

**\*\*\*\*\*DRAFT\*\*\*\*\***

**PUBLIC HEARING UPON  
PROPOSED ZONING CHANGE FOR PARCELS OWNED BY DOUBLE DIAMOND  
TO A PLANNED DEVELOPMENT DISTRICT ZONE FOR THE PROPOSED  
LOST LAKE RESORT PROJECT.**

August 4, 2011

Supervisor Galligan called the public hearing to order at 7:00 p.m.

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  
John Munsey, C.T. Male Associates

Town Clerk, Joanne Nagoda read the notice of public hearing and submitted the affidavit of posting.

Supervisor Galligan explained that basically what this is tonight is that all of the property owned by Double Diamond, where the Lost Lake Resort is planned to be located, is currently zoned as rural residential. In order for them to do what they want to do and move forward, we would have to change it to a PDD (Planned Development District), which would open it up for mixed uses such as is planned along with more density (i.e. more homes) than would be originally allowed. They are still far from final approval, but it would be one more step in allowing them to move ahead with the development.

Is there anyone who wishes to speak on the change of zoning on those pieces of property.

Richard Feller – You will have to let me know if this is acceptable for this, you say that it's open to the PDD, there are a lot of things to be discussed under this change that you are talking about. One of the things that I want to discuss and bring up again, and it has to do with the water supply. Do you agree that this is appropriate for now? Supervisor Galligan stated yes, it is appropriate for now. Mr. Feller continued that the water supply for that development, is what I have spoken to in the past, and it has to do with the wells for that development and the use of water on that development and the negative effect it may have to the existing land owners on Cold Spring Road. During your public hearing on the findings statement, I raised this issue that I was concerned about that, that there was not proper or acceptable mitigation to protect the homeowners on the Cold Spring Road who have already been living there. A person at that point, who I had thought was one of the developers representatives, but later learned was the consultant for the Town on this project, directed me to look at page forty one of the findings statement which deals directly with the issue that I raised. Obviously I have looked at it and the language in there, and I have spoken to Town Board members about this, the language in there has four words in it, in the sentence with regard to mitigation, and those four words are "resulting from this project". When you have words like that in a document that requires a burden of proof. It requires a nexus between issues that homeowners on that road may have with their water supply and the development itself. When you are talking about moving to a PDD, obviously as you said you

are talking about a higher use, higher density and things like that. That is why I feel it's really important to raise this again. The language, quite honestly, that I believe should be there, if the Town Board is going to protect existing landowners, is not to put the burden of proof on the existing landowners who have wells and live there for over twenty years and have never had any problems during droughts and dry spells with our water. When you are considering this PDD designation, that there be a requirement that the developer actually take his mitigation on page forty one and get rid of the language "resulting from this project" and simply say, if there is any resulting issue with water and wells with the existing property owners that it will be mitigated by the developers. That is the only way we can be protected and not have to go through litigation, engineering studies, which would probably cost us more than if we were to drill another well. In my opinion, I believe at that point the Town Board was given the advice or direction that you were given on that particular item, I believe was not adequate to protect the landowners that are there. What I am asking you to do, if you are going to go through with the PDD and allow the density and allow this project to continue, that you take into consideration those of us who are neighbors to this project, contiguous landowners whose water and wells during dry spells will be affected by this. If you are going to continue with this, this is one of the last opportunities we have to get this right. That is the first thing. The second part is, with regard to what's happening today. I guess I am confused and I am going to try to follow logical sequences here. Everything that has happened to this point, has happened and been approved with the knowledge and understanding that in order for this to occur, if you keep this as an RR-1, which it is now, you can't have this. You can't have the development. The reality is, from someone who is viewing this from the outside, and attending some of the last meetings, and it's my mistake I wasn't involved earlier, by the way you have approached this and approved it, the DEIS, the FEIS the findings statement, I'm confused. Why wasn't a PDD designation talked about and authorized or tentatively authorized early on. Because honestly now, when you are looking at the whole thing from the outside in, of course you are going to vote for a PDD, you have already approved everything else. I'm confused with the logic in that process. The first issue is a very specific issue for myself and I will include, if they are fine with it, and I am sure they would be, the other landowners on Cold Spring Road whose wells might be effected. Which I really do wish you would address, because be my second point, you are obviously going to approve this for a PDD. So, one is a concern that I would like to have addressed and the other is just a procedural question.

Supervisor Galligan asked Attorney Bavoso to outline the procedure that the Town Board needs to follow. Attorney Bavoso stated that the process being followed is set up by the PDD law. It is conceivable that the process might not have gone the way it has gone here. It is possible that going through the SEQRA process, the Town was not satisfied with what was presented by the applicant. Not satisfied by what mitigation measures were suggested by the applicant, not satisfied by what mitigation the Town was prepared to accept, so it is possible that the Town would be in a position that to say, "based upon what we have seen so far, based upon the environmental impacts that are proposed, we don't think that this particular property lends itself to being designated as a PDD." Everything that has gone on before, is an environmental analysis as to whether the impacts proposed on these parcels would lend themselves to a PDD designation and that type of development. So it is conceivable, I agree with you, the way things have gone so far, it seems to me, I don't vote, but it seems to me that the board is in a position to approve the PDD designation. The next step then, if they do so tonight, is to proceed to the final site plan review. The Board would then analyze the final site plan, proposed infrastructure, proposed structures to be built, hardscape, etc. and that is the next step after that. The PDD procedures say that the Town Board can, but does not have to have a public hearing or further public hearings with regard to the final site plan approval process, but can have additional public hearings with regard to that final site plan review.

John Munsey – I can address the offsite well impact. Page forty one of the findings statement addresses offsite impacts to wells. The specific language that is in the final findings statement, which would become part and parcel, part of the PDD legislation that you are considering tonight, says the applicant will monitor identified offsite wells, after the resort wells are in normal operation, if authorized by the private well owners. Any impact recorded in the offsite private wells resulting from this project will be mitigated by the applicant. Results of such offsite monitoring will be reported to the Planning Board during the site plan application, which will probably be done on a phase by phase basis. Despite the fact that this wording is very general, it's not overly specific in what will be done, it appears that there is sufficient information here for the Town Board to warrant and direct the applicant to initiate offsite mitigation of wells that are being impacted or that might be impacted by the future development or pumping of the wells. That is above and beyond any and all permit conditions that the department of health or DEC would put on the project as well. Supervisor Galligan added that any adjacent landowners, today, tomorrow, next week, can request that their well be monitored, and the developer will pick up the expense of the monitoring. That would document any changes to the well and the developer would be responsible for any mitigation to correct the problem.

Mr. Munsey continued that based upon the pumping test data that has been included in the DEIS and the FEIS, it would appear that only under high levels of ground water withdrawal would there potentially be a nominal impact to the closest offsite wells.

Councilman Galligan stated that Mr. Feller asked for a couple of words to be changed. Mr. Munsey added that he could not find those words. Mr. Feller replied it's very simple the words are "resulting from this project". When those words exist in a language that is in this mitigation plan on page forty one, it says "any impact recorded in the private, offsite wells resulting from this project will be mitigated by the applicant". Those four words require the proof and some nexus to exist between the offsite well and the project. What I am suggesting to you is that the burden should not be upon the existing landowners on Cold Spring Road. The burden should not be on us. I don't know anybody who lives on that road, and some of us have been there over twenty years, that in the deepest of droughts we have had in twenty years, this is an unusual August, right now Stephen Crane Pond is still flowing over the banks that just doesn't happen usually. This wouldn't be the best time to test in August. None of us that I know of, have had our wells go dry. You could have a situation where you could be monitoring a well, the well goes dry or it becomes not serviceable by health standards. Monitoring the well alone does not create that cause all relationship. All monitoring the well does is say "ok, we have one level of water in the well at this point, and now we have another". My well is one of the ones they monitored previously, that is not a consistent pumping, that was during a specific time. It is not day after day, after day, after day. It shouldn't be our burden to prove it, a situation shouldn't exist where our well goes down and they say "yeah, we're pumping and we're using water, but it's not our pumping that is causing your well to go, it could be something else. Maybe there is less water in that aquifer or something". I don't know, I am just speculating. All I am asking is to just take out that little bit of problem that is now on the backs of the landowners on Cold Spring Road, and I don't even want the Town to have... well, the suggestion was that the Town can hold their feet to the fire and force them – that should not be the case. Why should you have to step in and do something like that either. It just shouldn't be like this. We are not talking about a ton of wells and a ton of people here for the size of this project.

Councilman Raponi asked how we could put this in that language. Supervisor Galligan stated that we should let the other finish their comments first.

Eugene Blabey – I know this is a public hearing for the PDD legislation and I also know that this is one of many of a string of public hearings, and I doubt anything I say will change or influence your upcoming decision to approve this PDD, and that is ok, it's certainly within your power. From the beginning, I just want to reiterate, my objection has not been to the project, as such, until the density of housing in the project. I know the developer has said that without the density, the project doesn't work for them. In the past, you have gone along with that. By changing the character of Forestburgh from its rural, low density nature to something we'll see in thirty, forty or fifty years out, I probably won't be around and most of you probably won't be around in another fifty years. By changing that, we are changing the Town's character forever. What you are deciding to do here tonight is really to make Forestburgh a little bit of suburbia with a population density that could probably equal the third largest community in the county after Liberty and Monticello, if they achieve the full build out of homes over there. That is not the Town that I bought into and not the Town that many of you bought into. So tonight you are taking a historic step and turning your back on the Forestburgh that we once knew and creating a different Forestburgh. You can't go back and I think it's sad that we are making that change to the Town, and frankly, in the future, I don't think anyone will look at tonight as a night of betterment for the Town.

Stuart Salenger – I sit on the Economic Development Board of this County, as a volunteer. We are the second poorest county in the State of New York. Without this project, the Apollo Mall project, that I am pretty sure everyone has read about or heard about, to help this County, this project is very, very important to the County and I think we all need to start thinking about what we can do for this County.

Shirley Blabey – It was stated in a report that I read that if the water supply wasn't sufficient to go on to stage two, then various groups with responsibility, including the DEC and the department of health or the DRBC could actually request that more wells would be required. I only read it twice, but I did not read whether or not Lost Lake has stated that they would be willing to drill wells to go forward. They have said that they have to have this density, they can't build it without this density because they can't make it work economically. But there is the possibility that it could be stopped from going on to another phase without enough water. That is my first question. My second question is that it was also documented that they met with the fire department and I can't quote it exactly, but the fire

department was concerned about getting enough volunteers. I would like to know and I didn't see it in writing, it's one thing for the developer to say we will ask people to be volunteers, but a building to hold a fire engine or an ambulance won't be built in phase one. If we don't get volunteers something could happen to a whole lot of money that has been invested in whatever phase and be gone. So, have they written in their proposal, not that they would ask people, but maybe they should be held to come up with so many volunteers. Supervisor Galligan stated that we can answer your second question, there are provisions made about employees of Double Diamond becoming members of the fire department and getting a bonus in their wage if they do. Mrs. Blabey further asked if they have a certain number or if we have asked for a certain number of volunteers. Supervisor Galligan stated that the employees who join would get an increase in their wages and another part of the mitigation with the fire department was that all buildings in the development would be sprinklered. Mr. Munsey added that this concern was identified in the environmental review, having a sufficient number of volunteers to meet the future needs of the fire department and the findings statement has a number of bullets that include mitigation measures that the applicant will be required to do in the future. First bullet – sales and marketing tools for the project will include information about volunteer opportunities in Forestburgh, it's really just an educational thing. The second bullet will provide for an incentive program for employees who become and maintain active volunteer firefighters in the Forestburgh Fire Company, a one dollar an hour increased wage, the third, the resort will provide an incentive program for homeowners who become and remain active volunteer firefighters in the Forestburgh Fire Department an annual maintenance fee discount. The report will provide opportunities for initial and ongoing state mandated fire fighting training at the facility providing fire fighting opportunities they would not otherwise have access to in this resort community once it's built. It fell short of mandating that the applicant provide a specific number of employees and I don't know if that would have been appropriate, but hopefully these mitigation measures will result in either workers or residents at the resort to participate in the volunteer fire department. Supervisor Galligan stated that eight hundred people live in Forestburgh, minus the children. Wherever you go, there are problems getting volunteers, out of that number of people, there are thirty one active members in the fire department. Oakland Valley cannot be our members as that is a different fire district. So I would encourage anybody to join as volunteers are needed all over. The only alternative is a paid fire company and that becomes very expensive. Mr. Munsey added that with regard to the first question about wells and has the applicant agreed to install additional wells, they really don't have a choice. They would have to install additional wells in order to move forward.

Attorney Bavoso stated that he wished to make a brief clarification. Not to minimize what the proposed action would be by the Town Board as a result of this public hearing or after this public hearing, but the action proposed is to basically to designate this land to be in a PDD district. If that happens, then we go to site plan review. We have completed the environmental review and a discussion of the environmental impacts and possible mitigation, but we now go to site plan review to review again the proposal itself with regard to how this will be built. Even beyond that, the applicant is not even close to being able to complete or finish this development. There are several other agencies that must issue permits for that to happen, including as you have touched upon, issues of water, issues of sanitary disposal, and if the agencies reviewing that determine that the applicant – the applicant believes that his proposal will receive the permits they need – but if the agencies that do that permitting disagree based upon the submissions by the applicant then that could change this proposal, the density, the way things are done. So I just want to make sure that everybody understands that this is not a final approval for the project, it is an approval for the Planned Development **District** that this land can be built on.

Mary Ann Toomey – To my knowledge, our Highway Superintendent has not been included in the roadways, and I know that Tetz is bringing in thousands of truck loads of shale and other materials and I now have noticed that all of the driveways have chains across them. In the eventuality that our Town may have to take over the roads on this development, down the line, I was wondering when Dan will be invited in to make sure the road beds are up to our specs. Supervisor Galligan replied when they actually start building the roads, right now they are just building access roads.

MOTION by Councilman Galligan, seconded by Councilman Sipos to close the public hearing at 7:33 p.m. Vote: 5 ayes – 0 nays. Motion carried.

Respectfully submitted,

Joanne K. Nagoda,  
Town Clerk