

Third Track Committee of the Board of Trustees
Village of Garden City
351 Stewart Avenue
Garden City, New York 11530

April 8, 2020

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Ladies and Gentlemen:

We are writing to you as the members of the Third Track Committee of the Board of Trustees of the Village of Garden City. We represent the Village of Garden City and are authorized to act on its behalf.

We are also referring to (i) the Landscaping Plan sent to us on April 7, 2020 at approximately 8:36 am by Virginia Conforti and (ii) the Walls and Poles Plan sent to us on April 7, 2020 at approximately 1:05 pm by Virginia Conforti. For ease of discussion we refer to the 2 items as the “Current 3T Plans”. As you are also aware, the Village entered into a highly negotiated Memorandum of Understanding with the LIRR/MTA in 2018 (“MOU”) which set forth many terms related to the Third Track project in the Village. For purposes of this letter, we refer you to Sections 21 (utility lines and burial of such lines where feasible), Section 38 (sound walls), Section 39 (landscaping), Section 42 (Visual and aesthetic considerations), Section 53 and 54 (New Hyde Park Road) and Section 59 (Denton Avenue).

We are quite disturbed by recent events and actions taken by the Third Track Construction Consortium (for purposes hereof, “3T”), with some proposed actions, completed actions or proposed actions bordering in our opinion on deceit or outright dishonesty. We do not intend to recite every action taken in violation of the MOU, but we note several here. For example, the use of Village land without permission. The failure to keep workers from parking on Village streets – in fact the promise that workers would be bused or transported in to work areas - was pretty much ignored throughout the project. The promise to at least consider burying utility lines has also been ignored.

First and foremost, the Village of Garden City was never asked or consulted with respect to the placement of the 4-5 metal 120 foot high utility poles between the bridge at Nassau Boulevard and Weyford Terrace. As of the date of this letter, 4 of the poles have been installed. We are advising your team not to install the 5th pole or any other poles on the south side of the Main Line. While we have been informally advised that the LIRR/MTA was unaware that the poles would be placed south of the

Main Line, however, the 3T team is the agent of the LIRR/MTA, and therefore, the Village considers the placement of such poles in bad faith and a breach of Section 39 of the MOU.

Second, we were explicitly advised, again explicitly advised, that save perhaps one or two poles near the Nassau Boulevard Bridge, all poles west of Nassau Boulevard to New Hyde Park Road would be on the north side of the Main Line. We were provided renderings by the 3T team back in September, 2019 which confirmed our understanding.

The installation of these poles is in direct conflict with prior discussions with us and the EIS for the Third Track Project. We formally advise you that the Village reserves all rights with respect to its ability to bring an action against 3T and the Long Island Railroad for moving these poles without any environmental or other the studies or analysis. Additionally, if these matters are not addressed and cured to the Village's satisfaction, we will consider the LIRR/MTA in default of the MOU.

Third, the Current 3T Plans are woefully short and deficient with respect to landscaping. For months we have been having discussions with 3T and the LIRR/MTA regarding landscaping. Numerous times the 3T team has appeared in public meeting to assure the residents of Garden City that landscaping is of utmost importance and would be addressed in a mutually agreeable manner. In September and October of 2019, we had several conference calls with the 3T team, including its landscape architect, where we presented our ideas back and forth. The 3T landscape architect agreed with our broad outlines for the planting of various hedges, shrubs and trees. The focus of these discussions was the Cow Pasture/Strawberry Field and Merillon Avenue Station areas. We communicated to the 3T team and LIRR/MTA that planting 6 foot arborvitaes throughout the Third Track/Main Line is not acceptable nor in compliance with the MOU executed between the Village and the LIRR/MTA. While some of the landscaping plan contained in the Current 3T Plans include improvements in this regard, more work is needed, especially the planting of taller trees. We note that the Current 3T Plan does not include or provide for any trees which are larger than approximately 15 feet in height. We refer you to Section 39 of the MOU. Among other commitments, the LIRR/MTA committed that: *[i]n this area, trees and other landscaping will be provided in the LIRR Right of Way south of the barrier with such trees and landscaping, to the extent possible, mirroring and enhancing the landscaping prior to construction."*

We also note that the 3T team utilized the Cow Pasture/Strawberry Field area to construct switching equipment for the Third Track – without asking the Village for permission. Forgetting for a moment that we reasonably expected to be asked for the use of Village property, that usage requires that the area be cleaned up and repaired. We expect that the divots will be fixed and new sod planted, and trees that were damaged by the heavy equipment be replaced. There are at least 2 large trees that were damaged. Note that the MOU requires that irrigation be included.

Below is the text of an email sent by our Committee to the 3T team on September 26, 2019 at 4:23 PM. This email outlined the various agreements and compromises made by 3T and the Village as of that date and is not intended to reflect all the compromises and agreements that the Village has reached with the 3T team, but it is indicative. As you are aware, we have telephone conference calls nearly every 2 weeks to discuss various matters regarding the Third Track and its impact on Garden City, and steps that will be taken to mitigate or address certain matters as the “design/build” project moves forward.

[Complete Text of Email]

So we have some place in a writing - and yes I will create a short document for execution by 3T, GC and MTA - on matters we have already agreed upon/figured out, let me summarize (briefly) a few things:

1. 3T crew asked for GC to ok (i) moving some of the poles and retention/sound walls along the Cow Pasture/Strawberry Field area closer to the LIRR property line and (ii) taller poles in the Nassau Blvd train bridge area and (iii) some of them being south of the tracks instead of north of tracks.
2. GC had no issue with #1 - in consideration of 3T crew agreeing that the sound/retention walls (ii) from Nassau Blvd bridge through the Cow Pasture area to the GC high school will be at least 8-10 feet and (ii) along the baseball ball field at the Nassau Haven Park, and from Denton Avenue Bridge to Merillon Platform will be 8-10 feet or more above track level, instead of original plan of 6 feet. Does not change intended original higher walls heights behind houses on Greenridge Avenue.
3. The parties will utilize Garden City News and Garden City Life for announcements during the project to keep residents informed, as well as continue to create material for publication by GC.
4. New Hyde Park Road will not be closed entirely to traffic during underpass construction on New Hyde Park Road
5. Top of Clinch Road spilling onto new Hyde Park Road will be closed.
6. Parties will continue to communicate about signage and traffic plans.
7. 3T crew and GC will work to finalize plans for temporary cross walks along Merrillon Avenue. GC may, with support from 3T, apply for funds from Community Fund for permanent crosswalks in area from community fund. Parties to discuss 3T paying for permanent cross walk costs if MTA refuses to allow reimbursement from Community Fund
8. 3T/LIRR surveys for property line have been provided to GC as requested and parties to work together to ensure Third Track project does not intrude into private property lines in GC Village, especially along Greenridge Avenue properties.
9. items actively being discussed include agenda items for 9/26 telephone conference call.
10. New Item - 3T to pay for soil improvement and new grass sod at Cow pasture between LIRR property line and light pole (approx 60 feet?). Village will do the work.

There are probably a few things I missed.

[end of email text]

Fourth, we note in the Current 3T Plans there is no reference to the wall to be placed along the ballfield in Nassau Haven Park. From day one there was to be a wall in that area. It was to be at least 4 feet in height, as outlined in the original MOU (Section 38) executed by the Village with the LIRR/MTA. As

you will note from the email text, 3T agreed to increase the height of the wall in that area. However, no wall is shown in the Current 3T Plans.

Fifth, the height of the sound walls in the “Cow Pasture/Strawberry Field” area was to be increased. The Current 3T Walls and Poles Plan makes confusing reference to:

Sound Wall

7-9 feet high above T-Wall.

4-7 feet from top-of-rail

The sound walls in this area were always set to be at least 8 feet above the lower of the proposed ground line or 4 feet above rail. As set forth in the September 26th email it was agreed that the sound wall in this area would be 8 feet above rail. The height of 8 feet was chosen because we were advised that the wall portions are in 4 foot height increments, and we acted in good faith with the 3T team to choose a height that would not result in burdensome construction changes.

We also expect that obligations to fix areas or roads impacted by the project – will be repaired in accordance with Section 19 of the MOU. These areas include the area bordered by Old County Road/Hicks Road and Rockaway and because of wear and tear caused by the closure of New Hyde Park, most likely Stratford Avenue from Clinch Avenue to Tanners Pond Road and additionally the streets surrounding the Cow Pasture/Strawberry Field. Also curbs along Merrillon/Main Avenue

We fully anticipated that as a “design/build” project that there would be necessary changes. The Village has acted in good faith throughout this process. We expected the 3T team and the LIRR/MTA to do the same. The Village has acted in compliance with the MOU – we expect the LIRR/MTA and its agent – the 3T team - to do the same.

We will not sign off on the Current 3T Plans or consider changes to the Denton Avenue Bridge area until the issues set forth herein are resolved to our satisfaction. Weeks ago we provide a draft an amendment to the MOU to address many of the issues set forth above (except the poles which were not an issue known to us when we drafted the amendment). We have not received any written comments to the draft.

Cordially,

Brian C. Daughney
Stephen Makrinos

cc: Joseph DiFrancisco, Village of Garden City
Travis Brennan, 3rd Track Constructors, via email travis.brennan@3rdtc.com
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