

****DRAFT****

The Town of Forestburgh Town Board held a special meeting on **Tuesday, April 6, 2010** at the Town Hall.

Supervisor Galligan called the meeting to order at 6:35 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 – David Griffin, Sole Assessor

MOTION by Councilman Sipos, seconded by Councilman Creegan to enter into executive session for the purpose of interviewing a candidate for the vacancy on the Board of Assessment Review and invite Assessor Griffin into the executive session. Vote: 5 ayes- 0 nays. Motion carried.

MOTION by Councilman Galligan, seconded by Councilman Creegan to reconvene into regular session. Vote: 5 ayes- 0 nays. Motion carried.

MOTION by Councilman Raponi, seconded by Supervisor Galligan to appoint Ronald Geysen to the vacant seat on the Board of Assessment Review. Vote: 5 ayes- 0 nays. Motion carried.

The Town of Forestburgh Town Board held a joint workshop with the Town of Forestburgh Planning Board on **Tuesday, April 6, 2010** at the Town Hall for the purpose of a second review of the Double Diamond/Lost Lake Draft Environmental Impact Statement (DEIS).

Supervisor Galligan called the meeting 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 – Susan Hawvermale, Planning Board Chair
Ivan Orisek, Planning Board Member
Rick Katzman, Planning Board Member
Glen A. Plotsky, Attorney for the Town
John Munsey, C.T. Male Associates, Consultant for the Town

Supervisor Galligan introduced John Munsey and asked him to provide an overview of the project and the DEIS this far. We have all received the comments and read them, but please review it for everyone.

John Munsey – The January 29, 2010 Draft Environmental Impact Statement (DEIS) is the second version of the DEIS that the applicant prepared for the Town. Our comments were not that extensive for the second go around, we had one major comment and the rest are minor and easily addressable. There is one kicker that is in there and it is under water supply. The second draft of this DEIS contains an expanded hydro-geo report that was appendix “M”, well drilling and testing report that was provided that included 72 hour pump tests, which was requested and outlined in the final scope. However, after we have reviewed this, they have not demonstrated they have enough of a water supply for the full build out of the facility. That was making some assumptions on our part that we generally concurred with that the applicant made in terms of about a half a million gallons a day of water use, times a peaking factor of two, which is 1.1 billion gallons of water a day and the applicant did not demonstrate that they had that much water. That is our engineer’s analysis of what we think is sufficient for the purposes of demonstrating adequate water supply for this site. You will see as we get further into the DEC’s comments, the DEC has a bit of a different twist on that. Because of that one fact, we came to the determination that this DEIS was incomplete for the purpose of commencing public review on the project. Primarily for that one reason and then we had some other comments. The other general comment that we had was regarding bonus density. Whatever the Town Board does with regard to bonus density, this project is going to set a precedent for future projects that come in under the new PDD legislation. The applicant has clearly articulated what they think they should be getting in terms of bonus density and it’s really not our position to disagree with that, necessarily, at this point, but to accept the applicant’s position in the draft DEIS. Even when the DEIS is accepted by the Town Board, it is still going to be an applicant’s document, it’s not really your document. You are just saying it’s adequate for commencing public review on the project. With that, we just pointed out what the applicant is asking for in terms of bonus density and it’s not that much changed from the initial sketch plan and the initial PDD plan application, but there have been some refinements. They calculate an additional residential development density, a base density of 748 units and then they are asking for 278% or almost 2,000 additional lots on top of that. Of that amount they are requesting a total of 2,627 dwelling units for this approximately 2,080 acre site or approximately 1.26 dwelling units per acre. It’s not that we are agreeing with that, it’s not that the Town Board would be agreeing with that at this point, the only thing we would be coming to would be the consensus that “ok, that’s good enough to initiate the public review on this”. Then we went into specific comments. Our comments on the sheets were very minor, labeling, our storm water team at C.T. Male reviewed the erosion and sedimentation control of the plan and I would characterize these as minor comments that we are asking for, additional details regarding the rain gardens, more temporary erosion/sedimentation control measures. Some other minor comments are there. Geology and soils, we had some minor comments there, we did correct one inconsistency that 80% perennial vegetative cover is required for the site to be considered stabilized, that is a storm water requirement. Regarding wetlands for a project of this magnitude, the amount of wetlands impact is insignificant. They will still need to acquire a permit from the Army Corps. of Engineers and freshwater wetlands certification from the DEC – they still need to obtain a wetlands permit, but they are not impacting the wetlands, there are just two road crossings to impact the wetlands. The biology sections of this report are very good, there is very little to debate in terms of what they are putting in there. They do make the statement that 1,215 acres of upland forest to be preserved and I don’t see how, during a full build out scenario how there could be 1,215 acres of upland forest that clearly would be preserved if the whole build out were to take place. It seems like they are trying to take credit for forested upland area within residential lots that wouldn’t be cleared. I thought that added to the confusion. Under water sources, it goes back to the significant comments that we had of not being able to demonstrate an adequate supply of water to service the full build out of the facility. That is the primary substantive comment that we have there. There are some additional sedimentation/erosion control measures. Section 3.6 – Zoning, land use and public policy are minor comments. Section 3.7 historical and archeological resources, we ask that correspondence from OPRHP which I assume is existing that it be added to the appendix. I assume the 1-A report has been submitted to OPRHP and that OPRHP has provided some level of correspondence back to the applicant. If that doesn’t exist they can’t put it in, however if it does exist, they need to put it in there so the public can see that as well. They propose to do, because of the size of the project, they have proposed to do 1-B testing, in a phased way on this project and I would say as long as that approach is acceptable to OPRHP it should be acceptable to the Town, but they need to make that demonstration approach is acceptable by OPRHP. Community services and facilities minor comments, visual resources – minor comments, adverse impacts that cannot be avoided, we recommended that they add a few sentences that they recognize there may be some short term noise impacts during construction, with potential for blasting, long term impacts to surface water with the associated planned waste water discharge into the surface waters just because you get a permit to discharge waste waters, the receiving stream – does not mean there is no impact with that. It seems like the project as you drive by you may be able to look in and see some lots or buildings – that is not a significant visual impact, but it’s the road ways improvements to St. Josephs Road and Cold Spring Road, it would seem you will be able to see in from those

roadways as you pass by. There will be an increase in visibility of the structures as you are on public right of ways, but that is not a bad thing as well. Storm water management, those are specific comments from our storm water folks. Appendix M is where we laid out more specific comments to the applicant, along the lines of where they could meet the peak flows associated with the facilities and then an important concept there is that the regulatory agencies will probably require a permit allowing 2/3 of whatever the maximum draw downs or rates that they get from each of the wells. The agencies themselves are only going to permit 2/3 of that. The highest yielding well is 200 gallons per minute (gpm), which is a good and rare well to find in a bedrock aquifer system area. Just because they pumped that for 200 gpm for 72 hours does not mean the regulatory agency is going to permit at that level. In fact they normally permit at 2/3 of what the normal capacity is. There is a meeting tomorrow with the DEC and the Department of Health (DOH) and the Delaware River Basin, we are going to go into that in more detail tomorrow. Traffic, they addressed all of our prior comments on that, we had asked them to check a required site distance for the main entrance and that was the extent of our comments. There was only one major comment and the rest were insignificant, but that one comment is pretty major. Our comment letter was dated March 9, 2010 at the request of Supervisor Galligan, we submitted a second copy of the DEIS to the DEC as well as a copy of our comment letter and the DEC on March 16, 2010 put together preliminary comments on the project and they really focused in on water resources, the use of water resources an argument that they would like to see more open space on the project and their comments were even more fine tuned than ours were in terms of questioning the amount of water that is needed for the full development instead of using 200 gallons/per day/per residential dwelling unit – which we agree with, the DEC wants to use 400 gallons per day, which is almost double, but taking into an account a 20% reduction because of water fixtures, you can reduce it down to 320 gallons per day/per dwelling unit. They made the statement that they think that is more appropriate and then instead of using a factor of 2 for a peaking factor, which would be multiply it by two. That should be the amount of water you are supplying or should be able to supply to meet the demands of the development. They said that a peaking factor in the range of 3.52 to 2.75 should be used, both of which are significantly higher than what the applicant put together in the engineer's report on the project. Our water supply folks at C.T. Male typically use the 200 gallons per day/per unit and we design systems and have monitored systems based on full time residence status in the Albany area that is the actual demand for those facilities. These units are not proposed to be full time, so theoretically it should be less. There is no recognition that these are part time residences. I am very interested to see what the DEC has to say tomorrow. Primarily it will be the applicants lead in negotiating with the DEC, we will be there representing the Town as an active listener, if we are asked to participate, we will render our opinion. Ultimately the DEC will be the one issuing the permit for the water withdrawal so it is there call. But not for areas of completeness with the DEIS. That is a lead agency determination. We want to take all of the DEC's comments into consideration. If they are being reasonable, great, if we think they are being unreasonable, we can still go to completeness on the DEIS. However, the final analysis, the DEC is going to satisfy themselves before they issue a permit to the applicant. One of the things the DEC says in their letter, which I disagree with, "while the acceptance of the DEIS is adequate for public review at the discretion of the lead agency, it is the discretion of the department that the DEIS should contain sufficient environmental information so that the department, as the involved agency to make final decisions on the proposed project". I would respectfully disagree with the DEC on that. It is the final SEQRA record, the final DEIS, the final EIS and the findings statement that is all the SEQRA record. It is the SEQRA record that needs to provide a final basis for a permit issuance before DEC could issue their permit on the project. Respectfully, I would disagree with the DEC on that one. Theoretically, you would like that to occur but in practice it rarely occurs even when the DEC is the lead agency, in my experience. It is clear that the DEC wants to see more open space preservation on this project. You can read it in between the lines of their letter, but when I talked directly with John Petronella, who is the DEC lead person, he was feeding out that the draft DEIS, to the internal technical reviews of the DEC and essentially, he's the quarterback for the DEC. He puts together all of the comments in a letter and verbally said to me that the position of the department is they would like to see no development on the other side of the wetlands. Discussion was held to the number of units on the other side of the wetlands, which it was determined is a substantial amount of units and Willie Janeways influence over the members of the DEC, as regional director. Mr. Munsey went on to say the one thing he pointed out to the DEC was, that in order to have an adequate water supply, it would seem likely that there will need to be wells and infrastructure on either side and the water tanks are on the high point of the other side as well. So to think that there would be no lots on the other side is pushing the envelope a little too far in the conservation end of things. For what it's worth, I pointed that out to John Petronella. The DEC also, relative to the golf course irrigation, the use of Lost Lake itself, the lake is a surface water source for the golf course. They are asking for a very detailed draw down assessment to be conducted to fully understand the impacts of that. We did not make that comment. Yes, an analysis of the draw down was provided, it was a very simple analysis that was provided. We thought that was sufficient, we did not raise that as a red flag, however I think it is likely that it would be a public comment in any event and the

FEIS (Final Environmental Impact Statement) would have an upgraded analysis of the potential of surface water draw down and the DEC did make the statement that there are freshwater wetlands that are around that lake, so any potential draw down of the lake would be a potential impact to the freshwater wetlands as well. That is a common permitting authority the DEC is taking, wetlands that are adjacent to surface waters having an impact on those surface waters, they commonly would say there is a need to have a wetlands permit for that. The DEC also thought that the alternatives analysis was deficient and that there should be instead of just saying, that some of the alternatives do not support the resort development model. They are suggesting there should be a more thorough analysis within the DEIS. I think that could be done pretty easily by the applicant.

At this time the floor was opened up for comments from the members of the Town Board and Planning Board.

Councilman Creegan asked what percentage of the water is being supplied now? Mr. Munsey replied that in his opinion, they made an adequate demonstration that the first phases of the development they could supply. The DEC disagrees with that. Councilman Raponi asked for the first phase or the whole thing? Mr. Munsey stated that the DEC disagrees with both. It is their opinion that the applicant has not made a demonstration that the first phase of the development could be satisfied by the existing wells. Right now, I believe they have more wells, but this report that was done and dated January 27, 2010 essentially they did a 72 hour pump test on two wells and it was effectively three wells. Because the location had a 200 gpm well, which is the highest producer, so they paired that well and put another well right next to that, because there is a regulatory requirement that you have meet the peak loads with the largest well out of production. So the common thing to do is to put two wells where the best resource is, and one of those wells is going to be taken out of production. So they paired those wells up and got 200 and 200, but can only use one of them, so 200 and then there was a 50 gpm well and a 28 gpm well. The 200 gpm well is about the best you are going to do in bedrock – I don't know if you going to get any better. It is rare to get a bedrock well over 100-150 gallons. It is for sure intersecting a lot of fractures with a lot of secondary shattered zones. And these wells are deep, like 400 feet deep. I would say a fraction a third to maybe a half. From the DEC's perspective, it's only a quarter that they have made a demonstration of. I think it's ok for the Town to take a slightly different position than the DEC would, with the use of a peaking factor and how much water per unit. In the final analysis the DEC will be the one issuing the permits. The applicant has to satisfy both entities. Attorney Plotsky inquired about the formula used for the conversion of gallons per minute to gallons per day. Mr. Munsey stated that it's just a multiplication factor, you're just changing minutes to days. Each day has twenty four hours and each hour has sixty minutes. Fred Wells of Tim Miller Associates stated that he would like to explain how and why Lost Lake has arrived where they are now with regard to the water. What we did, and it's in the DEIS is took a fracture trace analysis from aerial photographs to look at where fault lines maybe which would identify where good well sites might be, so we did that and initially came up with twenty four well sites all over the property and then used that out in the field to actually locate well sites and that is done a little more exactly, but it is still a "crap shoot" on what we will hit. So we went to the best locations we could find based upon the trace analysis and drilled the wells. Some are almost dry and some are almost two hundred gallons or over. We are now at over a dozen wells, one well may come up at 200 gallons and the next well, a couple of hundred feet away maybe only 60 or 80 gallons. That is the variation we are finding. It is our feeling that the applicant wants to continue to find enough water for the project, what the exact number is, hopefully we will find out tomorrow. We are continuing to go ahead and drill more wells and look for water. John Munsey stated that the this report summarized eight wells, but they needed a DEC permit to get to the other side of the wetlands and to intersect some of the other more prominent wetlands that are shown on their map. I imagine they will encounter some pretty good wells on the other side. Councilman Galligan stated that you feel that you can demonstrate there is enough water. Dominic Cordisco responded that we have to find enough water for the whole project in order for us to get permits from the DEC. The question that we have at this point is how do we keep this process moving forward, we understand that the DEC is making certain demands and we'll find out more tomorrow, we need to go above and beyond what is required, but we are going to have to deal with them in the permit process. Our goal right now is to get you to deem the DEIS complete and officially start the review process.

Ivan Orisek – I would like to start with some issues that are equally or more important. I am a little disappointed that the second draft is not more responsive to certain comments that were issued after the first draft was reviewed here and I also noticed that the consultant is not really (inaudible) in his last report. The first suggestion that I would like to make is that for the purposes of completing that document, that the latest and previous comments are considered together because there are some things that just have not been covered in the second draft at all. I really get the impression that some documents are an attempt to throw something at the wall and see if they stick. For example, we have discussed extensively and repeatedly emergency services and fire protection. There are members of the

planning board, who are members of the fire department stated that it is a small fire department, which is not prepared to offer fire protection to hundreds or thousands of people and there was a discussion back and forth with how this was going to be handled. And in fact the Town is contemplating hiring a consultant for the purposes of reviewing this. If I understand the second draft correctly there is a paragraph on this issue that simply says that Forestburgh already has three times as many firemen as required, I don't agree that this is proper treatment of this important issue. It is entirely possible that a new firehouse will have to be built, a new fire truck may have to be obtained, we are talking about millions of dollars of expenses and the question is where would that money come from? There was a discussion here, and I'm pretty sure that the applicant stated in this room, sometime in the past, that they would be willing to buy a new fire truck for the town and we haven't heard anything about that lately. The applicant, if I remember correctly is just making two acres of property available for building a firehouse. Where is the money for this massive fire protection going to come from? That brings the question of the economic analysis of this whole project. The applicants state that based upon the average school and town expenses the project will actually generate a million dollars in excess tax payments, I think that the Town needs to take a hard look at this and perhaps commission an independent economic analysis for a project like this. It would be naïve, and ladies and gentlemen, I have been talking to a lot of residents who are under the impression that if the Town can get its hands on the amount of taxes as specified in the document, that we will all become rich. That is an extremely naïve view. First of all, I have already asked where is the money for the firehouse and the fire truck going to come from? Secondly, and I have asked that this be done, but the applicant didn't spend any time on it, if you put ranges on the various kinds of expenses in the economic analysis instead of averages you will find that at one end of the range the Town would actually have to increase taxes in order to cover the additional expenses. Finally, my last comment on the economic analysis is a well know fact that residential properties receive over a dollar thirty in services for one dollar of taxes paid. And that residential properties in that sense are subsidized by vacant land and commercial properties who take less than a dollar in services for every dollar paid in taxes. This is a massive residential development so I would argue that we could easily assume it will be more than a dollar for a dollar paid. Those are important factors to be considered and I would very much suggest an independent serious economic analysis of this issue be performed. Traffic analysis – this is why I am suggesting that all of those comments that were submitted previously after the first draft be considered again, for the third. SEQRA mandates in every aspect, cumulative the analysis of cumulative effects of developments in the area have to be considered. It is mandated by SEQRA. This first draft, in terms of traffic didn't do it and I don't believe that the second draft does that. I believe what the applicant has done consistently is just applied the Department of Transportation percentage for annual assumed increase in traffic, which is just an annual average increase over the whole county or state, which is just two percent a year. And they did not study the cumulative effects of other developments which are being planned in this immediate area. Now what happens is this, there is a statement in the section on traffic analysis that the entrance is on Cold Spring Road, which is a lightly travelled road. So there are diagrams, showing traffic going south on Cold Spring Road, they assume absolutely no traffic on (inaudible). Now, that is fine, Cold Spring Road is lightly traveled about 150 – 200 cars per hour are going to go down Cold Spring Road. But where are they going to end? They are going to end at the blinking light, right? Which is not mentioned in that study at all. What is going to happen at the blinking light? If they say 150 – 200 peak cars we have peak traffic of over 200 cars per hour already and if the other developments generate over 200 cars per hour peak, we may have around 600 cars at the blinking light per hour as to traffic. Now that has to be seriously studied, it is not sufficient for the applicant to say, Ok, Cold Spring Road, we will send them there and you are assuming they will not go anywhere else. They will end up on Route 42 at the blinking light, sure they will take Route 48 West to Route 42 South. Finally, I would like to amplify what the consultant already offered on the open space. The Planning Board has been concerned about open space for a year and a half. After the first draft, the consultant's report said "Now it is incumbent upon the Town to make a decision on the open space particularly in terms of whether the golf course qualifies as open space" – we think that it does not qualify as open space, it is right in our PDD regulation. So this is a question of the whole concept of this document and what the applicant is doing. Every inch of dry ground is covered by residential lots and the open space, 50% of something is just the golf course. Well, if the golf course does not qualify as open space the density of this project will have to be greatly reduced. And again, that is in the consultant's report, it is in the first one, it states that it's the question of the open space and the golf course and that it is going to set a precedent for future projects in this Town. I would amplify that by reminding you that this clearly stated in our PDD regulation. It says "active recreational space does not qualify as open space". John Munsey replied, along with others that it is not what is stated, Mr. Munsey read "the definition of open space in the 2008 version of the PDD legislation for the purposes of PDD application, the term open space means that an area of land set aside and designated in perpetuity for protection from development, typically such land is kept in its natural state or in some instances improved for the purposes of providing passive outdoor recreation, wildlife protection and agriculture or forest management. In some cases, areas

utilized for active outdoor recreation may be included as open space but any area of land where building, structures or impermeable surfaces, such as parking lots are situated shall not be considered as part of an open space area. In addition, any lands that are part of a residential or non-residential building lot shall not be considered open space. In any PDD application the area of land that constitutes open space is ultimately the determination of the Town Board, taking into consideration all of the factors of the proposed PDD in the purposes of the PDD set forth in the section above". That is exactly what the PDD legislation says. Mr. Orisek questioned if it was incumbent upon the Town Board to make this decision? Mr. Munsey replied yes, the Town Board as lead agency and ruling entity in the Town. Mr. Orisek further stated what has happened is that this process, before SEQRA started has been going on for a year and a half. This whole process where the Town Board... Mr. Munsey interject that the sketch plan and PDD application have already been submitted on this. But that doesn't, it's my understanding that just because the town has processed a sketch plan and a PDD application, does not mean they agree with everything that is proposed. Supervisor Galligan stated that this has been mentioned by the Town Board many times before that there is no guarantee. Dominic Cordisco stated that is a good point and asked to jump in on this discussion. What he thought would be helpful, if we could just focus on the two kinds of comments, the completeness comments, whether or not, in our document did we do what we said we were going to do in the scope. That is really what the Board has to decide. Go through the scope and check off all of the items – you may not agree with all of the information we provide. That opportunity to comment, substantively on whether or not you agree with our open space, agree with our traffic or agree with any other aspect of the project is going to come in the FEIS. The DEIS is our document, the FEIS is the Board's document as lead agency. But to spend time talking about, repeatedly, about substantive comments, at this point we are trying to get completeness. I think we were making some headway before when we were talking about the issue of water. At this point the Board concurred that we need to go back and address the issues pertaining to the water. Mr. Cordisco asked if we could return to that discussion, because that is a main issue at this time. John Munsey continued that as engineers who design these systems, that number, is actually 320 gallons per unit as requested by the DEC versus 200 which is what is in the engineers report from the applicant. We already agree with the two hundred number. Our first review letter said that we thought that the 200 calculation was ok, we would have done the same thing. 200 is the normal usage for a single family full time residence, not a seasonal residence. We also use the same peaking factor as the applicant as well, so I'm interested to see how the applicant is going to move the DEC from their numbers. I have already shared my opinions with Fred Wells on this. Councilman Galligan stated that once you agree on the water, which is the standstill now, would you recommend that this goes to public comment? Mr. Munsey replied that once the applicant makes the demonstration that they can meet the full build out of what they are proposing to do using the peaking factors that they propose, using 200 gallons per minute per dwelling unit estimate that they propose, then I would recommend completion, the other items they are minor. Councilman Galligan stated that once the water issue is resolved either less density or more water, you would recommend that this go to public comment, is that correct? Dominic Cordisco – we appreciate that that is your position. Councilman Galligan further stated that there will be plenty of time for density talk, of course we have to do something about emergency services, but water is the biggest issue. Supervisor Galligan stated that the fire company will attend all of the meetings and their biggest concern is that they are a volunteer company, equipment you can buy and sell. I know they are not excited about two firehouses, it creates problems but those issues will get resolved.

Rick Katzman – In all fairness, you can't expect Lost Lake to do the whole thing, we have other developments in Town and they ought to have a share. Supervisor Galligan again stated that we need to hire a consultant to look at all three proposals and help us decide the best way to handle it. For us, it's not just fire – it's emergency services and fire. Our ambulance service is a paid service out of Monticello, we have good mutual aid and all of that stuff but I think we need more formal information. Mr. Katzman continued that we have an unusual thing, you can have all of the mutual aid in the world and we have a forest fire in Forestburgh, all of the firemen and all of the apparatus isn't enough. We live in a box full of dry matches, seriously the more people that come into this town, the more likelihood you are going to have a fire. Let's face it, that's the way life is. Someone drives down the road, throws a cigarette out the window and the next thing you know is half of the Town is gone. This is not something we should take lightly at all. What Ivan was talking about for the two acres, I think they changed that, it's to be used for ambulance service, which again is fine, but I agree with Ivan, somebody has to pay for this facility, and somebody has to pay for the equipment and it's not going to be the taxpayers of Forestburgh. Supervisor Galligan stated that he was not speaking on behalf of the fire company, but their general consensus is that they are opposed to two separate facilities, in essence you end up with two small companies and they would rather keep everything located at one facility. But that is all for public comment, the big issue now is the water. Councilman Creegan asked Dominic Cordisco for any comments or suggestions with regard to the water issues. Mr. Cordisco replied that with the water, he once again goes back to the scope. The scope says we have to have 72 hour pump tests on the wells and it also

says we have to establish an estimated demand for the project. The scope does not say that we have to find every last drop of water in order for the DEIS to be accepted. I think it's fair to allow the document to be finalized and go to public comment, with the understanding that we are continuing to search for water and that we cannot close the SEQRA process without fully establishing that we have the water that we need. That way we can start the official public review process on every other aspect including the water that we have found so far. Supervisor Galligan stated that he has some questions about that, we are talking about a major project, we start the public comment based upon the entire project and let's say we get 2/3 of the way through it and you don't find enough water. It really changes the whole project and it would change the comments made by the public. Mr. Cordisco replied that is a risk that falls on us. If we get to the point where we have a FEIS and we drilled all of the wells and have a team out there working and we can't find the water, then the onus falls on us, that we have an FEIS and having a revised alternative, which are already included in the FEIS. I really don't think the risk is on the Town, because we would be stating up front that we understand that we need to finish our searching before you finish and have to make a decision. Discussion was held that if we give completeness now, will it appear that we are giving our blessing to that many units? How will the public perceive our decision? Attorney Plotsky added there is still a whole other analysis that has to be done and part of that analysis is public hearings that are relative to SEQRA which is done after the DEIS is declared. The question right now is have they addressed all of the things there were supposed to address, whether we like the way they did it or not. Did they address what they were supposed to address according to the scoping and the directions they were given. Mr. Munsey added that he has discussed this his internal staff, outside legal counsel, I discussed it with the DEC and took into account the experience that we have from other projects. It is not like the applicant is asking for a lot here beyond the initial base unit build out, one unit per two acres. The applicant is asking for 2.75 times that in density bonuses, that's a lot and if the applicant wasn't asking for that much, the water demand wouldn't be as high. It seems like they are pushing, and from a non-scientific perspective, they are pushing the envelope on how big, how many units essentially can they do. Based upon my experience dealing with bedrock aquifers there is no guarantee they are going to find enough water to meet the full build out of this project. If they were dealing with sand and gravel that had a much higher productivity, you move a well 5, 10, 20, 40 feet and stay in the same area you will have variability, but nowhere near the variability that you have with a bedrock unit system. With the water level information that they have in this draft, the second draft of the EIS, you have our recommendation, and that is a recommendation for you. If the applicant were to submit more information relative to new wells that were installed, new pump test results, I think it would be appropriate for us to re-evaluate the information. Councilman Galligan asked if we could not move this on to public comment, we certainly are not going to approve it if there isn't enough water, but can't we move it on? Mr. Munsey replied that you certainly could, but there are two dangers that I see, one, is with DEC. The DEC in their correspondence is telling you what it should be in terms of what the DEIS should contain. Everything that they need to issue a permit should be in the DEIS. I think that is unreasonable and I think what they really mean is that it should be in the overall SEQRA record, not in the DEIS. But none the less, you would be doing something that would be in opposition to what DEC is telling you in writing. The other risk, is just with the public. You are potentially going to put yourself, the Town Board, not the Planning Board, the Town Board it's going to potentially be criticized, "how could you possibly go to completeness on this document, when the applicant hasn't demonstrated that they have enough water to do the build out". Councilman Galligan asked if Mr. Munsey thought any of this will be resolved tomorrow? Mr. Munsey replied no. I think what will be resolved tomorrow is what the DEC's position will be on purposes of permit issuance, not for SEQRA. I am hopeful that will be resolved tomorrow, it might not be resolved to the point where the applicant is happy, but I think they will leave that meeting with a pretty good idea of what they will have to do to get a permit from DEC for this project. We did not come to this conclusion quickly, we thought about it as we were going through this document. We have two senior hydro geologists on staff, plus myself we discussed this. We have project engineers that have designed municipal water systems for communities, we discussed that and we all came to the conclusion that, what would we do if we were in this position? We would go forward and make a proposed action that centers around these resources that serve to limit that development. Councilman Sipos stated that we need to resolve the entire water issue before we can move forward. Mr. Munsey replied that would be his recommendation at this time, if they have more information that they have not given to us at this time. Supervisor Galligan asked Randy Gracy, principal of Double Diamond if he had any comments. Mr. Gracy stated that he would like to expand on that. Like Dominic said, we need to go back to the scoping document and carefully read what it says about water. It says to demonstrate that we have enough water, it doesn't say drill enough wells until we have it all. What we've done is, we've already drilled twelve wells, and I believe one of you said we have maybe a third of the water needed out of those wells. Mr. Munsey stated it would be out of the eight wells that are all we know about. Mr. Gracy continued that we have 2,000 acres, we have 30 potential well sites given to us from the fracture trace analysis, so I drill 8 wells, find a third of the water. What do I have to do, drill 16 to prove I have 2/3, and then I

have demonstrated it? Dominic Cordisco added that it's similar to the historic preservation offices (OPRHP) for a smaller project, in order to get the state parks department to sign off on the fact that you don't have any archeological or cultural resources there that will be effected, you have to go around and dig holes looking for any evidence that there was something prehistoric or ancient things that happened on that site. But with a site of this size, when you consider 2,000 acres, the expense and the effort taken to cover the site with those holes would be prohibitive. That is why the state parks commission allows you to phase that effort; we are not talking about phasing our water. All we are asking is that we be allowed to finish our search for water as the SEQRA process continues. Again, the scope does not say we have to find every drop of water. I understand the rationale; I understand why the DEC is saying we have to find it also before the project goes forward. On the one hand it's good to have their feedback early on, so we understand what we are dealing with. On the other hand, the DEC does not usually receive this document until the Board deems it complete. We have to have these issues out. Rick Katzman stated that as a Board I don't see how you can make any determination at this time. I say wait until they have the meeting with the DEC, the DEC is not the kind of body we can push around, pretty much when they tell you it's one way, that is the way it is. Mr. Cordisco stated that in this particular instance, especially for SEQRA the Town Board is the lead agency, as determined by the DEC. Mr. Katzman continued if they ever want to be lead agency again on a project this size, it's never going to happen. Supervisor Galligan stated that in this issue, forget the DEC, the question is before the Board. Councilman Galligan added that Randy said they drilled 8 wells and found 30% of the water, and they plan to possibly drill 30 0 isn't it logical that they are going to find enough water? He said based upon that, we should move ahead. Does this seem logical or not? Mr. Munsey stated it was not ill-logical, but from a hydro-geo standpoint, we are dealing with a bedrock aquifer system. It's not uniform, homogeneous, isotropic, it's heterogeneous. Attorney Plotsky inquired assuming for the moment that we deem this document complete, do we have a public hearing and hold it open until the water issue is resolved? Mr. Cordisco responded that he thought the water issue would have to be resolved before you accept the FEIS, at that point the FEIS has to include the water reports, once you have that in the FEIS, then you are free to make conclusions about the project. Mr. Gracy added that then we would have to meet the demand that the DEC puts on us, whether its 200 gallons a day or 400. I see that coming in the FEIS, just like the archeological 1B for example, that is not required to be done prior to the application being deemed complete it is required prior to the FEIS. That could impact the development if we don't find (inaudible). Mr. Cordisco added that the FEIS is really your document you don't accept it until you are completely satisfied with it unlike the DEIS where we have to go against the scope, and satisfy everything that is in the scope. You may not agree with everything, you are not passing judgment on any aspect of it, you are just comparing it to the scope and saying it's complete. You will pass judgment on the FEIS. In terms of criticisms to the board, you can say "this is what the scope required and this is what we are going to require for this project to move forward". Mr. Gracy added that we are continuing to drill, and I just had them bring in an extra drilling rig so we can go twice as fast. As we drill these wells, we will provide you and John the information as we get it, by the time a public hearing comes around, I may have found another four or five hundred gallons. Supervisor Galligan asked what would happen if we did nothing tonight, not complete, not incomplete. They are drilling wells, and we say "ok, we'll meet in three weeks" does that give you enough time to test them and they can submit an addition or an addendum and demonstrate they found more water. Mr. Munsey responded that it's a possibility, we have already heard there are twelve wells, when we reviewed the document there were only eight. What I am suggesting is that the applicant, after the meeting tomorrow with the DEC, address all of our comments, revise appendix "m" with the new well information, resubmit that as the third draft for the additional consideration for the Town Board. The Town Board can go either way on this. It is not a requirement that we go one way or the other. Just because the final scoping document, there wasn't that much information in the final scope on water resources and supply. I think we kind of went into this thinking that there will be enough water on this site. The factor that needs to be applied is what's written in the final scope and what is common sense and that is what should be addressed. I'd want to get a feeling that they are closer to achieving the water development with the additional wells they have put out there. The quality of the hydro-geo report is quite low and should be upgraded. Previously there were just some well drilling logs that were in there and this is the first version of the hydro report that we saw. I would feel very uncomfortable making a recommendation to any lead agency based on the hydro-geo report that is in this document. You could go to public review, but it has information in it that is not entirely true. Councilman Raponi questioned if the Board will perceived as we agree with the density, we agree with the golf course being part of the open space and things like that. That is Ivan's concern also, am I correct Ivan? Supervisor Galligan stated that his personal feeling is there is too big of a question on the water yet. It does give a perception. Councilman Sipos suggested that we wait, let's see what happens at the meeting tomorrow, let's see what the other four wells are producing, and we'll see what happens within the next two or three weeks. Fred Wells stated that we have information right now that are just driller's yields on the wells, and right now we can't say we have double the water. Plus we don't have any of the

pump tests which prove the yield. Discussion was held with regard to the length of time needed to obtain pump test reports, constructing roads to access the targeted well sites on the far sides of the wetlands, making an appendix to the DEIS. Mr. Gracy stated that they have been working on this project for a long time now, and Tim Miller and all of the others have done a lot of work on this site, and I think we have done a good job showing our commitment that we are going to do everything that needs to be done. I know I have to go find all of the water before I can go for any permits or an FEIS. I am fixing to have it all done in the next ninety days. Phasing won't be an issue, I don't want it to be. If we have addressed all of the items within the scoping document, all we are asking is that it's complete as far as the scoping document is concerned. That will allow us to...I'd like to get the rest of the comments from everybody else on everything else, whether it's emergency services, so we can start working on those things. I don't want to stop the whole process just because of water, and I can't get the permit without the water. Councilman Galligan stated that he would like to see this move ahead, and I don't see why we have to get hung up on the water. Obviously if there isn't enough water, nobody on this board is going to vote for it. Why can't we move it on to public comment? Discussion followed about public comment, the requirements of the scoping document to the DEIS, water location and extraction. Mr. Gracy added that there are other items that are important to this Town that we have to address, like traffic, noise and other things. Discussion was held to adjourn the meeting, the DEC meeting tomorrow, anticipated DEC permitting requirements and the process this project will take from here. Supervisor Galligan asked the hypothetical question, let's say it's complete and we all agree that the FEIS won't be complete until you say there is enough water. You can't have public comment until you have that anyway. Attorney Plotsky stated that the review of the analysis of this evening is, is the DEIS complete. Have they addressed the issued that had previously been identified through the scoping process, have they identified those things, have they discussed those things, have they, or not, from their perspective mitigation is required, is further mitigation required or if not, not only is the DEIS their document, it's basically the world according to the applicant, whereas the FEIS is the world according to the board. They will draft the FEIS for your review and approval until it is satisfactory to you, you don't adopt it. The distinction is, is that when the DEIS is deemed complete, whether you agree with their assertions or not, it is then subject to distribution to various entities, including the DEC, other involved or interested agencies, whoever is on the dissemination list and then there is a public hearing, it may be done in one evening or over several evenings depending upon how much comment there is. There is also, in my experience, a public comment period, in addition to the public hearing, where written comments can be received and provided. Basically what happens at that point is, the applicant takes all of those comments and formulates a response to every question that is raised at public hearing, in terms of is there an issue that requires mitigation, yes/no and how are they going to mitigate it. Ultimately when they submit that FEIS for your review, it's your answer. For example, dinosaur eggs – they say there are none, and we know they found a dinosaur egg on someone else's property, they have to address that issue to your satisfaction. The question tonight is, do you have enough information to deem the DEIS complete, is it enough to send out and start that more public dialogue. Some of what I am hearing is a somewhat conditional approval, "we are asking you to deem it complete, so we can get input on all the various issues, but we know we can't move forward to the adoption of an FEIS until the water issue is completely and utterly satisfied. While on the one hand, with two thousand acres, I can certainly understand where a professional would look at it and say, we got to be able to come up with enough water and then focus on the scoping. Now that there are issues with "are they going to come up with enough water", my concern at this point about completeness and a public hearing is having to re-do the public hearing when it turns out they don't get enough water. That would be my issue, we don't want to do a public hearing anymore than we have to. Mr. Munsey added that while the applicant says it's their risk, there is still a risk to the Town as well, because in the final analysis, the Town will be adopting SEQRA finding statements at the end of the SEQRA process and if there is dispute, and somebody challenges the project, the statutory limitations time frame issues and Article 78 – that litigation is to the Town Board as the agency that under took the SEQRA review aspect of the project. It's not all the applicants risk, it's the applicant's risk from the stand point of that we would need to make a demonstration during the SEQRA process that there is enough water there. I have never been involved in a project where C.T. Male has produced a technical comment letter, stating there is a deficiency and the lead agency goes to completeness. That would be a first for me and I would rather not have that happen. At a minimum you should recommend to the applicant, you have written comments from C.T. Male, you have written comments from DEC, take those into consideration and revise and re-submit a third draft of the DEIS. My review of the next version of the DEIS is really just going to be on the appendix "M" – the water report and making sure that some of the superficial changes have been made. Based on the format that Tim Miller produced, the second draft of the DEIS I have confidence that the minor comments would be addressed pretty easily. I don't think it's in the Town Board's best interest to issue a decision of completeness when your technical consultant has said it's incomplete. That raises an easy challenge to somebody that is sitting out there that would potentially challenge the project. In fact that scenario came about next

door in the Town of Wawayanda, they went through a second public comment review on a document that some people believed was complete and others did not. They did not have unanimous approval and the final analysis, what they agreed to do, although it was not required by SEQRA, was to go through a additional public comment period because there was a recognition that there were parts of the document that should not have gone to public review. They weren't complete in comparison to the scoping document. Potentially you could be in that situation. Mr. Gracy requested, with all due respect, what exactly does he have to do to get this deemed complete. Please tell me precisely what I have to provide to you to get over that hurdle. Mr. Munsey replied that he had heard nothing tonight that he hadn't heard before, the applicant has come forward and stated that we will make a demonstration that we will have enough water to support the full build out of the project before and FEIS is issued. I have not heard that before and it is not in the scoping document. I think that carries some importance to it. I'd say address all of comments that are in our letter and re-do and update Appendix "M" and supplement whatever information you have on the wells that are not included in this, whatever new well information you have, put it in here and we will take it into consideration. I've been persuaded a little bit to move off of my dime but not completely. Councilman Creegan stated that he felt John's comments were very fair and that it's inappropriate for us to rush into this and not let the client address the DEC's comments in justification for their gallons per day. Councilman Sipos stated that he wants to see them amend the document that we have and this particular session amended and resubmit it along with the comments from the DEC, we'll leave the meeting open. Further discussion was held to leaving the meeting open, the amount of time to amend the documents necessary and resubmit the information and not deem the DEIS complete or incomplete at this time.

MOTION by Councilman Galligan, seconded Councilman Sipos to hold the meeting open so they applicant can submit additional supplemental information in accordance with the C.T. Male comment letter of March 2, 2010 as well as the modifications and providing of additional information regarding Appendix "M" as well as considering the DEC comments. Vote: 5 ayes – 0 nays. Motion carried.

MOTION by Councilman Sipos to adjourn at 8:45 p.m.

Respectfully submitted,

Joanne K. Nagoda,
Town Clerk