

Anthony Ruggiero

From: Anthony Ruggiero
Sent: Tuesday, December 06, 2016 5:48 PM
To: City Council Beacon
Cc: Elizabeth Evans; Timothy Dexter; Nicholas M. Ward-Willis
Subject: FW: Beacon 248: Report to City Council as required under conditions of Special Permit extension
Attachments: December 5, 2016 report to City Council.PDF

Please review the attached quarterly report from Jennifer VanTuyl and let me know if you would like them to attend a workshop and update the Council or is the attached report sufficient. Thank you.

Anthony J. Ruggiero, M.P.A.

City Administrator
City of Beacon
One Municipal Plaza
Beacon, New York 12508
Ph: 845-838-5009
Fx: 845-838-5012
www.cityofbeacon.org
aruggiero@cityofbeacon.org



From: Van Tuyl, Jennifer [mailto:JVanTuyl@CUDDYFEDER.COM]
Sent: Monday, December 05, 2016 5:39 PM
To: Anthony Ruggiero <aruggiero@cityofbeacon.org>; Randy J. Casale <mayor@cityofbeacon.org>; Nicholas M. Ward-Willis <NWARD-Willis@kblaw.com>; Timothy Dexter <tdexter@cityofbeacon.org>
Cc: Peter DeRosa (pete.derosa@gmail.com) <pete.derosa@gmail.com>; 'Larry Boudreau' <lboudreau@chazencompanies.com>
Subject: Beacon 248: Report to City Council as required under conditions of Special Permit extension

Dear Anthony,

Kindly refer to the attached, updated, copy of the Report. I realized after sending that the letter I initially sent did not include the official cover page of the recorded document that showed all the recording information and the date recorded. Accordingly, please disregard the previous attachment. After reviewing this report with the Council, I would appreciate your letting us know if the Council wants us to appear on a workshop in December to summarize the within report, or whether the written report will suffice.

Thank you for your consideration.

Jennifer Van Tuyl



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Cuddy & Feder LLP
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From: Van Tuyl, Jennifer
Sent: Monday, December 05, 2016 5:03 PM
To: Anthony Ruggiero <aruggiero@cityofbeacon.org>; Randy Casale (mayor@cityofbeacon.org) <mayor@cityofbeacon.org>; Nicholas M. Ward-Willis (nward-willis@kblaw.com) <nward-willis@kblaw.com>; 'Timothy Dexter' <tdexter@cityofbeacon.org>
Cc: Peter DeRosa (pete.derosa@gmail.com) <pete.derosa@gmail.com>; 'Larry Boudreau' <lboudreau@chazencompanies.com>
Subject: Beacon 248: Report to City Council as required under conditions of Special Permit extension

Dear Anthony:

Enclosed is our quarterly report of progress, and documentation of recording of the MTA corrected second amendment to Indenture. After reviewing same with the Council, I would appreciate your letting us know if the Council wants us to appear on a workshop in December to summarize the within report, or whether the written report will suffice. A copy of the recorded document is attached to this report.

Thank you for your consideration.

Jennifer Van Tuyl



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December 5 , 2016

Hon. Anthony Ruggiero
City Administrator
City of Beacon
One Municipal Plaza
Beacon, New York 12508

Re: Beacon 248-periodic report to City Council of progress with MTA/building permit

Dear Mr. Ruggiero:

This letter is submitted as a 3-month update report of progress with the MTA and progress toward obtaining a building permit. The Council required these periodic reports when it granted an extension through January 13, 2018 for the Special Permit for the above project.

A condition of the extension from January 13, 2017 to January 13, 2018 was that:

- (1) "The agreement with the MTA shall be recorded on or before January 13, 2017."

I am very pleased to report that the MTA has signed the Corrected Second Amendment and it has been recorded in the Dutchess County Clerk's Office as Document No. 02-2016-8347, on November 30, 2016. A copy of the fully executed and recorded document is attached.

At this point, having accomplished the recording of the documents, our attention is focused on finalizing the conditions of the Planning Board approval. We will appear on the Planning Board agenda on December 13, 2016 to request two 90-day extensions of the subdivision approval to finalize the outstanding conditions, including finalization of the plat (which will include the revised crossing information) and the Greenway Trail agreement. We continue to meet with the City Attorney to discuss the terms of that document.

Mr. De Rosa has met with Tim Dexter to discuss his plans in detail, and I'm sure Mr. Dexter would be happy to update you on the substance of these discussions.

I believe that all of the above confirms the continued diligent good faith efforts to finalize the approvals and commence construction.



December 5, 2016
Page 2

Based on this report, kindly advise if the Council would like us to appear at a workshop in December to give provide this report verbally, or whether the within written report will suffice for such purpose.

We thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "JL Van Tuyl".

JENNIFER L. VAN TUYL

cc: Nicholas M. Ward-Willis, Esq.
Mayor Randy Casale and City Council
Timothy Dexter, Building Inspector
Pete DeRosa
Larry Boudreau



Dutchess County Clerk Recording Page

Record & Return To:

Date Recorded: 11/30/2016

Time Recorded: 10:22 AM

PAUL J EPSTEIN ESQ
621 ROUTE 52
PO BOX 2
BEACON, NY 12508

Document #: 02 2016 8347

Received From: SNEERINGER MONAHAN PROVOST REDGRAVE

Grantor: METRO NORTH COMMUTER RAILROAD CO

Grantee: BEACON 248 DEVELOPMENT LLC

Recorded In: Deed

Tax District: City of Beacon

Instrument Type: AMEND

Examined and Charged As Follows :

Recording Charge: \$100.50

Transfer Tax Amount: \$0.00

Includes Mansion Tax: \$0.00

Transfer Tax Number: 2756

Number of Pages: 11

*** Do Not Detach This Page

*** This Is Not A Bill

Red Hook Transfer Tax:

RP5217: N

TP-584: Y

County Clerk By: ste

Receipt #: 39721

Batch Record: 261

Bradford Kendall
County Clerk



0220168347

CORRECTED SECOND AMENDMENT TO INDENTURE

THIS AMENDMENT TO INDENTURE, made the 7th day of November 2016,

between

METRO-NORTH COMMUTER RAILROAD COMPANY, a public benefit subsidiary
corporation of the Metropolitan Transportation Authority, having its principal office at 2
Broadway, New York, NY 10004, hereinafter referred to as "GRANTOR" and

BEACON 248 DEVELOPMENT, LLC having an address of 104 Rochelle Avenue,
Rochelle Park, NJ 07662, hereinafter referred to as "GRANTEE".

WITNESSETH:

WHEREAS, Grantor is the owner of certain lands located in the City of Beacon, New
York, and located adjacent to a public street known as Tioronda Avenue, on which are located
railroad tracks; and

WHEREAS, Grantee is the owner of certain lands located in the City of Beacon, New
York, identified as tax parcel #130200-5954-16-993482-0000 and as further depicted as Parcel 1B
on a map entitled "Subdivision Plat prepared for Advantage Mortgage" prepared by Badey &
Watson Surveying and Engineering, P.C., filed in the Dutchess County Clerk's Office on February
22, 2000, as Filed Map No. 10970; and

WHEREAS, a grade crossing exists across Grantor's property to Grantee's property (the
"Grade Crossing") as provided for in a certain indenture between the New York Rubber Company,
a predecessor of Grantee and the Newburgh, Dutchess and Connecticut Railroad Company, a
predecessor of Grantor (the "Original Indenture") and recorded in the Dutchess County Clerk's
Office in Liber 257 of Deeds at page 32; and

WHEREAS, the parties hereto previously executed an Amendment to Indenture dated
March 5, 2009 ("First Amendment"), which was filed in the office of the Dutchess County Clerk
as Document Number 02-2009-1123, which established the original easement area of the Grade

Recorded by:

Sneeringer Monahan Provost

Redgrave Title Agency, Inc.

800 724-7856 Title No.: M - 065771

P10
clB
EASE
95.52
5.-
100.52

CORRECTED REVISED SCHEDULE A

SURVEY DESCRIPTION

ALL that plot, piece or parcel of land, situate and being in the City of Beacon, County of Dutchess, State of New York and being more particularly bounded and described as follows;

BEGINNING at the southeasterly corner of the herein described easement, said point being located N 18° 10' 10" E 76.78 feet from the southwesterly corner of the lands now or formerly of Beacon 248 Development, LLC as described in Deed Document No. 02-2006-4859 and said point being on the easterly bounds of the lands now or formerly of Metro North Commuter R.R. Co., described in Liber 1956 of deeds at page 339; thence westerly through said lands of Metro North Commuter R.R. Co., N 58° 59' 54" W 41.42 feet and S 45° 37' 02" W 23.26 feet to a point on the assumed easterly right of way line of Tioronda Avenue; thence along the assumed easterly right of way line of Tioronda Avenue N 09° 20' 11" E 1.88 feet, along a curve to the right having a radius of 1935.08 feet, an arc length of 162.34 feet, said arc having a chord bearing N 14° 45' 39" E 162.29 feet to the point of tangency; thence continuing along the assumed easterly right of way line of Tioronda Avenue, N 17° 09' 51" E 14.79 feet to the northwesterly corner of the herein described easement; thence easterly through said lands of Metro North Commuter R.R. Co., S 71° 49' 50" E 14.84 feet to the northeasterly corner of herein described easement; thence continuing through said lands of Metro North Commuter R.R. Co., S 16° 02' 00" W 99.11 feet, S 00° 20' 10" W 11.57 feet and S 58° 59' 54" E 40.23 feet; thence along the division line between the herein described easement and said lands of Beacon 248 Development, LLC, S 18° 10' 10" W 48.23 feet to the point or place of beginning.

Containing: 0.103 acre of land more or less.

March 23, 2015

April 26, 2016 – Revised

Crossing as set forth in the metes and bounds description prepared by Badey & Watson Surveying and Engineering, P. C., dated August 19, 2008 ("Original Easement Area"), which was attached to the First Amendment as Exhibit A, and

WHEREAS, the parties hereto previously executed a Second Amendment to Indenture dated December 28, 2015, ("Second Amendment"), which was filed in the office of the Dutchess County Clerk as Document Number 02-2016-795, which re-established the original easement area of the Grade Crossing as set forth in the metes and bounds description prepared by the Chazen Companies, dated March 23, 2015, (the "New Easement Area") which was attached to the Second Amendment as Exhibit A (the Original Indenture, the First Amendment, and the Second Amendment collectively hereinafter referred to as the "Existing Indenture"); and

WHEREAS, the parties desire to correct the Existing Indenture to further revise the metes and bounds description of the Grade Crossing.

NOW, THEREFORE, in consideration of the sum of ONE (\$1.00) DOLLAR, payment hereby waived, the parties hereto agree to amend the Existing Indenture as follows (the Existing Indenture as amended by this Amendment is herein referred to as the "Indenture"):

1. Grade Crossing. The parties agree that the metes and bounds set forth on Schedule A to the Existing Indenture shall be deleted in its entirety and replaced with the metes and bounds description prepared by the Chazen Companies, dated April 26, 2016, ("New Easement Area") contained in Corrected Revised Schedule A attached hereto and made a part hereof and as depicted on the survey revised April 29, 2016, by the Chazen Companies attached hereto as Exhibit A and made a part hereof.

2. Schedule A of the Existing Indenture is deleted in its entirety and replaced with the "Corrected Revised Schedule A".

3. GRANTEE will construct the improvements as shown on the plan attached hereto as Exhibit B. Grantee shall maintain the Improvements paving of the roadway up to the grade

crossing and improvements as set forth in the plans prepared by The Chazen Companies (Utility Plan SP5) and dated June 30, 2013, and revised May 19, 2016. Prior to commencing any Improvements, or any further maintenance, repairs, or replacements related, directly or indirectly to the Improvements, Grantee shall, in each instance, apply for, and obtain, prior to taking any action, an entry permit ("Entry Permit") from Grantor, the giving of which will not be unreasonably withheld, delayed or conditioned. The Entry Permit will specify the terms upon which Grantee may proceed, including but not limited to, the insurance requirements and other policies governing work on Grantor's property.

4. Grantee hereby covenants and agrees to at all times indemnify, defend and save harmless Metro-North Commuter Railroad Company (MNRRC), Metropolitan Transportation Authority (MTA), Danbury Terminal Railroad Company, Maybrook Railroad Company and Housatonic Railroad Company and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein and their agents, servants, directors, officers, and employees (each an "Indemnitee" and collectively, the "Indemnitees") from and against any and all losses, damages (to property, materials and equipment or otherwise), detriments, suits, claims, demands, costs and charges which any Indemnitees may directly or indirectly suffer, sustain, or be subjected to by or on account of the entry upon, occupancy or use of the Permitted Areas or the Property, or the conduct thereon, by grantee, its contractors, subcontractors, officers, employees, agents, guests or invitees, whether such loss or damage be suffered or sustained by any Indemnitees directly or by any other persons (including employees of any Indemnitees or corporations or other persons who may seek to hold an Indemnitee liable therefor) and whether attributable to the fault, failure, or negligence of Indemnitees or otherwise.

5. **INSURANCE:** GRANTEE hereby shall procure and maintain, at its sole cost and expense for the duration of the Indenture:

- a. Commercial General Liability Insurance (I.S.O. 2001 Form or equivalent approved by MNRR) in Grantee's name with limits of liability in the amount of at least \$2,000,000.00 each occurrence/\$2,000,000.00 General Aggregate Limit (other than products-completed operations)/\$2,000,000.00 Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any MNRR/MTA policy available.
- b. Such policy should be written on an occurrence form, and shall include:
- i. Contractual coverage for liability assumed by Grantee under this agreement;
 - ii. Personal and Advertising Injury Coverage;
 - iii. Products-Completed Operations;
 - iv. Independent Contractors Coverage;
 - v. "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
 - vi. Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary;

vii. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be removed in this respect; and

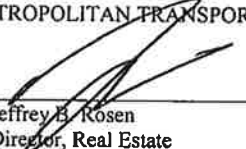
viii. Additional Insured Endorsement (I.S.O. Form CG2026 07/04 version or equivalent approved by the MNRR) naming: [Indemnified Parties]

6. The terms, covenants and agreements herein contained shall inure to the benefit of, and binding upon the parties hereto and their respective heirs, distributes, legal representatives, successors and assigns and ALL COVENANTS HEREIN SHALL RUN WITH THE LANDS AFFECTED THEREBY AND SHALL BE PERPETUAL IN DURATION.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the GRANTOR and GRANTEE have executed this instrument as of the date first set forth above.

GRANTOR: METRO-NORTH COMMUTER RAILROAD COMPANY
By: METROPOLITAN TRANSPORTATION AUTHORITY

By: 
Name: Jeffrey B. Rosen
Title: Director, Real Estate

GRANTEE: BEACON 248 DEVELOPMENT, LLC

By: 
Name: Peter De Rosa
Title: Member

ACKNOWLEDGMENT FOR GRANTOR

(STATE OF NEW YORK, COUNTY OF DUTCHESS) ss:

On the 7th day of November in the year 2016 before me, the undersigned, a Notary Public in and for State, personally appeared JEFFREY B. ROSEN personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

D. Smith-Santos
Notary Public

DALILAH J. SMITH-SANTOS
Notary Public, State of New York
No. 01SM6337087
Qualified in New York County
Commission Expires Feb. 16, 2020

ACKNOWLEDGMENT FOR GRANTEE

State of New Jersey, County of Morris ss.:

On October 13th, 2016 before me, the undersigned, personally appeared PETER DeROSA personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in Lincoln Park

(insert city or political subdivision and state or county or other place acknowledgment taken)

M. Morel
(notary public)

Marleidy Morel
Notary Public
New Jersey
My Commission Expires 2-12-18
ID No. 2430016

RECORD & RETURN TO:
PAUL J. EPSTEIN, ESQ.
621 ROUTE 52, P.O. BOX 2
BEACON, NY 12508



CORRECTED EXHIBIT A

THE **Charters** COMPANIES
Charter Companies
11-16
SOUTH CHARTER COMPANY
P.O. BOX 111111
NEW YORK, NY 10001
1-800-451-1111

[illegible]

