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**PUBLIC HEARING UPON  
LOCAL LAW # 3 OF 2011 ENTITLED  
“PLANNING DEVELOPMENT DISTRICT LAW OF 2011 OF THE TOWN OF  
FORESTBURGH, SULLIVAN COUNTY, NEW YORK”**

June 2, 2011

Supervisor Galligan called the public hearing to order at 7:05 p.m. in the Town Hall.

Roll Call: Present – James P. Galligan, Supervisor  
Eugene D. Raponi, Councilman  
John W. Galligan, Councilman  
William B. Sipos, Councilman  
Michael Creegan, Councilman

Absent – None.

Recording  
Secretary – Joanne K. Nagoda, Town Clerk

Others  
Present – William D. Bavoso, Attorney for the Town  
Dan Hogue, Jr. – Highway Superintendent  
Tim Gottlieb – Gottlieb Engineering - Town Engineer  
Tom Berg – Member of Planning Board  
John W. Galligan, Jr. – Member of Planning Board  
Ivan Orisek – Member of Planning Board

Town Clerk, Joanne Nagoda read the notice of Public Hearing and submitted the affidavit of publication.

Supervisor Galligan read a prepared statement to explain the introduction of this local law. In 2007 the Town Board began considering the enactment of a Planned Development District (PDD) law for the Town. Saratoga Associates was engaged as the consulting firm to assist in researching and developing a proposed law that would work for potential planned developments in Forestburgh. The law was adopted in July, 2008. Under the 2008 law, the Town Board assumed certain responsibilities on PDD applications. From June 2009 to the present, the Town Board has reviewed various SEQRA documents prepared in support of the application for the Lost Lake Resort. The Town Board and its consultants have expended considerable time in reviewing the potential environmental impacts for the proposed project as well as project master plan, preliminary site plan and proposed phasing plan for the project. As a result having spend over two years in reviewing the proposal for the Lost Lake project, the Town Board has determined that certain changes should be made to the 2008 Planned Development District Law, specifically changes which continue the Town Board as the Board which will conduct all reviews and make all final SEQRA, PDD and site plan/subdivision determinations relating to Planned Developments within the Town. Accordingly, the purpose of this Law is to establish the Town Board as the sole board in making SEQRA, PDD and site plan/subdivision determinations on all Planned Developments in the Town of Forestburgh.

As the Town Board worked through the SEQRA review, including developing and adopting scoping documents, a draft Environmental Impact Statement, a Final Environmental Impact Statement, a Findings Statement and, ultimately, a Planned Development District determination under the existing PDD law, members of the Town Board questions why, having gained so much information, knowledge and insight into the proposed development’s plans and impacts there should now be a transfer of the obligations to complete the site plan and additional reviews for the

project to another Board, specifically the Planning Board. The Planning Board has participated in the process of reviewing the Lost Lake application and project, but the Town Board has spent over two years on the specifics of the project and not only reviewing the specifics but making determinations that will bind the developer and shape and define the project. The Town Board fought for the designation of lead agency and secured that from the State DEC Commissioner. The Town Board made determinations on each and every aspect of the final EIS which included issues of density, open space, access and all of the other issues contained in the Final EIS and the seventy plus page Findings Statement. The intimate knowledge of the project gained through the entire process to date has given the Town Board members a very complete and concise understanding of all aspects of the project and for these reasons this new PDD law been proposed to keep final decisions on this project, at the Town level, with the Town Board.

Lost Lake is the first application and the first project that is being completely reviewed under the 2008 PDD law. As with all other laws or regulations, it can be changed when the practical application of the law is tested under actual circumstances. We have found that the process that the Town Board has gone through to get to this point in the review of this project has made the Town Board the appropriate and best agency to continue and complete the final process because of all of the information we have see, digested modified and assimilated. We believe that the process has made this Board the best and most appropriate agency to see this review to its conclusion. That is what this local law would permit.

At the direction of Councilman Galligan, Supervisor Galligan stated that the Town Board would not be able to take any action on this tonight as we have not yet received the 239 review from the County Planning Department, but we will hear all of your comments.

Town Clerk, Joanne Nagoda read a letter that was received from the Planning Board on June 1, 2011, addressed to Supervisor Galligan. "At tonight's Planning Board meeting, the board voted to oppose the establishment of Local Law # 3 which the Town Board is considering enacting. Specifically, the opposes the statement: Accordingly, the purpose of this law is to establish the Town Board as the sole board in making the aforementioned SEQRA, PDD and site plan/subdivision determination on all Planned Developments in the Town of Forestburgh.

We strongly oppose the preempting of site plan determination by the Planning Board for all PDDs for the following reasons:

1. We have worked side by side with the Town Board since Double Diamond applied to the Town of Forestburgh for a subdivision. We have spent countless hours reading the documentation that has been issued since then, attending many meetings devoted to Double Diamond both inside and outside regularly scheduled Town and Planning Board meetings. It has been a huge investment in time on the part of the Planning Board to help shape this project, and changes have been made to the FEIS based on Planning Board suggestions.
2. To eliminate the Planning Board at this stage is to disenfranchise an official Town Board who are trained in site planning. Despite the four Town Board members who have previously served on the Planning Board, this law will effectively remove a hand chosen group of people with site planning expertise who continue to hone their skills at seminars and training sessions.
3. A project of this size needs more than five people to serve as representatives of the community at large to make decisions on PDD projects. Public Hearings allows residents to express their opinions on issues, but most of these people will not have devoted the amount of time it takes to read the vast amount of documentation that must be digested to under the complete nature of the project. The Planning Board has already done this.
4. The law sets a bad precedent. Future PDDs could come before a Town Board that has no site planning training whatsoever. Not all elected officials will have served on the Planning Board, and lacking that experience, they will be untrained.
5. Site planning is the Planning Board's job. This is a large part of why we exist. Our board has been preparing to receive the Double Diamond project for over two years.

The last minute attempt to establish a law to cut us off from future discussion of the project is questionable at best and we have yet to hear a clear answer as to why Local Law # 3 is even being considered. Future PDDs will not have the benefit of Planning Board knowledge or input, effectively leaving the determination of the development of the town to only five elected officials. As the town grows, the concentration of power these few individuals will

wield will result in less representation of the expanding community. The Town will be compromised in ignoring the expertise the Planning Board can contribute.

We urge you not to pass Local Law # 3.

Sincerely, Susan H. Hawvermale  
Chair, Forestburgh Planning Board”

Supervisor Galligan opened the floor to the public and also encouraged written comments be forwarded to the Town Clerk.

Bill Mullery – I am a part time resident and I am also a professional planner, or at least I was in New Jersey and a professional engineer. I respect that the education that the Planning Board folks have gotten from all of their time on the board, plus the knowledge they have of all of the local laws pertaining to planning while they have been on the board should not be usurped by a new party that does not have all of that knowledge.

Roger O’Dell – On your introduction I thought it was only Lost Lake that the Town Board was going to take care of. Susan Hawvermale, she’s saying its all future PDD regulations. My thoughts are that you got a pretty substantial increase in the last budget because you had a heavy load, why do you want to take on more? You are going to have to go to classes and everything else that is a heavier load.

Richard Robbins – I am here speaking on behalf of the Merriewold Club. We oppose the adoption of Local Law # 3. We don’t oppose it based on anything having to do with Lost Lake. Local Law # 3 is a law that is governing this Town and will continue to govern this Town going forward. Our comments are not addressed to Lost Lake. Nor are our comments concerned about the legal questions that I, as a lawyer, have as to weather in the middle of an ongoing application process, this Local Law # 3, the rules and the reviewers can be changed in the middle on a pending application. That is not what I am speaking of today. What I am speaking to you today about is our concern on the long term of Forestburgh. What this local law is going to do, is, I believe, have a serious impact on the Towns ability to actually review and control development. The designated Town Board here, the Planning Board is the board with the most experience, training and knowledge. Their sole responsibility is for site plan review. This is what they train for, this is what their role is as determined by the Town Law of the State of New York, as it has been adopted by Forestburgh. This is their job. This is what they are good at and this is all they do. They don’t have the myriad of responsibilities that you guys do, on the Town Board. The Town Law of the State of New York, although it gives the Board the authority, the Town Board, to delegate these authorities to the Planning Board, the fact is that almost every town in New York, in fact, delegates that power to the Planning Board. This Town did, up until the proposal of this Local Law # 3. It makes perfect sense, its good governance, you recognize that and your consultant, Saratoga Associates recognized that when Local Law # 3 of 2008 was proposed, discussed and enacted. The Planning Board has a role to play and should have a role to play in good common sense in governance has always seemed that to be the case. I and Merriewold have a fundamental problem in the idea of the concentration of power. It’s a basic concept in government that with the increase in responsibilities that governments have, and my day to day work is in the health care field, if you look at the Federal Government, they delegate duties to different entities. If you look at the control of drugs and food, the FDA, they are a specialized body that the Federal Government says “ok, you have the knowledge, the expertise, we’ll give you a broad enabling statute, you carry out that government responsibility.” In the context of a small town like Forestburgh, it’s analogous, like the Planning Board would be serving the same type of function as the FDA, it’s an administrative function, they develop the expertise, they have the training, taking that away from them, to me, makes no more sense than the Congress closing down the FDA and leaving the rest of us exposed to what bad might happen. That is what we worry about here in Forestburgh, is the future, it’s not about Lost Lake, it’s about the future. What about the next developer who comes to town and offers and promises wonderful things, and has a very complex program they want us to evaluate, and yes, of course, consultants will be hired, but one of the obligations of the Town Board is to review not only the application, but the consultants do. We can’t just assume what the consultants are doing, who are being paid by the developer, are being one hundred percent. You have an obligation to review that yourself. It is the expertise that is necessary. We don’t know who the next developer is going to be, we don’t know if they are going to be as honest, up front and straight with us as we believe, with good reason that Lost Lake has been. We don’t know that. By taking the power away from the Planning Board, you are depriving yourself of the additional eyes and expertise that they provide to you. They are an appointed body by you. You have selected these people, you have vetted them based on their background and

experience, one was a planner who recently resigned, that is a terrible loss. I don't know if the Town's well is that deep to draw on the expertise that is available here. This is something that is for the benefit of the Board as well, as for the Town to have a Planning Board participate in a process like this. I think that the process is important, you are changing the process, you're narrowing it, and you're concentrating it with the adoption of Local Law # 3. I think that is a mistake. I think you have to give it consideration completely divorced from what your experiences being what they are right now with Lost Lake. Yes, it's been two years, and yes, the Planning Board has in some ways offered friction to you in the evaluation. They have offered objections to aspects of how you have evaluated it. That is their job, we can't always have it easy. We are going to disagree, we're going to get into disagreements, you are going to get in disagreements, that is the nature of human interaction. But to eliminate the potential for benefit coming from that friction by stripping away their responsibility, by disenfranchising them, I don't think that is good governance. I think that is a mistake. Please focus on governance. Don't focus on Lost Lake. Lost Lake has been a good example of a developer coming in and everybody feels positively about what they have done and what they can do for the Town, this is not about Lost Lake. The statute is not about Lost Lake.

Jacob Gunther – I agree with Mr. Robbins completely. I expected to talk more about that, but he covered almost every angle as much as I could. I have been told by a member of the Board that at this is not an attempt at this time to eliminate the Planning Board completely. I am very much opposed to the elimination of the Planning Board. The Planning Board has been very active in this Town, it started back with the McCauley Club, which was a development that was going to be set forth over in North Road, Wildwood Way area, a taxpayers association was formed at that time, and they beat McCauley Club out of the way. I am opposed to this, which is what could be called the first step in the elimination of the Planning Board completely.

Richard Feller – I concur with everybody else that has spoken. Let me premise everything by saying I have complete respect for everybody that is sitting on the Town Board. And let me remind everybody that I sat on the Planning Board for five or seven years, back in the seventies, as a matter of fact, I sat on the Planning Board with Gene Raponi. We did quite a few projects at the time, the good thing about it was that as we sat around the table, everybody has opinions, everybody expresses their opinions. And I remember some of the things we wanted to do were countered by the Town Board and what they wanted to do, but we were able to sit down, come to a common consensus and move forward. The simple fact is that the gentleman from Merriewold spoke quite well to one particular point. To some extent the Planning Board and the Town Board, is, in a town, somewhat of what we would all consider separation of powers, some separation of control. When it comes to planning issues there is no harm in having one set of eyes looking at it and another set of eyes overlooking at what is going on. There is no doubt in my mind to the value of a Planning Board who devotes all of what they do to planning. As a matter of fact, the Planning Board, when Gene and I were on it, came forward with the development of the first master plan for the Town of Forestburgh. There is one key thing that is listed, that I think the Supervisor read, and it's also listed in page one or page two of the proposed Local Law, under purposes, and it has to do with the knowledge you have all gained going through the Lost Lake project. That is fine and that is something that happens, but I don't view that in any way as reason or justification for taking over the duties of a committee that already has that knowledge and ability to do that. Quite honestly, if, and it was also mentioned, the Town Board can obviously change. New people come on the Town Board and they weren't part of the SEQRA process for Lost Lake, and they don't have the knowledge you talk about. The knowledge you talk about, quite honestly, we would have to say, and people agree that you have done a good job so far with Lost Lake. You admit that you had no knowledge or limited knowledge in SEQRA prior to that, but you survived that and came through it okay. I think we have to give that level of consideration back to the Planning Board and say they have that knowledge already and if they had been the ones to deal with Lost Lake, they would have gained that same higher level of knowledge that you feel that you have now. On so many levels, I would suggest that the Town Board not approve this Local Law for the sole purpose of taking control over PDDs, but let that stay with the Planning Board. However, that being said, if there are some particular parts of the PDD regs that were enacted in 2008, other than the Town Board wanting to take control, that need to be addressed, adjusted or changed, then deal with those on a separate basis. So if language in a law needs to be corrected or approved, then change the language in the law, but don't take total control over something that you really don't need to do. Like people have said, it's a small Town and to have different sets of eyes looking at something like that, I think is valuable. I felt as a Planning Board member that I was able to provide something to that Board and to the Town Board and I would like to see that process remain for all of those reasons. It's a better process, it's much better for the Town and quite honestly, it's something that the Town Board doesn't need to really be involved in if you have faith in your Planning Board. Quite honestly, if you don't have faith in your Planning Board, tell them so, you appointed them, appoint a different Planning Board. But don't take the power over on to yourselves. It's the same

thing with elected officials, if you don't like the elected officials; you vote them out of office. If there is an issue with people or persons on the Board, change the Board, but don't take control of the Board.

Dan Hogue, Sr. – I just have question for the Board, why do you want to do this?

Mary Ann Toomey – This Board will be changing in January. Are you going to answer Danny's question? Supervisor Galligan stated this is a public hearing, we are just hearing statements. This Board has four members, even though some were on here thirty years ago or whatever on the Planning Board. The next Town Board will not be of the same composure. Also, you don't go to school, you don't follow the new laws and regulations, I object to the whole thing, and I think the whole thing is summed up on page two at the end of the first paragraph where it says "determination on all planned developments in the Town". I don't think any future Town Board has the expertise to deal with any new developments that may be coming.

Kathrine Barnhart – I have a question as well, I would like to know if this new law changes any part of Chapter 85 except for the Board to take control of all developments in the future is that the only change? Supervisor Galligan replied that is the only change.

Tom Berg – My name is Tom Berg and I have been a member of the Planning Board for about twenty two years now, and I don't see the reason why you would want to shut the eyes of the Planning Board. I don't see any benefit to this and that is why the Town pays us. This power that you want to get, this strength and power, in ten years Lost Lake will have a higher voter turnout than the Town of Forestburgh. They will have control over voting, they could vote everyone out of here and the people of Forestburgh will have no say. It's twenty seven hundred units but how many voters is that going to be? Even if it's a thousand homes, that could be eighteen hundred people voting. There is what six hundred voters now? This power that you want, it could backfire.

Carl Buckstad – You have turned the Planning Board into a lame duck, why don't you just eliminate the Planning Board. I don't quite understand this whole thing. It's a lame duck, you guys can do what you want and the Planning Board has nothing to say. You can send all of the paperwork you want to the Planning Board, but when it comes here, you guys make your own decision, so it's a lame duck and why don't you just get rid of them. It's a State law, the State law says you have to have them, but they don't have to do anything, just pay them to sit there. Mannequins work well.

Ivan Orisek – I have been on the Planning Board for seven years and after the letter from the Planning Board was read into record and all of the speakers here, I have very little to add but I would like to clarify a couple of things. I have to say that I am strongly opposed to this Local Law, there is no evidence and I fail to see how the Town of Forestburgh could benefit from a law like this. Much has been made about the experience that the Town Board has gained over the last two years reviewing Lost Lake documentation, but what the residents don't know is that Planning Board has gained equal experience and studied the documentation and made significant comments which resulted in significant changes in the documentation, in comparison to the way the Town Board handled this, which relied heavily on a consultant. As an example, the alternatives which are required by SEQRA which were opposed by the applicant but were put into the documentation only at the insistence of the Planning Board. I really don't see what Forestburgh can gain out of this but I would observe that the Town Board stands along with the applicant regarding the Lost Lake project where all of the interested and involved agencies have significant comments which was (inaudible), but the issue is no longer the density because the way things stand now the density will be determined by the DEC who have to issue the permits and they will require a set number of units, so that is a moot issue. My feeling is that the Town Board has proposed Local Law # 3 precisely because the Town Board feels that the Planning Board in discharging its duties would not handle the Lost Lake project in the way the Town Board would like and I think that is a misunderstanding and misconception and I think there should be better cooperation between the Town Board and the Planning Board.

Jessica Jones – We are all residents of Forestburgh and at one time or another everybody on this Board and sitting in this room will be a private citizen and my feeling is that we all want to see what is best for Forestburgh and we also really need to depend on the objectiveness and separation of the people that represent us and the people that have insight to the development and that is why you have specialty and separation so that you have many eyes viewing any given project at any given time so that not just one interest is represented. The Planning Board really serves that

purpose and the Town Board really has the obligation to listen to the insights that the Planning Board has and again everybody can change and everybody is replaceable in that sense, but we need that kind of separation and specialty.

MOTION by Councilman Galligan, seconded by Councilman Sipos to close the public hearing at 7:40 p.m. Vote: 5 ayes – 0 nays. Motion carried.

Respectfully submitted,

Joanne K. Nagoda,  
Town Clerk