

## Anthony Ruggiero

---

**From:** Van Tuyl, Jennifer <JVanTuyl@CUDDYFEDER.COM>  
**Sent:** Thursday, August 10, 2017 9:18 AM  
**To:** Anthony Ruggiero; Randy J. Casale  
**Cc:** Timothy Dexter; 'Gray, Jennifer L.'; 'Larry Boudreau'; Nicholas M. Ward-Willis; Paul Epstein; Paul J. Epstein (rc.eplaw@aol.com)  
**Subject:** RE: update on Beacon 248  
**Attachments:** Beacon 248 Reports to Council.PDF

Anthony:

Sure. I've gone through my own emails and records, which show the following:

The Council resolution granting the extensions through 1/13/18 was granted on June 14, 2016. The purpose of the reporting was to describe what items remained to be completed prior to building permit application. Our first report was in the form of an email to Nick dated 8/31/16 relating to the MTA(attached). Thereafter, you and I spoke and you indicated you were going to forward that email, with Nick's response, to the Council and ask if they wanted us to actually appear. I have a note in my file that on October 5, 2016 you and I spoke on the phone, and you told me we did not have to appear before the council to deliver the report.

Our second report was in December, 2016. Copy of my email and report attached. We indicated in that report that the only remaining conditions we needed to complete were finalizing the plat to include the revised crossing information, and the Greenway Trail Agreement with the city. We also reported that we were continuing to meet with the City Attorney to finalize that agreement. We also reported that Mr. DeRosa continued to regularly communicate with Tim Dexter about the plans.

Our third report took the form of our very active participation in the council discussions and deliberations leading to the enactment of the City's Trail Law, which included regulations applicable to the Greenway Trail. The Trail Law was critically important to both the applicant and the City in resolving the Greenway Trail issue, the single most important outstanding condition to be fulfilled before application for building permits could be made. We received a draft of this law on Feb 1, 2017. Our discussions with the City Attorney regarding this law commenced in February. On February 23, 2017, I participated in a conference call with City staff regarding the issues. On March 12, 2017, we submitted to the City an 11 page memo of the liability concerns regarding trails, which I understand was discussed with the Council in its deliberations on the law. Copy of memo attached. Since our involvement in this process on behalf of the Applicant was so manifest, and directly involved the Council itself, there would have been no purpose in separately submitting the same information as a "report." The law was finally adopted on April 3, 2017

Our fourth report was the one delivered on July 12, 2017. This report contained the proposed final architectural plans and the proposed final plat. We have been informed that the City consultants (engineer and planner) have reviewed the plat and found that it meets all conditions. Having received the sign off of the City consultants, Chazen is now plotting the mylar of the plat to obtain the signature of the Health Department. The July 12 report notes that the only condition that remains is the City's sign off on the transactional documents, particularly the Greenway Trail Easement. The Greenway Law adopted on April 3, 2017 resolved many of the issues regarding the Easement, but not all of them. The issue of maintenance remains to be resolved. Both the applicant and the City Attorney have been diligent in negotiating in good faith to resolve the issues. We submitted initial drafts of these documents in May of 2015. Since that time, the attorneys for both sides have had numerous meetings and calls to resolve the issues, including preparation of numerous subsequent drafts of the documents. After the law's adoption, the attorneys for the applicant and the city met further to discuss the remaining open issues, and the Applicant has now submitted to the City attorneys a proposed final version of the Greenway Trail. Nonetheless, this remains a "working draft" and will ultimately require the City Council's

approval. At the Planning Board meeting on Tuesday, Jennifer Gray indicated to the Board that these documents will be discussed with the City Council in the near future. Notably, the applicant's easement document will serve as a prototype for all future Greenway Easements, so the discussions are resulting in a benefit to the City that is broader than this project alone.

In addition to the above reports, the applicant has continued to be totally transparent and communicative with City staff about the project and the progress to building permits. The applicant has been very open about his proposed sale of the property, the identity of his buyer. Both the applicant and his proposed contract vendee have spoken to City officials and have been available for any questions or discussions. The applicant responded to Mr. Dexter's letter re: the affordable housing law as soon as he received it.

The project continues to have all of the benefits previously identified by the Council and the Planning Board, including the largest segment of Greenway Trail of any property in the City. The City now has a proposed final draft that incorporates all of the provisions of the new Greenway Law. We ask the Council to move quickly to review the draft so that it can be finalized.

I'm copying Paul Epstein on this email, as he is the attorney representing the applicant on the sale of the property, and he may have a contractual obligation to notify the contract vendee of the proposed workshop Monday, and provide an opportunity to directly participate in the reporting process going forward.

If you have any further questions, I'll do my best to answer them. All date references above are based on my office notes and file copies. I believe they are accurate, and any errors are unintentional.

Jennifer

---

**From:** Anthony Ruggiero [mailto:aruggiero@cityofbeacon.org]

**Sent:** Wednesday, August 09, 2017 1:08 PM

**To:** Van Tuyl, Jennifer <JVanTuyl@CUDDYFEDER.COM>; Randy J. Casale <mayor@cityofbeacon.org>

**Cc:** Timothy Dexter <tdexter@cityofbeacon.org>; 'Gray, Jennifer L.' <JGray@kblaw.com>; 'Larry Boudreau' <lboudreau@chazencompanies.com>; Nicholas M. Ward-Willis <NWard-Willis@kblaw.com>

**Subject:** RE: update on Beacon 248

Jennifer:

I am going through my emails, and there was supposed to be an update every 3 months. I am only showing one. Can you resend me the others or explain why there were not others.

**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](http://www.cityofbeacon.org)

[aruggiero@cityofbeacon.org](mailto:aruggiero@cityofbeacon.org)



---

**From:** Van Tuyl, Jennifer [<mailto:JVanTuyl@CUDDYFEDER.COM>]  
**Sent:** Tuesday, August 08, 2017 3:13 PM  
**To:** Anthony Ruggiero <[aruggiero@cityofbeacon.org](mailto:aruggiero@cityofbeacon.org)>; Randy J. Casale <[mayor@cityofbeacon.org](mailto:mayor@cityofbeacon.org)>  
**Cc:** Timothy Dexter <[tdexter@cityofbeacon.org](mailto:tdexter@cityofbeacon.org)>; 'Gray, Jennifer L.' <[JGray@kblaw.com](mailto:JGray@kblaw.com)>; 'Larry Boudreau' <[lboudreau@chazencompanies.com](mailto:lboudreau@chazencompanies.com)>  
**Subject:** RE: update on Beacon 248

Anthony, I just heard back from Larry. He, Pete and I are available for this Monday the 14<sup>th</sup> and also for the 28<sup>th</sup>, if that turns out to be a better date.

Jennifer

---

**From:** Anthony Ruggiero [<mailto:aruggiero@cityofbeacon.org>]  
**Sent:** Tuesday, August 08, 2017 11:45 AM  
**To:** Van Tuyl, Jennifer <[JVanTuyl@CUDDYFEDER.COM](mailto:JVanTuyl@CUDDYFEDER.COM)>; Randy J. Casale <[mayor@cityofbeacon.org](mailto:mayor@cityofbeacon.org)>  
**Cc:** Timothy Dexter <[tdexter@cityofbeacon.org](mailto:tdexter@cityofbeacon.org)>; 'Gray, Jennifer L.' <[JGray@kblaw.com](mailto:JGray@kblaw.com)>; 'Larry Boudreau' <[lboudreau@chazencompanies.com](mailto:lboudreau@chazencompanies.com)>  
**Subject:** RE: update on Beacon 248

Jennifer:

We are looking to put this on for Monday, are you available. Can you also send me all the quarterly reports to date.

**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](http://www.cityofbeacon.org)

[aruggiero@cityofbeacon.org](mailto:aruggiero@cityofbeacon.org)



---

**From:** Van Tuyl, Jennifer [<mailto:JVanTuyl@CUDDYFEDER.COM>]  
**Sent:** Wednesday, July 12, 2017 5:55 PM  
**To:** Anthony Ruggiero <[aruggiero@cityofbeacon.org](mailto:aruggiero@cityofbeacon.org)>; Randy J. Casale <[mayor@cityofbeacon.org](mailto:mayor@cityofbeacon.org)>  
**Cc:** Timothy Dexter <[tdexter@cityofbeacon.org](mailto:tdexter@cityofbeacon.org)>; 'Gray, Jennifer L.' <[JGray@kblaw.com](mailto:JGray@kblaw.com)>; 'Larry Boudreau' <[lboudreau@chazencompanies.com](mailto:lboudreau@chazencompanies.com)>  
**Subject:** FW: update on Beacon 248

Dear Anthony and Randy,

Please see below. My previous email, which attached the final proposed maps and drawings, bounced back due to size, so Kellie will deliver a hard copy in the morning of my letter with the attachments. So I'm just resending the cover letter without the attachments.

Thanks.

Jennifer Van Tuyl



**Jennifer L. Van Tuyl, Esq., LEED AP BD+C**  
**Partner**  
**Cuddy & Feder LLP**  
300 Westage Business Center, Suite 380  
Fishkill, New York 12524  
T 845 896 2229 | F 845 896 3672  
[JVanTuyl@cudfyfeder.com](mailto:JVanTuyl@cudfyfeder.com)  
[cudfyfeder.com](http://cudfyfeder.com)

---

NOTE: The information in this e-mail message and any attachments thereto have been sent by an attorney or his/her agent, and is or are intended to be confidential and for the use of only the individual or entity named above. The information may be protected by attorney/client privilege, work product immunity or other legal rules. If the reader of this message and any attachments thereto is not the intended recipient, you are notified that retention, dissemination, distribution or copying of this e-mail message and any attachments is strictly prohibited. Although this e-mail message (and any attachments) is believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, the intended recipient is responsible to ensure that it is virus free. The sender and Cuddy & Feder LLP shall not have any responsibility for any loss occasioned in any manner by the receipt and use of this e-mail message and any attachments.

Pursuant to Treasury Regulations, any U.S. federal tax advice contained in this communication, unless otherwise stated, is not intended and cannot be used for the purpose of avoiding tax-related penalties.

---

**From:** Van Tuyl, Jennifer

**Sent:** Wednesday, July 12, 2017 5:33 PM

**To:** Anthony Ruggiero <[aruggiero@cityofbeacon.org](mailto:aruggiero@cityofbeacon.org)>; Randy Casale ([mayor@cityofbeacon.org](mailto:mayor@cityofbeacon.org))  
<[mayor@cityofbeacon.org](mailto:mayor@cityofbeacon.org)>

**Cc:** Tim Dexter ([TDexter@cityofbeacon.org](mailto:TDexter@cityofbeacon.org)) <[TDexter@cityofbeacon.org](mailto:TDexter@cityofbeacon.org)>; 'Gray, Jennifer L.' <[JGray@kblaw.com](mailto:JGray@kblaw.com)>; 'Larry Boudreau' <[lboudreau@chazencompanies.com](mailto:lboudreau@chazencompanies.com)>

**Subject:** update on Beacon 248

Dear Anthony and Randy,

Enclosed is an update on Beacon 248, together with reduced size copies of the plans that have been submitted for final engineering and planning review by the City. In the event that these emails bounce back because of size, I will have Kellie drop off hard copies at City Hall tomorrow.

Please call if you have any questions. As noted in the attached letter, Larry Boudreau and I are happy to respond to any questions you may have.

Jennifer Van Tuyl

## Van Tuyl, Jennifer

---

**From:** Van Tuyl, Jennifer  
**Sent:** Wednesday, August 31, 2016 5:22 PM  
**To:** Way, Sandy  
**Subject:** FW: Beacon 248 and MTA

Please PPC this email in the chron for B248. And enter 9/26 in my outlook calendar for the presentation to council

**From:** Van Tuyl, Jennifer  
**Sent:** Wednesday, August 31, 2016 5:14 PM  
**To:** Nicholas M. Ward-Willis (nward-willis@kblaw.com)  
**Cc:** 'Larry Boudreau'  
**Subject:** Beacon 248 and MTA

Nick:

I'm just sending a quick update. We have been in continuing communication with the MTA, and have now been told by Anthony Campbell that our application is stalled in the legal department. Anthony asked what our deadline is to report to the Council. I told him we wanted to report to the Council no later than the September 26<sup>th</sup> workshop (the resolution wasn't totally clear whether the 3 months ran from the effective date of the extension, i.e. July 13<sup>th</sup>, or the date of the grant of the extension (June 20<sup>th</sup>) so it seemed that September 26<sup>th</sup> was appropriate.

Anthony Campbell is going to try to use this date as leverage with his legal department to get this moving. We have had fully compliant papers with them since May, and have not been asked to change anything. I remember that either you or the Mayor were very helpful in getting them to move things along in the past. We would welcome any efforts on our behalf to get this done. If you need Anthony Campbell's contact information, I'll forward it.

Thanks for your assistance. Have a good holiday weekend.

Jennifer Van Tuyl

## **Van Tuyl, Jennifer**

---

**From:** Van Tuyl, Jennifer  
**Sent:** Monday, September 19, 2016 6:22 PM  
**To:** Peter DeRosa (pete.derosa@gmail.com); 'Larry Boudreau'; Paul J. Epstein (rc.eplaw@aol.com)  
**Cc:** Gentle, Kellie  
**Subject:** B248 report to Council

Update:

I got a call from Anthony Ruggiero. He is going to send my email to the Council with Nick's and ask them if this is enough of an update or if they want us to come in for a Council meeting. If the council wants us to come in for a council meeting, they are going to have us come in on October 10<sup>th</sup>.

Paul, please advise me if you receive anything from the MTA, as I need to notify the city council.

Jennifer

## Van Tuyl, Jennifer

---

**From:** Van Tuyl, Jennifer <JVanTuyl@CUDDYFEDER.COM>  
**Sent:** Monday, December 05, 2016 5:40 PM  
**To:** Gentle, Kellie  
**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

PPPC to B 248. "Jennifer's report to council, amended to show recording page."

**From:** Van Tuyl, Jennifer  
**Sent:** Monday, December 05, 2016 5:39 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,

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

**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.





300 Westage Business Center, Suite 380  
Fishkill, New York 12524  
T 845 896 2229  
F 845 896 3672  
cuddyfeder.com

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  
821 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: \$100.60  
Transfer Tax Amount: \$0.00  
Includes Mansion Tax: \$0.00  
Transfer Tax Number: 2768

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



445 Hamilton Avenue, 14th Floor  
White Plains, New York 10601  
T 914 761 1300  
F 914 761 5372  
cuddyfeder.com

## **MEMORANDUM**

To: Jennifer L. Gray, Esq.

From: Jennifer L. Van Tuyl and Taylor M. Palmer

Date: March 10, 2017

Re: NYS Recreational Use Statute – NYS General Obligations Law Section 9-103  
Case Law Regarding Liabilities for Proposed Fishkill Creek Heritage & Greenway Trail

---

### **INTRODUCTION**

The City has required a number of private landowners to offer the City a “Greenway Trail” easement over their lands, as a condition of land use approvals. The City is now considering a local law which would govern activities on the Trail. Trail enthusiasts are urging the City to allow a broad array of activities. The servient landowners, on the other hand, have asserted that liability concerns dictate that the City should circumscribe the activities in order to limit liability. You have asked for an analysis of statutory and case law discussing potential liability of the City of Beacon (as trail easement holder/“dominant estate”) in light of New York State General Obligations Law Section 9-103, commonly referred to as the Recreational Use Statute (hereafter, “GOL” or “the Statute.”)

The *Fishkill Creek & Heritage Trail Master Plan* (the “FCGHT Master Plan”)<sup>1</sup> asserts that “... so long as the FCGHT is free and open to the public, landowners are protected from liability through the above statute.”<sup>2</sup> This statement substantially overstates the protections provided by the Statute. New York General Obligations Law (“GOL” or “the Statute”) does not totally exclude the liability of toward recreationists, and could pose serious liabilities to the City of Beacon. Therefore, the City’s reliance on this Statute to provide full protection (“[i]n holding such easements and in establishing public trails, the City and the Grantors of the easements expressly rely upon the protection against liability contained in Section 9-103 of the New York State General Obligations Law...”<sup>3</sup>) may not be sustainable.

This memorandum is written to describe the various types of potential liability for the City of Beacon. This liability cannot be eliminated entirely, for it is undisputed that the Greenway Trail has been established by the City, and that landowners have been compelled to create and offer the easement to the City for the Greenway Trail as a prerequisite to obtain approvals. As noted in Point 1 (C) below, it is likely that the City would be joined in any litigation for injuries along the Greenway Trail, subjecting the City to the uncertainties and expense of litigation. Therefore, the

---

<sup>1</sup> Adopted by the City of Beacon City Council on June 17, 2013.

<sup>2</sup> FCGHT Master Plan, at 57 (2013).

<sup>3</sup> FCGHT Local Law, proposed Section 170-1.

March 9, 2017

Page 2

FCGHT Legal Liabilities

most meaningful way in which the City can limit its liability is to carefully limit the activities on the Greenway Trail in a manner to lower the risk of injury as much as possible.

**1. There is a Substantial Question of Whether GOL 9-103 Immunity Applies At All to a Municipally established Trail System.**

Understanding the applicability of GOL9-103 to the public sector is important because public entities in New York generally can be sued for acts of negligence. The NY Court of Claims Act, Section 8, establishes that the State of New York waives its immunity from liability and agrees to have its liability determined in similar manner as for actions taken against individuals and corporations.

- a. *Municipally organized trail systems are outside the purpose of the Statute:***  
The Recreational Use Statute, which grants property owners immunity for ordinary negligence, was promulgated to encourage property owners to permit persons to come on their property to engage in specified recreational activities without fear of liability for injuries suffered by the recreationists. The sole purpose of the statute is to induce property owners, who might otherwise be reluctant to do so for fear of liability, to permit persons to come on their property to pursue specified activities.<sup>4</sup>

Some courts have ruled that an organized municipal trail system is simply outside the protection of the GOL, on the grounds that the Statute applies only to private owners who are incentivized to open their private lands to public passage by means of the incentive. Other courts have similarly ruled that the Statute does not apply to lands and trails that have been organized and planned by a municipality for public use, since the GOL is not the incentive for opening the lands to the public.

The legislative history of the Statute indicates a finding that municipalities have a compelling, independent motivation to provide public access to its supervised parks above and beyond any incentive offered by statutory immunity under the Statute.<sup>5</sup> Thus, a municipality cannot cast off its long-standing duty to the public on such areas by relying on this Statute, which was intended for a different purpose.

A leading case holding that the GOL does not apply to ordinary users of municipal parks is Bush v Saugerties, 114 App Div 2d 176, 498 NYS2d 563 (3d Dept 1986). As noted in that case:

Moreover, the unique duty owed to the ordinary public users of municipal parks is clearly not what the Legislature intended to alleviate by General Obligations Law § 9-103. As stated in *Sega*, the purpose of the legislation

---

<sup>4</sup> 85 N.Y. Jur. 2d Premises Liability §§ 10 & 16.

<sup>5</sup> See, Mem of NY Law Rev Commn, Bill Jacket, L 1956, ch 842, at 22-23.

March 9, 2017

Page 3

FCGHT Legal Liabilities

was to insulate from liability for ordinary negligence “landowners who *gratuitously allow* persons to use their property for certain enumerated recreational activities” (*Sega v. State of New York*, 60 N.Y.2d 183, 186, 469 N.Y.S.2d 51, 456 N.E.2d 1174, *supra* [emphasis supplied] ). Once the subject parks were dedicated, an easement was created in favor of the public for the uses to which municipal parks are ordinarily applied (*see, Porter v. Intl. Bridge Co.*, 200 N.Y. 234, 245; 42 N.Y.Jur., Parks and Recreation Centers, § 7, at 544 [1965] ). Thereafter, the Village and Town had no absolute right to exclude the general public, plaintiff included (*cf. Williams v. \*180 Gallatin*, 229 N.Y. 248, 128 N.E. 121). It follows that this is not simply an instance of permissive use to which the statute seemingly is limited.

In *Baker v. Cty. of Oswego*,<sup>6</sup> the Supreme Court Appellate Division Fourth Department held that the statutory immunity of the Recreational Use Statute does not apply to a County which actively advertised its trail, operated and maintained it “in such a manner that the application of such immunity would not create an additional inducement to keep the property open to the public for the specified recreational activities set forth in [the statute].”<sup>7</sup> GOL 9-103 was determined not to apply to an injured biker in a supervised municipal park since the statute was intended to induce private owners to open their property, and this is simply not the case in parks and trail systems planned for and organized by a municipality. (*Ferres v. New Rochelle* (1986) 68 NY2d 446, 510 NYS2d 57, 502 NE2d 972). Nor did it apply to an injury on a hill in a public (town) park used for sledding (*Sena v Town of Greenfield* (1998) 91 NY2d 611, 673 NYS2d 984, 696 NE2d 996), or on a public golf course open to the public and used for winter recreation activities (*English v City of Albany* (1997, 3d Dept) 235 AD2d 977, 652 NYS2d 873). Nor did it apply to a snow tubing accident at a supervised public park (*Rashford v. City of Utica*, 2005 N.Y Slip-on 8372; 23 A.D. 3d 1000; 803 N.Y.S.2d 453; 2005 N.Y.App. Div.).

Thus, the Recreational Use Statute does not apply to provide immunity to the City from liability for its failure to fulfill its duty of reasonable care in the operation and maintenance of an organized trail system which is part of the City’s overall recreation and open space program.<sup>8</sup> If the City operates, maintains, and supervises a particular recreational activity, it owes the injured party the same duty of care that governs common-law negligence; the

<sup>6</sup> 77 A.D.3d 1348, 1349, 909 N.Y.S.2d 600, 601 (2010).

<sup>7</sup> *Id.* (citing *Quackenbush v. City of Buffalo*, 43 A.D.3d at 1388, 842 N.Y.S.2d 657; *see Ferres v. City of New Rochelle*, 68 N.Y.2d 446, 448, 502 N.E.2d 972, 973 (1986); *Rashford v. City of Utica*, 23 A.D.3d 1000, 803 N.Y.S.2d 453; *Keppler v. Town of Schroon*, 267 A.D.2d 745, 747, 699 N.Y.S.2d 792; *cf. Sega v. State of New York*, 60 N.Y.2d 183, 469 N.Y.S.2d 51, 456 N.E.2d 1174; *Myers*, 11 A.D.3d 1020, 782 N.Y.S.2d 326).

<sup>8</sup> *See Celia v. Town of Whitestown*, 71 A.D.3d 1427, 1427, 896 N.Y.S.2d 774, 775 (2010); *Sena v. Town of Greenfield*, 91 N.Y.2d 611, 673 N.Y.S.2d 984, 696 N.E.2d 996 (1998); *Ferres v. City of New Rochelle*, 68 N.Y.2d 446, 510 N.Y.S.2d 57, 502 N.E.2d 972 (1986); *Bennett v. Town of Brookhaven*, 233 A.D.2d 356, 650 N.Y.S.2d 752 (2d Dep’t 1996); *Phelan v. State*, 11 Misc. 3d 151, 804 N.Y.S.2d 886 (Ct. Cl. 2005).

March 9, 2017  
Page 4  
FCGHT Legal Liabilities

statutory recreation-use qualification does not allow the lower standard of care in such a situation.<sup>9</sup> Because the sole purpose of the statute is evident to induce property owners, who might otherwise be reluctant to do so for fear of liability, to permit persons to come onto their property to pursue specified activities, the Recreational Use Statute finds no application where the municipality already operates and maintains a supervised facility for use by the public.<sup>10</sup> Determining whether an area that is open for recreational use is sufficiently supervised so as to fall outside the application of the statute can be quite problematic, and it is essential that any such determination be based on consideration of the underlying purpose of the statute, which is to induce property owners, who might otherwise be reluctant to do so for fear of liability, to permit persons to come on their property to pursue specified activities.<sup>11</sup>

- b. *Trail systems created by easements are outside the protection of the Statute.*** There is also authority that the Statute does not apply to Trails created by easement. In Testani v. Northshore Equestrian Ctr., Inc.,<sup>12</sup> the Court held that the Statute *did not* confer immunity upon owners of land used as equestrian trails created by easement. In relevant part, the Court held:

Here, the equestrian trail owned by the defendants is open to the residents of Old Westbury and defendants “need no encouragement” from the immunity offered by statute. Indeed, they are powerless to close the trail to the easement owners. It is also noted that the recreational use statute applies only when the gratuitous permission of a landowner is concerned. Here, the easement suggests a quid pro quo, an additional factor which would take defendants’ property outside the protection of the statute. Accordingly, the motion for summary judgment is denied.<sup>13</sup>

- c. *The City cannot immunize itself against claims and suits for liability.***

If injuries occur on the Greenway Trail, it is virtually certain that the City would become a defendant in any lawsuit for damages. Such claims of liability would be based on the undisputed fact that the City has created the plan for the Greenway Trail, adopted a Master Plan for same, established a committee to supervise the Trail, and required private properties to grant the easements for the Trail. Under well-established principles of real property law, the dominant estate is responsible for maintaining easements. The City is not able to immunize itself against claims for injuries, either by simply reciting its reliance

<sup>9</sup> Blount v. Town of West Turin, 195 Misc. 2d 892, 759 N.Y.S.2d 851 (Sup 2003).

<sup>10</sup> Ferres v. City of New Rochelle, 68 N.Y.2d 446, 510 N.Y.S.2d 57, 502 N.E.2d 972 (1986); Walters v. County of Rensselaer, 282 A.D.2d 944, 724 N.Y.S.2d 97 (3d Dep’t 2001).

<sup>11</sup> 85 N.Y. Jur. 2d Premises Liability § 16.

<sup>12</sup> 156 Misc. 2d 1031, 1033, 595 N.Y.S.2d 653, 654 (Sup. Ct. 1992).

<sup>13</sup> *Id.*

March 9, 2017

Page 5

FCGHT Legal Liabilities

on the Statute, or by using its municipal power to force landowners, as a condition of land use permits, to maintain the trail. Even if the City asserts protection under the Statute, many questions of fact will be created; including:

- whether an injured party was engaged in a recreational activity specifically listed in the Recreational Use Statute;
- whether the property upon which the recreational activity occurred was suitable for that activity; and
- whether the owner/lessee/occupant willfully failed to guard or warn against a dangerous condition, use, structure, or activity.

These questions of law and of fact have led to broadly varying results and great uncertainty.<sup>14</sup> For example, the determination as to whether a party is “hiking” for purposes of the Recreational Use Statute must be made by considering the totality of the facts and circumstances,<sup>15</sup> including the path taken; the length and purpose of the journey; the topography of the property and the party’s subjective intent. Each of these considerations is relevant, but not controlling, which leads to differing conclusions as to liability in individual cases.

All of these factors should incentivize the City to limit the scope of activities on the trail to limit the possibility of future injuries.

**2. New York’s Recreational Use Statute Protects Against Claims Only as to Specifically Enumerated Uses, and Does Not Provide Immunity for Injuries From Walking, Jogging, Running and Other non-enumerated Uses to be Anticipated on the Greenway Trail.**

---

<sup>14</sup> Note: Indeed the Courts have considered certain issues matters of law and other issues of fact. For example, the Court in Twomey v. Rosenthal, (2 Dept. 2008) 52 A.D.3d 693, 860 N.Y.S.2d 591, held that the determination of whether a particular parcel of land is suitable for a recreational activity, as required to protect landowner from premises liability under the Recreational Use Statute, is a question of law for the court. However, in Morales v. Coram Materials Corp., (2 Dept. 2008) 51 A.D.3d 86, 853 N.Y.S.2d 611, the Court held that generally, a question of fact is raised under the Recreational Use Statute if there is evidence that the defendant does not own, lease, or occupy the land where the accident occurred, or that the plaintiff was not engaged in a listed recreational activity, or that the property was not suitable for the recreational use. Additionally, in Hulett ex rel. Hulett v. Niagara Mohawk Power Corp., (4 Dept. 2003) 1 A.D.3d 999, 768 N.Y.S.2d 535, the court considered whether parcel of land was suitable for bicycle riding, and whether immunity was available under Recreational Use Statute, determining that they were questions of statutory interpretation, and were, therefore, questions of law for court in action to recover for injuries sustained by children struck by train while attempting to reach paths on railroad property.

<sup>15</sup> Guillet v. City of N.Y., 131 Misc. 2d 578, 579, 500 N.Y.S.2d 946, 947 (Sup. Ct. 1986).

March 9, 2017

Page 6

FCGHT Legal Liabilities

A second major insufficiency of the Statute is that it provides protection for only certain activities, and provides no protection for many activities that could be undertaken on the Trail. The Recreational Use Statute was established to encourage landowners to *gratuitously* open up their land to the public for certain *specified* recreational uses, by indemnifying these landowners from liability:

An owner, lessee or occupant of premises, whether or not posted as provided in section 11-2111 of the environmental conservation law, owes no duty to keep the premises safe for entry or use by others for hunting, fishing, organized gleanings as defined in section seventy-one-y of the agriculture and markets law, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, speleological activities, horseback riding, bicycle riding, hang gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes or training of dogs, or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes.<sup>16</sup>

The Recreational Use Statute's language only protects those activities "enumerated" in the above provision, which provides significant limitations on its application. Unlike other states, the New York Recreational Use Statute does not include a catchall for "other recreational activities." Bills proposing to broaden the protection of the statute have pointed out the limitations of the statute. For example, Senate Bill S4645-2011 notes that activities like snowboarding are not included. This bill also notes that the current statute covers boating but not sailboat racing; hunting but not bird watching; subterranean rock climbing but not above-ground rock climbing; gliding but not ballooning; and hiking but not walking. Unfortunately, the statute has not been amended to contain broader protections for "other recreational activities."

In Rousseau v. County of Dutchess,<sup>17</sup> Dutchess County attempted to invoke GOL 9-103 in order to avoid liability for injuries to a child walking on a trail. The Dutchess County Supreme Court found that the protection provided by the statute was limited to "hiking," not walking, and that [w]alking 500 to 600 feet to get to a trestle is not enough to transform [the plaintiff's] activity into hiking. The court therefore found the County was liable for the injuries to the person walking, as opposed to hiking.

In Drake v. Sagbolt, LLC,<sup>18</sup> a resort with walking trails attempted to use GOL 9-103 to protect it from a suit by a walker, claiming that the "hiking" clause of the statute applied. However, the plaintiff claimed that "walking" is not "hiking," and the Court agreed:

<sup>16</sup> N.Y. Gen. Oblig. Law § 9-103(1)(a).

<sup>17</sup> 167 Misc.2d 568, 638 N.Y.S.2d 290 (1996).

<sup>18</sup> 112 A.D.3d 1132, 1134, 977 N.Y.S.2d 131, 134-35 (2013).

March 9, 2017  
Page 7  
FCGHT Legal Liabilities

“[a]lthough the term ‘hiking’ is not defined by the statute, when we give such term its ordinary and usual meaning (*see McKinney’s Cons Laws of NY, Book 1, Statutes § 232*), it contemplates more than merely walking on a paved walkway (*see generally* 6 NYCRR 197.2[a]; Sega v. State of New York, 60 N.Y.2d 183, 193, 469 N.Y.S.2d 51, 456 N.E.2d 1174 [1983]; Cometti v. Hunter Mtn. Festivals,<sup>19</sup> 241 A.D.2d 896, 897, 660 N.Y.S.2d 511 [1997]). In our view, classifying plaintiff’s actions as ‘hiking’ would place an overly broad interpretation upon that term. Nor is there any evidence in the record that plaintiff was training her dogs.”<sup>20</sup>

In Rosen v. Long Island Greenbelt Trail Conference, Inc.,<sup>21</sup> a plaintiff was injured while biking on a dirt trail along the Nassau–Suffolk Greenbelt Hiking Trail, when he fell off a wooden footbridge that he claimed was in a state of disrepair. While the Trail Conference escaped liability on the grounds that the injury did not occur on the trail, but rather on a State parkway, the Court of Appeals also ruled that the Long Island Greenbelt Trail Conference, Inc. (“LIGTC”) did not qualify as an occupier or occupant. This implies that had an injury occurred in an area where LIGTC exercised control, they would not have been accorded the protection of GOL 9-103.

The Recreational Use Statute does not apply to situations in which a defendant is not engaging in one of the specifically enumerated activities. For example, in addition to the above discussion regarding the Rousseau case, the Court has considered a case where a man fishing on the bank of the Hudson River adjacent to a railroad ran to the track in attempt to rescue his dog and was struck by a train. In James v. Metro N. Commuter R.R.,<sup>22</sup> the Supreme Court Appellate Division, First Department, did not allow the Railroad Company the protection of GOL 9-103 because the fishing was not occurring on the railroad property.<sup>23</sup>

Similarly, the Recreational Use Statute does not apply to swimming, which is not a listed activity. In Cramer v. Henderson,<sup>24</sup> the Supreme Court Appellate Division, Fourth Department considered when a plaintiff was injured when he was struck on head by falling rock while walking away from swimming hole. At the time plaintiff was injured he was walking, but not hiking, and the Recreational Use Statute did not apply.

---

<sup>19</sup> In the Cometti case, an individual who bought a ski lift ticket to ascend a mountain with the intent of walking down, and who fell and was seriously injured while descending the mountain, was ruled to fall within a normal definition of hiking and the GOL was ruled relevant to the ski resort owner.

<sup>20</sup> *Id.*

<sup>21</sup> 19 A.D.3d 400, 400, 796 N.Y.S.2d 130, 131 (2005).

<sup>22</sup> 166 A.D.2d 266, 267, 560 N.Y.S.2d 459 (1990).

<sup>23</sup> *Id.*

<sup>24</sup> 120 A.D.2d 925, 503 N.Y.S.2d 207 (1986).

March 9, 2017  
Page 8  
FCGHT Legal Liabilities

Ultimately, the Court of Appeals has held that the Statute grants protection to landowners only from claims of recreational "wanderers and wonderers" partaking of activities enumerated in GOL 9-103.<sup>25</sup> However, such people must be clearly participating in one of the listed activities for the Statute to apply.<sup>26</sup> The Statute may not be applicable in many different factual scenarios that could arise on the Greenway Trail.

**3. In Accessing Potential Future Liability, the City Should Anticipate Future Crowded Conditions.**

The potential liability for the City of Beacon should not be underestimated by imagining solitary walkers/hikers on an early morning visit to the trail. This trail has a significant possibility to become very crowded. The City Greenway Trail is proposed to soon connect to the Hudson Valley Fjord Trail from Cold Spring/Breakneck. The communities to the south have already faced difficulties due to the growth in popularity of the Greenway Trail. For example, with the growing popularity of Breakneck Ridge and the Hudson Highlands State Park, more and more visitors and tourists are arriving by car, train, boat, bicycle, foot and other multi-modal means, which is creating new liabilities for private property owners and municipalities alike. Many of these tourists are traveling between the Village of Cold Spring and the City of Beacon, with those numbers expected to increase significantly upon the development of the nine-(9) mile public Hudson Highlands Fjord Trail which is intended to connect to the City's trail system, including the FCGHT.

Recent public hearings held in nearby communities have identified additional liabilities concerning traffic, parking, congestion, trash, quality of life amenities and maintenance of the park areas, issues that are explicitly identified in the Hudson Highlands Fjord Trail Preliminary Draft Master Plan.<sup>27</sup> For example, a recent November 16, 2016, *Poughkeepsie Journal* article, entitled "Hudson Fjord Trail: Worries of congestion in Cold Spring", included comments made during a recent public hearing that stressed the dangerous potential for car-versus-pedestrian accidents.<sup>28</sup> The online article even included a video showing the steady flow of pedestrians crossing busy sections of Route 9D between Beacon and Cold Spring. The November 16<sup>th</sup> Article cites Linda Cooper, Regional Director for the State Office of Parks, Recreation and Historic Preservation, who affirmed residents' observations about the increase of visitors, confirming that "[t]he popularity of Breakneck has been 'exponentially' increased by reviews in national publications and the power of social media..."<sup>29</sup>

---

<sup>25</sup> *Farnham v. Kittinger*, 83 N.Y.2d 520, 523, 634 N.E.2d 162 (1994).

<sup>26</sup> *Id.*

<sup>27</sup> Hudson Highlands Fjord Trail Preliminary Draft Master Plan, "Introduction" (2015), available at: [http://media.wix.com/ugd/0d79b3\\_560be9394d1740819545a4e9cb97d5a2.pdf](http://media.wix.com/ugd/0d79b3_560be9394d1740819545a4e9cb97d5a2.pdf).

<sup>28</sup> See *Poughkeepsie Journal* article (2016), John Ferro, available at: <http://www.poughkeepsiejournal.com/story/tech/science/environment/2016/11/16/hudson-fjord-trail-worries-congestion-cold-spring/93909744/>.

<sup>29</sup> *Id.*

March 9, 2017  
Page 9  
FCGHT Legal Liabilities

**Image 1 – Breakneck Ridge Parking Lot – Along Route 9D:**



Still image (screenshot) of the Breakneck Ridge parking lot, taken from a video posted on the November 16<sup>th</sup> Poughkeepsie Journal Article.

In another *Poughkeepsie Journal* article from 2015, Scenic Hudson Senior Planner Amy Kacala identified that “the other major concern, and one of the roots of the Fjord project overall, are the safety concerns in the 9D corridor and pedestrian management...”<sup>30</sup>

Provided the growing concerns, an advertisement was recently posted in *The Putnam County News and Recorder* on March 1, 2017, signed by Ms. Cooper and Ms. Kacala, who were quoted in the above articles. The advertisement stressed that as visitation levels reach a tipping point, with more visitors anticipated, congestion management strategies and other multi-entity strategies will be needed for pedestrian safety in concert with trail management strategies. *See* Exhibit A - Fjord Trail Advertisement. The City should be mindful of these additional liabilities and concerns stemming from increased Greenway Trail usage and in consideration of the additional railway proposals in the region.

---

<sup>30</sup> “Beacon-Cold Spring Trail to Break Ground in Spring”, Stephanie Schappert, For the *Poughkeepsie Journal* (Updated February 10, 2015), available at: <http://www.poughkeepsiejournal.com/story/tech/science/environment/2015/02/04/breakneck-ridge-trailhead-hiking/22897331/>.



March 9, 2017  
Page 10  
FCGHT Legal Liabilities

### CONCLUSION

Based on the foregoing, the City cannot eliminate the risks of claims for liability for injury to users of the Greenway Trail. We believe that the best way to limit such claims and risk of ultimate liability is by carefully limiting use of the trail to activities less likely to create situations involving injuries.

It is noted that the landowners have additional concerns beyond those expressed in this memo. There are many liabilities that are not prevented by the Recreational Use Statute. Indeed, "Appendix D" of the FCGHT Master Plan includes references a secondary source entitled "Recreational access and owner liability,"<sup>31</sup> which details issues and concerns of liability for property owners. Nonetheless, we believe that the concerns expressed herein are sufficient to establish that the City should limit activities on the Greenway Trail to those which will limit possibilities of injuries to the maximum extent practicable.

---

<sup>31</sup> Department of Natural Resources, Cornell University, Tommy L. Brown, available at: <https://blogs.cornell.edu/ccednrpublications/files/2015/03/Recreational-Access-and-Owner-Liability-Brown-15sa3ki.pdf>, also available at:


[https://static1.squarespace.com/static/514a2220e4b0a5ba64c924be/t/528c14ade4b07984fcd8a155/1384912045851/f-FCGHT+Master+Plan\\_Final+June+2013\\_reduced\\_p2.pdf](https://static1.squarespace.com/static/514a2220e4b0a5ba64c924be/t/528c14ade4b07984fcd8a155/1384912045851/f-FCGHT+Master+Plan_Final+June+2013_reduced_p2.pdf), as page 71-77.

March 9, 2017  
Page 11  
FCGHT Legal Liabilities

## Exhibit A

### *The Putnam County News and Recorder Advertisement*

March 1, 2017



**Hudson Highlands Fjord Trail**

Dear greater Cold Spring area residents:

Thank you to those who attended last November's public meeting on the Hudson Highlands Fjord Trail. What began as a kickoff of the environmental review process for the trail quickly became an outpouring of views by some Cold Spring residents over the impacts of high visitation on village life and sensitive natural areas.

While the Fjord Trail planning project hasn't caused these conditions, we were happy to provide a platform for open dialogue about them. We got a clear sense that visitation levels reached a tipping point in summer 2015, with the village attracting even more visitors last summer. Evidence suggests this trend will continue.

Clearly, Cold Spring needs a visitor congestion management strategy to ensure quality of life can be protected in the face of growing visitation to Hudson Highlands State Park Preserve as well as the village as a destination site. Fortunately, a proven formula exists—a strategy developed by the National Park Service for gateways into some of its parks. Among its recommendations:

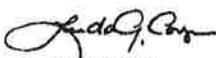
- Formalize parking areas and place more controls on parking, such as no parking zones or metered parking.
- Use electronic systems to help reduce unnecessary movement, such as early notification that a parking lot is full.
- Improve public transportation—e.g., provide a shuttle.
- Make traffic improvements—better wayfinding to direct visitors, enhanced crosswalks, reduced speed limits.
- Inform people about trip planning, such as providing early notification if an area is congested and suggestions for less crowded alternatives.

What this makes clear is that if designed with these considerations in mind, the Hudson Highlands Fjord Trail will function as a visitor congestion management strategy. It will add controls around parking, lower the speed limit and improve pedestrian crossings on Route 9D, as well as support infrastructure to move pedestrians quickly and safely through the village.


In fact, this project started with a group of residents who wanted to improve pedestrian safety along Route 9D. Soon, they realized the trail also could support Main Street businesses and enhance quality of life. From there, the idea took off—attracting an impressive coalition of local, municipal, regional and state groups. Construction of improved and expanded formalized parking already is underway. More parking and the first trail sections (north of Breakneck) will commence soon. However, based on your input, we will review the recommended improvements again to determine if more congestion management techniques should be included.

We're committed to working with Cold Spring area residents to ensure the project does all it can to serve as a congestion management tool. Already, we're working closely with NYS Parks to coordinate how the trail's management strategies dovetail with those under discussion for Hudson Highlands State Park Preserve and with NYS DOT to look at safety measures along Route 9D.

While no single entity can address the challenges high visitation pose to quality of life and natural habitat, the strong coalition behind the Fjord Trail has a significant opportunity to make meaningful, sustained improvements. We look forward to continued discussion with area residents and businesses to help find the right combination of tools and techniques to make life in Cold Spring and recreation in the Hudson Highlands safer and more peaceful for all.



Linda Cooper  
Regional Director, Taconic Region, NYS Office of  
Parks, Recreation and Historic Preservation



Amy Kacala  
Scenic Hudson, Hudson Highlands  
Fjord Trail Project Manager

Paid Advertisement