

## Justifying the Beachwood Eruv Extension

### Introduction

In June 2018 when visiting Cleveland as a scholar-in-residence for the Greenwood Synagogue, Rabbi Binyamin Blau introduced me to a number of community members who were quite interested in expanding the Cleveland Eruv to encompass all of Beachwood east of Richmond Road to the 271 highway. The Eruv did not previously encompass this area, due to the presence of a number of bodies of water in this area.

The Rav HaMachshir of the broader Cleveland Eruv, Rav Moshe Heinemann does not approve of an Eruv encompassing bodies of water not used for human needs and thus this portion was not incorporated in the Eruv. Since all of the local Rabbanim, Rav Blau, Rav Naftali Burnstein and Rav Ari Spiegler unanimously supported the expansion and felt it quite necessary for the community, I agreed to pursue the matter (there is not concern for overruling the decision of Rav Heinemann, since the decision of the local Rabbanim is the most relevant, as is evident from the Aruch HaShulchan Yoreh De'ah 242:57). After considerable thought and approval from Rav Elazar Meyer Teitz and Rav Mordechai Willig, I agreed to pursue the expansion.

### The Karpeif Issue

A potentially major obstacle in creating a viable community Eiruv is the existence of a Karpeif within the enclosed area, which may invalidate the Eiruv. A Karpeif is an area at least 100 Amot (between 150 and 200 feet) by 50 Amot (between 75 and 100 feet) that is not used for human habitation (Dirah) or other human needs.[1] Accordingly, sports fields, playgrounds, and lakes used for boating do not constitute Karpeifiot (plural of Karpeif).[2] Chazal forbid carrying on Shabbat within a Karpeif even if it is enclosed by Mechitzot or Tzurot HaPetach and is therefore within a Reshut HaYachid. This is because the Mechitzot or Tzurot HaPetach must be built for the purpose of human habitation (Mukaf LeDirah) in order for carrying on Shabbat to be allowed within them. A wall or Tzurat HaPetach built to surround a very dense and impassable forest is not built for the

sake of human habitation, so it does not permit people to carry on Shabbat within that forest.[3]

Moreover, the presence of a Karpeif forbids carrying in the entire enclosed area surrounding it, because an area's walls or Tzurot HaPetach must be erected solely for human habitation. If they also encompass a Karpeif, however, they are erected for an area that is not entirely fit for human habitation. This issue arises much more often in suburban and rural areas than in urban areas, as an urban setting contains fewer undeveloped areas, making this a relatively rare advantage for an Eiruv in an urban setting. The Chazon Ish (Orach Chayim 88:25) writes that the only way to prevent a Karpeif from invalidating the rest of the Eiruv's area is to encompass the Karpeif with either Mechitzot or Tzurot HaPetach, thereby excluding it from the Eiruv. The community is then Mukaf LeDirah, while the uninhabited Karpeif is severed from it.[4]

The lenient positions of some authorities might also solve this problem. The Bi'ur Halachah (358:9 s.v. Aval) cites one such approach from the Devar Shmuel. He rules that if a Karpeif is situated within a city and is only a small part of the city, carrying is allowed within that area. The Devar Shmuel reasons that in such a situation, the Karpeif is negligible compared to the rest of the city and may be ignored.

Halachic authorities have reacted to the Devar Shmuel's leniency with mixed feelings. On the one hand, the Chazon Ish (Orach Chaim 88:25) rejects this approach, as he sees no reason for a Karpeif within a city to differ from one in a more rural area.[5] The Bi'ur Halachah expresses serious reservations concerning this leniency, but he seems to accept the conclusion of the Chacham Tzvi that the Devar Shmuel's opinion may be followed where it is impossible to construct an Eiruv otherwise.[6] . Rav Yechiel Michel Epstein (Kitvei HaAruch HaShulchan number 64) permits relying on the lenient view regarding Karpeif in case of pressing need (Sha'at HeDechak).

This issue remains controversial, as some communities rely on the Devar Shmuel,[7] while others do not. A number of prominent Israeli rabbis (including Rav Dimitrovsky of Yeshivat HaKotel) told this author in 1991 that the practice of

many large Israeli communities is to follow the lenient opinion of the Devar Shmuel (they noted that Bnei Brak, where the Chazon Ish resided, is a significant exception).[8] This is hardly surprising, since Eiruv in Israel often encompass entire cities, and it is often exceedingly difficult to exclude every Karpeif within Israel's (Baruch Hashem) growing communities.[9] Hence, in keeping with the approach of the Bi'ur Halachah, they rely on the Devar Shmuel's lenient ruling.[10]

A number of authorities adopt a compromise approach that distinguishes between different types of Karpeifiyot.[11] If a Karpeif beautifies the city, carrying is allowed. If, however, humans in no way benefit from the area, it must be excluded from the Eiruv.

#### The Beachwood Eruv Expansion

Most of the bodies of water incorporated in the expanded Beachwood Eruv are used for boating and fishing. One exception is a lake that serves as the centerpiece of an upscale retirement facility. This lake, while not used for boating or fishing, is most aesthetically pleasing and makes the retirement area most attractive. A walking path, for example, courses around the lake.

Rav Heinemann cites Rav Moshe Feinstein as ruling that a body of water's aesthetic qualities does not remove it from the status of a Karpeif. Rav Moshe's ruling is preceded by similar rulings issued by Teshuvot Divrei Chayim (2 Orach Chaim 28) and Teshuvot Sho'eil UMeishiv (1:3:131).

However, numerous great Poskim, such as Teshuvot Imrei Yosher (1:170) and the Nezirut Shimshon (cited in Rav Bloi's Netivot Shabbat 13:13) disagree. In fact, Teshuvot Chelkat Yaakov (Orach Chaim 1:181) writes that the consensus of Acharonim adopt the lenient view regarding this matter.

In practice, numerous prominent pre-war communities in Europe adopted the lenient approach to this issue. Teshuvot Melamed L'Ho'il (Orach Chaim 65) records the lenient practice in Cracow (Poland), Lomzha (Lithuania) and Fulda (Germany). Teshuvot Chelkat Yaakov (ad. loc.) similarly records that the lenient practice was adopted in Warsaw (Poland), Manheim (Germany) and Antwerp

(Belgium). In fact, Rav Yitzchak Isaac Liebes (who served as a leading Rav in pre-war Europe and post war New York) records (Teshuvot Beit Avi (4:68) that almost all pre-war European cities had parks large flower beds that were not excluded from the community Eruvin.

It is important to note that the idea that a planted section that serves to beautify the area is considered part of the Dirah (and hence not a Karpeif) already appears in the Meiri to Eruvin 24a. This is quite noteworthy since the agreement of a Rishon to one side of a Machloket Acharonim can serve as strong support to that opinion.

However, the Meiri was most often not available until relatively recently and thus its Halachic weight is debatable. The Chazon Ish famously claims that it does not enjoy much Halachic weight since it was not part of the Mesorah (tradition) for many centuries. On the other hand, both the Mishna Berura and Rav Ovadia Yosef frequently quote the Meiri. Thus, the Meiri is an important, though not necessarily decisive, support of the lenient view. We might even be able to say that the strict opinions known that the Meiri supports the lenient approach, they may have retracted their strict ruling.

We also should clarify that the Meiri and the Dvar Shmuel represent different lines of reasoning. Although some conflate the two ideas, Rav Bloi (in his Netivot Shabbat 13:13 and 15) presents them as distinct ideas.

#### Rav Moshe Feinstein's Ruling

Although there is ample Halachic support for the Beachwood Eruv expansion, the fact that it runs counter to a reported ruling of Rav Moshe Feinstein is no small matter. As is well known, Rav Moshe is the greatest Halachic authority ever to have graced North America.

However, we may consider the fact that (as as we mentioned is reported in the aforementioned Teshuvot Chelkat Yaakov) the pre-war Warsaw Eruv relied on the lenient view of the Meiri. Moreover, the lenient position was endorsed, reports the Chelkat Yaakov, by none other than the Chidushei HaRim. Rav Moshe considers (as is evident from Teshuvot Igrot Moshe Orach Chaim 5:28:5)

Warsaw's Eruv as a significant precedent. For example, Rav Moshe's extraordinary ruling (Teshuvot Igrot Moshe Orach Chaim 4:87) expanding the permission to make an Eruv consisting of Tzurot HaPetach in an area where the population is less than 600,000, to an area which has less than 2,400,000 people (Rav Moshe argues that 600,000 refers to the amount of people typically in the street during the daytime and that this will happen in a city of a population of at least 2,400,000) relies on the precedent of the pre-war Warsaw Eruv where the population was 1.3 million people. Thus, we may set forth the possibility that Rav Moshe may have not issued his strict ruling had he known that the lenient view was followed in Warsaw and was endorsed by such an eminent rabbinic personality such as the Chidushei HaRim.

One might counter that Rav Moshe believed, as cited in Rabbi Francis and Rabbi Glenner's "The Laws of an Eruv" page 151) "that accepted leniencies with respect to Eruvin were needed in prewar Europe, where private homes often lacked basic necessities such as running water making carrying essential. In modern-day cities an Eruv is not as crucial and therefore a more stringent approach is warranted".

One may respond that the aforementioned Teshuvot Chelkat Yaakov cites precedents from prewar communities to apply to creating an Eruv in post war Switzerland which is an advanced society. Rav Zvi Pesach Frank (Teshuvot Har Zvi Orach Chaim 2:24) and Rav Yosef Eliyahu Henkin (Kol Kitvei HaRav Henkin 2:32-33) also apply the standards of the Warsaw Eruv as a precedent to post war cities in the United States. Similarly, Rav Hershel Schachter told me that one may rely on the pre-war practice to create an Eruv in a community that has very large flower beds in its parks. Moreover, pre-war Warsaw was a developed city and the lenient approach to Karpeif was relied upon.

Finally, and this perhaps the most important point of this discussion, the reality of 2019 is that it is crucial for every Jewish community to have an Eruv even if it means that the possible Karpeifim are not excluded. There are many Jews who find the Melacha of Hotza'ah (carrying) to be especially challenging and may not necessarily refrain from this Melacha unless there is an Eruv that

encompasses the area. For some, the existence of an Eruv is a make or break issue as to their decision if they will observe Shabbat altogether. I believe that it is quite possible that even Rav Moshe would agree that lenient opinions may be utilized to create an Eruv in keeping with traditions from Europe, in such circumstances.

Thus, although the reasons for the need for the Eruv is different, having an Eruv encompass all Jewish communities in the United States today is just as crucial as it was in pre-war Europe. Indeed, all three of Beachwood's rabbis agree that the entire Beachwood area needs an Eruv. Therefore, just as the Israeli rabbinate encompasses all urban Israeli communities with an Eruv even if all possible Karpeifim are not excluded, so too must every North American community must be encompassed by an Eruv even if all possible Karpeifim are not excluded.

#### Satisfying Every Opinion

At the beginning of the Eruv webinar posted on the Star-K website Rav Heinemann states that an Eruv must satisfy all opinions. However, the standards that Rav Heinemann sets forth are not, in reality, accepted by all opinions. For example, he follows (as he stated in an address to a conference of Young Israel rabbis in the 1990's and is evident from his creation and maintaining an Eruv in Baltimore) Rav Moshe's opinion that an Eruv may be created in a community where the population is less than 2.4 million. However, Rav Yosef Shalom Eliashiv (cited in the "Laws of Eruv" page 156) believes that an Eruv made of Tzurot HaPetach should not be made in cities whose population is larger than 600,000 people. Moreover, "The Laws of Eruv" (page 150) notes that Rav Aharon Kotler believed that Eruvin should not be created altogether in the United States, as many Rishonim reject the 600,000 person leniency.

In addition, he relies on the Rav Aharon Kotler's opinion permitting a slanted Eruv wire that is less than 45 degrees steep. Rav Yaakov Bloi (Netivot Shabbat 19:27 note 60), however, does not accept a slant greater than 22 degrees. Rav Heinemann permits a top side wire, something that the Laws of an Eruv (page 102) cites Rav Moshe as not permitting. Rav Heinemann permits a

minor sag in an Eruv wire, something to which Teshuvot Mishkenot Yaakov (11 cited by Shaar HaTziyun 382:56) strongly objects. Rav Micha Shotkin reports that Rav Heinemann permits (following the ruling of Rav Aharon Kotler cited in the Laws of Eruv page 108) a Lechi to be placed under an eave, something which Rav Yaakov Kaminetzky (cited in the Laws of an Eruv pages 108-109) disagrees. Finally, Rav Shmuel Khoshermann reports that Rav Heinemann permits the Atlanta Eruv to rely on a very thin grounding wire as a Lechi, to which Rav Hershel Schachter strongly objects.

I am not criticizing Rav Heinemann for following any of these leniencies. However, what I simply seek to clarify is that even the Eruvin that follow Rav Heinemann's fine standards, do not satisfy all opinions. I would agree, though, that an Eruv should satisfy all of the area's communal rabbis. Otherwise, the Eruv would serve as a source of controversy and friction which every effort should be made to avoid. Indeed, Rav Moshe writes (Teshuvot Igrot Moshe IV:86) that one of the reasons he endorses the Eruv in the Kew Garden Hills section of Queens, New York is that all the neighborhood rabbis support it. In the case of the Beachwood Eruv expansion, all of the neighborhood rabbis consent to its creation.

#### The Toy Boat Solution

Two rabbinic sources report that Rav Heinemann rules that if one plays with a toy boat in a body once a week removes a body of water from the question of a Karpeif, as by doing so, the body of water now serves a use for the community. However, such marginal and contrived use of the body of water seems hardly constitutes significant use. Moreover, such an approach appears ludicrous in the eyes of most observers and hardly serves to enhance the prestige of the Torah/Halacha. I know of one specific situation where it did not create an impression of being an Am Chacham V'Navon (Devarim 4:6).

#### Conclusion

The Beachwood Eruv expansion relies on the precedent of many pre and post war Jewish communities relying on the lenient views regarding Karpeif. Many

other Jewish communities worldwide rely on the lenient views including Teaneck (the Teaneck Creek and deeply forested areas are included within the approved Teaneck Eruv boundaries), with the approval of each of the four Yeshiva University Rashei Yeshiva who reside in the area and serve as community rabbis.

Although it is undoubtedly best to adopt the stricter opinion, in many instances, including the situations in both Teaneck and Beachwood, following the stricter view is not a viable and sustainable option. Thus, while those who wish to be strict are encouraged to do so. However, those who wish to follow the lenient views have ample Halachic precedent and rabbinic authority supporting them.

### Footnotes

[1] See Eirubin 23a-b and Shulchan Aruch, Orach Chaim 358. The Gemara's two primary examples of a Karpeif are sown fields and water not used for human needs.

[2] Rav Moshe Heinemann mentioned in a Shiur delivered to the Conference of Young Israel rabbis that sand traps and other hazards on a golf course do not constitute Karpeifiyot despite the fact that they are unused land. He explains that since the hazards are part of the game of golf, it is considered to be a useful portion of the golf course and part of the Dirah.

[3] For an analysis of the Karpeif's impact on the walls, see Bi'ur Halachah (358:9 s.v. HaZra'im).

[4] Also see the Bi'ur Halachah (358:9 s.v. Aval).

[5] Of course, the Devar Shmuel's leniency does not apply to Eirubin that enclose very large forest areas that are not integrated into the local community, since his entire reason for leniency is that the Karpeif is negligible compared to the inhabited area. When this author many years ago sought to construct an Eiruv in a certain summer community in Connecticut, Rav Hershel Schachter ruled that the Eiruv could not be built because the Tzurot HaPetach would have had to encompass huge tracts of forest which were outside the area of habitation and



not at all integrated into the living area. In fact, the deeply forested area would have occupied approximately ninety percent of the area encompassed by the proposed Eiruv. Rav Schachter also did not permit relying on the extraordinarily lenient views of Teshuvot Divrei Malki'el (cited in Melamed Leho'il 1:65) and Teshuvot Even Yekarah (Orach Chayim 16), which would have facilitated constructing this specific Eiruv, as these views are not accepted by most Halachic authorities.

[6] Although the Devar Shmuel speaks of a city surrounded by walls, his ruling appears to apply equally to a city surrounded by Tzurot HaPetach; see Melamed Leho'il 1:65.

[7] Rav Aharon Gruman of Twin Rivers, New Jersey informs me that Rav Moshe Shternbuch permitted a community that otherwise could not reasonably exclude potential Karpeifim within its Eiruv to rely on the Devar Shmuel. Rav Gruman reports that Rav Shternbuch remarked that many communities rely upon the Devar Shmuel.

[8] In addition, Eiruvim Mehudarim in Israel exclude every Karpeif in accordance with the strict ruling of Rav Yosef Shalom Eliashiv. In January 2019 I saw how a sown field is excluded from the broader Modi'in Eruv.

[9] For example, according to information received from the Jerusalem Rabbinat in 1991, the circumference of Jerusalem's Eiruv is approximately 110 kilometers. One can only imagine that the size of the general Jerusalem Eiruv has considerably expanded since 1991.

[10] There is considerable debate regarding whether a cemetery constitutes a Karpeif. Rav Eliashiv (Kovetz Teshuvot 1:45) rules leniently, as people visit cemeteries, making it part of the Dirah. Rav Heinemann, though, reports that Rav Moshe Feinstein adopted a strict approach and did not regard a cemetery as part of the Dirah. The Passaic, New Jersey community excludes cemeteries from its Eiruv. An exception even according to the strict view might be cemeteries of special historic and/or national interest, such as Arlington National Cemetery.

[11] See Orchot Chayim (Ch. 358), Teshuvot Melameid Leho'il (1:65), and Teshuvot Har Tzvi (Orach Chayim vol. 2, Harari VaSadeh p. 249).

[12] Regarding watery areas, see Shulchan Aruch Orach Chaim 358:11. Rav Heinemann cites Rav Moshe Feinstein, who rules that in contemporary times, even water that is less than three Tefachim deep (approximately 9 to 11 inches) should be regarded as a Karpeif. Although the Mishnah Berurah (Bi'ur Halacha op. cit. s.v. VeHi) considers it a problem only if the water is at least three Tefachim deep, Rav Moshe feels that in contemporary society, unlike in the past (see, for instance, Yoma 77b and Ta'anit 23b), people do not walk through any body of water, even if it is very shallow; thus, no body of water is part of the Dirah.