

A **Special Meeting** of the Forestburgh Town Board was held on **Wednesday, March 16, 2011** at the Town Hall.

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 – William D. Bavoso, Attorney for the Town
Dan Hogue, Jr. – Highway Superintendent
Tim Gottlieb, Town Engineer
Susan Hawvermale, Planning Board Chair
Ed Kaufmann, Planning Board Member
Ivan Orisek, Planning Board Member
John Munsey, C.T. Male Associates

Supervisor Galligan explained that we are here to review the updated, amended FEIS for Double Diamond and the Lost Lake project. We have just received the final amended copy tonight. Supervisor Galligan introduced our consultant John Munsey of C.T. Male Associates.

John Munsey – This FEIS has been prepared after iterations back and forth mostly between Fred Wells and myself on a section by section basis. Electronically, I have reviewed every section of this report and provided tracked comments back to Fred. Then Fred assembled this document without any track changes on it. The last two sections of the report that have been revised are Appendix K, which will become the basis for the Spedes permits application for the DEC for the wastewater treatment plant. We demanded that the applicant prepare a Water Assimilative Capacity (WAC) analysis to address the DEC’s comments. The wastewater treatment plant will be discharging all the time once they start building the resort and the homes, but the most important period for design criteria is “low flow”, the biggest variable is the stream itself. During low flow conditions, it is going to continue to get a discharge. So it is a requirement that you make a demonstration that even during low flow periods, and I think the design criteria was less than one cubic foot per second, you must demonstrate that you are going to treat the water well enough, such that the assimilative capacity of the receiving stream, in this case, the Bushkill, will be able to properly dilute what you are loading into the stream. They did this for two scenarios. Supervisor Galligan asked if this would be at full capacity of the development. Mr. Munsey continued that they did it for two scenarios, the first is phase one and the second scenario is the full build out, assuming there is a residential unit on every lot. They were able to make that demonstration. They also did a sensitivity analysis, because there is an “F” factor that needs to be assumed for the stream. Mr. Munsey went on to explain what the Bushkill is classified as and the determining of the “F” factor for this project as it relates to the project. You may recall that early on I was pushing for them to get a permit application in this document, this is essentially the nuts and bolts of the permit application that will be submitted to the DEC and it demonstrates that the capacity of the Bushkill will not be exceeded. What this means is there is still going to be a surface water impact, because you are still discharging treated wastewater into the stream, it’s just not going to exceed what that stream is able to dilute during low flow conditions. Assuming that the wastewater treatment plant is properly constructed, properly designed and properly operated. Once we are done with the SEQRA process it is incumbent on the applicant to seek the permits that will be required of him for the project before they can get site plan approval from the Planning Board. We have dealt with the water supply aspects of the project and we are now comfortable with those, there is a water supply report in here which significantly appends the one that was provided in the DEIS. The other components are the phase one and two archeological

reports and that is addressed in this report. Of the extensive archeological work that they did, they only found one site that is potentially eligible for inclusion on the national registry of historic places, and OPRHP hasn't commented on that report to date, we have addressed the compliance stages that the applicant will need to fulfill before they can move forward again for site plan approval. The subject matter of the FEIS follows the subject matter of the DEIS, so I would urge every Town Board member to take a look at this document, proof it and if you have any questions, feel free to call me or Bill on some legal issues. This will become your document. C.T. Male is a hired technical consultant, hired by the Town Board, we have reviewed this document and we think it is acceptable for the project to move forward, in order for the Town Board to accept it as complete. Ultimately it is your document, somebody else has prepared it on your behalf, you caused it to be created. But once you accept it, it becomes your document. There are two main conclusions you need to come to on this document, one is that they are proposing a lot of lots on this site. That made the level of due diligence that the applicant had to go through much higher in terms of demonstrating that there is adequate water supply and that they can meet the wastewater requirements of the project. The main conclusion on the water supply is that the applicant, in my opinion, has done with due diligence, shown that there is an adequate water supply there to meet the full build out. When we reviewed the DEIS, we did not come to that conclusion. We came to the conclusion that they did not have enough to support full build out. They may need to drill additional wells or clone some of their high yield wells, they still have to meet the Department of Health permit requirements for a public water supply system, as well the DEC's water supply requirements for the taking, as well as the Delaware River Basin Commission (DRBC) permitting requirements as well. That is one main conclusion, the other main conclusion is that for the wastewater, the water assimilative capacity (WAC) show that they have the ability to build a wastewater treatment plant for the full build out of the facility without causing a water quality contravention of the Bushkill. It's all on paper, but that is what you do at this phase of the analysis. They will need to demonstrate that operationally, on a phase by phase basis with the DEC. And if they are in phase one, two or three and encounter other problems or issues, they may not be able to make it on to the next phase. But from a demonstrative point, they have shown the conclusion that there will not be an adverse impact to the receiving body of water. They have also proposed some additional mitigation on that where once seven hundred units are online at the site, they are going to start to recycle the wastewater and use it to irrigate the golf course, which is an excellent re-use of that wastewater. The wastewater will be treated, and while it won't be potable, it will be pretty close to it. There are also some other mitigation measures included in there. Those are the two main technical conclusions, once we got beyond fire, and the issues that were a concern of the fire department. And once the Town Board adopted their resolution on the density issue, the wastewater was the last technical issue hurdle, and we pushed the applicants team pretty hard to come up with an analysis that we could check that made sense and that we feel can be used as a basis for moving forward for the permitting, even though the DEC may ask for more details during the permitting. You as lead agency, it is your onus to make sure that there has been enough engineering done, so that with confidence you can say that the environmental impact associated with the project, as proposed, will not have an adverse impact on the environment and that the project has incorporated all of the mitigation measures necessary to make sure that there will not be adverse impacts. Based upon the review of the team at C.T. Male, it is our recommendation that you accept the FEIS as complete, but I urge the Town Board to do its own level of review of this document and make sure that you are comfortable with it. There may be one or two more revised pages to come, but that would just be a new cover page and the one or two pages to be substituted in, which is very common when you are this far into a project like this. Councilman Raponi asked what is potable water. Mr. Munsey replied that it is water that you can drink that meets the standards of the health department for drinking water. It has been analyzed for inorganic and organic compounds so that it is good enough for consumptive use. They will not be treating the water to meet potable water standards, but it will be pretty close. Supervisor Galligan asked if any board members had any other questions to which there were none, he continued stating that there would be no decision made on this tonight as no one has read it yet. At this time the floor was opened to the public for questions and comments.

Mary Ann Toomey – As historian, what were the historical features that were identified? Mr. Munsey stated there were no prehistoric sites found. There was not even one flake that was found, which is uncommon for a site this size. It was just an old historic farmstead structure and the archeologist working for applicant made the recommendation that the site was fairly common, there was nothing unique that was found there. It was their recommendation that no further study was needed there. However, that is just the applicants recommendation. There were a lot of pipes that were found, I thought it was, well there were clay pipes in various stages of use, and then they would break a piece off. It appears that a lot of guys were hanging out at this site, smoking. Ms. Toomey stated that it used to be a major tannery, with about nine hundred residents, they had schools and stores and the station and Gilman had a huge mansion. Mr. Munsey added that the technical reviewer for OPRHP is Doug Mackey and I

called him last week and he hadn't reviewed the project yet. It doesn't matter, they have to satisfy the requirements of OPRHP for the project. If they say the site is eligible for inclusion, then they will have to do more work on it. Ms. Toomey stated she thought they would find much more than pipes. Mr. Munsey stated they did find more than pipes, they found some china and a few other things and it was only in that one spot, which is unusual for a site that is two thousand acres.

Susan Hawvermale, Planning Board Chair – Are there photographs of that site? Mr. Munsey replied yes and there are photographs of the artifacts as well. Mr. Munsey continued that it doesn't matter if OPRHP finds it national register eligible or not, because under either scenario, if they find it is not national register eligible, no further work is necessary. If they do decide that it is national register eligible, then it is up to the applicant to complete a phase three investigation at the site, which essentially would serve to mitigate that resource. They would study it more and collect those artifacts and those artifacts would be put into a repository and there would be a record of what was done. Or they can decide to avoid the site, and say ok, we are going to define the site boundaries, and we will not do any construction here, we will run the road around it and there does appear to be some design flexibility to accommodate that.

Ed Kaufmann, Planning Board Member – Mr. Munsey, you must have received, you were cc'ed, the most recent letter from the DEC dated February 18. Mr. Munsey replied absolutely. Mr. Kaufmann asked if he would comment on a few things that were written here, specifically, well, I will start off with what you mentioned about the wastewater for the golf course. The DEC asked the question on how it would be irrigated, and I thought I heard you say it would be irrigated with wastewater from the sewer treatment plant. Mr. Munsey replied as a secondary source. Mr. Kaufmann asked if the main source would be a well on site. Mr. Munsey replied that the main source would be surface water, and then groundwater would be used a supplemental source and then the treated effluent could be used as a supplemental source. Mr. Kaufmann then asked if he would comment on his comment about, because this is an issue that the Planning Board brought up about their recommendation of the formation of the municipal sewer district as opposed to the SWC process, could you just comment on that for the sake of getting some answers to this letter here. They suggest that the Town look into the formation of this sewer district as opposed to this SWC process. The Planning Board had discussed this and one of our members is in the business of developing, and has been for a long time, brought up the fact that the Town is at risk if we don't deal with this issue early on, in making sure that the sewer system for this development is going to be something that the applicant is going to be responsible for, and that the Town doesn't have to take over later on. So could you just comment on that, I am assuming that you have that letter in front of you. Mr. Munsey replied that there is a written response to all of the comments in here (the FEIS) what we are requiring, what the Town Board is requiring is that both the water and the sewer district be set up before site plan approval can be granted by the Planning Board. So that administrative procedure of establishing the district for both water and sewer will be done in advance of any construction on the site. Then it is up to the applicant as the owner of the facility and the private operation of it, to get the permits from the DEC for that SPEDES discharge and then they will need to insure the compliance of it. So, in response to that DEC comment, we had already demanded that the water and the sewer districts be established, and reluctantly, the applicant agreed to that. Dominic Cordisco, Attorney for the applicant stated that had suggested that all along. Supervisor Galligan added that while we hope it would never happen, if the Town should have to take over the water and sewer, the districts are already in place, but the mechanism is already there so it does not become a burden on the other residents of the Town. Mr. Munsey added that originally it wasn't there, but it is a form of mitigation and it is up to the Town Board to make sure that there is enough mitigation so there won't be a significant adverse impact. Mr. Cordisco added that if you go back to the DEIS, we suggested that back then, so that there are no issues with this and the practical benefit of that is that in the unlikely event that there is a need for the Town to step in, then all of the charges that are associated with that get paid by the residents of Lost Lake and not by any other resident of the Town. Mr. Kaufmann continued that also in that same comment there, they addressed how the mitigation could take place in terms of the waste water, which gets us back to the whole density issue, which the Planning Board has clearly stated that we are not in favor of, the 2,700 plus homes in there and they specifically address that if the density was 1,235 it would probably mitigate any of the concerns that they had with this water going down into the Neversink River Unique Area and eventually to the Bashakill, does your review here address that? Or have we decided that the 2,700 plus homes is a done deal? Mr. Munsey stated that was a Town Board determination, in terms of the resolution that was passed. That does not mean that there are going to be 2,700 homes in this development. And in fact, if development takes place as envisioned, by the developer as stated in the DEIS, many of the lots will never be developed and will be maintained as green space. However, what we required of the applicant, was that they make a demonstration that under the unlikely scenario that there is a house built on every lot that they would

still be able to meet the requirements of a waste water treatment plant, in terms of the discharge. It is still going to be up to them to do that in terms of a phase by phase basis. Based on our review, we believe that that demonstration has been made. Mr. Kaufmann stated that he heard your report on the water, and that your company is satisfied with the water reports, that there is an adequate enough amount of water. Mr. Munsey replied yes, that is a simplified conclusion. The statement that we made is that the data that has been submitted to date, has made the demonstration that the applicant would be able to fulfill the requirement if there were 2,700 lots. There is enough water on the site to support full development, but they might need to install additional wells in order to meet that requirement. They tried to get, through the Department of Health, a waiver of a guidance where pursuant to ten state standards, that you are able to meet the peak flow requirement by having your largest well out of service. It is likely that they will need to put in what I call a clone well, which is another well in a productive location, so that if one of those wells goes down, they are still able to tap a unit at a higher amount. So they may need to install more wells in the future, but they won't have to install more wells for a period of time. With the well capacity they have out there, with the wells that are installed out there, it is likely that those wells will be able to meet the envisioned build out scenario for the next twenty years. Mr. Kaufmann asked IF there were 2,700 homes built in the next 27 years or whatever, with the current wells that he has on that property right now, could he function without drilling any more wells? Mr. Munsey replied they would be able to meet the demand, but they wouldn't be able to meet the Department of Health requirement to have the largest well out of service and still meet that demand. Mr. Kaufmann asked if the Department of Health would issue any permits knowing that? Mr. Munsey replied that they commonly do. Mr. Kaufmann asked if Mr. Munsey expected any additional comments from the DEC now that you have done this review or is it pretty much the end of the DEC comments at this point. Because they seem to comment here that there are additional wildlife studies that need to be done, but they were not done at the time that this letter was written on February 18. Mr. Munsey stated that once the FEIS is accepted as complete by the Town Board, copies of this document are sent to all involved agencies, of which DEC is one, there is a ten day waiting period that is required, minimum, before a findings statement can be adopted. Sometimes involved agencies issue written comments during that ten day waiting period. I can't stand here and predict what DEC Region 3 will do. I would characterize DEC Region 3 as a somewhat unpredictable wild card division, based upon the work we do with other divisions.

Ivan Orisek – Planning Board Member – I have read quickly through this document and I don't think it contains the letter from the DEC or your response. The last letter in here is from July 1, 2010. But that is not here nor there. Mr. Munsey responded that it should and it will be in the document. Mr. Orisek continued that his question is this, the Planning Board has been saying for the past three years, that we have significant environmental concerns. And as it was mentioned before, we didn't like the 2,700 plus units proposed by the applicant. During those three years, those concerns have not changed. Now you have the DEC sending letters, one on July 1 and another one dated February 14, which confirms the concerns previously voiced by the Planning Board. My question is how does the lead agency and the consultant plan to deal with this situation? Where you have two involved agencies basically saying that the alternative, which is approvable is 1,235 units, and moreover, the DEC stated clearly, twice, in their letters that they are not going to issue permits for more than 1,235 units. I think it's nice when you talk about waste water and all that, but this is a far more important issue which needs to be resolved. Just imagine the situation where this is approved for 2,700 units and the applicant goes to the DEC and he will never get the permits, which may kill this project. I think there are a lot of us here who feel that this project is beneficial to the Town, but this approach may very well kill the project. I have urged, in previous meetings, the lead agency to work in a cooperative manner with the DEC to resolve this issue of the density. In their letter of February 14 they are concerned about the density and the open space. They say clearly, that in their view, the open space, which is proposed by the applicant is not 50% of the acreage, but 15%. These are important issues and I don't see where, you, as a consultant for the Town are taking any position on these issues, which are far more important than the waste water discharge, in my opinion. And I have observed where you, as a consultant for the Town, owe fairness to the applicant, but allegiance to the Town. So, is there going to be a document issued by C.T. Male, which will advise the Town on these important issues, which seem to be killing this project. Mr. Munsey replied that the work of C.T. Male that has been done on this project, based on our prior experience with similar projects, the lead agency has the discretion to make final decisions, that was the whole intent of the dispute over lead agency, where the DEC wanted to be the lead agency, and the Town Board, basically won that battle of lead agency. It is common to have an involved agency, on a project, disagree with the lead agency on the project. That is common, there may be some projects where every involved agency agrees unilaterally with a document, but that doesn't exist most of the time. There is some level of disagreement, just as there are disagreements that exist in this room back and forth between the involved agencies and the lead agencies on a project. Ultimately, it is a Town Board decision, it is not a C.T. Male decision, it is not a

Planning Board decision, it is not a DEC decision. The project and the environmental impacts associated with the project, it is up to the Town Board to come to a conclusion. All we can do is as a consultant is to provide guidance based upon our experience and our knowledge in that regard, and I think we have done that through this process. Now, if the applicant goes forward and is unable to get permits from DEC, they're stuck and the only way, first of all, I think that is an improbably scenario, but I guess it is possible, that it could occur. If they could not get permits for the project, they would have to come back to the Town Board and perhaps ask them to re-open the environmental impact statement for the project and do a supplemental environmental impact statement. But right now, based upon the Town Board's direction of accepting the density of the project, which C.T. Male did provide a recommendation on to the town, in that regard. Now the project has to move forward and the SEQRA process has to be completed. Are there levels of risk involved, absolutely. Mr. Orisek stated that he has heard Mr. Munsey say several times in meetings that the applicant says, for example, they are entitled to a 300% density bonus, and I have never heard you take a position on this, as an advisor to the lead agency. Many times you make statements saying this is what the applicant says, and you tell them they (the Town Board) have to be "comfortable" with it. Mr. Munsey replied that is the way these projects go, it is not up to the technical consultant to direct a board to make a decision. Supervisor Galligan added that we pay him to review these things, and give us his/their advice, alternatives and whatever else we need to help us make our decision. We are the ones who are responsible at the end. To sit here and question him, we are the ones who make the final decision. Mr. Orisek said that his problem, and he will say this and be done, I think we all have a problem if the project is approved for 2,700 units, and the DEC says they are not going to approve more than 1,235 units and we are stuck. My point is that it would be smart to work with the DEC on resolving this rather than take a stand where you guys can decide what you want to because we can decide this, we need to be conscious of the fact that these are the guys who are going issue those permits that the applicant needs. Mr. Munsey added that we did give them another bite at the apple, so to speak, where the draft of the FEIS was given to the DEC, that was above and beyond the minimum requirements of SEQRA. Supervisor Galligan added that he has had several conversations with Willie Janeway about the processes. Councilman Raponi asked if the Supervisor would enlighten the board about these conversations. Supervisor Galligan stated that he had spoken to Mr. Janeway about the process and the letters, and that in the majority of these cases they don't see anything until it is complete, and we had discussions about keeping them aware of what was going on. Councilman Sipos added that is what we have done since day one. Mr. Munsey added that they were at the public hearings, and John Petronella, who reports to Willie Janeway, I inform him of the meetings going on down here.

Stuart Salenger – I just walked in and I have a few comments here, I own property right next to this, the train station, which is a historic building and the Gilman house and I see that you touched on some farm site on the property, what is planned on the area where my ag district is at this time. Mr. Munsey replied that he did not know where the ag district is. Mr. Salenger replied that it is where the Gilman Depot property and right across the street. After reviewing the map it was determined that it was the area that was being reserved for emergency services and currently there are no plans to use that area, the balance is wetlands and open space on St. Josephs Road. Mr. Salenger then asked if there are any plans for St. Josephs Road, is it going to be re-paved. Dan Hogue, Jr., Highway Superintendent replied that St. Josephs Road is a county road, county road 108, and the fire department sent a letter to the county about increased response time due to the road conditions, a lot of the roads are frost heaved now, but I guess their concern is the response time over that road and the counties response was that there are no plans to do anything further with it other than re-grade it on a yearly basis. To pretty much keep it in the condition it is now, there is no plan at this time to pave it. Supervisor Galligan added that as the development progresses, they would re-evaluate it. Superintendent Hogue stated that the average daily traffic count on that road is like fourteen cars, which is extremely, extremely low. If the average daily traffic flow increases annually, then I would imagine there would be a necessity to pave it. Legally you are not obligated to pave a road, but you must make it passable, I don't believe the County is legally liable to pave it. Mr. Salenger added they had an incident last fall where they lost their electric because the lines were hit by a rigging truck and we had to call Orange & Rockland, and there were loose lines and I don't want to see this happen again in the future. Mr. Munsey added that within the FEIS there is a mitigation measure that the applicant has a requirement to maintain the existing roads, they will have to do a pre-construction survey of the roads, and then when they are done with construction they will need to again assess the conditions. It is discretionary on the town engineer's review, but they have to maintain those roads and are responsible for any damage to them during construction.

Supervisor Galligan asked if there were any further comments, there were none. He stated that the Board has to make a decision and that we need to read this, and we meet again on the first Thursday of the month. Discussion was held to determine what time to meet on April 7, 2011 to review this. MOTION by Councilman Sipos, seconded by

Councilman Creegan to meet at 5:00 p.m. on April 7, 2011 to review the Double Diamond FEIS with the regular Town Board meeting to convene at 7:00 p.m. Vote: 5 ayes – 0 nays. Motion carried.

ADJOURNMENT – MOTION by Councilman Sipos to adjourn at 7:50 p.m.

Respectfully submitted,

Joanne K. Nagoda,
Town Clerk