. SOKOLOFF: Well, let me just ask this.

5 THE COURT: Go ahead.

6 BY MR. SOKOLOFF:

7 Q Did you receive an e-mail about the change in size of
8 the lechis from the Weil Gotshal attorney after this
9 lawsuit was already filed?

10 THE COURT: That is permissible.

11 Can you answer that?

12 A Yes.

13 BY MR. SOKOLOFF:

14 Q And did you receive that after this hearing had
15 already started?

16 A No.

17 Q Except on Shabbos when you walk around or drive
18 around the village or the town, do you have a means of
19 taking digital photographs?

20 A Yes.

21 Q And how do you do that?

22 A iPhone.

23 Q Your iPhone can take pictures?

24 A Yes.

25 Q Were all of the pictures that you identified and were

1 introduced in evidence here taken with your iPhone?

2 A Yes.

3 Q When did you, in your own mind, decide you would take
4 pictures of signs in villages or towns?

5 A In 2000 -- well, I think I started -- I think I
6 started taking them in 2008.

7 Q And is it fair to say that from 2008 until today,
8 late June 2011, the only photographs of signs or banners
9 that were produced and put into evidence in this courtroom
10 today against Westhampton Beach are the four photos that
11 you identified, the four photos in three years?

12 A No.

13 Q Well, how many photos did you identify here today
14 that were put into evidence against Westhampton Beach?

15 THE COURT: Sustained.

16 Q Are you yourself an orthodox Jew?

17 MR. BUCHWEITZ: Objection.

18 THE COURT: Sustained.

19 BY MR. SOKOLOFF:

20 Q Are you claiming in this case that your First
21 Amendment rights to practice your religion have been
22 interfered with by the Village of Westhampton Beach?

23 A Yes.

24 Q And that's because there's no eruv?

25 A No. I think that other people who require the eruv

1 should be able to as a tolerant society.

2 Q My question is whether you yourself, Plaintiff
3 Clinton Greenbaum, require an eruv.

4 THE COURT: Sustained.

5 Q When were you on the school district, the school
6 board?

7 A From 2005 to 2010.

8 Q And you were a school board member?

9 A Yes.

10 Q Were you the president of the board?

11 A No.

12 Q During the time when you were on the school board,
13 did the school board authorize any banners to be put up?

14 THE COURT: Banners where?

15 MR. SOKOLOFF: In any of the three
16 municipalities that are the defendants here.

17 THE COURT: On the school board property or
18 public property? What are we talking about? Just banners
19 in general?

20 MR. SOKOLOFF: Yes.

21 THE COURT: How about in the school?

22 MR. SOKOLOFF: Well, not in school.

23 THE COURT: Not in school.

24 How about school property?

25 MR. SOKOLOFF: Let me rephrase the question.

1 THE COURT: Good idea.

2 BY MR. SOKOLOFF:

3 Q During the five years you were on the school board,
4 did the school district put up any banners on any
5 telephone or electric poles?

6 A Yes.

7 Q And did the school board seek permission from anybody
8 to do that?

9 A No.

10 Q Did you yourself go -- withdrawn.

11 MR. SOKOLOFF: I have no further questions.

12 CROSS-EXAMINATION

13 BY MS. LICCIONE:

14 Q Good morning, Mr. Greenbaum.

15 A Good morning.

16 Q Mr. Greenbaum, do you recall submitting a declaration
17 in support of the motion for a preliminary injunction that
18 we're here about today?

19 A Yes.

20 Q And do you recall testifying in that declaration that
21 officials from the various municipalities have expressed
22 opposition to an eruv? Do you recall that?

23 A Yes.

24 Q And could you tell me what opposition you received
25 from the Town of Southampton, you personally?

1 A Yes.

2 I sent an e-mail to the supervisor and to each
3 of the trustees of the Town of Southampton. And I
4 received -- I think it is in Exhibit A in my
5 declaration -- a response from a supervisor.

6 Q And did the supervisor anywhere indicate that she was
7 opposed to an eruv?

8 A What she said in the exhibit is that there was
9 problems, if I can use the term, regarding sign ordinance,
10 and that their attorneys would take action regarding the
11 eruv and the sign ordinance.

12 Q So it's your testimony, then, that she never used the
13 word "oppose"; is that correct?

14 A When someone tells me --

15 MS. LICCIONE: Move to strike.

16 THE COURT: Overruled.

17 A When someone tells me there's going to be attorneys
18 and ordinances and they'll uphold the law, my
19 interpretation of that was very much that it was an
20 opposition.

21 BY MS. LICCIONE:

22 Q So it was your interpretation that --

23 THE COURT: Asked and answered.

24 A As long as we're talking about this exhibit, would I
25 be able to see the exhibit?

1 MS. LICCIONE: Sure.

2 Here's a copy of your declaration, and I can get
3 you copies of the e-mails.

4 THE WITNESS: Thank you.

5 MR. BUCHWEITZ: Your Honor, if you are
6 interested, it's Exhibit 28 of your binder.

7 THE COURT: Thank you.

8 THE WITNESS: I'm just waiting for the e-mail.

9 MS. LICCIONE: I understand.

10 BY MS. LICCIONE:

11 Q She indicates there, does she not, she will be
12 enforcing the sign ordinance, does she not?

13 A As I said, yes.

14 Q Now, to your knowledge --

15 A You see the words, permit the installation of lechi
16 would be in conflict with the Town of Southampton sign
17 ordinance, and it will defend its local laws. And I'm
18 committed to supporting efforts of our attorneys in this
19 regard.

20 Q But she never used the word "oppose"; am I right?

21 A I'll repeat --

22 MS. LICCIONE: That's not necessary.

23 THE COURT: Sustained.

24 BY MS. LICCIONE:

25 Q Mr. Greenbaum, I think you testified in your direct

1 testimony that you participate in certain fund-raising,
2 runs, 5K races.

3 So you are able, yourself, to walk to synagogue;
4 isn't that correct?

5 MR. BUCHWEITZ: Objection, your Honor.

6 THE COURT: I'll allow it.

7 A Yes.

8 BY MS. LICCIONE:

9 Q You don't have any disabilities that would prevent
10 that?

11 A No.

12 Q Now, going back to your declaration, at paragraph 7
13 you made the statement, did you not, that municipalities
14 have not enforced any laws that would purport to prohibit
15 the attachment of objects to utility poles?

16 Was that your statement at paragraph 7?

17 A I'm reading it now (perusing).

18 THE COURT: Do you have paragraph 7 in front of
19 you?

20 THE WITNESS: Yes. I'm reading it right now.

21 THE COURT: Okay. What exhibit are we talking
22 about?

23 MS. LICCIONE: It's his declaration in support
24 of preliminary injunction. It's not marked as an exhibit,
25 but -- it's not marked as an exhibit.

1 A Yes, that's in my declaration.

2 BY MS. LICCIONE:

3 Q You didn't make any inquiries of the Town of
4 Southampton as to how important was that sign ordinance,
5 did you?

6 A No.

7 Q Now, going to the paragraphs, particularly 31 through
8 40, which were the Southampton locations, I'd like you to
9 draw your attention to those.

10 I think it was your testimony, at least with
11 respect to this case, you started taking photographs in
12 approximately September of 2010, and you took photographs
13 through June of 2011.

14 A Correct.

15 Q Okay.

16 By the way, this time period included the
17 holiday seasons, did it not, the winter holiday seasons,
18 Christmas and Hanukah?

19 A Yes.

20 Q You didn't include any wreaths or any other holiday
21 decoration, did you, sir?

22 A I have pictures of them.

23 Q Well, you didn't include any of them, did you, sir?

24 A No.

25 Q Now, with respect to the Town of Southampton, let's

1 look at photographs 31, 32 and 33.

2 Those are all at the same location, are they
3 not?

4 A Yes.

5 Q Do you have idea who put these up?

6 A I would guess it was the fall clean-up at 373-LAWN.

7 Q And you never called 373-LAWN and asked them to take
8 the signs away, did you?

9 A Actually, I did.

10 Q You did?

11 A Yes.

12 Q And what happened?

13 A They didn't answer.

14 Q Did you leave a message?

15 A I don't think they had a machine.

16 Q Okay. And you didn't call the town and ask them to
17 have them taken down, did you?

18 MR. BUCHWEITZ: Objection.

19 THE COURT: Sustained.

20 A No.

21 MR. BUCHWEITZ: When he says "sustained" --

22 THE COURT: When I say "sustained," don't answer
23 the question. If I overrule the question, then you
24 answer.

25 THE WITNESS: I understand.

1 THE COURT: Okay.

2 MS. LICCIONE: Your Honor, could I respectfully
3 ask the Court what the basis is for that ruling?

4 THE COURT: Next question.

5 BY MS. LICCIONE:

6 Q Are you aware --

7 THE COURT: He has no obligation to call the
8 town, the village or anyone else.

9 Q Are you aware that the town has a sign enforcement
10 unit?

11 A Yes.

12 Q Do you know, as you sit here today, whether anyone in
13 the town had knowledge of these signs?

14 A Well, I could only assume that everyone that drives
15 down that street --

16 Q And how high up were these, did you say? You had to
17 stand on the top of your van?

18 A Reachable from my van.

19 Q And you didn't take it down yourself when you could
20 reach it; is that right?

21 MR. BUCHWEITZ: Objection.

22 THE COURT: Sustained.

23 BY MS. LICCIONE:

24 Q Do you know how it was fastened?

25 MR. BUCHWEITZ: Objection.

1 THE COURT: Sustained.

2 You want him to rip down the signs that are
3 posted all over? Is that what your question is?

4 MS. LICCIONE: I'm just asking him a question.

5 THE COURT: I'm asking you what you mean by
6 that.

7 Is that his duty and responsibility, to pull
8 down signs throughout the villages and towns?

9 BY MS. LICCIONE:

10 Q If the sign had come down, you wouldn't have been
11 able to use it as an exhibit today, would you?

12 MR. BUCHWEITZ: Objection.

13 THE COURT: Sustained.

14 BY MS. LICCIONE:

15 Q Now let's look at photographs 34 and 35.

16 You have no personal knowledge as to who put
17 these up, do you?

18 A Again, I can only assume the people whose names are
19 on the signs.

20 Q And you don't know when they put them down --

21 MR. BUCHWEITZ: Objection.

22 BY MS. LICCIONE:

23 Q When they put them up, rather?

24 A Yes.

25 Q And with respect to Exhibit 34, that was taken down

1 in between November 17th and May 10th; is that correct?

2 THE COURT: What were the dates?

3 MS. LICCIONE: Between Exhibit 34 and 35, the
4 lower sign --

5 THE COURT: I'm asking what your question was.
6 I thought it was between November through May.

7 MS. LICCIONE: November 10th, which is the date
8 of 34, and the date of Exhibit 35.

9 BY MS. LICCIONE:

10 Q The lower sign came down at some point in between?

11 A The lower sign, winter, was taken between
12 November 17th and May 10th.

13 Q Do you have any knowledge as to who took it down,
14 sir?

15 A No.

16 Q And the sign at pages 36 and 37, the Edward Michael
17 sign --

18 A Yes.

19 Q -- do you have any knowledge as to who put that up?

20 A No.

21 Q Do you have any knowledge as to whether it has been
22 taken down?

23 A They both had been taken down as I checked it
24 yesterday.

25 Q And do you know who took it down?

1 A No.

2 Q And on Exhibit 37, the piece of paper up there
3 (indicating), you included that piece of paper in
4 Exhibit 37 because you considered that piece of paper a
5 sign; is that correct?

6 MR. BUCHWEITZ: Objection.

7 THE COURT: I don't know what piece of paper you
8 are talking about.

9 MS. LICCIONE: 37.

10 THE COURT: The one on the top, not the one on
11 the bottom?

12 MS. LICCIONE: Correct.

13 THE COURT: The one on the top I can't read any
14 writing; the one on the bottom I can.

15 MS. LICCIONE: Exactly.

16 THE COURT: Okay.

17 A It was stapled to the pole. The legible words were
18 if you look right under the staple. And at least on my
19 picture, you can see an S or a five. I think it was an S.

20 MS. LICCIONE: Your Honor, may I approach?
21 Because I don't see it on mine.

22 THE COURT: His pictures are better than what we
23 have.

24 THE WITNESS: It was a sign.

25 MS. LICCIONE: Thank you.

1 BY MS. LICCIONE:

2 Q Now, 38. This picture is from April 27th?

3 A Correct.

4 Q Do you know would put it up?

5 A Again, I would assume the Kiwanis Club. It's on the
6 sign.

7 Q Do you know if anyone made an effort to call the town
8 about this?

9 MS. LICCIONE: Objection.

10 THE COURT: Sustained.

11 BY MS. LICCIONE:

12 Q Exhibit 39. Do you know when that was put up?

13 A No.

14 Q Do you know when it was taken down?

15 A No.

16 Q Do you know would put it up?

17 A No.

18 Q Now, the piping behind the sign on which the sign is
19 attached, do you know who put that there?

20 A You are talking about that gray, huge --

21 Q Yes -- strike the word "huge."

22 I'm talking about the gray piping.

23 A I just assume that is part of the utility.

24 MS. LICCIONE: Thank you.

25 Q Now, number 40. Do you know who put these up?

1 A Once again, these were the people who were having the
2 sale.

3 Q And do you know when they were taken down?

4 MR. BUCHWEITZ: Objection.

5 BY MS. LICCIONE:

6 Q Do you know if they were taken down?

7 THE COURT: I'll allow it.

8 Go ahead.

9 A They have been taken down, but the picture was taken
10 May 10th, which was -- May 7th --

11 BY MS. LICCIONE:

12 Q I'm sorry?

13 A They weren't taken down right after the sale. I
14 mean, they are down now.

15 Q When was the last time you looked at this location,
16 sir?

17 A I've been by this location many times.

18 Q Do you know when they were gone?

19 A No. But again, the picture was taken on May 10th.
20 The sign says the sale -- one of the signs says May 7th.
21 One of the signs was after. But I can tell you the sign
22 is now not up. Neither sign is up.

23 Q And do you know who took them down?

24 A No.

25 Q Now, to summarize this briefly for the Court,

1 Exhibits 31 through 33 are the same site; is that correct?

2 THE COURT: Is that a review for the Court?

3 Thank you. The Court doesn't need this.

4 MS. LICCIONE: I'm just trying to summarize this
5 quickly, your Honor.

6 THE COURT: You are not supposed to summarize.
7 That's in your summation at the end.

8 MS. LICCIONE: I will not then.

9 BY MS. LICCIONE:

10 Q So altogether, you have photographs of six locations
11 here. I think some of them were of the same locations.

12 A Six locations in the Town of Southampton?

13 Q Correct. 31 through 40.

14 A (Perusing) Correct.

15 Q And you were taking photographs from September to at
16 least about a week ago; is that correct?

17 A (No response.)

18 Q And you came up with six spots?

19 A I have more.

20 Q You came up with evidence at this hearing of six
21 spots?

22 A Yes.

23 Q Would it surprise you to know there are over
24 400 miles of public roads in the Town of Southampton?

25 A No.

1 THE COURT: How many more people will you ask
2 any more questions?

3 MS. LICCIONE: None, your Honor. Thank you.

4 THE COURT: Counsel?

5 MR. SPELLMAN: Your Honor, may we take our
6 morning break now?

7 THE COURT: Yes.

8 We have a couple of criminal matters. Are we
9 ready for them or not?

10 Okay, they're not ready.

11 Short break. About ten minutes.

12 (Whereupon, a recess was taken.)

13 (An unrelated matter was taken by the Court.)

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1 THE COURT: Will the witness please take the
2 stand.

3 (Clint Greenbaum resumed the witness stand.)

4 THE COURT: Go ahead, Counsel.

5 MR. SPELLMAN: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. SPELLMAN:

8 Q Good morning, Mr. Greenbaum.

9 I'm Thomas Spellman. I represent The Village of
10 Quogue.

11 My questions will be limited to the three
12 exhibits that have been involved in Quogue which have been
13 moved into evidence.

14 Sir, is The Village of Quogue within the
15 Westhampton Beach Union Free School District?

16 A Yes.

17 Q While you were on the school board, did the school
18 district ever pass any resolutions or indicate in any
19 manner they wished to put up banners or anything such as
20 that within The Village of Quogue using either the
21 telephone or LIPA poles?

22 A Not that I'm aware of.

23 Q Now, with reference to Exhibit 66 -- do you have that
24 before you?

25 A Yes.

1 Q That's the one with the telephone pole.

2 A Yes.

3 Q You can read off of that, can you not -- it has a
4 little plate on it. Looks like the shape of a bell.
5 Looks like NYT, and then it has some numbers, 2255?

6 A Yes.

7 Q Can we agree that is, in all probability, all part of
8 the utility company putting those on there?

9 A Yes.

10 MR. BUCHWEITZ: Objection.

11 BY MR. SPELLMAN:

12 Q Below that there are three discs that appear to be
13 metal.

14 Do you see them?

15 A Uh-huh.

16 Q Do you know what they are?

17 A No.

18 Q In your looking at them with your copy of the
19 photograph, can you read anything on them?

20 A No.

21 Q And they also would appear to be put there by the
22 utility company?

23 A Yes.

24 Q And as for the rest of the photograph, would you tell
25 us what that appears to be?

1 A Well, I do know.

2 Q Okay. You were there.

3 A No. I was curious, and I asked a worker from the
4 telephone company as to what this is.

5 Q Tell us.

6 A This is a splice box that is used for homes which
7 have underground services. And the metal conduit that
8 goes up the length of the pole gets those wires from the
9 ground to the wires on top.

10 Q So can we agree that all of that is put on there by
11 the utility company?

12 A Yes.

13 Q So Exhibit 66, does it show anything other than that
14 which is put on by the utility company?

15 A Yes. And I'm showing the extent of the stuff that
16 can go on these poles.

17 Q This is in evidence. Not what might go on. This is
18 in evidence as to what this pole looks like, correct?

19 A Yes.

20 Q And everything on there is the utility company's?

21 A Correct.

22 Q And Exhibit 17, that's the fire department thing?

23 A Yes.

24 Q That's an advertisement for a November 28th, is it --

25 A Yes.

1 Q -- pancake breakfast?

2 It looks like the 28th is changed every year.

3 A Yes.

4 Q So it's a reusable sign?

5 A I guess they use it every year.

6 Q And this was taken the Tuesday before the Sunday
7 pancake breakfast?

8 A Yes.

9 Q When did the sign come down?

10 A I do not know.

11 Q And you are aware -- you were here, and I wasn't, but
12 I'm trying to read the transcript.

13 Were you here on June 15th --

14 THE COURT: I don't think he was here.

15 Q Were you here on June 15th, in the courtroom?

16 A Yes.

17 THE COURT: Okay. I'm wrong. I didn't notice
18 you.

19 BY MR. SPELLMAN:

20 Q There was testimony concerning the relationship
21 between the village and the fire department. You recall
22 that?

23 A Oh, yes.

24 Q And that the village controls -- it's a village fire
25 department. Can we agree with that?

1 A I don't know the relationship of a volunteer fire
2 department in the village. I do not know --

3 Q You just don't know about it?

4 A I know there's a fire department.

5 Q Yes.

6 A I don't know what you mean by village-controlled.

7 Q Okay. As I say, I don't know what you heard or what
8 you remembered, because there is other evidence on that
9 subject.

10 But the question is, are you aware from any
11 meetings, including what transpired in this courtroom, are
12 you aware that it is a village fire department? The
13 village board of trustees controls the fire department.
14 They elect their own officers and are passed on by the
15 board of trustees. The budget of the fire department is
16 fully funded by the village.

17 Are you aware of that, sir?

18 MR. BUCHWEITZ: Objection.

19 THE COURT: If he's aware of it.

20 MR. SPELLMAN: Yes.

21 A No, I'm not aware of it.

22 BY MR. SPELLMAN:

23 Q Okay.

24 And look at Exhibit 16, if you would, sir.

25 You took that one on September 20, 2010?

1 A Yes.

2 Q And what occasioned you to take this photograph?

3 A The number 75 and the reflectors.

4 Q I must tell you, sir, I don't see the number 75 on
5 mine. I see a seven.

6 A It is clear (indicating).

7 Q It is clear on your copy?

8 A Absolutely.

9 Q That's the one in evidence, and I'll take your word
10 for it.

11 The other items on the pole -- it's apparently a
12 LILCO pole or a LIPA, right?

13 A I guess.

14 Q Well, it says L-I-F?

15 A I guess so.

16 Q The 296 and the X appear to be put there by the
17 utility company?

18 A Yes, I would guess.

19 Q And again, that other symbol appears to be there?

20 A I do not know.

21 Q Can you read what the writing is on that disk?

22 A No.

23 Q On yours you can't?

24 A No.

25 Q Does it say the word "Quogue"?

1 A I can read the word "five," but I can't read the
2 disk.

3 MR. SPELLMAN: May I approach the witness with
4 this instrument?

5 May I point out precisely what I'm talking
6 about?

7 THE WITNESS: Sorry, I cannot make it out.

8 MR. SPELLMAN: Okay.

9 Does your Honor have a copy of the exhibit in
10 front of you?

11 THE COURT: Yes, but mine doesn't show it at
12 all.

13 BY MR. SPELLMAN:

14 Q Now, there are some reflectors on there?

15 A Yes.

16 Q Is that the reason you took the photograph?

17 A Yes.

18 Q And those reflectors are blue and red?

19 A Correct.

20 Q Now, are you aware that fire departments use blue
21 reflectors to indicate a fire hydrant in the area?

22 A These reflectors -- yes, I don't know that. But
23 these reflectors have been taken down since.

24 Q When were they taken down?

25 A I don't know.

1 Q How long were they up?

2 A I can't tell you.

3 But I have also gone by this pole recently, and
4 these reflectors have been replaced with about
5 (indicating) yea high, 75, on a little pole, post.

6 THE COURT: When you say "yea high," how high?

7 THE WITNESS: I would say about three feet.

8 MR. SPELLMAN: Your Honor, I'll move to arrest
9 the balance of the answer because I didn't talk about how
10 high the reflectors were.

11 THE COURT: Okay.

12 BY MR. SPELLMAN:

13 Q Mr. Greenbaum, do you know who lives at this
14 residence?

15 A No, I do not.

16 Q Do you know if he's a volunteer fireman?

17 A No, I do not.

18 Q You started to make reference to something else that
19 is not in evidence, is that correct, what the present
20 situation is there?

21 A I was just answering a question.

22 Q Were any of these photographs that you have
23 submitted, particularly the ones 16, 17 and 66, were they
24 enhanced in any manner in their development?

25 A Absolutely not.

1 Q How were they developed?

2 THE COURT: Pardon? What was the question? I
3 didn't hear you.

4 A Again, I sent these electronically, and I used a
5 printer -- and again, this is the Weil office. And you
6 can tell by the print there is no difference from any
7 printer they use for any documentation.

8 BY MR. SPELLMAN:

9 Q Where were they developed and printed?

10 A These were given as part of the testimony today, and
11 they were given to me by the lawyers of Weil Gotshal.

12 Q And you took the photographs?

13 A Yes.

14 Q And you transmitted them to the attorneys -- to your
15 attorneys?

16 A Correct.

17 Q How did you transmit them?

18 A E-mail with attachments.

19 Q Do you have any special expertise in photography?
20 Any training or anything such as that?

21 A No.

22 MR. SPELLMAN: Thank you, Mr. Greenbaum.

23 Nothing further.

24

25

1 REDIRECT EXAMINATION

2 BY MR. BUCHWEITZ:

3 Q Among the plaintiffs' group, are you responsible for
4 interfacing with rabbinic authorities about lechis or
5 other matters of Jewish law?

6 A No.

7 Q Turning to Exhibits 36 and 37 for a moment, sir --

8 A Yes?

9 Q -- I believe you mentioned that you testified that
10 Exhibit 36 you took on May 10th of 2011, and Exhibit 37
11 you took on June 7th of 2011.

12 A Correct.

13 Q You've also testified since then the sign "Edward
14 Michaels Cleanup Service" has been removed?

15 A Correct.

16 Q Did you go there this morning, Mr. Greenbaum?

17 A Yes.

18 Q What did you see on that pole?

19 A A new sign.

20 Q What does the new sign say?

21 A I didn't really look. It just was a new sign which
22 was approximately the same height.

23 MR. BUCHWEITZ: Nothing further.

24 RECROSS-EXAMINATION

25 BY MR. SOKOLOFF:

1 Q Mr. Greenbaum, you are not responsible among the
2 plaintiffs' group with interfacing with rabbis on issues
3 of Jewish law relating to the eruv?

4 A No.

5 Q Who is?

6 A Again, the one who seems to have taken a lead on that
7 is Moishe Tuchman, Morris Tuchman.

8 Q Did he tell you about any discussions that he had
9 with any rabbis?

10 A No.

11 MR. SOKOLOFF: I have no further questions.

12 THE COURT: I have a few questions.

13 You told us through the defense attorney that
14 you've taken many photographs at Westhampton Beach.

15 THE WITNESS: Yes.

16 THE COURT: How many have you taken,
17 approximately, showing signs? That's what we're talking
18 about.

19 THE WITNESS: Oh, I would say we're talking -- I
20 would say at least 30, 40.

21 THE COURT: When did you start?

22 THE WITNESS: In earnest, in September of 2010,
23 but I have pictures prior to that.

24 THE COURT: Next. You mentioned that you took
25 pictures of Southampton, pictures of the holiday season.

1 THE WITNESS: No. The pictures of the holiday
2 season was a picture in Westhampton Beach.

3 THE COURT: Okay.

4 THE WITNESS: The picture -- let's see. There
5 is one, yes. There was a pole --

6 THE COURT: Which town are we talking about?

7 THE WITNESS: Excuse me. The Town of
8 Southampton. The pole on Sea Breeze Avenue with a picture
9 of a red Christmas bow.

10 THE COURT: And you have that picture?

11 THE WITNESS: Yes.

12 THE COURT: You also mentioned when you were on
13 the school board, you put up signs without permission of
14 the local board. Is that correct?

15 THE WITNESS: Of the local municipality?

16 THE COURT: Yes.

17 THE WITNESS: Yes.

18 THE COURT: What signs did you put up?

19 THE WITNESS: They were signs campaigning for
20 the passage of a bond.

21 THE COURT: And where was it put up?

22 THE WITNESS: They were put up within the voting
23 district of the school board, which constitutes
24 Westhampton Beach and Quogue.

25 THE COURT: Was it put on the school property or

1 off the school property?

2 THE WITNESS: Not on the school property.

3 THE COURT: And how big were these signs, so we
4 have an idea?

5 THE WITNESS: The signs varied in -- difference
6 in sizes.

7 THE COURT: When you say "difference in sizes,"
8 give us an idea. I don't know.

9 THE WITNESS: I'll be glad to.

10 Some of the signs could have been a placard.
11 Some signs -- again, some of these signs that were put up
12 were with permission.

13 For example, we had a sign on the local movie
14 theatre with the permission of the theatre owner.

15 We had a sign --

16 THE COURT: Any signs on poles?

17 THE WITNESS: Any signs on poles? Not to my
18 recollection.

19 THE COURT: Okay.

20 Anybody want to ask any questions concerning
21 that?

22 MS. LICCIONE: Yes, your Honor. I do. Thank
23 you.

24 RE-CROSS-EXAMINATION

25 BY MS. LICCIONE:

1 Q I think you just mentioned you saw a red bow in the
2 Town of Southampton.

3 A Yes, correct.

4 Q Do you know when that was?

5 A I could easily go back to my records. In fact, I
6 think it is in my first declaration.

7 Q And that would have been...

8 A Which would have been March of 2011. I think the
9 declaration was in March, if my recollection is correct.
10 March 13th.

11 I think it was September 7th, or it might have
12 been taken November or December of 2010.

13 Q It may have been taken in September, but it was a
14 Christmas bow?

15 A Again, I don't have the evidence today, and I don't
16 have the exact date.

17 Q So it could have been in September?

18 A I don't have the exact date.

19 MS. LICCIONE: Your Honor, would you like to see
20 what I'm showing him? It's Exhibit AA to the complaint.

21 THE COURT: Okay. I see it.

22 MS. LICCIONE: It's Exhibit Z to the complaint,
23 the last page before Exhibit AA.

24 Thank you, your Honor.

25 BY MS. LICCIONE:

1 Q Is this the red bow to which you were referring?

2 A Yes.

3 THE COURT: How long was it up; do you know?

4 THE WITNESS: I can't tell you how long it was
5 up, but it's not up now.

6 THE COURT: Can you tell us approximately?

7 THE WITNESS: I can only tell you that the bow
8 is weathered.

9 THE COURT: Okay.

10 MS. LICCIONE: I'd like to move that into
11 evidence.

12 Is that necessary, or is the fact that it is
13 attached to the complaint sufficient for the Court?

14 THE COURT: You can mark it. Give it a number.
15 Anybody have any objection?

16 MR. BUCHWEITZ: No. I'd like to show
17 Mr. Greenbaum his reply memorandum with respect to the
18 date to refresh his recollection, your Honor.

19 THE COURT: Sure. And if you mark it as an
20 exhibit, tell me what number you want to put on it.

21 MS. LICCIONE: Your Honor, I object. I don't
22 believe this witness's recollection needs to be refreshed.
23 He said it could have been September.

24 THE COURT: Well, doesn't that have the need to
25 be refreshed?

1 Show it to him.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. BUCHWEITZ:

4 Q Mr. Greenbaum, review that, Exhibit 7.

5 Does that refresh your recollection as to the
6 date of the ribbon?

7 A Okay.

8 THE COURT: Does that refresh your recollection?

9 THE WITNESS: Yes.

10 The photograph depicts a large red ribbon
11 attached to the utility pole at the intersection of Booker
12 Lane and Sea Breeze Avenue, taken on November 17, 2010.

13 MR. BUCHWEITZ: Nothing further.

14 THE COURT: Any other questions?

15 FURTHER RECROSS-EXAMINATION

16 BY MR. SOKOLOFF:

17 Q Mr. Greenbaum, the Village of Westhampton Beach has a
18 sign ordinance; does it not?

19 A Now it does.

20 Q When was it enacted?

21 THE COURT: Sustained.

22 Q The Village of Westhampton Beach --

23 THE COURT: Counsel, you cannot go into other
24 things.

25 MR. SOKOLOFF: Your Honor, I'm not going into

1 other things. He's testified when you asked him
2 questions, he testified about --

3 THE COURT: I will make that determination.

4 Next question.

5 BY MR. SOKOLOFF:

6 Q The other item -- withdrawn.

7 You say that you have other photos depicting
8 signs in Westhampton Beach that are not in evidence in
9 this hearing?

10 A Yes.

11 Q And are any of those items in the village
12 right-of-way, in other words, on village property, to your
13 knowledge? Yes or no?

14 A Not to my knowledge.

15 Q And these other items that you say you photographed
16 that were not put into evidence in this trial, do you have
17 any knowledge of whether an application was or was not
18 made to the village under a sign ordinance or village
19 permission --

20 THE COURT: Sustained.

21 MR. BUCHWEITZ: Objection.

22 MR. SOKOLOFF: No further questions.

23 MR. SPELLMAN: Your Honor, just one further
24 question.

25 I'll do it from here.

1 FURTHER RECROSS-EXAMINATION

2 BY MR. SPELLMAN:

3 Q To clarify an answer you gave to the Judge: When you
4 were on the school board, you said there were some signs
5 or posters put up on a bond issue, and you indicated where
6 they were.

7 You mentioned Quogue?

8 THE COURT: I'm sorry?

9 MR. SPELLMAN: That's how I pronounce it.

10 How do you pronounce it?

11 THE WITNESS: I asked the mayor of Quogue how to
12 pronounce the name, so he said Quogue and Quiogue.

13 MR. SPELLMAN: We'll call it Quiogue. Is not
14 the same as Quogue.

15 THE WITNESS: Correct.

16 BY MR. SPELLMAN:

17 Q If I call it Quiogue, it's within the Town of
18 Southampton.

19 A I understand.

20 But it is in the school district of Westhampton
21 Beach.

22 Q And that's where you say the taxes and whatnot --
23 that they pay Westhampton Beach school taxes --

24 THE COURT: Sustained.

25 MR. SPELLMAN: Your Honor, merely to make it

1 clear, it is not Quogue. Correct?

2 THE WITNESS: There's a difference between
3 Quogue and Quiogue.

4 THE COURT: What is the difference? I'm totally
5 confused.

6 MR. SPELLMAN: Your Honor, if I may, there's a
7 village --

8 THE COURT: Let's get it from the village.

9 THE WITNESS: This is Quiogue.

10 This is Quogue.

11 Again, I'm no municipality expert, but this is
12 not an incorporated village that is part of the Town of
13 Southampton. This is The Village of Quogue. So --

14 THE COURT: That portion you are pointing to,
15 which is the white portion, east of Southampton Beach --
16 I'm sorry, Westhampton Beach --

17 THE WITNESS: That's part of the Westhampton
18 Beach Union Free School District.

19 THE COURT: But it's also part of the Town of
20 Southampton?

21 THE WITNESS: Correct.

22 THE COURT: And not part of Quogue itself?

23 THE WITNESS: Correct. Nor is it part of
24 Westhampton Beach.

25 Then further east of that is the incorporated

1 Village of Quogue itself.

2 THE COURT: Yes. And it is almost spelled the
3 same.

4 Any other questions?

5 MR. BUCHWEITZ: No, your Honor.

6 THE COURT: Let's take a short break. Who is
7 your next witness?

8 MR. BUCHWEITZ: This is our last witness, your
9 Honor.

10 We'll take a short break.

11 (Whereupon, a recess was taken.)

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1 A F T E R N O O N S E S S I O N

2 THE COURT: Be seated.

3 Motions, briefly.

4 MR. SOKOLOFF: Judge, on behalf of the
5 Westhampton Beach defendants.

6 Before this Court can do anything with regard to
7 Westhampton Beach, it has to have subject matter
8 jurisdiction under Article 3 of the constitution. There
9 has to be a case or controversy that has to be ripeness.

10 You can't run to a federal judge to get free
11 legal advise because in your own mind something may happen
12 in the future. And as to my client -- and I'm only
13 speaking for Westhampton Beach -- there is none of that.
14 There is not a ripe controversy. There is nothing.

15 The plaintiffs admit into evidence Plaintiffs'
16 Exhibit 1, but they can't or don't identify where on that
17 map the lechis are going to go.

18 They say that some of the lechis which have
19 changed -- and we've dealt with that, but that is not
20 necessary for this motion. They say that some of the
21 lechis are on Verizon poles and some of them are on LIPA
22 poles. Which are which? Nobody knows.

23 They put in a LIPA agreement. And we had
24 Mr. Balcerski here yesterday. That agreement is in its
25 infancy. He testified there is supposed to be a pole walk

1 to identify which poles and whether there were any poles
2 that are inadequate. They never even did that. They
3 haven't gotten to that stage yet.

4 As to the rest of the eruv, the other poles, the
5 LIPA poles, there is no LIPA agreement in evidence. There
6 was no witness for LIPA. We don't know which LIPA poles
7 are involved, where they are.

8 As to my client, there's been no application
9 made. There was a different application made in 2008.
10 Several witnesses testified that before the witness
11 could --

12 THE COURT: Counsel, I need to bring it to an
13 end.

14 MR. SOKOLOFF: Your Honor, I'm making a motion.

15 THE COURT: I know. I said do it briefly.

16 MR. SOKOLOFF: I'm doing it as briefly as I can.

17 THE COURT: Decision reserved.

18 Next?

19 MR. SOKOLOFF: I -- just for the record, I
20 didn't finish my argument.

21 THE COURT: That is correct. I'll give you a
22 chance at the end of the case.

23 Go ahead.

24 I told you it was going to be brief.

25 MS. LICCIONE: Your Honor, this is going to be

1 very brief.

2 I want to reiterate counsel for Westhampton
3 Beach's argument with respect to the Town of Southampton,
4 with respect to ripeness. There has been no application
5 for a variance, no application for an interpretation of
6 the sign ordinance to the zoning board of appeals, which
7 is standard procedure in these municipal applications.

8 All the town has done, one member of the town
9 board has said, I'm going to report the ordinance. That's
10 all that happened here. There is no ripeness.

11 During the break, Mr. Sokoloff said I would be
12 making the lack of irreparable harm argument on behalf of
13 both of our clients.

14 We've not heard a witness testify as to
15 irreparable harm to them. We've had a witness -- every
16 single witness who has been here is capable of walking to
17 synagogue. All of them have lived in the community for
18 many, many years.

19 The witness in the Town of Southampton bought
20 the home in 1997 when her teenagers were babies. She
21 found a way to get to the synagogue with strollers then.

22 There is no immediate or irreparable harm.

23 Thank you, your Honor.

24 MR. SPELLMAN: On behalf of The Village of
25 Quogue defendants, I would move that this Court deny the

1 preliminary injunction sought by the plaintiffs. The
2 Village of Quogue relies on its village code, which
3 includes a sign ordinance. Relies on state law.

4 The village, clearly, under state law, controls
5 its right-of-way. Transportation corporation law,
6 allowing utilities to place their poles on this
7 right-of-way, comes into consideration. And the utilities
8 cannot sublicense these -- the use of these poles without
9 the permission of the municipality.

10 The applicants wishing to use the utility poles
11 within The Village of Quogue right-of-way to affix signs
12 of any sort must obtain village permission.

13 Plaintiffs have not applied for this permission.

14 Up to this point, we're concerned with New York
15 State law. Plaintiff, when they do apply, will be granted
16 permission or move in the state court for an Article 78
17 proceeding.

18 Our point is, and to follow up on what my
19 predecessor defendant counsel says, this case is not ripe
20 for the federal court on four points:

21 The Court lacks jurisdiction because there is no
22 case or controversy.

23 The claims are not ripe for judicial review.

24 The likelihood for success on the merits have
25 not been shown, particularly with respect to the confusion

1 with where, what -- with where these lechis ought to be
2 and to what they are affixed. We didn't go into any of
3 that.

4 And then the plaintiff pointed out, could not
5 show irreparable harm.

6 With reference to the facts that were brought
7 out on the June 15th hearing, the Court, of course, is
8 familiar with that. The mayor testified, again, with
9 reference to the codes, and no application has been made.

10 There was an attempt by plaintiffs to show that
11 this sign law didn't mean anything, wasn't enforced or
12 whatever their point was.

13 In submitting the three pictures or photographs,
14 the Court clearly heard the discussions. The fire
15 department one is part of a village function. The utility
16 pole, number 66 in evidence --

17 THE COURT: Counsel, I said let's not go over
18 the facts.

19 MR. SPELLMAN: Excuse me?

20 THE COURT: I said, let's not go over the facts.

21 MR. SPELLMAN: I thought I heard you say that.
22 I apologize.

23 THE COURT: Reserve decision. You don't have to
24 say anything. I reserve decision.

25 Call your first witness, whoever wants to go for

1 the defendants.

2 MS. LICCIONE: The Town of Southampton
3 defendants call Michael Benincasa.

4

5 **M I C H A E L B E N I N C A S A,**

6 called as a witness, having been first
7 duly sworn, was examined and testified
8 as follows:

9 THE WITNESS: My name is Michael Benincasa,
10 B-E-N-I-N-C-A-S-A.

11

12 DIRECT EXAMINATION

13 BY MS. LICCIONE:

14 Q Can you tell the Court where you are employed?

15 A Southampton.

16 Q In what capacity?

17 A Chief building inspector.

18 Q Is that a civil service position?

19 A Yes, it is.

20 Q So you do not serve at the pleasure of the town
21 board, do you?

22 A No, I do not.

23 Q How long have you been the chief building inspector?

24 A A little over nine years.

25 Q And your prior experience?

1 A I was a senior building inspector with the Town of
2 Brookhaven.

3 Q And do you have any special training as a building
4 inspector?

5 A Yes.

6 Q What is that training?

7 A It's a 125-hour specialized state code enforcement
8 training, and 24 hours a year continuing training, plus
9 previous experience in the building field.

10 Q Let me get to that.

11 Prior to you being with the Town of Brookhaven,
12 what did you do?

13 A I was a builder.

14 Q Now, in the Town of Southampton, can you explain to
15 the Court, briefly, what your duties are?

16 A My duties are enforcing the city uniform fire
17 prevention code as well as the Town of Southampton
18 building code.

19 Q Now, do you have a staff?

20 A Yes, I do.

21 Q How big is your staff?

22 A Nineteen, twenty, including myself.

23 Q Do you have a staff person who is assigned
24 administration and enforcement on the sign ordinance?

25 A Yes.

1 Q And who is that?

2 A Mark Viseckas, V-I-S-E-C-K-A-S.

3 Q Now, are you familiar with the Town of Southampton
4 sign ordinance at section 330-200 of the code?

5 A Yes.

6 Q And I show you what's been marked Southampton
7 Exhibit A and ask you if that is the Town of Southampton
8 sign ordinance (handing).

9 A Yes.

10 MS. LICCIONE: I move that Southampton A Exhibit
11 into evidence.

12 THE COURT: In evidence.

13 (Whereupon, Defendant Southampton Exhibit A was
14 received in evidence.)

15 MS. LICCIONE: Thank you, your Honor.

16 BY MS. LICCIONE:

17 Q Now, can you tell me -- strike that. Withdraw that.

18 Now, are you familiar with section 330-165 of
19 the Southampton town code with respect to the
20 interpretation of the zoning law?

21 A Yes.

22 Q I'd like to show you what has been marked as
23 Southampton Exhibit B and ask you if you are familiar with
24 that section of the code.

25 A Yes.

1 Q Can you tell the Court in sum and substance what that
2 section says?

3 I'm sorry. Withdrawn.

4 MS. LICCIONE: Your Honor, I'd like to move
5 Southampton B be admitted in evidence.

6 MR. BUCHWEITZ: No objection.

7 THE COURT: In evidence.

8 (Whereupon, Defendant Southampton Exhibit B was
9 received in evidence.)

10 A That chapter says that -- chapter 330, section 165,
11 states that if somebody feels -- or an applicant feels my
12 interpretation of the building permit is incorrect, they
13 could appeal my decision to the zoning board of appeals.

14 BY MS. LICCIONE:

15 Q Now, turning to the sign ordinance at 330-200, can
16 you take a look at the bottom of the fourth page and the
17 top of the fifth page, please?

18 A Yes.

19 Q How does the Town of Southampton sign ordinance
20 define a sign?

21 A It defines a sign very broadly. It's any material,
22 structure --

23 Q You may look at the exhibit.

24 MR. BUCHWEITZ: Objection.

25 THE COURT: I'm sorry, I didn't hear you.

1 MR. BUCHWEITZ: The document or the statute
2 speaks for itself.

3 THE COURT: What was your question?

4 MS. LICCIONE: Could you tell us, in essence,
5 how the Town of Southampton defines a sign.

6 THE COURT: I'll allow it.

7 MS. LICCIONE: Thank you, your Honor.

8 A Any material, device, structure that intends to
9 transmit a message and also defines -- also includes any
10 outline, emblem, letter, numeral, delineation, in fact, is
11 also considered a sign.

12 BY MS. LICCIONE:

13 Q And does a delineation or an outline mean necessarily
14 to convey a message?

15 A Repeat that, please?

16 Q Sure.

17 Does a delineation or an outline need to convey
18 a message in order to be considered a sign?

19 A No, it doesn't.

20 Q Now, as a building inspector, are you familiar with
21 the concept of a public right-of-way?

22 A Yes.

23 Q And could you explain to the Court what that concept
24 is?

25 A Public right-of-way is normally town-owned property

1 used for egress and ingress of particular property or area
2 of the town.

3 Q And can you tell the Court who owns the public
4 right-of-way?

5 A Town of Southampton.

6 Q Now, are signs prohibited in the public right-of-way?

7 A No, they are not.

8 Q Prohibited?

9 A Signs are prohibited in the right-of-way.

10 Q And what powers does the Town of Southampton have
11 with respect to signs in the public right-of-way under the
12 code?

13 A Section 203.

14 Q What does that say?

15 A It says that -- I'm sorry, I need to review this.

16 Q Go ahead. Take your time.

17 A (Perusing.)

18 Q Sir, looking at 330--

19 A 330-210.

20 Q I'm sorry. Could you tell the Court what power
21 grants the town?

22 A It says signs aren't permitted on telephone poles,
23 building, fences, any fields.

24 Q Referring to 330-210 A, what powers does the town
25 have with respect to removing the sign?

1 And I'm looking at page 16 of 18.

2 A 330-210 A says that the town has the power to remove
3 signs that are placed in a right-of-way.

4 Q And what about with respect to the poles in the
5 right-of-way? Are signs permitted on the poles in the
6 right-of-way?

7 MR. BUCHWEITZ: Objection.

8 THE COURT: Overruled.

9 A Signs are not permitted on the poles.

10 BY MS. LICCIONE:

11 Q Can you give me an example of any exemptions from the
12 prohibition against signs in the public right-of-way in
13 the poles?

14 A Political signs.

15 Q Is that provided in the town code?

16 A Yes.

17 Q Now, turning to section 330-210 E, on page 16 of 18,
18 does that provide for a variance procedure?

19 A Yes, it does.

20 Q And can you explain that variance procedure to the
21 Court?

22 A When an application is made to the building
23 department for a permit for a sign, and it doesn't meet
24 the criteria set forth, we deny the application, and we
25 send a denial letter with a copy of the variance

1 procedure.

2 And the option is either bring the sign into
3 compliance or make an application to the zoning board.

4 Q Now, that variance procedure is in addition to the
5 ZBA, to the section 330-165 that we spoke about a moment
6 ago; is that correct?

7 A Yes.

8 Q And 330-165 allows someone to appeal your
9 determination as to the legality of the sign?

10 A Right. If you don't comply with the criteria of the
11 zoning code, you can go to the zoning board. Or if I
12 determine it was a sign and somebody disagrees with me,
13 they can take a direct appeal to the zoning board of
14 appeals on my interpretation.

15 Q Now, just very quickly, I'll show you what's been
16 marked Southampton Exhibit SH-C and ask you if you
17 recognize this document -- this form, I should say.

18 A Yes. It is the packet we hand out when someone
19 requests an application for a sign.

20 MS. LICCIONE: I would like to move SH-C into
21 evidence.

22 MR. BUCHWEITZ: No objection.

23 THE COURT: In evidence.

24 (Whereupon, Southampton Exhibit SH-C was
25 received in evidence.)

1 MS. LICCIONE: Thank you, your Honor.

2 BY MS. LICCIONE:

3 Q Just moving quickly, Southampton -- SH-D, I'd ask you
4 if you recognize this form (handing).

5 A This is the actual denial checklist.

6 Q And does the denial contain instructions for applying
7 for variance?

8 A Yes.

9 MS. LICCIONE: I'd like to move Southampton SH-D
10 into evidence.

11 MR. BUCHWEITZ: No objection.

12 MS. LICCIONE: Thank you.

13 Your Honor?

14 THE COURT: In evidence.

15 MS. LICCIONE: Thank you.

16 THE COURT: Please stop saying "thank you" every
17 time.

18 MS. LICCIONE: You're welcome.

19 (Whereupon, Defendants' Exhibit SH-D was
20 received in evidence.)

21 BY MS. LICCIONE:

22 Q Do you recall when, approximately, the sign ordinance
23 was enacted?

24 A November of 2004.

25 Q And do you recall how the sign ordinance became

1 drafted?

2 A Yes.

3 Q And how was that?

4 THE COURT: Sustained.

5 Q Did you participate in the drafting of the sign
6 ordinance?

7 THE COURT: Sustained.

8 MS. LICCIONE: Can I understand this?

9 THE COURT: Can you understand what?

10 MS. LICCIONE: May I ask the basis?

11 THE COURT: It's the material. It's passed.

12 The law, the village, doesn't matter what the reasons
13 were. It's passed. It's there.

14 That's what you are relying on. I allowed that
15 in evidence.

16 BY MS. LICCIONE:

17 Q Mr. Benincasa, as chief building inspector, is it
18 your duty to interpret the town code?

19 A Yes, it is.

20 Q When you do that, do you consult with anyone else?

21 A No.

22 Q And are you the final arbiter of the interpretation
23 of this town code on appeals?

24 A Yes.

25 Q Are you aware of the plaintiffs' proposal to

1 establish an eruv?

2 A Yes, I am.

3 Q Has anyone made an application to your department, to
4 your knowledge?

5 A No.

6 Q To any other portion of town government, to your
7 knowledge?

8 A Not to my knowledge.

9 Q Now, could you just briefly tell me what your
10 understanding is of an eruv?

11 MR. BUCHWEITZ: Objection.

12 THE COURT: I'll let him.

13 Go ahead.

14 A It's an area that is defined by lechis that are
15 attached by wires to define an area so certain practices
16 can be performed inside that area that normally wouldn't
17 be able to be done.

18 BY MS. LICCIONE:

19 Q Have you ever made an interpretation as to whether
20 the sign ordinance applies to the eruv?

21 A To the lechis, yes.

22 Q And to whom did you give that opinion?

23 A Mike Sordi.

24 Q And who is Mike Sordi?

25 A He was a previous town attorney.

1 Q What opinion did you give him?

2 A I told him that the lechi would qualify as a sign.

3 Q And did you put that in writing or was it verbal?

4 A It was verbal.

5 Q And can you tell me why the sign ordinance applies to
6 the lechis?

7 A Well, the sign code, as I mentioned before, is very
8 broad and all-encompassing, and it was designed to be just
9 that.

10 The definition is any material, device or
11 structure -- and seeing what a lechi looked like, or it
12 was described to me, you know, it's a material. It's a
13 device, structure -- you can question whether it's a
14 structure because it's a single piece of wood. And it
15 demarks an area.

16 It really wasn't a tough interpretation. It was
17 pretty black and white to me, and so I ruled that I
18 interpreted it would be a sign.

19 Q Now, if that determination were appealed to the ZBA,
20 would it be your practice to attend that meeting?

21 A No.

22 Q Is it your practice to attend ZBA meetings when your
23 interpretation is called into question?

24 A No.

25 Q Now, did anyone on the town board tell you that if an

1 application for lechis or an eruv comes in, you are to
2 deny it?

3 A No.

4 Q What would you do if somebody on the town board told
5 you to do that?

6 MR. BUCHWEITZ: Objection.

7 THE COURT: Sustained.

8 BY MS. LICCIONE:

9 Q Now, I believe you testified that your office
10 enforces the sign ordinance.

11 A Yes.

12 Q Does it enforce it perfectly?

13 A No.

14 Q Do you ever miss illegal signs?

15 A Yes, we do.

16 MS. LICCIONE: That's all I have. I would say
17 "thank you," but I don't want to do that.

18 THE COURT: Don't say "thank you."

19 MR. BUCHWEITZ: Your Honor, I'm going to put on
20 the witness stand Exhibit 31 through 40, which is already
21 in evidence, and I may refer to them.

22 CROSS-EXAMINATION

23 BY MR. BUCHWEITZ:

24 Q Good afternoon.

25 You mentioned that signs are prohibited in the

1 right-of-way in the Town of Southampton, right?

2 A Yes.

3 Q But that's not all signs?

4 A Excuse me?

5 Q That's not all signs, right?

6 A No.

7 Q You have a number of exclusions, do you not?

8 A Yes.

9 Q And you mentioned one of them: political signs.

10 Right?

11 A Yes.

12 Q And if I'm correct, the source of the exclusions is
13 Southampton Exhibit A, section 330-203 A, 1 through 13; is
14 that right?

15 A I believe so.

16 Q And political signs is number 9?

17 A (Perusing) Yes.

18 Q And do you see any -- you also have a number of
19 prohibited signs, right?

20 A Yes.

21 Q And it's also in the section B, the next group?

22 A Yes.

23 Q Nowhere under prohibited signs does it say
24 five-eighth-inch black PVC is a prohibited sign, right?

25 A No.

1 Q Also doesn't say that wiring on a pole is an exempt
2 sign, right?

3 A Those specific words, no.

4 Q And it doesn't say that big gray things stuck next to
5 utility poles are exempt signs, right?

6 A No.

7 Q And it doesn't say that wood sticks that are around,
8 that go up and down utility poles, are exempt signs,
9 right?

10 A No.

11 Q It doesn't say that blue rounded things on utility
12 poles are exempt signs?

13 A No.

14 Q And if you were to take a look at Exhibit 39 in front
15 of you, what are the signs on Exhibit 39?

16 A Excuse me?

17 Q What are the signs on Exhibit 39, if any?

18 A Well, you have a "for sale" sign. That would be
19 considered a sign.

20 Q You are the final arbiter of what a sign is in
21 Southampton, right?

22 A Yes, I am.

23 Q Is that a sign?

24 A Yes.

25 Q Was it taken down?

1 A Don't know.

2 Q Was it up on the day that it appears on Exhibit 39,
3 April 27, 2011?

4 A I don't know.

5 Q You don't have any reason to believe it isn't?

6 A Excuse me?

7 Q You don't believe it wasn't up on April 27, 2011?

8 MS. LICCIONE: Objection. He says he doesn't
9 know.

10 THE COURT: Sustained.

11 BY MR. BUCHWEITZ:

12 Q What else is on Exhibit 39?

13 A Looks like that would be it.

14 Q What about that black wire running up and down the
15 pole? Is that a sign?

16 A If it were a part of the utility system, no.

17 Q Why?

18 A Because it is part of the utility system.

19 Q Where does it say in your sign law these parts in the
20 utility system are exempt?

21 A It doesn't.

22 Q Not in the sign law?

23 A No.

24 Q Are you familiar with the lechi in this case that is
25 proposed?

1 A Excuse me?

2 Q Are you familiar with the proposed lechi in this
3 case?

4 MR. SOKOLOFF: Objection.

5 Q Showing you Plaintiffs' Exhibit 2 --

6 MR. SOKOLOFF: I will object. It's a vague
7 term. There have been different types of lechis that have
8 been proposed.

9 THE COURT: Overruled.

10 THE WITNESS: If you will show me the picture.

11 MS. LICCIONE: Why don't you put it over there.
12 Perhaps you can move it in front of the witness so I can
13 see it.

14 THE COURT: Counsel, go wherever you want so you
15 may see it. It will be one or two questions.

16 BY MR. BUCHWEITZ:

17 Q Do you see this black strip going up and down right
18 here?

19 A This right here?

20 Q Yes.

21 A Yes, I do.

22 Q And do you understand that that is the lechi that is
23 being proposed in this case?

24 A Now I do.

25 Q How is that any different than the black strip on

1 Exhibit 39?

2 A Because it is a material, a device or structure, and
3 intends to convey a message. And it also delineates an
4 area, or as the definition of "sign" says -- it fit the
5 definition.

6 Q This fits the definition but Exhibit 39 doesn't fit
7 the definition?

8 A Yes.

9 Q How do you know? How do you know Exhibit 39 --

10 MS. LICCIONE: Objection. Argumentative.

11 THE WITNESS: If you let me answer --

12 MS. LICCIONE: I've objected.

13 THE COURT: Overruled.

14 Let him answer.

15 Go ahead.

16 A If the wire was part of the utility system that the
17 pole supports, it wouldn't be considered a sign.

18 BY MR. BUCHWEITZ:

19 Q Why not? There is no exception in your sign law.

20 MS. LICCIONE: Asked and answered. Objection.

21 THE COURT: Yes. Sustained.

22 BY MR. BUCHWEITZ:

23 Q Who told you that a lechi has to convey a message?

24 A Could you repeat that, please?

25 Q Who told you that a lechi has to convey a message?

1 MS. LICCIONE: Objection.

2 THE COURT: Overruled.

3 A When it was described to me what an eruv was and what
4 the lechi was designed to do, it fit the definition of the
5 code.

6 The code is so broad that it catches a lot of
7 things.

8 BY MR. BUCHWEITZ:

9 Q But it doesn't catch the stuff on Exhibit 39?

10 MS. LICCIONE: Objection. Asked and answered.

11 THE COURT: Sustained.

12 BY MR. BUCHWEITZ:

13 Q You said it was described to you what a lechi was and
14 what an eruv was. Who described it to you?

15 MS. LICCIONE: Objection. Asked and answered.

16 THE COURT: Overruled.

17 A Michael Sordi came down to my office and asked me --
18 or told me about lechis. I had no idea what a lechi was
19 or even what an eruv was.

20 He described to me what they were, and he asked
21 me would that fit the definition of a sign, a lechi.

22 And just as I always do, I opened up the code
23 book just to be sure, read the definition of a sign. And
24 again, it is so broad, it was captured by the definition.

25 Q What did he tell you about an eruv?

1 A He told me it was board, a narrow strip of wood, that
2 is affixed to a telephone pole connected by wires that
3 define an area.

4 Q Absent what Mr. Sordi told you, if you look at that
5 black strip there on that pole, did you see a message?

6 MS. LICCIONE: Objection.

7 THE COURT: Overruled.

8 A Just looking at that lechi on the pole there, if it
9 wasn't related to the utility system, I would say yes.

10 BY MR. BUCHWEITZ:

11 Q What? What message?

12 MS. LICCIONE: Objection.

13 MR. SOKOLOFF: Objection.

14 THE COURT: Overruled.

15 A Because of the definition of a sign: Any material,
16 device or structure.

17 BY MR. BUCHWEITZ:

18 Q That's it?

19 A Well, I don't get to ask the questions.

20 Q Is that your answer?

21 A My answer is that looking at that, yes, it would be
22 considered a sign.

23 Q One lechi on its own?

24 MS. LICCIONE: Objection.

25 THE COURT: Overruled.

1 A It fits the definition of a sign.

2 BY MR. BUCHWEITZ:

3 Q One lechi on its own fits the definition of a sign?

4 MS. LICCIONE: Objection. Asked and answered.

5 A Yes.

6 BY MR. BUCHWEITZ:

7 Q Do you have an understanding how the eruv proposed
8 here will be established?

9 A No.

10 Q Do you have an understanding as to how many lechis
11 will be used versus natural boundaries?

12 A No.

13 Q If I told you that the eruv would be established
14 using natural boundaries and very few lechis scattered
15 throughout the line, would that change your determination?

16 MR. SOKOLOFF: Objection.

17 MS. LICCIONE: Objection.

18 THE COURT: Sustained.

19 BY MR. BUCHWEITZ:

20 Q Take a look at Exhibit 40, please.

21 How many signs do you see on Exhibit 40?

22 A Two.

23 Q Are those two signs that were on a pole in the Town
24 of Southampton as of May 7, 2011?

25 MS. LICCIONE: Objection.

1 THE COURT: Counsel, do you object to everything
2 he asks?

3 MS. LICCIONE: No.

4 THE COURT: So far you have.

5 Do you want a standing objection to every
6 question? I'll give you one.

7 MS. LICCIONE: No, your Honor.

8 THE COURT: Then please stop objecting to
9 everything. That was a perfect question, and he could ask
10 that.

11 A Two. And whether they were there on that date, I
12 don't know.

13 BY MR. BUCHWEITZ:

14 Q What about the wood sticks sticking out of the top of
15 the sign that says "trainmasters"?

16 A I see them, yes.

17 Q Are those signs?

18 A No.

19 Q Why not?

20 A As I said before, they are part of the utility
21 system.

22 Q How do you know?

23 A Because it is a conduit used to protect the wires
24 from the top of the poles to the ground.

25 Q The wood sticks?

1 A Usually they make the conduits out of wood, not
2 metal. To me, they look like conduits. If they are not
3 conduits and they are not part of the utility system, yes,
4 they would be considered a sign under our sign definition.

5 Q And the blue tubing on the left, that's also a sign?

6 A That's a conduit, part of the utility system.

7 Q Can you show me where in the sign laws a conduit for
8 a utility system is exempted and a lechi isn't?

9 A It isn't.

10 Q It's not there, is it?

11 A No.

12 Q Excuse me?

13 A No.

14 THE COURT: Does a sign have to give a message?
15 Yes or no.

16 THE WITNESS: No.

17 THE COURT: It could still be a sign without a
18 message?

19 THE WITNESS: Yes.

20 THE COURT: Give me an example. Just a piece of
21 wood tacked on is a sign. It gives no message.

22 I'm not talking about this case but in general.

23 If I were to nail a piece of wood to the post,
24 just a piece of wood -- I like pieces of wood. I nail it
25 to it. Is that a sign?

1 THE WITNESS: Under our definition, yes.

2 THE COURT: What is the message?

3 THE WITNESS: There doesn't have to be a
4 message.

5 THE COURT: So anything nailed to the post, to a
6 telephone pole, is a sign, regardless of a message or not?

7 THE WITNESS: Yes. Under our definition.

8 THE COURT: Under your definition?

9 THE WITNESS: Under the town's definition.

10 THE COURT: Okay.

11 BY MR. BUCHWEITZ:

12 Q Which part of your definition would Judge Wexler's
13 piece of wood be considered a sign?

14 A It would be under definitions. You would go to
15 definition of a sign, and you would go to A. Any letter,
16 numeral, figure, emblem, picture, outline, character,
17 spectacle, delineation, announcement, trademark or logo.

18 Q Which one of those does Judge Wexler's wood post fall
19 under?

20 A It probably would be outline, figure, delineation, if
21 it had a particular shape.

22 Q How many wood post applications did you get in the
23 last few years?

24 A How many wood post applications? That go up on
25 signs? On poles?

1 I don't believe any. I'd have to defer to my
2 sign inspector.

3 Q So a blank wood post is a figure?

4 A I'm hearing impaired.

5 Q A black wood post is an outline?

6 A A blank wood post is what?

7 Q An outline.

8 Is that your testimony?

9 A Yes, that's my testimony.

10 Q Is there anything other than the prohibited signs
11 listed on page 6 of 18 that isn't a sign under your
12 definition?

13 A So the question was in section 203. The question was
14 in section 203.

15 Q Yes. Anything that was permitted in this list would
16 be permitted as a sign. Anything at all that would be
17 permitted anywhere in the town code. This it is?

18 A Yes.

19 Q Except the Verizon stuff. That is a special
20 exemption?

21 A It's not an exemption; it's part of a utility pole.

22 Q Let's take a quick look at some of the exhibits you
23 put in.

24 Exhibit -- take a look at Exhibit C, Southampton
25 Exhibit C.

1 Turn to the middle --

2 A C is what?

3 Q Town of Southampton sign permit application. It has
4 a box that says SH-C.

5 And if you turn to the middle, there is a
6 letterhead with your name on it, Michael Benincasa.
7 Instructions.

8 And if you turn to the next page, list of items
9 to be submitted.

10 These are your instructions to people applying
11 for a sign and what they need to list, right?

12 A Yes.

13 Q And if you turn to the fourth bullet point, it says:
14 You need to include sign board and sign structure showing
15 overall dimensions, materials, embellishments, graphics,
16 height from ground to base and top, lettering size, font
17 type and dimensions, placement of any and all design
18 placements.

19 Anything about the lechi or the fixture in front
20 of you or the wood stick that Judge Wexler referred to in
21 these items at all?

22 A Well, those are the things we want to see. Now, if
23 it's just an outline or a piece of wood, then we need to
24 have a diagram of that.

25 Q And if you turn to the next page, there is something

1 from Michael Charier, the chairman of the architectural
2 review board, that all sign designs must indicate but not
3 be limited to the following:

4 The type and location of fonts and other
5 graphics.

6 Is there any graphics on the lechi or Judge
7 Wexler's example?

8 A Judge Wexler's example, no.

9 Q There are no graphics on that either?

10 A I can't tell either.

11 Q Letter C says: the precise measurement of all
12 lettering to include measurements between lettering.

13 There is no lettering on the lechis, right?

14 A Not what I can see from that picture, no.

15 Q And there's no lettering on Judge Wexler's example?

16 THE COURT: I'm sorry I asked the question.

17 Please don't keep bringing me into the picture.

18 MR. BUCHWEITZ: I'll stop.

19 BY MR. BUCHWEITZ:

20 Q As to the lechi, you would answer no?

21 A Could you repeat the question?

22 Q There is no lettering on the lechi?

23 A From what I could see from that picture, no.

24 Q And if you look at H, it says: Sign illumination
25 details: color, type, luminosity, wattage, method of

1 concealment.

2 There is nothing on the lechi either, right?

3 A With all due respect to Michael Charier, he's not the
4 interpreter of the code, and this is not my list.

5 Q This is what your counsel submitted as Exhibit C,
6 right?

7 A We hand this out, but, yes.

8 MS. LICCIONE: Excuse me, your Honor. If I
9 could move that exhibit, I could sit down.

10 Are we finished with that exhibit?

11 THE COURT: We've been finished with it for a
12 while, I think. You can sit down, yes.

13 BY MR. BUCHWEITZ:

14 Q Just moving to Exhibit D that you testified about, I
15 believe you called this a denial checklist; is that right?

16 A It's a checklist that we use to let an applicant know
17 that the application that he had submitted wasn't complete
18 or if it was being denied because of what he's requesting
19 doesn't comply with the code.

20 Q I see.

21 And if you look on the first page and on the
22 second page, there are numerous references to subsections
23 of 330 that could be checked off to show that there is a
24 noncompliance, right?

25 A The last part of that question was --

1 (Whereupon, the record was read back by the
2 reporter.)

3 A Correct.

4 BY MR. BUCHWEITZ:

5 Q And if I counted them up correctly, there are 20
6 different subsections of section 330 that are listed as
7 check-off boxes, right?

8 A I've never counted them, but, yes, there are quite a
9 few.

10 Q None of them are section 200 for summons, correct?

11 A In addition to the sign code ordinance.

12 Q It doesn't say that.

13 A Okay.

14 Q I'm asking you: It doesn't say that, right?

15 A Well, I haven't read this in a very long time.

16 Q Flipping to --

17 A Could I just clarify?

18 This is a generic checklist. It's just not used
19 for the sign code.

20 Q Okay. And there's no reference to the sign code
21 among the groups of boxes that you've checked off. That
22 we've already established.

23 A Well, there's references down towards the bottom by
24 Mark's name that talks about the sign code.

25 Q This is a particular person who made an application,

1 right?

2 A No -- Mark Viseckas.

3 Q About seven or eight pages in, there is something
4 called a board of appeals application, right?

5 A Can I ask you to please speak into the microphone?

6 Q About seven or eight pages in, there is something
7 called the board of appeals application, right?

8 A Page 7?

9 Q Well, it says page 1 on the bottom. There are
10 several attachments entitled Board of Appeals Application.

11 A Okay.

12 Q Do you see that?

13 What is this board of appeals application?

14 A It's an application that we use to supply information
15 to the secretary for the zoning board so she can do our
16 paperwork.

17 Q And it requires a lot number and a parcel location,
18 right?

19 A Yes, it does.

20 Q And lechis on a pole don't have parcel locations or
21 lot numbers, do they?

22 A No, they don't.

23 THE WITNESS: Excuse me. May I have some of
24 this water, please?

25 THE COURT: Sure.

1 MR. BUCHWEITZ: Please.

2 THE WITNESS: Thank you.

3 BY MR. BUCHWEITZ:

4 Q Now, you testified a little bit about a variance
5 procedure to the sign law.

6 A Yes.

7 Q But if lechis aren't signs, it's totally irrelevant?

8 A Lechis are what?

9 Q If lechis are not signs, the variance procedure is --

10 A If they weren't considered a sign, no.

11 MS. LICCIONE: I made an objection.

12 THE COURT: Yes, I heard you.

13 THE WITNESS: Would you repeat the question?

14 BY MR. BUCHWEITZ:

15 Q If the lechis are not signs --

16 THE COURT: I heard the question, and you heard
17 the answer that he gave, so why did you have to repeat it?

18 MR. BUCHWEITZ: I didn't hear the answer.

19 THE COURT: The last question and answer I
20 heard.

21 MS. LICCIONE: Your Honor, I didn't hear the
22 answer either.

23 THE WITNESS: Could you repeat the question? I
24 want to be accurate here.

25 THE COURT: Go ahead.

1 BY MR. BUCHWEITZ:

2 Q You testified about variance procedures. If the
3 lechis are not signs, then everything about the variance
4 procedures are irrelevant, correct?

5 A Correct.

6 Q Just very quickly, Exhibit 31, the photos in front of
7 you.

8 Do you have any reason to believe that
9 Exhibit 31 wasn't on the poles that it says that it was
10 on, that it purports to be on, this exhibit, on
11 September 17, 2010?

12 A The sign is on the pole, and it is captioned and
13 dated, so I have no reason to believe it wasn't there at
14 that time.

15 Q And on Exhibit 32, do you have any reason to believe
16 that the sign on the pole depicted on Exhibit 32 wasn't
17 there on November 17, 2010?

18 A I have no reason to believe it wasn't.

19 Q On Exhibit 33, do you have any reason to believe the
20 sign depicted on Exhibit 33 wasn't there on May 10, 2011?

21 A No.

22 Q And those depict the same sign, right?

23 A Right.

24 Q And that wasn't taken down for at least eight months,
25 right?

1 A I don't know.

2 Q And with respect to Exhibit 34, do you have any
3 reason to believe the signs depicted there do not
4 accurately depict signs on November 17, 2010?

5 MS. LICCIONE: Your Honor, I object. The
6 witness has no knowledge of these. He's gone over them
7 with the witness as to when he saw them.

8 I don't see the point of this.

9 MR. BUCHWEITZ: Almost done.

10 MS. LICCIONE: There is no foundation laid that
11 he's familiar with the signs.

12 THE COURT: Overruled.

13 BY MR. BUCHWEITZ:

14 Q With respect to Exhibit 35, do you have any reason to
15 believe that the sign on Exhibit 35 wasn't there on
16 May 10, 2011?

17 A No.

18 Q And with respect to Exhibit 36, do you have any
19 reason to believe --

20 THE COURT: Counsel, you will not go through
21 every one, are you? I know you intend to, but --

22 Q All right. With respect to the exhibits on 36, 37
23 and 38, do you have any reason to believe those are not
24 accurately depicted on the dates described on the exhibits
25 in front of you?

1 A No. But I did notice that 34 and 35, the lower sign,
2 was taken down.

3 Q But the higher sign --

4 A It wasn't.

5 MR. BUCHWEITZ: Thank you.

6 MR. SOKOLOFF: Your Honor, I have a couple of
7 questions.

8 THE COURT: Go ahead.

9 CROSS-EXAMINATION

10 BY MR. SOKOLOFF:

11 Q Mr. Benincasa, I represent Westhampton Beach.

12 Have you ever seen a Christian cross?

13 A Yes.

14 Q Have you ever seen a Christian cross --

15 THE COURT: You mean this witness has seen a
16 Christian cross? It's amazing in this day and age. I'm
17 shocked.

18 A brilliant question.

19 Go ahead.

20 BY MR. SOKOLOFF:

21 Q Have you ever seen a Christian cross that was made
22 out of two simple pieces of wood?

23 A Yes.

24 Q And even if there was no lettering or depiction of
25 any symbol at all, have you understood there being a

1 message conveyed by two simple pieces of wood?

2 A Yes.

3 MR. SOKOLOFF: No further questions.

4 THE COURT: And would you have seen a message in
5 the piece of wood if you didn't hear anything about this
6 case? On the piece of wood we're talking about, the
7 lechi, would there be a message to you if you didn't hear
8 about this case?

9 THE WITNESS: No, sir.

10 THE COURT: I think the Court even mentioned
11 that earlier, that I didn't even know what that was prior
12 to this case. But I certainly knew what a cross meant. I
13 know what a menorah means and a crescent means. But I
14 didn't know what a piece of wood means. It had no message
15 to me.

16 Next. Next witness.

17 MS. LICCIONE: Your Honor, I just have very
18 short redirect.

19 THE COURT: Sure. Go ahead.

20 MS. LICCIONE: Thank you, your Honor.

21 REDIRECT EXAMINATION

22 BY MS. LICCIONE:

23 Q With respect to Southampton D, which counsel for the
24 plaintiffs questioned you about, is this form used for all
25 variance applications?

1 A It is a generic form, yes.

2 Q And on page 2 towards the middle of the page, there
3 are some blanks with boxes, with blank spaces next to
4 them?

5 A Yes.

6 Q Is that used in case any of the sections up above are
7 not applicable?

8 A Yes.

9 Q Now, you were asked some questions by plaintiffs'
10 counsel with respect to these public utility conduits on
11 the poles in, I guess, 39 and 40.

12 Would you take a look at those?

13 A 39 and 40?

14 Q Yes, sir.

15 A Okay.

16 Q Now, you testified on direct that you were familiar
17 with the concept of a public right-of-way?

18 A Yes.

19 Q Okay. Now, there's permission, is there not, for
20 public utility use within the public right-of-way?

21 A I couldn't hear you. Just speak into the mike.

22 Q There is permission given by the town for utility use
23 in the public right-of-way; isn't that correct?

24 A Yes.

25 Q Now, with respect to variances that you were

1 questioned about on cross, if I have a garage that goes
2 into the setback, if it's prohibited -- if I want to build
3 a garage that is prohibited, that goes into a certain
4 setback area, do I apply for a variance because of that
5 prohibition?

6 MR. BUCHWEITZ: Objection.

7 THE COURT: Sustained.

8 BY MS. LICCIONE:

9 Q Are variances intended for uses or areas that are
10 otherwise prohibited? Is that your understanding?

11 A Yes.

12 MR. BUCHWEITZ: Objection.

13 THE COURT: Sustained.

14 Counsel, we're not talking about movement of a
15 garage; we're talking about a First Amendment case.

16 MS. LICCIONE: My second question is --

17 BY MS. LICCIONE:

18 Q What is a variance for?

19 THE COURT: Sustained.

20 Q Why do people apply for variances?

21 THE COURT: Sustained.

22 Q You are the CHIEF building inspector, correct?

23 A Yes.

24 Q And you make determinations from which people request
25 variances; isn't that correct?

1 A Yes.

2 Q And they seek variances when you say something is
3 prohibited; isn't that correct?

4 MR. BUCHWEITZ: Objection.

5 A Yes.

6 THE COURT: I'll allow it.

7 MS. LICCIONE: And I think this one is my last
8 question.

9 THE COURT: It should be a good one.

10 MS. LICCIONE: I'll do my best.

11 BY MS. LICCIONE:

12 Q Mr. Benincasa, you were asked a couple of questions
13 about whether or not the lechi depicted on the exhibit
14 next to you sends a message. You may recall that from the
15 cross-examination.

16 I think you also testified that you never heard
17 of an eruv before this controversy developed; is that
18 correct?

19 A That's correct.

20 Q Now that you know what an eruv is, does that
21 depiction in that exhibit send a message?

22 A Yes.

23 MR. BUCHWEITZ: Objection.

24 THE COURT: I'll allow it.

25 MS. LICCIONE: Thank you. That's all I have.

1 I'm sorry, I shouldn't say "thank you."

2 THE COURT: You may step down.

3 Next witness.

4 (Witness excused.)

5 THE COURT: How many more witnesses do you have?

6 MS. LICCIONE: Three, and they will be very

7 quick, your Honor. That was the longest one.

8 I would like to call to the stand Mark Viseckas.

9 THE COURT: Remain standing.

10

11 **MARK VISECKAS,**

12 called as a witness, having been first

13 duly sworn, was examined and testified

14 as follows:

15 THE COURT: You'd better spell your last name

16 slowly.

17 THE WITNESS: V-I-S-E-C-K-A-S, Mark.

18 **DIRECT EXAMINATION**

19 **BY MS. LICCIONE:**

20 **Q** Where do you work?

21 **A** Currently employed by the Town of Southampton.

22 **Q** What is your title?

23 **A** Senior building inspector.

24 **Q** Do you have prior experience as a building inspector?

25 **A** Yes.

1 Q Could you tell the Court what that is?

2 A In a similar capacity, I worked for the Incorporated
3 Village of Mineola, New York, for five and a half years.

4 Prior to that, in a similar capacity for the
5 incorporated Village of Manorhaven, New York.

6 THE COURT: Can't hear you, Witness.

7 MS. LICCIONE: If you can just speak slowly so
8 the court reporter -- it's different than a conversation.
9 This is being taken down.

10 THE WITNESS: You got it.

11 BY MS. LICCIONE:

12 Q What training do you have as a building inspector?

13 A Initially I have the New York State certified code
14 enforcement officer training under 24 hours in 1989. And
15 pretty consecutively from that time until now, 24 hours
16 mandated by New York State, minimum.

17 Q Minimum for what period of time?

18 A Those are the minimum hours that I would have had the
19 training over those years.

20 Q Each year?

21 A Each year, yes.

22 Q Okay.

23 Now what are your duties in the Town of
24 Southampton?

25 A Primarily under the direction of the chief building

1 inspector, to administer and enforce the town sign law.

2 Q And just very briefly, what do you do in terms of
3 administration of the sign law?

4 A Well, I assist the residents and business community
5 in their applications for sign permits via the application
6 procedure and in general consultations, as well as
7 accepting applications, checking for accuracy.

8 And once accepted, the plans and permit
9 applications are reviewed for zoning and building code
10 compliance, and if they meet those requirements, a permit
11 is issued.

12 Q Okay. So would it be fair to say the Town of
13 Southampton regulates signs?

14 A Yes.

15 Q Now, with respect to your enforcement duties, what do
16 you do in order to enforce the sign code?

17 A Well, the typical enforcement procedure would be per
18 the application and permit approval process where certain
19 inspections are required. And that's part of the
20 enforcement when a permit is issued and a sign, a
21 regulated sign, is erected.

22 And once inspected and all satisfactory
23 inspections have taken place, both for design, structure
24 and electric, a certificate of compliance would be issued
25 certifying that that sign meets the code.

1 Q What about with respect to illegal signs? What are
2 your duties?

3 A In addition to the typical sign procedure I just
4 mentioned, we -- the town building department receives
5 complaints and logs them in. Based on what the complaint
6 is, if it's a sign complaint, it would be assigned to me,
7 and it would be investigated.

8 If there was a violation, either -- a form of
9 notification, either by phone or a certified mail notice
10 of violation, would be sent to the party or entity. And
11 they would be given some opportunity to remove the sign.

12 If the sign is not removed and the town
13 personnel removes the sign or does not remove it, an
14 appearance ticket could be given to the entity.

15 Q Could you, in the exercise of those duties, have ever
16 taken down signs?

17 A Yes.

18 Q How often would you say, personally, you've taken
19 down signs?

20 A Well, based on complaints and my travels to and from
21 regulated inspections, I would say in the neighborhood of
22 40, 50 a month, you know. It's a general number.

23 Q I understand.

24 Now I'd like to show you what has been marked as
25 Plaintiffs' Exhibit 34 in evidence (handing).

1 A Thank you.

2 Q You're welcome.

3 Are you familiar with what is depicted in that
4 picture?

5 A I am familiar with this graphic example of something
6 that may have existed.

7 Q Tell the Court how you are familiar with Exhibit 34.

8 A It was presented at a meeting at the town attorney's
9 office when you went through --

10 Q I'll withdraw the question.

11 MR. BUCHWEITZ: I'd like to hear the end of the
12 answer.

13 THE COURT: Yes.

14 A This particular location was presented to me in this
15 form at a meeting at Town Hall with the town -- with
16 Maureen.

17 Q Are you familiar with that location?

18 Were you familiar with that location prior to
19 the meeting?

20 A Yes.

21 Q And tell the Court about your familiarity with that
22 location.

23 A The general area. There was a similar sign on the
24 pole across the street. This is the intersection of Mill
25 Road and Montauk Highway. I believe it is still

1 Westhampton there.

2 There was a sign, "seasoned firewood," across
3 the street on the southeast corner of that intersection.
4 And I remember receiving a complaint, and I verified the
5 existence of a similar sign that is depicted here. The
6 phone number on the sign is disconnected or just was not
7 accessible.

8 I noted the location, the owner of the utility
9 pole and its identification. And I believe it was LIPA,
10 and I had the number. And I was able to contact LIPA, and
11 I told them of the issue, and they said they would take
12 care of it.

13 Sometime later, the sign had been removed.

14 This occurred in 2010.

15 MS. LICCIONE: Thank you.

16 BY MS. LICCIONE:

17 Q I'd like to know show you Plaintiffs' Exhibit 36, and
18 I'd ask you what, if anything, you did when you became
19 aware of that sign.

20 A Once I became aware of this sign, it basically became
21 a complaint.

22 Q And what did you do?

23 A It was scheduled as part of my route, and it was
24 removed. I personally removed this sign.

25 MS. LICCIONE: Thank you.

1 Q Now I'd like you to take a look at what has been
2 marked as Plaintiffs' Exhibit 40 and ask you if you are
3 familiar with what is depicted in that picture.

4 A No. I mean, I have not seen this physically, but I
5 think this was part of the discussion in terms of the
6 plaintiffs.

7 Q Have you seen what is in that picture before?

8 A Physically?

9 Q Yes.

10 A No.

11 Q Are you familiar with that area?

12 A I don't know what area this is.

13 Excuse me. I'm sorry. South Country Road and
14 Club Lane.

15 MS. LICCIONE: Thank you. That's all I have.

16 CROSS-EXAMINATION

17 BY MR. BUCHWEITZ:

18 Q Good afternoon.

19 A Good afternoon.

20 Q You were directing your attention to Exhibit 34. Do
21 you have Exhibits 31 through 40 in your pile there?

22 A I have 35, 34 and 36. Which one do you want?

23 Q 34 first.

24 A Okay. I have it.

25 Q I believe you testified that this was presented at a

1 meeting at Town Hall. What was that meeting?

2 A No. No. It was presented at a meeting in the town
3 attorney's office when I met with Maureen and, I think,
4 Dave, another attorney, with my chief building inspector
5 to discuss my initial presentation of the plaintiffs'
6 materials.

7 MS. LICCIONE: I'll object to this. It's
8 attorney work product, privilege, etcetera, etcetera.

9 THE COURT: Overruled.

10 THE WITNESS: Can I just clarify the question?

11 Are you asking when did I first see this photo?

12 MR. BUCHWEITZ: No, I asked you --

13 BY MR. BUCHWEITZ:

14 Q All I asked you was whether this Exhibit 34 was the
15 subject of a meeting at Town Hall with the town attorney.

16 A It was one -- it was discussed.

17 Q When was this meeting?

18 A I didn't write it down. There were several meetings
19 to discuss what the complaint was, I guess. Nothing in
20 particular. But I was shown these photos.

21 Q So you were shown photos that were presented by
22 whom -- withdrawn.

23 What was your understanding of where these
24 photographs came from that you were shown?

25 A They were in part of the legal papers that were filed

1 by the plaintiffs. I believe that's where they were.

2 About a month ago, I guess.

3 Q So you started to focus on these photographs after
4 the lawsuit was filed?

5 MS. LICCIONE: Objection.

6 A I don't understand the question.

7 THE COURT: Overruled.

8 A I don't know what that means, "started to focus."
9 Explain the context.

10 THE COURT: Ask another question of the witness.

11 BY MR. BUCHWEITZ:

12 Q Prior to the meeting in the town attorney's office,
13 subsequent to the meeting in the town attorney's office,
14 did you take down a number of signs as a result of the
15 meeting or -- meeting with the town attorney?

16 A Yes. This is a typical procedure. Any violation
17 presented to me is investigated and acted upon as
18 necessary. I know none of the details. I only know what
19 I saw in the packet and to the general sign law with Chief
20 Benincasa.

21 And I can only answer general questions as to
22 when I first seen these photos.

23 Q Can you take out Exhibit 35 as well.

24 A Okay.

25 Q Isn't it true that the "seasoned firewood" sign was

1 up on the pole depicted on Exhibit 34 and 35 for six
2 months?

3 MS. LICCIONE: Objection. No foundation.

4 THE COURT: Overruled.

5 A Just repeat the question again. You are getting into
6 a very specific time period.

7 Go ahead.

8 THE COURT: Were those pictures up for six
9 months?

10 THE WITNESS: I don't know.

11 THE COURT: Okay.

12 BY MR. BUCHWEITZ:

13 Q Do you have any reason to believe they weren't?

14 THE COURT: Sustained. He doesn't know.

15 Q Exhibit 36 and 37, you testified you personally took
16 down the pictures depicted in both Exhibits 36 and 37?

17 A Yes.

18 Q When did you do that?

19 A Within the last two weeks.

20 Q Did you remove the signs as a result of the fact that
21 these pictures were presented in this case?

22 MS. LICCIONE: Objection.

23 THE COURT: Overruled.

24 A Once I had knowledge of this violation, they were
25 investigated and removed.

1 BY MR. BUCHWEITZ:

2 Q Were you here this morning when Mr. Greenbaum
3 testified?

4 A Yes, I was.

5 Q Did you hear that there was a sign on this single
6 location up again, a new sign?

7 A It wasn't clear what he was talking about. He said
8 something about another sign, but so many signs were
9 discussed in that presentation that I really don't
10 remember.

11 THE COURT: Let me ask a couple of questions.

12 THE WITNESS: Sure.

13 THE COURT: Were you given, recently, a bunch of
14 pictures showing signs?

15 THE WITNESS: Yes.

16 THE COURT: And were they involved in this
17 lawsuit?

18 THE WITNESS: They were attached to the
19 materials, the legal papers.

20 THE COURT: In this case?

21 THE WITNESS: They were photocopies of some
22 kind.

23 THE COURT: In this case?

24 THE WITNESS: Yes.

25 THE COURT: And therefore you went out and

1 pulled down all the signs?

2 THE WITNESS: If they were there, they were
3 taken down. Or if they were not verifiable. Some of them
4 were just photos. I would not know where they were.

5 THE COURT: Let's go to the one for firewood for
6 sale.

7 You said it could have been up for six months,
8 but you don't know. That is number 34.

9 THE WITNESS: Oh, yes.

10 (Perusing.)

11 I think 35, your Honor.

12 MR. BUCHWEITZ: 34 and 35.

13 THE COURT: I'm talking about 34. I'm
14 interested in 34.

15 THE WITNESS: 34?

16 THE COURT: Yes.

17 THE WITNESS: These are the same utility pole
18 that these are, perhaps at different times.

19 THE COURT: And you understand it could have
20 been up for six months, but you don't know. Is that
21 correct?

22 THE WITNESS: Yes.

23 But I can tell you that the sign is not there,
24 because last week or the week before, I called -- I
25 verified its existence again.

1 THE COURT: When you got the package, right?

2 THE WITNESS: And I called LIPA, I think it was
3 LIPA, and within the week it was down.

4 THE COURT: What road is this on.

5 MR. BUCHWEITZ: This is on Montauk Highway --

6 THE COURT: No, I'm asking the witness.

7 THE WITNESS: Montauk Highway.

8 THE COURT: So for the people that don't know
9 Long Island, Montauk Highway out in this area is the main
10 road, isn't it?

11 THE WITNESS: It's sparsely populated. It's
12 part of the country, part of the road.

13 THE COURT: Is that the main road out there?

14 THE WITNESS: Sunrise Highway would be the main
15 road.

16 THE COURT: But this road, would this be the
17 biggest one?

18 THE WITNESS: Oh, yes.

19 THE COURT: Did you ever use that road in the
20 last six months before you got the package?

21 THE WITNESS: Yes.

22 THE COURT: Did you ever notice the sign at all?

23 THE WITNESS: No.

24 THE COURT: You can't tell us whether it was up
25 or not?

1 THE WITNESS: Well, okay. Give me a second.

2 THE COURT: Take as much time as you need.

3 THE WITNESS: There was a complaint a mile down
4 east -- west, firewood. And Westhampton handyman.

5 So I'm a little bit confused, because there was
6 a complaint not too far from there on Montauk Highway in
7 Speonk, so the procedure was followed.

8 THE COURT: Is that a different village?

9 THE WITNESS: This is the unincorporated village
10 of the town known as Westhampton. A little further west
11 is Speonk. And a complaint with a similar sign.

12 THE COURT: No, we're interested in this sign in
13 this location, not in Speonk.

14 THE WITNESS: That's why. There are a lot of
15 signs.

16 THE COURT: So you are confused.

17 THE WITNESS: But I don't recall seeing this
18 sign. And I'm also a little bit confused with the other
19 sign.

20 But that being said, I don't recall seeing this
21 sign.

22 THE COURT: How many times have you taken that
23 road by Montauk Highway?

24 THE WITNESS: In what period?

25 THE COURT: The last year.

1 THE WITNESS: Believe it or not, at the most in
2 the year, probably ten, ten passes, because there are
3 other ways to get to the shopping center. You know, this
4 is not the road I would normally take.

5 This sign, if it was there, it was high up. And
6 when one is concentrating on safety, driving -- this is an
7 intersection -- that is where the focus is.

8 So if it was there, I may have missed it.

9 THE COURT: Okay.

10 You wouldn't miss the bottom sign, though, would
11 you?

12 THE WITNESS: No, not at all.

13 In fact, can I add to that?

14 THE COURT: Add whatever you wish.

15 THE WITNESS: There was a similar sign where the
16 building department received a complaint for this exact
17 same sign in the Hampton Bays.

18 THE COURT: That's another community. We're not
19 interested.

20 THE WITNESS: But they were removed based on the
21 complaint.

22 THE COURT: All right. Tell us that story.

23 THE WITNESS: The story is that a similar sign,
24 or a replication of this sign, was installed in a couple
25 of areas in the Hampton bays, and we had some complaints

1 from the residents.

2 I verified their existence. I called this
3 number, I did not get any response, and I removed the
4 signs.

5 One of the other --

6 THE COURT: What did you say? We removed?

7 THE WITNESS: I removed.

8 THE COURT: Okay.

9 THE WITNESS: There was another entity attached
10 above this one at the other location. They removed their
11 sign. I did not have to remove the sign. When the winter
12 was coming, I removed it.

13 BY MR. BUCHWEITZ:

14 Q Just one last group. Exhibits 31, 32 and 33, and
15 then we'll sit down.

16 Are you familiar with the signs depicted in
17 Exhibits 31, 32 and 33?

18 A 31, 32 and 33.

19 Q Yes. Fall cleanup signs.

20 A Exhibit 31, no.

21 Exhibit 32, no.

22 Q And Exhibit 33?

23 A No.

24 Q So is this another one that you missed?

25 A What kind of question is that?

1 THE COURT: Your question is a good one. The
2 witness. I'm agreeing with you.

3 THE WITNESS: There's a certain element of
4 intent, it sounded like.

5 THE COURT: That's why I said your question was
6 a good one. I wasn't being facetious. But no one is
7 objecting.

8 He's objecting to the question, and he happens
9 to be right.

10 THE WITNESS: Thank you.

11 BY MR. BUCHWEITZ:

12 Q You didn't remove the sign depicted in -- the signs
13 depicted in 31, 32 and 33, right?

14 A I did not remove them.

15 MR. BUCHWEITZ: Thank you.

16 MS. LICCIONE: Very short redirect, your Honor.

17 THE COURT: You promise?

18 REDIRECT EXAMINATION

19 BY MS. LICCIONE:

20 Q Pictures 31, 32, 33, 34 and the one on top, 35. I
21 direct your attention to those, 31 through 35.

22 A Yes.

23 Q And with respect to 34, it's just the higher-up sign.

24 Does your department have equipment that can
25 remove signs that are that high?

1 A No.

2 Q Okay. And, periodically, does your department
3 contact another town agency to get those signs?

4 A Yes.

5 Q What agency is that?

6 A The highway department.

7 Q And do they have equipment that can reach that high
8 up?

9 A Yes, to my knowledge.

10 Q Okay. Now, with respect to Exhibit 36 and 37, is
11 that the only sign you removed after you saw these
12 photographs?

13 36.

14 A 36 and 37?

15 Q Yes.

16 Is that the only signs you removed after you
17 learned of the existence of these signs?

18 A No.

19 Q Is it the only sign -- let me state it a different
20 way.

21 Is it the only sign between 31 and 40 that you
22 removed as a result of being shown these photographs?

23 Did you remove anything else other than what is
24 depicted on 36 and 37?

25 A Out of this grouping?

1 Q Yes, out of that grouping.

2 A Okay.

3 (Perusing.)

4 Did I speak of 35 already, notifying LIPA?

5 Q The question was, did you remove any sign other than
6 the one that is depicted at 36 and 37?

7 A No, with the exception of number 40. Number 40 was
8 brought to the attention of a coworker to another
9 inspector. And I asked the inspector to verify the
10 existence of, or not, of the ones shown on Exhibit 40.

11 Q And what was the result of your effort to
12 investigate? What did he do?

13 A He actually did not have knowledge of the location of
14 this but was able to, based on the identification number
15 on the utility pole --

16 Q Yes?

17 A -- he was able to go through LIPA, I believe, and
18 obtain the location.

19 He physically went to this location and called
20 me on the phone, the NEXTEL phone. There were no signs on
21 this pole.

22 Q When was that?

23 A That was this Friday, this past Friday.

24 Q I believe you testified on direct that your duties
25 include administering the sign ordinance and enforcing it.

1 A Yes.

2 Q Do you spend your entire day driving around looking
3 for signs?

4 A No.

5 Q Do you get every illegal sign in the Town of
6 Southampton?

7 A I get every one I come across.

8 Q Is your enforcement on the code perfect?

9 A No.

10 MS. LICCIONE: Thank you.

11 THE COURT: Any other questions?

12 You may step down.

13 THE WITNESS: Thank you, your Honor.

14 THE COURT: Let's take a short break.

15 (Whereupon, a recess was taken.)

16 THE COURT: Swear the witness, please.

17

18 **L A U R E N C E P. S C H U R E K, J R.,**

19 called as a witness, having been first

20 duly sworn, was examined and testified

21 as follows:

22 THE WITNESS: Last name is Schurek,

23 S-C-H-U-R-E-K, and I'm a junior. First name is Laurence,

24 L-A-U-R-E-N-C-E, middle P, for Paul.

25 DIRECT EXAMINATION

1 BY MS. LICCIONE:

2 Q Good afternoon.

3 A Good afternoon.

4 Q Mr. Schurek, where are you employed?

5 A Southampton Town Police Department.

6 Q What is your rank?

7 A Lieutenant.

8 Q What are your duties?

9 A I'm chief of patrol.

10 Q How long have you been with the Southampton PD?

11 A I'm in my twenty-sixth year of service.

12 Q And as chief of patrol, do you supervise sergeants?

13 As a lieutenant of chief of patrols, do you supervise
14 sergeants?

15 A Yes, I do.

16 Q How many sergeants?

17 A Approximately 12.

18 Q How big is the Southampton Police Department?

19 A It's about 100 officers.

20 Q Okay. What role, if any, does the police department
21 have with respect to enforcing town code?

22 A We actively try to enforce town codes.

23 Q Does the Southampton Police Department enforce the
24 sign ordinance?

25 A Yes, we do.

1 Q Could you explain to the Court what the police
2 department does to enforce the sign ordinance?

3 A Basically, we -- while we're on patrol answering
4 calls or patrolling our neighbors, if we pass what we
5 determine is an illegally posted sign, we try to remove
6 that sign from whatever structure it might be on, or it
7 may be planted on a wire in the ground.

8 Q And what about officers while on foot post?

9 A While on foot post -- usually that's on main street
10 areas -- they usually do pull down signs they can access.
11 Usually consist of yard sale and/or someone selling some
12 type of machinery.

13 Q Now, I think you testified before there are 12
14 sergeants.

15 A There are more than 12 sergeants, but I supervise 12.

16 Q Would they be patrol sergeants?

17 A Yes, they are.

18 Q What directives, if any, do you give the patrol
19 sergeants with respect to enforcing the sign ordinance?

20 A I give them verbal direction. I may send an e-mail.
21 Sometimes we have a supervisors' meeting, and I will
22 direct them to enforce not just the sign ordinance but all
23 town code ordinances.

24 Q And what, if anything, do you do if you are out in
25 the town and you see a proliferation of signs in a

1 particular area? What do you do?

2 A If I'm feeling energetic that day, I'll try to remove
3 the signs myself. Usually, going from point A to point B,
4 I don't have the time to do it. I'll call a supervisor
5 down or a sector operator to that location and have them
6 remove the illegally posted signs.

7 Q Can you tell us what you do personally in terms of
8 removing signs?

9 A Well, I personally remove multiple signs in my
10 travels. I don't know where you want me to go.

11 Q Can you just explain to the Court, give the Court a
12 little more detail about that?

13 A If I see an illegally posted sign, I try to pull over
14 on a safe shoulder on the roadway, whether it is with a
15 hammer or whatever I have, to pull the sign down.

16 If it is reachable, I take it down. I use claw
17 hammers. I step on the tailgate of my suburban. I do
18 what I can within my means to get that illegally posted
19 sign down.

20 Q Now, when you personally take signs down, what do you
21 do with them?

22 A Some of them I discard into the trash. Some of them,
23 if they have a phone number on them, I try to bring them
24 back to my headquarters so maybe we can contact the
25 individual and advise them that they are in violation of

1 the town code and to cease and desist. And, possibly, he
2 could go out and remove the other signs he may have posted
3 that are illegal.

4 Q Now, what do you do if you have a question with
5 respect -- well, withdraw that for now.

6 Do you keep signs in your office?

7 A Yes, I do.

8 Q And did I ask you to keep them there for the duration
9 of this hearing?

10 A Well, I had multiple signs in my office. Like I
11 said, I was trying to contact the phone numbers associated
12 with the signs. But I have kept a better amount of them
13 since this hearing started.

14 Q And speaking of which, how long have you been
15 involved in enforcing the sign ordinance the way you just
16 described?

17 A Actively, I would say like the last ten years.

18 Q And that includes your personal removal of signs?

19 A Yes, it does.

20 THE COURT: Sustained.

21 Q Now, Lieutenant Schurek, I will show you something
22 and ask you to identify it.

23 A Okay.

24 Q Lieutenant Schurek, is this the box of signs you've
25 been keeping in your office?

1 A Yes, that is my box of signs.

2 Q And you took these all down, personally?

3 A I would say 99 percent of them, yes.

4 Q Can you tell the Court approximately over what period
5 of time you removed those?

6 A This is only probably the last two or three months.

7 Q And were you on vacation last week?

8 A Yes.

9 Q So you didn't take down any signs?

10 A I'm still currently on vacation, by the way.

11 MS. LICCIONE: Thank you.

12 Your Honor, if I may, I wanted the Court to get
13 the visual impact of this. I'd like to see if we can move
14 these into evidence. It may be a little cumbersome.

15 MR. BUCHWEITZ: I was aware there was a box, but
16 we didn't have an opportunity to inspect them.

17 MS. LICCIONE: I did tell counsel I would be
18 brief.

19 MR. BUCHWEITZ: I was aware there was a box but
20 haven't inspected them. I will not object to them coming
21 into evidence subject to my having an opportunity to
22 quickly look at them before I examine the witness.

23 THE COURT: Okay.

24 BY MS. LICCIONE:

25 Q Lieutenant Schurek, some of these signs have little

1 notations of them. For example, there's a sign for a
2 benefit battling Lou Gehrig's disease. There's a date
3 6/7/11 on there.

4 Can you tell me what date that signifies?

5 A That would be the date that I removed that particular
6 sign.

7 THE COURT: What was that date?

8 MS. LICCIONE: 6/7/11.

9 BY MS. LICCIONE:

10 Q And do you remove signs if they are not for profit?

11 A Yes. I don't differentiate. Just remove the
12 illegally posted sign.

13 Q Now, the box, subject to --

14 MS. LICCIONE: I guess we'll mark that as R for
15 identification.

16 I'll just mark an R for now until we get the
17 stickers.

18 Q Lieutenant Schurek, I'd like to show you what has
19 been marked as SH-E and ask if you can identify that
20 e-mail.

21 A This is a copy of an e-mail that I sent out to my
22 squad supervisors back on December 22nd of 2010, advising
23 them of the enforcement efforts of illegally placed signs.

24 MS. LICCIONE: I'd like to move SH-E into
25 evidence.

1 MR. BUCHWEITZ: No objection. It's hearsay, but
2 no objection.

3 MS. LICCIONE: Your Honor, with all due respect,
4 he wrote it.

5 MR. BUCHWEITZ: He's here. There's no
6 objection.

7 THE COURT: I'm sorry, what did you say?

8 MR. BUCHWEITZ: I first said it is hearsay
9 because he's here and he testified about it, but then I
10 said in the interest of moving things along, no objection.

11 THE COURT: Okay.

12 (Whereupon, Southampton Exhibit SH-E was
13 received in evidence.)

14 BY MS. LICCIONE:

15 Q In the second line you said: Many of these signs
16 serve as advertisement: fall cleanup --

17 A Counsel, can you talk into the microphone, please?

18 Q Sure.

19 The second line says: Many of these signs are
20 advertisements for services such as fall cleanup, pool
21 winterization, property sales and snow removal.

22 Did you intend to limit the enforcement of the
23 sign ordinance to just these types of signs?

24 A Not at all.

25 MR. BUCHWEITZ: Objection.

1 THE COURT: I'll allow it.

2 A No, I did not.

3 BY MS. LICCIONE:

4 Q Now, when patrol officers are on desk duty, do you
5 give them any assignments with respect to the enforcement
6 of sign ordinance?

7 A Not really enforcing it, but what I have them do is
8 do the follow-up telephone calls. If there are phone
9 numbers on the sign, I try to have them phone those phone
10 numbers possibly related to the signs of the individual
11 and advise them that it is an illegally posted sign.

12 Q When the patrol officers take down signs, generally,
13 what do they do with them?

14 A They discard them.

15 Q I'd like to show you what has been marked as
16 Plaintiffs' Exhibit 34, and I'd like to draw your
17 attention in particular -- that says "winter is coming,"
18 the lower sign.

19 Are you familiar with that sign?

20 A Yes. Mill Road and Montauk Highway. Yes, I am.

21 Q How are you familiar with the lower sign there?

22 THE COURT: What number is that?

23 MS. LICCIONE: 34, your Honor.

24 THE COURT: Go ahead.

25 A We have a firearms range in Westhampton, and during

1 the months of April and May, I instruct firearms training.

2 When I come from the firearms range, I run
3 directly into this pole and these signs. That's how I'm
4 familiar with it.

5 Q Did you remove the lower sign?

6 A I believe I did. The lower one, yes, I did.

7 Q And did your removal of that sign have anything to do
8 with this lawsuit?

9 A No. This was prior to any knowledge that I had of
10 this lawsuit.

11 Q And going back to the e-mail -- and I think we said
12 that is Exhibit SH-E.

13 With respect to Southampton E, the e-mail dated
14 September 22, 2010, was that before your knowledge of this
15 lawsuit?

16 A Yes, it was.

17 MS. LICCIONE: That's all I have.

18 THE COURT: Go ahead. Cross.

19 MR. BUCHWEITZ: Can I have a few minutes to
20 review the box?

21 THE COURT: Sure.

22 How many more witnesses do you have?

23 MS. LICCIONE: Just one.

24 THE COURT: Because I want to break early.

25 From the other parties?

1 MR. SOKOLOFF: I want to make sure that we put
2 on -- Westhampton Beach -- we put on our case on the cross
3 of the village officials that the plaintiff called.

4 THE COURT: Okay.

5 We'll be back in five minutes. Let him go
6 through all the papers or signs.

7 MR. BUCHWEITZ: Thank you.

8 THE COURT: Take your time.

9 (Whereupon, a recess was taken.)

10 THE COURT: Go ahead. Be seated.

11 CROSS-EXAMINATION

12 BY MR. BUCHWEITZ:

13 Q Why don't we start with the boxes.

14 Can I call you "Officer"?

15 A Yes.

16 Q Are you familiar with the box of signs?

17 A Somewhat, yes.

18 Q Okay. Are there any plastic strips in that box?

19 A Are there any what?

20 Q Plastic strips?

21 A I don't believe so.

22 Q Are there any signs in that box that do not have
23 words on them? And you can look at them if you like.

24 A I don't believe so.

25 Q I note, also, you've written on many of them a date

1 and then an initial. I didn't see any that were before
2 May 25th.

3 Does that sound right to you?

4 A I'm not sure of the date, but there were many signs I
5 did not date.

6 Q Of the once ones you did date, is it fair to say they
7 were from May and June of this year?

8 A Yes.

9 Q Officer, do you know what a lechi is?

10 A I do now. I didn't know what it was a few days ago.

11 Q And if you would, I would direct your attention to
12 Plaintiffs' Exhibit 2. Can you see it where it is now?

13 A I believe so (indicating).

14 Q What you see there, is that a sign?

15 A Yes.

16 Q Did you consult with anyone with regard to the sign?

17 A I consulted with my senior building inspector,
18 Michael Benincasa and Mark Viseckas.

19 Q V-I-S-E-C-K-A-S?

20 A Yes.

21 Q Other than your consultation with the two witnesses
22 you've testified to here today, do you have any reason to
23 believe that is the sign?

24 MS. LICCIONE: I think there has been testimony
25 that Mr. Benincasa is the person who determines whether

1 something is a sign.

2 THE COURT: Overruled.

3 A One is a gray area. That's why I consult with code
4 enforcement or the building inspector.

5 So in this case, it might be a gray area, so
6 that's why I consult with them. And I was advised it was
7 a sign. So, yes, I would say it is a sign.

8 Q Other than what you've been told by Mr. Benincasa and
9 Mr. Viseckas, you have no other knowledge this is a sign
10 under the town code?

11 MS. LICCIONE: Objection.

12 THE COURT: Same ruling.

13 A I don't know if I understand your question.

14 MR. BUCHWEITZ: I'll take it back.

15 BY MR. BUCHWEITZ:

16 Q You said you learned a few days ago what a lechi was.
17 How many days ago was it, approximately?

18 A I know the attorneys spoke about it, so it might be
19 Sunday.

20 Q Before Sunday -- and you also testified that you've
21 been taking down signs around the Town of Southampton for
22 about ten years?

23 A Around the town, yes, I've taken down.

24 Q Before Sunday, in ten years, did you ever take down a
25 plastic strip such as that because you thought it was a

1 sign?

2 A I might have.

3 Q I said did you?

4 A Did I?

5 Q Yes.

6 A No, I never took a lechi down.

7 Q Did you ever take down a strip like that in the ten
8 years before Sunday?

9 A That looked like that?

10 That is awfully long. No, I did not.

11 Q I want to direct your attention quickly to
12 Exhibit 40, if you would. It's in the pile of the color
13 photographs.

14 A What was the number?

15 Q 40.

16 A Okay.

17 Q Do you see the wood postings going up and down and
18 then the blue posting on the left of that sign, or the
19 left of this pole?

20 A The center of the pole?

21 Q Yes.

22 A Yes, I do.

23 Q Have you ever seen this pole on Exhibit 40 before,
24 before this picture?

25 A I don't know if I did. I may have seen a photograph

1 of this, but I don't know if I actually saw the pole.

2 Q Well, around the Town of Southampton, have you ever
3 seen poles which have wood or plastic or metal tubing
4 going up and down?

5 A Yes, I have.

6 Q Sorry.

7 Have you ever removed one because you thought it
8 was a sign? Yes or no.

9 A I've never removed one, no.

10 Q Thank you.

11 The lechi -- one of the things you testified to
12 a number of times was that you called the people on the
13 sign to say, no dice. Take the sign down.

14 Do you see phone numbers on that lechi?

15 A It's a blurry picture, but I don't see a phone number
16 on it.

17 Q There wouldn't even be room for a phone number; am I
18 right?

19 A That's your interpretation, not mine.

20 Q Do you see any words or letters on it at all?

21 A Again, it's a very blurry picture, and I can't tell
22 if there is any wording on it.

23 Q At some point were you given a package of photos of
24 signs that may have been around the Town of Southampton?

25 A I was never given a packet of photos.

1 Q Directing your attention to the e-mail that you sent,
2 which is document SH-E.

3 A Yes.

4 Q And you gave a number of examples what would be a
5 sign, right, in your e-mail to your agents?

6 A When I wrote this e-mail, it was while I was driving
7 in to work, and I noticed -- these were the particular
8 signs that I noticed within a few-day time frame. So
9 that's why I use that as an example.

10 Q A fall cleanup, pool winterizations, snow removal?

11 A Yes.

12 Q No plastic strips?

13 A I put "etcetera" there, so it encompasses everything
14 that I consider a sign.

15 Q When you sent this letter, were you aware that the
16 Town of Southampton supervisor sent a letter to Verizon
17 concerning lechis?

18 A No, no knowledge whatsoever.

19 Q And were you aware that six days before you sent the
20 e-mail that is SH-E, that the town supervisor sent an
21 e-mail to Mr. Greenbaum and others concerning the eruv?

22 A No knowledge at all.

23 Q I think you agreed in your testimony there are some
24 signs that you have not removed.

25 A Absolutely.

1 Q Without going through each one of them, if you would
2 please flip through Exhibits 31 through 40 before you, and
3 tell me if those depict signs in the Town of Southampton
4 that you did not take down as of last week.

5 A 32 and 33, are they the same photograph?

6 Q Yes.

7 A Okay.

8 Q They are different dates.

9 A The question was, did I remove any of these signs?

10 Q As of the dates these photographs were taken depicted
11 on the exhibit numbers.

12 A No -- that is postdate or predate?

13 Q These are the date the photographs were taken.

14 A Did I remove any of these since the photographs were
15 taken?

16 Q As of the date the photographs were taken, had you
17 removed those signs?

18 A Okay. Just let me look through them (perusing).

19 I believe Exhibit 34, which is Mill Road and
20 Montauk Highway, I believe I took down the "winter's
21 coming" sign off that telephone pole. That would have
22 been previously, in April, mid-April or early May when I
23 was coming from the firearms range.

24 Q So that was five months after the photograph dated in
25 Exhibit 34?

1 A According to this date, correct.

2 MR. BUCHWEITZ: Nothing further. Thank you.

3

4 REDIRECT EXAMINATION

5 BY MS. LICCIONE:

6 Q Lieutenant Schurek, did you ever discuss this case
7 with your supervisor?

8 A No, I did not.

9 Q Lieutenant Schurek, the Town of Southampton law
10 enforcement department, are they perfect?

11 A I have to answer "no." We're working on it.

12 Q Excuse me?

13 A We're working on it.

14 Q Do you catch every suspected criminal in the Town of
15 Southampton?

16 A Unfortunately not.

17 Q Do you catch every code violator in the Town of
18 Southampton?

19 A No.

20 Q Do you get every illegal sign?

21 A Absolutely not.

22 Q Have you ever seen a lechi before you saw that
23 picture?

24 A No, I have not.

25 Q Have you ever taken down lechis?

1 A No, I have not.

2 THE COURT: How could he take one down if he's
3 never seen one?

4 MS. LICCIONE: Exactly.

5 THE COURT: Good. Okay.

6 Now ask him if he ever put one up.

7 THE WITNESS: No, your Honor.

8 THE COURT: I didn't think so.

9 BY MS. LICCIONE:

10 Q Referring to photographs 31 through 35, do you have
11 within the police department the apparatus to take those
12 down?

13 THE COURT: Do you have what?

14 MS. LICCIONE: The apparatus in the police
15 department to take down the photographs in 31 through 35.

16 THE COURT: Sustained.

17 THE WITNESS: 31, no --

18 THE COURT: No, I sustained the objection.

19 Don't answer.

20 BY MS. LICCIONE:

21 Q Pictures 31 through 40, other than the picture in 34
22 that was testified you took down, were you aware of the
23 signs on the dates reflected on any of them?

24 A I am aware of Exhibit 35, that sign. I believe that
25 is at Mill Road and Montauk Highway.

1 Q Tell the Court how you are aware of that sign.

2 A I already testified that --

3 THE COURT: He testified about that. He said,
4 "I already testified." That's while he's coming back from
5 the shooting range on Montauk Highway.

6 I listen.

7 THE WITNESS: You listen to me.

8 THE COURT: Counsel doesn't, but I do.

9 BY MS. LICCIONE:

10 Q Other than Exhibit 35, were you aware of the signs on
11 those dates that are listed?

12 A 34, I believe that is the same telephone pole and
13 sign.

14 Q Yes.

15 A That's the only one I was aware of. I wasn't able to
16 access that sign.

17 MS. LICCIONE: Thank you. I have nothing else.

18 THE COURT: You may step down.

19 All sides rest?

20 MS. LICCIONE: Your Honor, I have one more
21 witness, your Honor. Michael Baldwin. I'll be very
22 brief.

23 THE COURT: You said that about every witness,
24 and they are not brief.

25 Come up, Michael.

1 So if Michael is long, I may break in the middle
2 of his conversation.

3 Come up.

4
5 **M I C H A E L B A L D W I N,**

6 called as a witness, having been first
7 duly sworn, was examined and testified
8 as follows:

9 THE COURT: Give us your name and spell it,
10 please.

11 THE WITNESS: Michael Baldwin, B-A-L-D-W-I-N.

12 DIRECT EXAMINATION

13 BY MS. LICCIONE:

14 Q Good afternoon, Mr. Baldwin.

15 A Good afternoon.

16 Q Could you tell the Court where you are employed?

17 A Town of Southampton.

18 Q In what capacity?

19 A I'm the geographics information systems manager.

20 Q Explain to the Court what that is.

21 A That is -- it's basically a technological tool for
22 comprehending geography, making intelligent decisions.

23 Q How does your department serve the county?

24 A We produce maps, do analysis based on location-based
25 data.

1 Q What departments do you service within the town?

2 A We service all the departments within the town.

3 Q Land use?

4 A Land use, 3D analysis, watershed modeling, all kind
5 of geographic applications.

6 Q And let me back up for a second.

7 Could you tell the Court about your educational
8 background?

9 A I have a bachelor of arts degree in geography from
10 SUNY New Paltz, postgraduate work at SUNY New Paltz, as
11 well as some extra postgraduate work beyond the
12 certificate program from ESRI, Environmental Systems
13 Research Institute.

14 Q How long have you been with the town?

15 A I've been with the town since 2002. And in 2007 I
16 went to the Town of Huntington and asked to come back to
17 the Town of Southampton later in 2007.

18 Q How big is your staff?

19 A I have a staff of four; five including myself.

20 Q Now, did there come a point in time when I asked you
21 if you could map the location of poles relevant to this
22 lawsuit?

23 A Yes.

24 THE COURT: Map what? I'm sorry.

25 MS. LICCIONE: The location of utility poles,

1 P-O-L-E-S.

2 THE COURT: Poles, yes.

3 BY MS. LICCIONE:

4 Q I ask you to take a look at Plaintiffs' Exhibit 3 in
5 evidence, and I draw your attention to Exhibit A, the
6 Exhibit A that is handwritten on the top.

7 Is that the list I gave you?

8 A Yes.

9 Q And were you able to identify these poles from that
10 list?

11 MR. SOKOLOFF: Judge, may we just clarify for
12 the record that what the witness is looking at is
13 Exhibit A of Exhibit 3?

14 MR. BUCHWEITZ: Why don't you use the Bates
15 number.

16 MS. LICCIONE: Excuse me?

17 MR. BUCHWEITZ: If you use the Bates number,
18 maybe that would work.

19 MS. LICCIONE: It ends with what looks like a
20 59. There's a little cutout, but it looks like 59.

21 BY MS. LICCIONE:

22 Q Were you able to determine the location of the poles
23 from that list?

24 A Almost all of them except for two.

25 Q Well, from just that list?

1 A No, I wasn't able to identify all of them.

2 Q Okay. Now, did you ask us to get some additional
3 information for you so that you would be able to locate
4 the pole?

5 A Yes.

6 Q And we advised you that we issued a subpoena of LIPA
7 and Verizon to get maps depicting the location of the
8 poles on that list?

9 A Yes.

10 Q And you were given a copy of these maps?

11 A Yes.

12 Q And are these the maps that were sent to you pursuant
13 to the subpoena (handing)?

14 A Yes.

15 MS. LICCIONE: And I'd like to mark this for
16 identification as -- I guess this is Exhibit T, SH-T.

17 Now, I'd like to move these into evidence.

18 MR. BUCHWEITZ: No objection, your Honor.

19 THE COURT: In evidence.

20 (Whereupon, Defendants' Exhibit SH-T was
21 received in evidence.)

22 BY MS. LICCIONE:

23 Q Now, once you had the list and these maps, were you
24 able to create a map locating the poles --

25 A Yes.

1 Q -- in Exhibit A to Exhibit 3?

2 And is this the map you created (handing)?

3 A Yes.

4 MS. LICCIONE: And I'd like to move this into
5 evidence as Southampton Exhibit U.

6 THE COURT: Have you seen it?

7 MR. BUCHWEITZ: We have. We have seen it.

8 As far as it goes, we'll allow it, but we'll
9 cross on it.

10 THE COURT: Okay.

11 BY MS. LICCIONE:

12 Q Now, when was the information from the subpoena sent
13 to you?

14 A Friday afternoon.

15 Q You received it Friday afternoon.

16 And we asked Verizon and LIPA to give us the
17 courtesy of sending it directly to you.

18 A Yes.

19 Q Now, going back to that Exhibit A again of
20 Exhibit 3 -- do you still have the copy there?

21 A No.

22 Q Well, I'd like you to take a look at the second item
23 listed on that Exhibit A where it says, "utility poles
24 running parallel to the train tracks," and underneath it,
25 it says, "where South Country Road meets the tracks going

1 east until Scrub Oak Road."

2 THE COURT: Where do you see that?

3 MS. LICCIONE: The second item on Exhibit C,
4 your Honor.

5 THE COURT: I see it.

6 BY MS. LICCIONE:

7 Q Were you able to locate what is described there?

8 A No. Only part of it.

9 Q Why couldn't you locate it?

10 A They didn't provide the map that extends that far.
11 And Scrub Oak doesn't extend, as far as I know, to that
12 location.

13 THE COURT: Who never gave you the map?

14 THE WITNESS: National Grid. LIPA.

15 BY MS. LICCIONE:

16 Q Does this location exist in the Town of Southampton?

17 A Where?

18 Q The second item.

19 A Where South Country Road meets the track going east
20 on Scrub Oak Road, no.

21 Q Why not?

22 A Those roads don't intersect. The train tracks don't
23 intersect Scrub Oak Road.

24 Q I'd like you to take a look at Exhibit 1, and I'd
25 like you to tell the Court --

1 MR. SOKOLOFF: Wait. Would you let the Judge
2 see it?

3 THE COURT: I don't have to.

4 MR. SOKOLOFF: I'd like you to.

5 MS. LICCIONE: I have a copy of a smaller one.

6 THE COURT: And since counsel demands I look at
7 it, I will.

8 When I demand, nobody listens.

9 But go ahead.

10 BY MS. LICCIONE:

11 Q Now taking a look at Southampton Exhibit U, where are
12 the poles located at the very easterly end running
13 north-south?

14 A Old Depot Road.

15 Q Is there anything on Exhibit A to Exhibit 3 that
16 lists poles on Riverhead Quogue road?

17 A No.

18 Q Now, Exhibit 1 depicts a red line on the Riverhead
19 Quogue Road, does it not?

20 A Yes.

21 Q Were any poles listed for Quogue Riverhead Road?

22 A No.

23 MR. BUCHWEITZ: Objection.

24 THE COURT: I'll allow it.

25 Go ahead.

1 BY MS. LICCIONE:

2 Q And the most easterly poles you described, would you
3 point that out on Exhibit 1, please, for the Court?

4 You may step down.

5 A Old Depot Road is right here.

6 Q So it is west of Quogue Riverhead Road?

7 A Yes.

8 Q Can you tell the Court in your own words the
9 difference between Exhibit 1 and Exhibit Southampton U?

10 MR. BUCHWEITZ: Objection.

11 THE COURT: I'll allow it.

12 A On the eastern border, the difference is Old Depot
13 Road. And this map depicts it going to Quogue Riverhead
14 Road, Route 104.

15 The whole entire boundary?

16 Q Yes.

17 A And the only other visible is Rogers Avenue.

18 Do you want me to point that out?

19 Q Yes, please.

20 A Rogers Avenue right here, there were poles identified
21 on Rogers Avenue towards the top of Westhampton Beach
22 village.

23 THE COURT: I see it.

24 THE WITNESS: And there is also poles identified
25 on Montauk Highway west of Scrub Oak, right here

1 (indicating).

2 Do you see it?

3 I believe that is it.

4 MS. LICCIONE: Your Honor, would it be of any
5 assistance to the Court if the witness marked those on the
6 smaller map submitted to you?

7 THE COURT: If you want to.

8 MS. LICCIONE: Just mark those, please.

9 MR. BUCHWEITZ: LIPA and Verizon sent a letter
10 to Ms. Liccione making some corrections to Exhibit A,
11 including where South Country Road meets the tracks of
12 Scrub Oak Road. So I think the Court should be aware of
13 that.

14 THE COURT: Well, you can do that on
15 cross-examination.

16 This will not be a short witness, Counselor,
17 contrary to your feelings.

18 She's not listening.

19 All right. We'll break for the day.

20 MS. LICCIONE: I apologize, your Honor.

21 THE COURT: See you at 9:30 tomorrow morning.

22 MS. LICCIONE: Your Honor, I'd like to finish.

23 THE COURT: So would I.

24 MS. LICCIONE: Counsel handed me a document, and
25 I was reviewing it.

1 THE COURT: See you at 9:30.

2 You still have to argue, and counsel wants to
3 express all his views, and I want to hear it. I don't
4 want to cut him off on the final argument.

5 MR. SOKOLOFF: Judge, wait, before you leave.

6 Instead of having final argument off the cuff,
7 can we submit posthearing briefs?

8 THE COURT: No. I'll take your final arguments
9 off the cuff. You have overnight to think about it.

10 MR. SOKOLOFF: I know, but I will not have the
11 transcript.

12 MR. BUCHWEITZ: Thank you, your Honor.

13 (Whereupon, the proceedings were adjourned until
14 Wednesday, June 28th, 2011, at 9:30 a.m.)

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