

*****DRAFT*****

The Town of Forestburgh Town Board held a **Special Meeting** on **Wednesday, May 18, 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 – Evelyn M. Parks, Deputy Town Clerk

Others
Present – David Bavoso, Associate Attorney for the Town
John Munsey, C.T. Male Associates

Supervisor Galligan announced that the purpose of tonight's meeting is to review and hopefully adopt the findings statement for the Lost Lake project and the modification of the PDD Legislation. At this time Supervisor Galligan opened the floor for comments.

Kathrine Barnhart – I would just like to know if the Planning Commission has agreed to everything so far? Supervisor Galligan replied that the Planning Board has not been too involved in Lost Lake because the Town Board is the lead agency on the project. They have received copies of everything and have made comments. They have made comments on the density. Ms. Barnhart asked if the density has been decided and Supervisor Galligan replied basically, yes.

Richard Feller – I just walked in, and my question may be the same as Kathrines, was it about Lost Lake? Supervisor Galligan and Ms. Barnhart both replied yes – about the Planning Board's involvement and agreement and the density. Mr. Feller stated that this was the first time he is here in regards to this, and he is somewhat surprised over the size of this, and admitted that he should have been more up on this. My question is this, tonight will you be taking any questions or comments from the public on this project with regard to the mitigation factors in the FEIS? Supervisor Galligan stated that the Board has already approved the Final Environmental Impact Statement but not the findings statement. Tonight we are discussing the findings statement and may or may not approve it. Mr. Feller asked if the findings statement has to do with the mitigation and the FEIS, to wit, again Supervisor Galligan replied yes.

Supervisor Galligan stated that everyone on the board has read the findings statement and asked Mr. Munsey how he wished to proceed.

Councilman Raponi stated that he went through it, and we approved some things on paper, but who's to say or dispute something. I question the discharge; the water coming out of that plant will be seventy degrees that will change the character of that brook. The other thing that bothers me is the water from the lake that will be used on the greens. It will affect the cold water in the stream. The traffic on St. Josephs Road and the density are the biggest problems.

Supervisor Galligan asked either Mr. Munsey or Mr. Bavoso if they would explain the Public Hearing process.

Mr. Munsey stated that from the SEQRA regulations, the Public Hearing process, we're in the process by the FEIS that has been accepted as complete. Now the next step in the procedure is to adopt the findings statement and at that point and time, any comments that come up tonight, you don't to comment on but you do need to take them into consideration before you do your final action. Once the findings are accepted, then that is subject to all of the

involved agencies being notified and then you are still in a public comment point in time for the PDD legislation. You will need to open a new comment period, close it and adopt the Lost Lake PDD legislation, then the applicant will be in the position, where the change in the zoning has been done and they may then go to the other involved agencies and begin seeking permits.

At this point, the board opened the floor to comments from the public.

Richard Feller – I will keep this as brief as I can, I am a land owner that is contiguous to the Lost Lake property, the only separation between our property and Lost Lake is the old railroad bed, which runs behind our house on the southern side of St. Josephs Road. There are a few matters I would like to bring to the Town Board's attention on the mitigation factors that were in the FEIS. There are obviously a couple of questions that I have also that I would like to start with and whoever can answer them, please do so. The first thing is in reading the plan, the project is incredible in size and scope not just for this town or county, but any town and any neighboring counties. There are certain concerns that I have over the mitigation in the FEIS regarding, in particularly the size of the project as it stands, and potential increase in the size of the project for the lot size of the present sizes. There are some numbers that when you look at the map are confusing. If you add the lots and the phasing, and then you read further, you come up with different numbers which is confusing. With specific comments regarding the mitigation, one of the things I question in the report has to do with the water supply and an adequate water supply for the project. It's known that the project had engineers pump those wells for a period of a week or two, which occurred sometime in October of last year. They then asked, and we volunteered to be one of the ones who have a well to be monitored through the process, we did receive a report after that and there was a reduction in our well water capacity, at that time of the year, it wasn't a level that was of real concern. However, that was a different time of the year and I would imagine that if you pumped those wells at this time of year, there wouldn't be a real issue or concern either, but anyone that knows or lives near the Bushville Creek knows that it goes from extraordinarily widespread to very narrow spots during July and August. There are both sides of the water issue that I would ask the Town to make sure you take a closer look at if you can. I don't know how drawing that much water will affect the homes in that area, and there are quite a few. Even if you are talking about a small phasing project of two, or three or four hundred homes you are drawing a lot from the water table. So our first concern is when you are taking the water out, what is the negative impact on us and if there is a negative impact what is the mitigation down the road from the developer if I or anyone else has to drill a new well, at whose expense is that going to occur. Considering that I and many others have lived there over twenty years and our wells have never gone dry. The second part is one that Gene Raponi has raised, once you draw that water, what do you do with it? Well, obviously as it appears, it will be going in to the creek. As other people have stated, with regard to the creek, as I said, depending upon the time of year, at this time of year you can see the overflow. It's not just this creek, any of the small creeks in the county and you will see the same thing, there are times they flow well and others when they trickle. I am not familiar with the temperature issue and what that does with regard to fish and algae and things like that, but I do know that if you put waste water into the creek in August, you will be putting in and pushing more that it can handle naturally. Separate from the water issue, there are some comments, and I don't represent Monticello Central School District, but I sat on the board for twenty one years, and am familiar with the issues of the district and developers using numbers for per pupil costs to address or mitigate the issue as it affects the school district. One of the things that happens sometimes when you use a per pupil cost, it's consistently done, it is not unique to this environmental impact statement, it's always shown that you take the per pupil cost and show the tax dollars against the per pupil cost, the costs are disparaged and the tax dollars are usually higher and there is no need to be concerned or worried. It seems sound and it seem valid, but when you look at it deeper, there are some cautionary things that need to be understood and one of them has to do with a school district's ability to absorb student population. You can't make any assumption that a particular development will or will not produce a certain amount of children per household unless you are going to use the standard number that the school is going to use, and I don't recall what that number is, what is used in the current document is a reduced number because of the claim that it is a resort typesetting, not a first home type community, so there aren't going to be as many children, from a school districts perspective obviously you aren't going to look at best case scenario you are going to look at maybe not worst, but what may be of a concern to them. The problem that you have with using per pupil numbers and putting that against tax dollars is that there is an assumption that the district can absorb those students simply at a per pupil cost. That works well in Monticello's case, if you just didn't close an elementary school due to budget constraints, and you may have had enough elementary slots in those schools, to absorb those students, as Monticello did before they closed that school. However, there is little or no capacity in the Middle and High School. What this is leading to, is where you will have a situation where there are students that are higher in age, that will fit into the Middle School and High School, what

happens is you have a situation where you don't have the capacity to absorb the student population. This causes a need for buildings to be built, once that occurs per pupil costs go right out the window. With regard to the mitigation on the school side, I question that and ask that the Town have further conversations with the schools about their ability to absorb student population. The other thing I have is in regard to utilities. Aside from water, runoff and waste water, but when I went to the utilities section and a few others I didn't see anything with regard to cable television, telephone, cell service or anything like that. I am sure I wasn't looking in the right place, but I didn't see anything with regard to that. I know there was a comment in the report about it, but I am just wondering what is being discussed with that. Considering that living in that area for over twenty years, I will tell you that Orange & Rockland lines are substandard compared to what most other people who have Orange & Rockland in other locations have. Talk to the folks that come out to repair the lines, some of them joke about the main feeds that you have coming into your house are as big as some of the supply lines they have pushing power to us. We don't have adequate power, we get the ups and downs of power, we have brown outs and flickering. So whenever O&R are going to be supplying power to this development, there should be some consideration for upgrades to those who live around the development and I would make the same complaint/suggestion with regard to telephone, internet and cable. No one on that road has any television or internet access, we have slowly connected to satellite and we are at the mercy of one or two satellite companies at best. I know we had issues with Time Warner Cable covering part of the town and a year or so ago, they increased some but obviously wouldn't come to our area, because there weren't enough houses, this certainly changes the game somewhat with regard to all utilities, Verizon, Time Warner Cable and everyone else. So everything that is going to be done for this development as it goes through, there should be something done in kind to bring the quality of utility and the quality of life with regard to utility for those that are going to be living right next door to this development. If for some reason, it's getting its approvals and going through all of this, between the Town Board and the Planning Board, if two years, five years, or whatever it is down the road, maybe even twenty years down the road and they use mitigation for a lot of things, if for some reason the Lost Lake Development or the Lost Lake project is to cease as the Lost Lake project as its current intent and this company decides to transfer ownership through a sale to some other entity whether they were going to carry on with this development the way it was planned or reshape it to use it for some other plan, is my understanding correct that they would have to comply with all of the provisions and statements made in the environmental impact statement or if they were going to have to go through the process again. I would just like some clarification on this. In the process that you are in now, I know there are many phases of the development, how many of them are going through the approval stage or actual building at work and how many are just being approved conceptually.

Supervisor Galligan replied that the utilities thing is Orange & Rockland obviously and hopefully they will be able upgrade the entire road. The phases, we are talking, right now, about the whole project but each phase has to go through its own process with Town Board and Planning Board approvals. The number of lots that is a very big question. Mr. Munsey stated they had concerns about the change of ownership in the findings statement, where all of these conditions must be complied with and additionally we put some language in here intended to be protection for the Town. In the future if Lost Lake sells to another entity, that entity will be required to make a full environmental assessment of any portion of the proposed future development that significantly deviates from the approved master plan. Supervisor Galligan stated that the Town Board is very concerned about that as well. Mr. Munsey continued that the first statement on water supply in the findings statement relates to offsite residential wells and impacts. I might also say that seventy two hour pump tests were conducted during high water pumping levels. The purpose in doing that continuous pumping is to emulate drought conditions. The intent is to fully exercise the wells and to really tap them out. Pump tests were done and more pump tests will need to be done at the time that they seek their water supply permits from the DEC and the DRBC. It was identified that up to eight feet of draw down occurred on offsite wells during these pump tests, our evaluation of that is "is it an impact? Yes." "Significant impact? We didn't think so." However, we put in there as a mitigation that the applicant will monitor offsite wells after the resort wells are in normal operation if authorized by the private well owners, which I think every well owner should. Any impact recorded on the offsite wells from this project will be mitigated by the applicant. The result of such offsite monitoring will be, according to the Planning Board, an application for the second through seventh phase of site plan approvals. There are seven phases of site plan approval, the intent there is, with the second phase of site plan approval they will already be operating the well for phase one for a period of time, so when they come forward to ask for the second phase of approvals they will have to evaluate any impact to offsite wells at that point in time. That is general wording, but I think it's protective wording. The SEQRA findings statement empowers the Town to demand that the applicant address any offsite water impacts. Now the lowering of the water level in the well isn't an impact unless that lowering goes below the pump setting on that well. Supervisor Galligan added that if you have gone through phase one and are applying for phase two and you have residents around it saying our wells aren't working right, the approving board would mandate that those offsite wells be taken care of before moving forward.

Mr. Feller stated that the reason he mentioned it is that they were one of the ones who knew they were testing and how many others didn't, it was continuous pumping and the people that did it were very nice, they explained everything and sent us the report. It was obviously heavy pumping but it was at a time of the year when water is in supply. If you pumped now, I'm sure you wouldn't see much of a problem. I am not being facetious, I am being protective, obviously for myself and my neighbors. I would be very curious to see if that same pumping were to occur in a dry period, which is, whatever period that is, if there were the same level of pumping at that time what that would do to the water supply. That is all about timing. One of my concerns is the wording, it doesn't say that the developer **will** do it, it says they will take action, there is no specific mitigation, there is nothing that says that the only way anyone is going to get satisfaction is to, well, is the Town going to take the developer to court if my well goes dry? Who is to prove that my well could go dry for other reasons and it may be because of Lost Lake. What I am looking at is that I certainly don't have deep pockets, like the developer, that if they choose not to live to what we have in the intent of the document, but they interpret it differently. Most of the language is interpretive. I am not casting any dispersions, please don't think that, I am just raising an issue that needs to be taken into consideration and I don't want to see the Town go through the expense of lawsuits, etc. because I would probably be suing you as well because you are the ones who approved it as a Town. I would like to see language that's pretty clear that an arbiter would look at, what wells went dry, your problem guys, fix it. Dominic Cordisco, attorney for Lost Lake stated that the document does, in fact say **will**. He further read directly from the findings statement a sentence that read "resulting from this project **will** be mitigated by the applicant". Mr. Munsey added that we tried to change all of the language that said maybe to will be as much as possible. Mr. Munsey further stated that this would probably have to go through some level of due diligence review by qualified hydro geologists to make that impact. I don't think it's necessary to say that. Wells do go dry over time, unrelated to water withdrawal and a host of other reasons and it has to be a verifiable impact. But Mr. Feller brought up some very good points. Councilman Galligan stated that Mr. Feller brought up and Mr. Scott brought this up last week, waste water in the Bushkill Creek, and I think that Mr. Feller is right that when the creek is really low, the waste water generated by the sewage plant and anything else there, is probably true. Is that a bad thing or is that water to a point that when it gets down to the Bushkill it's not harmful. Mr. Munsey stated that he is kind of dodging the question as there are multiple points. The first, is there going to be an impact, yes, there will be some level of impact. The idea is to keep that level of impact to acceptable levels, when the water levels in the stream are lower, I think the level of discharge will have to be monitored and controlled during those periods, there will be some storage of waste water at the treatment plant as well so they are not discharging high levels of flow. Councilman Galligan asked how will they control that. Mr. Munsey replied through storage. Councilman Galligan asked what if something went wrong in the plant, obviously soon or later something is going to go wrong, what if a chlorinator goes bad and that water hits the stream. What happens then? Mr. Munsey responded at some point, if they were in violation of the discharge requirements there would be an order and consent by the DEC and Delaware River Basin Commission (DRBC) issued for the project, they would require that an engineering report be done and the situation be rectified, normally it's a thirty day period. Councilman Galligan further asked if there are any safety precautions, they must check them every day to make sure everything is working. Mr. Munsey replied yes, they are usually monitored every day. I don't have all of that information off the top of my head, but periodic monitoring, daily monitoring and hourly monitoring will be done at the facility. If it doesn't work, it goes to the enforcing agencies. But it is not in the vested interest of owner of that sewer plant for that to happen. That would jeopardize any future development associated with the project. Supervisor Galligan asked that if during the permitting process, isn't all of this addressed then? Mr. Munsey replied yes. Your findings statement are really bootstrapped by the needs of the applicant, they need permits from State agencies and other regional agencies as well, that is a condition of the findings statement. The Town Board within the context of the SEQRA review is tasked with idea of evaluating the environmental impacts associated with the project. Not necessarily to the level of detail that DEC is going to go into for deeper levels of control technology. Supervisor Galligan asked if the applicant wished to make any comments. Fred Wells of Tim Miller Associates for Lost Lake stated that the discharge will be consistent with the quality and the quantity of the permit and the discharge will meet stream standards. Much of Mr. Wells following comments are inaudible at this point. Dominic Cordisco for Lost Lake stated that the DEC has two components to their permit review, one is where the DEC is looking at the impacts, potential impacts to the stream, which will dictate what level of treatment we have to provide to ensure that the discharge that comes out of the end of that pipe (inaudible) and that the stream can handle that discharge. The second aspect of their review is actually plant design and all of the backup systems to ensure that the plant can meet the discharge standards for a trout stream according to the standards.

Dan Scott – I think they are a little incorrect mostly (inaudible) during the summer. What they are going to have to do is drop another well just to keep Lost Lake full, thus dropping the stream lower, the only way that stream will be

running is if every once in awhile a hundred residents go up there and flush their toilets at the same time (inaudible). Having the capacity to hold this, is there enough capacity to hold all of July and Augusts' waste water? It's going to hurt that stream badly no matter what. When the level in that stream drops, the Double E pond and all of those other ponds within a few years, they will be able to build on everything, because they will all be dry. All of that surface water will be gone, Let's say they say only half of the development is going to be built, they now say three thousand houses, ok, now let's drop it down to fifteen hundred, out of those houses, let's just say seven hundred and fifty stay year round, you are still talking fifteen hundred new residents in a town of eight hundred, the numbers are just staggering. It doesn't seem like a practical way of doing this. Another thing is that they are making a golf community, Port Jervis Country Club almost went out because it was private, now they made it public and that is the only reason that it is solvent right now. Private golf clubs are out, and the fact that you have to drive by all of the slums in Monticello to get to this place, I sure wouldn't pay big bucks to join this thing. Back when Pataki was Governor and Cellini, who is the Supervisor in Thompson, the Hasidic community up there wanted to change their building laws, they didn't like them, so they wanted to start their own village. They got all of these signatures and lo and behold, they didn't have enough to accomplish that, but they went to the State and they were told to work it out and Thompson changed their building laws. It is my understanding they were interested in the property also. Well, down in Kiryas Joel, in Orange County, they wanted property that was an egg farm, the owners refused to sell to them. He puts it on the market, a developer comes down buys the property and after one day sells it to Kiryas Joel at a million dollars profit and that was it. I'm not saying this is that situation, I'm just saying if you go through with this PDD or whatever it's called, there is probably a three to five million dollar mark up on that without them putting a spade in the ground. Discussion was held about the types of homes being permitted to be built within the development. Mr. Scott continued saying that if you get five hundred people together, you can start a village and say "hey, Forestburgh, we don't care what you say, we can do whatever we want" that is my concern. I am not being anti-Semitic, but they tend to take everything off of the tax rolls and that I'm not big on that. Thank you, I'll save the rest for the next meeting.

Councilman Galligan stated that this corporation has an impeccable record.

Supervisor Galligan stated that previously there was question about the recreation fee of two hundred dollars per lot being paid up front or by phase or when they sign the map. That and that the permit application and site plan process will be a parallel process.

MOTION by Councilman Galligan, seconded by Councilman Sipos to accept and adopt the findings statement on the Lost Lake project. Supervisor Galligan requested a roll call vote.

Councilman Raponi voting nay,
Councilman Galligan voting aye,
Councilman Sipos voting aye,
Councilman Creegan voting aye,
Supervisor Galligan voting aye.

4 ayes – 1 nay. Motion carried.

Supervisor Galligan stated that there will be much more time for comments on the project as we move forward, and we must now distribute this document before we move on to the site plan application.

Supervisor Galligan announced that the board would like to introduce an amendment to the current Planned Development District (PDD) law. We can take no action on this, however, we must set a date for a public hearing for the introduction of Local Law # 3 of 2011 amending the PDD law. MOTION by Councilman Galligan, seconded by Councilman Creegan to hold a public hearing on Local Law # 3 of 2011 amending the PDD law on Thursday, June 2, 2011 at 7:00 p.m. in the Town Hall. Vote: 5 ayes – 0 nays. Motion carried.

Councilman Raponi requested to go on the record that he is against the adoption of this findings statement for several reasons. I have read through this many times and the more I read, the more I find. I have concerns with the open space and the water and a few other items and that is why I voted no.

MOTION by Councilman Galligan to adjourn at 8:00 p.m.

Respectfully submitted,

Evelyn M. Parks,
Deputy Town Clerk