

*******DRAFT*******

The Town of Forestburgh Town Board held their regular monthly meeting on **Thursday, December 1, 2022**, at the town hall.

Supervisor Hogue called the meeting to order at 6:00 p.m.

Roll Call – Present – Daniel S. Hogue, Jr., Supervisor
Karen Ellsweig, Councilperson
Steve Budofsky, Councilperson
Susan Parks-Landis, Councilperson
Vincent C. Galligan, Jr., Councilperson

Absent – Troy Johnstone, Esq. – Attorney for the town

Recording
Secretary – Teresa Collins, Deputy Town Clerk

Others
Present – Richard Robbins, Planning Board Chair

PUBLIC COMMENT – None

MINUTES – November 2022 Minutes

MOTION by Councilperson Budofsky, seconded by Councilperson Ellsweig
Councilperson Landis and Councilperson Galligan abstained. Vote: 3 ayes – 2 nays. Motion carried

GENERAL FUND VOUCHERS - #233-254 in the sum of \$12,018.14 as set forth in abstract #12 were audited for payment. MOTION by Councilperson Landis, seconded by Councilperson Ellsweig
Councilperson Budofsky Abstained, to pay the General Fund Vouchers. Vote: 4 ayes – 1 nay. Motion carried.

HIGHWAY FUND VOUCHERS - #132-148 in the sum of \$42,390.92 as set forth in abstract # 12 were reviewed. MOTION by Councilperson Budofsky, seconded by Councilperson Landis to accept the highway fund vouchers. Vote: 5 ayes - 0 nays. Motion carried.

ESCROW FUND VOUCHERS - in the sum of \$125 as set forth om abstract #5 were reviewed.
MOTION by Councilperson Landis, seconded by Councilperson Budofsky. Vote: 5 ayes – 0 nays.
Motion carried.

CORRESPONDENCE

Katherine Barnhart
232 Merriewold Road
Forestburgh, NY 12777

Forestburgh Town Board
332 King Road
Forestburgh, NY 12777

Dear Board Members

At your November Board meeting it was announced that the balance of the DASNY grant would be used for a horseshoe pit and for new playground equipment to be placed on the Town land surrounding Town Hall. There is already playground equipment on the property which I believe is seldom used. The age group that uses such equipment is mostly under 10 years.

The 2020 Census shows 914 Forestburgh residents. Of these 914, only six are under the age of five years and only twenty-two children are under the age of 10. On the other hand, there are 358 citizens 60 and over. The senior budget was cut from \$5000 to \$2500 in 2021 where it remains today. Adding new playground equipment (to that which is not being used) for 2 % of the population does not make sense.

There are 448 adults between the ages of 20 and 60.

Forestburgh is sadly lacking a sense of community. The children's day camp has been canceled and the pool only open for limited times during part of the summer. Perhaps it is time for Forestburgh to develop a long range plan to provide the residents with activities designed to bring our community closer together. Again, I suggest that a committee be appointed which would include residents of different ages, living in different parts of Forestburgh to develop an actual plan for community recreation in the future.

Sincerely



Katherine L. Barnhart

BLUSTEIN, SHAPIRO, FRANK & BARONE LLP

ATTORNEYS AT LAW

November 30, 2022

Via Hand Delivery

Town of Forestburgh Town Board
332 King Road
Forestburgh, NY 12777

**Re: Request of The Hartwood Club for the Town Board to Re-Open
SEQRA for the Lost Lake PDD Development
Our File No. 2022-0742**

Dear Board Members:

This law firm represents The Hartwood Club, Inc., a longstanding member of the Town of Forestburgh community. I write you this letter on behalf of the Hartwood Club to present to the Town Board their encouragement for the Town Board to re-open the SEQRA process for the Lost Lake Development for which a special PDD was created. As elaborated in more detail below, the Town Board should re-open SEQRA pursuant to the May 18, 2011 Findings Statement adopted by the Town Board which stated:

If at any time in the future, Lost Lake Resort, Inc. sells the project to another entity, the acquiring entity will be required to undertake an environmental assessment of any portion of the proposed future development that significantly deviates from the approved Master Plan proposed and evaluated in the DEIS and FEIS.

The New York Court of Appeals has stated that if a project after approval undergoes environmentally significant modifications, the lead agency for SEQRA must prepare a supplemental environmental impact statement. *See Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400, 429 (N.Y. 1986); *see also Oyster Bay Associates Ltd. Partnership v. Town Bd. of Town of Oyster Bay*, 58 A.D.3d 855, 860 (2d Dept. 2009) (decision to prepare a supplemental EIS deemed proper in light of substantial changes to project that would change its environmental impacts); *Green Earth Farms Rockland LLC v. Town of Haverstraw Planning Board*, 153 A.D.3d 823, 828 (2d Dept. 2017) (noting that where a 2009 findings statement was premised upon a particular buildout, and then the development plan changed the use to a more substantial/intensive one, the lead agency was required to take a hard look to determine if a supplemental EIS was warranted).

It is respectfully submitted that the Town Board should re-open the SEQRA review process because there are numerous environmentally significant deviations from the original development plan, including, as an engineer report found:

1. Stormwater management
2. Infrastructure design
3. Wastewater treatment
4. Water supply needs
5. Wetlands impacts
6. Transportation impacts

As you are all aware, The Hartwood Club has owned land within the Town of Forestburgh since 1893, with a principal mission to preserve the lands and waters it owns for hunting and sport fishing. The club's objective is to maintain its lands and waters as a hunting and fishing preserve and ensure that said lands and waters maintain a healthy population of fish, birds, and game. The Hartwood Club owns lands that border the Bush Kill, and within the Neversink Unique Area.

Given its mission and the fact that its lands are downstream along the Bush Kill, Eden Brook, and Neversink Unique Area, which would be the recipients of increased outflow and wastewater discharge, The Hartwood Club is substantially concerned by the ongoing development within the Lost Lake PDD, including attempts by the developer to circumvent the stringent procedures implemented by this Board a decade ago.

Indeed, as you are undoubtedly aware, the Lost Lake developer appealed to the Town Zoning Board of Appeals regarding the denial of numerous building permits for lots within the PDD, and the Zoning Board of Appeals denied that appeal. I have included with this letter a copy of that decision. The Zoning Board of Appeals found that the Developer's building plans, changes to restrictive covenants, and representations to the Town indicated that it was acting substantially out of compliance with the 2011 PDD Approval Resolution, the 2013 Design Guidelines, and the 2012 and 2013 preliminary and conditional final subdivision approvals. Decision at p. 34.

Specifically, the Zoning Board of Appeals found that the actions by the Developer in making unauthorized amendments to the 2013 Design Guidelines, in making representations about the nature of the planned build-out to convert for a seasonal/second home market to a primary residence market, etc., indicated that the Developer was seeking to build a development within the Lost Lake PDD that was materially different from the Resort Community proposed by the original developer Double Diamond and what was approved by the Town Board. Decision at p. 34-35.

The Zoning Board of Appeals noted that these material differences likely triggered the following provisions in the Town approvals:

Condition in the 2011 PDD resolution that modifications to the subdivision or site plan that substantially contradict a mitigation measure set forth in the SEQRA Findings Statement may require the Town Board to undertake further review and consideration.

Statement in the SEQRA Findings Statement that if the Lost Lake project was sold to a new developer, the new developer must undertake an environmental assessment of any portion that significantly deviates from the approved Master Plan.

Decision at p. 35.

It is clear that the Lost Lake Developer is indeed attempting to significantly divert from the project as approved by the Town Board last decade. The Zoning Board of Appeals Decision goes heavily into the details, but I also annex for reference the Amicus Petition of the Hartwood Club which summarizes the interest of The Hartwood Club and provides legal support for how the Lost Lake Developers plans trigger a need to re-open SEQRA.

Said Petition and its Exhibit go into detail, but, to state here briefly: The planned changes to the Lost Lake Development, as indicated by the building permit plans, would result in substantial changes to outflow into the Bush Kill and Eden Brook, and such increases in wastewater discharge would negatively affect the viability of the Bush Kill and Eden Brook as trout streams. This is just one example of the environmental effects of a far larger permanent population in the Lost Lake Development than was proposed and represented to the Town.

The Exhibit to our Petition, a report from Sterling Environmental P.C., states that the removal of the golf course, as another example, would change runoff calculations for the development. Exhibit A to Petition p. 6. Similarly, given the apparent change from a seasonal/second-home resort community to a more permanent first-home community, the water demands of the development would increase heavily, which would cause groundwater effects for neighboring properties, including Hartwood. Id.

The engineer also stated more specifically regarding the local waterways

The Bush Kill is a head water trout stream that flows through a portion of the Neversink River Unique Area, a highly regarded fishing location and ecologically rich and unique natural area. If the new project will increase wastewater production, the applicant needs to demonstrate that no degradation of water quality at the downstream discharge locations will occur due to increased pollutant loading or thermal effects

Exhibit A to Petition p. 7.

As previously stated, the Hartwood Club owns lands in the Neversink Unique Area, and along the Bush Kill. Negative effects to both waterways will negatively affect the Hartwood Club's ability to utilize those waterways for its mission.

It's the understanding of The Hartwood Club that the Developers plans to change the intensity of the buildout, including larger residential homes, would result in a need to revisit the SWPPP; there would be increased demands upon local water supply; there would be increased demands upon public schools and traffic; and increased sewage concerns. It is also Hartwood Club's understanding that the New York Department of Environmental Conservation has alerted the Lost Lake Developer of a number of concerns and changes related to the project.

In short, the number of apparent changes to the Lost Lake Development, combined with the passage of time, warrants the Town Board to re-open SEQRA to make sure that the development is proceeding as originally approved, and if not, to take appropriate action. *See E.*

Dean Leonard v. Planning Bd. of Town of Union Vale, 136 A.D.3d 868, 871-72 (2d Dept. 2016) (noting changes to the project required the Planning Board to assess whether prior environmental findings should be amended or rescinded); *see also Many v. Village of Sharon Springs Bd. of Trustees*, 218 A.D.2d 845 (3d Dept. 1995) (“A direct impact on one’s drinking water supply is a concern that is plainly within the zone of interest that SEQRA is designed to protect.”); *Doremus v. Town of Oyster Bay*, 274 A.D.2d 390, 394 (2d Dept. 2000) (noting supplemental EIS was required where 10 years had passed since original FEIS was submitted and the nature of the development’s impacts on groundwater and open space conservation changed)

Given that the Lost Lake Developer is hard at work building out roads, pouring concrete, and taking other actions with respect to infrastructure, it is imperative for the Town Board to reopen SEQRA sooner rather than later, to ensure the project is proceeding as approved.

Thank you for your attention to this matter.

Respectfully yours,
BLUSTEIN, SHAPIRO, FRANK &
BARONE, LLP

B M Newman
Brian M. Newman, Esq.

UNFINISHED BUSINESS

DASNY GRANT – As per Councilperson Ellsweig we are waiting for the contract to be signed by the state.

NEW BUSINESS

ZBA Ruling on Resort of Lost Lake Appeal - A summary of the Appeal

(6) Based on the above findings and determinations, the Building Inspector properly considered the Resort Project approvals as a basis for his determination to deny LLH's applications because said applications were subject to conformance with the 2011 PDD Approval Resolution (R. 7) including Condition 2 requiring "[t]hat the Applicant shall comply with the mitigation measures set forth in the SEQRA Findings Statement" (R. 7 at 8), which contains applicable and enforceable bulk standards, land use regulations, construction and design specifications, and mitigation measures referenced therein and incorporated thereto by referenced appendices, including the 2013 Design Guidelines (R. 3c Appx. E2) and 2013 CC&R (R. 10); as well as the 2012 and 2013 preliminary and conditional final site plan and subdivision approvals.

(7) that the Building Inspector's determination that the Lot 303 application was not consistent with the Resort Project approvals is based on and sufficiently supported by the record as discussed in this Decision.

(8) that this Board's review, under New York Town Law § 267-b (1) and after a well-developed record, finds substantial evidence in the record (as discussed above) that LLH has undertaken a course of action that is inconsistent with and materially different from the terms and conditions set forth and granted to LLH's predecessor Double Diamond, including but not limited to:

- (a) the unauthorized unilateral and substantive amendments to the 2013 Design Guidelines (R. 3c Appx. E2) and 2013 CC&R (R. 10) appended to the SEQRA Findings Statement, which serves, in part as the PDD zoning regulations and Project mitigation requirements, and have the force of law under PDD §§ 85-17 (B), 85-19 [B] [2] [i] (R. 6);
 - (b) that LLH's amendments to the 2013 Design Guidelines and 2013 CC&R, LLH's written representations, and witness testimony, are sufficient evidence of LLH's intent to construct a housing development that is materially different from the Resort Project proposed by Double Diamond and reviewed and approved by the Town. These modifications include:
 - i. a change to the proposed 2,500+ single family residential lots to be constructed by individual lot owners in strict accordance with the 2013 Design Guidelines (R. 3c Appx. E2) and 2013 CC&R (R. 10) to now designed and built by developer in accordance with its own standards;
 - ii. a change to the primary target for the Project, which was material to the PDD density bonuses that were granted, in part, on the representation and assumption that the homes would be primarily marketed to the seasonal / second home market with an expected demographic of on 47% full time residents; and a change to the target market would require, at minimum, reconsideration as to whether such 278% density bonus must be readjusted if LLH intends to construct model homes and sell to a primarily first or single home market..
- (9) that this Board's finding that LLH's intended development is materially different from the approved Resort Project proposed, and inconsistent with the approval terms, conditions and restrictions granted to LLH's predecessor Double Diamond trigger the following:
- (a) 2011 PDD condition that "[m]odifications to any subdivision plat or site plan for the Lost Lake Resort that (1) exceed the overall limits of this PDD approval, (2) exceed the approved overall density, or (3) substantially contradict a mitigation measure set forth in the SEQRA Findings Statement may require a further review or consideration from the Town Board (R. 7 at 9-10).
 - (b) SEQRA Findings Statement: "If at any time in the future, Lost Lake Resort, Inc. sells the project to another entity, the acquiring entity will be required to undertake an environmental assessment of any portion of the proposed future development that significantly deviates from the approved Master Plan proposed and evaluated in the DEIS and FEIS" (R. 5 FS at 6).

Any issue raised by Applicant and not addressed expressly herein shall be deemed denied. This shall constitute the final determination of the Board.

Attorney for planning board – Looking into a new attorney

Year end meeting Date and Time - December 19, 2022, at 6PM.

Zoning rewrite –

Forestburgh Zoning Committee

December 1, 2022

Dear Mr Supervisor, and Town Board Members;

Forestburgh first enacted a zoning code in 1977. While there have been additions and modifications over the last 45 years, it essentially remains as our zoning code today, hopelessly outdated and inadequate. In 2017 our volunteer committee, comprised of diverse Forestburgh residents undertook to create a modern Zoning code specifically addressing Forestburgh's character, history, needs and vision. Several of us had served on the committee that drafted the update to Forestburgh's Comprehensive Plan, which was adopted in 2017. Several of us also participated in drafting our new Subdivision Law, which was adopted in 2019.

We have been meeting once or twice a month since 2017 - initially in person, but then virtually, as a result of the COVID pandemic. Although not required to, in the interests of transparency, our meetings have been open to the public to attend – whether in person or virtually. During our tenure, we have received invaluable professional assistance from three individuals: Jacqueline Ricciani, esq. – who has represented Forestburgh's Planning Board and ZBA, as well as numerous other communities in Sullivan County; Glen Gabbard, our Code Enforcement Officer, who also serves in that role in other Sullivan County communities; and Freda Eisenberg, Sullivan County's Commissioner of Planning and Community Development.

There were several basic premises underlying our effort. First, we wanted our Zoning Code to be clearly defined and easily understood. Second, we wanted to develop a code which specifically met the needs of Forestburgh as it stands today and its needs and parameters as it grows in the future. We recognize that our existing tax base needs help – and we have proposed expanding existing commercial districts and adding a new one. We have also modified, to a small degree, our two residential districts.

We have also strived in this Code to clearly define the processes and procedures that must be followed in developing property in Forestburgh – whether residential or commercial. We have also proposed Forestburgh-centric regulations and standards for commercial development here.

We submit our proposed Forestburgh Zoning Code for your consideration. We stand ready to respond to any questions you may have regarding this proposal.

Respectfully Submitted,

Katherine Barnhart and Steve Budofsky, Chairpersons
Anthony Cardoso, Al Devlin, Richard Robbins, Dan Scott, Derek Weirdsma, members

**Zoning workshop review date will 12/10/2022 at 10 A.M on the proposal draft copy of zoning code.
Zoning code draft copy will be place on the website to be review by everyone.**

1241 Sackett Lk Rd. (unsafe building demolition) - No action needs to be taking, property own is cleaning up property.

Code Enforcer Glen Gabbard medical leave.

Supervisor Dan Hogue, motion to appoint Kaitlin Madison deputy code enforcement officer for the town of Forestburgh to serve in the absence of Glen.

MOTION by Supervisor Hogue, seconded by Councilperson Budofsky

Vote: 5 ayes – 0 nays. Motion carried

REPORTS – BOARD MEMBER COMMENTS –

**Town of Forestburgh Highway Dept.
HIGHWAY REPORT FOR December
Highway Superintendent, Joseph Ruggeri**

Dec,1 2022

Members of the Town Board

Winter HOURS

The winter schedule will resume on sept 6th, 2022. The hours will be the usual five 8-hour days from 7:00 am to 3:30 pm, Monday through Friday.

Winter

Winter will be upon us before you know it , sand will be outside the town barn for the Towns residents as a reminder please don't plow your snow in the road if so clean it up, also your garbage cans keep them off the road so the plow doesn't hit them.

Have a Merry Christmas and Happy New Year

Any question for the Highway please call

Thank you



**Joseph Ruggeri
Highway Superintendent**

VACANCIES – We are currently still looking for a ZBA Secretary.

Planning Board – Next meeting will be on 12/20/2022

EXECUTIVE SESSION – MOTION by Supervisor Hogue, to enter into executive session for the purpose of Union contract negotiations at 6.45 P.M.

No action taken. Dan Hogue will reach out to union with a counteroffer of 3%, 2%, 2%, 2% with no other modifications.

Motion made by Susie Landis to come out of executive session at 7:50 P.M.

ADJOURNMENT – MOTION by Karen Ellsweig to adjourn at 7:55 P.M.

Respectfully submitted,

Teresa Collins,
Deputy Town Clerk