

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

The Town of Forestburgh Town Board held their regular monthly meeting on **Thursday, March 30, 2023**, 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 – March 2, 2023, Regular meeting, and October 2022 Budget Workshop and Tax Cap override public hearing Minutes.**

MOTION by Councilperson Landis, seconded by Councilperson Budofsky

Vote: 5 ayes – 0 nay. Motion carried.

**GENERAL FUND VOUCHERS** - #56-81 in the sum of \$12,512.77 as set forth in abstract #4 were audited for payment. MOTION by Councilperson Budofsky, seconded by Councilperson Ellsweig, to pay the General Fund Vouchers. Vote: 5 ayes – 0 nay. Motion carried.

**HIGHWAY FUND VOUCHERS** - #22-32 in the sum of \$32,736.06 as set forth in abstract # 4 were reviewed. MOTION by Councilperson Landis, seconded by Councilperson Budofsky to accept the highway fund vouchers. Vote: 5 ayes - 0 nays. Motion carried.

**ESCROW FUND VOUCHERS** – None

**CORRESPONDENCE**

## FORESTBURGH FIRE DISTRICT

2539 State Route 42  
FORESTBURGH, NEW YORK 12777  
Ph# (845) 794-7899 Fax# (845) 794- 8031  
[www.ffdcommissioners@yahoo.com](mailto:www.ffdcommissioners@yahoo.com)

James E. Steinberg, Sr. Chairman  
Alan Kesten, Vice Chairman  
Angie Laufersweiler, Treas. / Sec.

March 28, 2023

Supervisor Dan Hogue  
Town of Forestburgh Supervisor  
332 King Rd.  
Forestburgh, NY 12777

Dear: Supervisor Hogue and Town Board Members,

This letter is to call your attention, that Brush Fire Season is Rapidly Approaching US, with the poor condition of four roads, Tannery Rd. King Rd. Davis Rd. Carpenter Rd., with over hanging Brush, Limbs, Ruts and Ditching which is making it impossible for our larger Fire Apparatus to get thru from either side. As we discussed at the September, 2022 Town Board meeting. As of this date nothing has been done to correct the problem.

With the current conditions of above-mentioned roads, this puts public safety at risk.

All this could be taken care of with maintenance and give the TAXPAYERS what they deserve.

James E Steinberg Sr.  
  
Chairman Board of Fire Commissioners  
Forestburgh Fire District

Cc. Zack Petrowsky : Chief FFD

## UNFINISHED BUSINESS

### Updated Zoning regulations

It was agreed by the town board that Councilperson Galligan and Councilperson Ellsweig will review the solar zoning regarding the state law versus local law and will return their finding on the next town board meeting.

**§ 180-29. Solar Energy Systems** of the proposed zoning Code with proposed changes to sections

a. **§ 180-29 D [5] (a) & O [6] (f) - adding an exception to the 3 month lack of use constituting abandonment for the circumstance that the lack of use is do to a problem caused by the interconnection utility.** {The logic for this proposed change is that where, for example, a bad storm (like Irene or Sandy) or some other massively destructive event damages the utility's infrastructure preventing it from accepting electricity produced by a large scale solar facility for a period in excess of 3 months, the owner of the facility should not be deemed to have abandoned the facility as its lack of operation is not their fault or decision. }

b. **§ 180-29 O [3] (a) removing the 10 acre parcel size limitation, while retaining the 200 ft. setback requirements, and reducing the setback requirement for the inverter to 200 ft from 500.** {The logic for this proposed change is that in today's market place, the amount of energy that can be produced on a parcel 10 acres, with the setbacks required (for aesthetic screening and safety) makes a project completely commercially unviable. If we want to have commercial-scale solar generation in Forestburgh, and have it with setbacks of this scale, as a very practical matter a 10 acre minimum is a deal breaker. No Solar developer is going to make an investment here where they can make the same investment elsewhere and not have their production limited in this fashion. Similarly, as the cost of running the cable from the inverter to the interconnection point is extremely expensive (~\$1,000,000.00 a mile), adding an additional 300 feet is a significant expense and does not, in any real sense, add to the protection of safety, health and welfare of the community. The previously discussed EMF concern to neighbors has not ben demonstrated - in other communities - to be a real issue, given the exponential dissipation of EMF energy over distance: 200 feet is more than sufficient at this level of potential EMF generation to provide for protection to the neighbors of potential EMF impact. }

c. **§ 180-29 O [3] (b) loosening up the 12 foot height maximum height for ground mounted collectors from 12 feet to an average of 12 feet.** {the logic of this proposed change is that where a dip in topography requires a stanchion to be a bit taller than those near by - to achieve a uniformity of height of the collectors themselves, and given that most collectors are just about 12 feet to begin with - gaining uniformity via an averaging method makes sense. It would be silly to

require a developer to apply for a variance for a limited number of collectors that might exceed the individualized 12 foot limitation.}

**d. § 180-29 O [8] (b) providing that the financial security provided to Forestburgh is in the form of a surety bond.** {The logic for this proposed change is that the obligations imposed on a town for the management and accounting associated with a security fund are significant. When the code was adopted in 2018, this was the language of the model NYSERDA code. Their current model code has refined the form of security to specify a surety bond, in favor of the town. It provides the same financial protection but is much easier to administer - both for the town, and also for the potential developer.}

**While the language of the proposed zoning code regarding the applicability of Chapter 153 of the Tax code remains the same, We have to repeal a portion of that chapter 153: specifically, § 153-36 (D & E).** {the logic of this repealer is several fold. First, the current section § 153-36 (D) requires a calculation that is absolutely impossible to perform. Since the adoption of this section in 2018, the state has enacted, in 2021 RPTL § 575-b that applies specifically to Solar and wind Generation Systems. This section requires, among many other things, a calculation to be performed AFTER the project is completed and a calculation of the then current value of actually generated electricity based on a whole host of factors specific to the local electricity grid. § 153-36 (D) states that a PILOT cannot be less than 90% of the amount that would be due but for the exemption and § 153-36 (E) requires that this must be determined and agreed to before construction of the facility can be approved by the Planning Board. RPTL § 575-b makes compliance with § 153-36 (D) IMPOSSIBLE. Any law that is impossible to comply with is void, on its face. It must be repealed. We cannot, however, repeal the requirement for a PILOT, however, as we have elected to adopt RPTL 487's 15 year exemption from real estate tax for value added by solar and wind installations. The balance of section 153, requiring a PILOT for large scale Solar and wind facilities must be left in place. The Sullivan County IDA has adopted a UTEP specifically for Solar and Wind generation, which has been adopted by all of our Sullivan County neighbors that host commercial Solar and wind generating facilities. We should too - in my humble opinion. In addition, again as a practical matter, no developer is going to agree to develop a parcel in Forestburgh if their PILOT obligations are significantly greater than what it will cost them elsewhere.

2. Also attached is an updated, clean, complete version of the proposed zoning code including the solar proposal- now version 7 - which, following Troy's review and the boards agreeing would seem to me to be ready for adoption as Local law 1 - and include, in addition, the repeal of § 153-36 (D) and § 153-36 (E) of the Forestburgh Code.

DELAWARE RIVER SOLAR, LLC  
P.O. Box 384  
Callicoon, New York 12723

March 15, 2023

Town of Forestburgh  
332 King Road  
Forestburgh, New York 12777  
Attn: Daniel S. Hogue, Jr., Supervisor

Dear Supervisor Hogue:

Delaware River Solar, LLC ("DRS") is one of New York's leading community solar developers. DRS has developed, built or manages over fifty (50) solar energy projects in New York. In Sullivan County, fourteen (14) DRS projects are interconnected to the New York State Electric and Gas ("NYSEG") electric grid. There are three (3) projects under construction and others in various stages of investigation.

DRS is currently building a project in the Town of Mamakating that will interconnect with the Orange and Rockland Utilities ("O&R") electric grid. DRS is interested in developing a project in Forestburgh. The purpose of this letter is to request that certain amendments be made to Forestburgh Code Chapter 85-44 ("Forestburgh Solar Law") to make a Forestburgh project viable.

Solar projects are only viable where the existing circuits are capable of accepting locally generated electricity. In Sullivan County, circuits with capacity to accept locally generated electricity generally fall into two (2) categories. First, circuits and substations that served a large electric draw that is no longer on the circuit. For example, DRS has built two (2) projects in the Town of Thompson interconnected with the circuit that previously provided electric power to the Laurels Hotel. The second category of viable circuits is where a substation or circuit has been recently rebuilt. Substations in Western Sullivan County were destroyed by flooding caused by Irene and Lee. These were rebuilt under various FEMA programs that allowed NYSEG to source Federal dollars. There are six (6) solar projects in the Town of Delaware, all on circuits connected to recently rebuilt substations. In Forestburgh, the Mongaup Falls substation has recently upgraded and that circuit, at least theoretically, is viable to interconnect locally generated electricity. The information O&R is required to publicly disclose shows 5.384MW ac of available capacity in the Route 42 13.2 kV feeder circuit that is fed by the Mongaup Falls substation. At present, according to O&R records, there is no other three-phase circuit in Forestburgh.

DRS has undertaken a search to find a parcel of land on the 13.2kV circuit that the O&R records indicates to have open capacity. A parcel meeting all known requirements to technically support a 5MW ac project was identified on Route 42. The parcel identified is over two hundred (200) acres in size. The parcel is generally flat, at least on that part of the parcel that could be a project site. The parcel is heavily wooded with a mix of Eastern White Pine – Northern Hardwood tree species. A project could be built on this parcel with no material visibility from any road or any other property.

The Forestburgh Solar Law references a section of the Forestburgh Code dealing with Taxation. This tax provision is unworkable. This provision requires a PILOT Agreement with a payment of “90% of the amount that would be due but for exemption under Real Property Tax Law (“RPTL”) §487(2)”. It references ninety (90%) percent of otherwise payable taxes that cannot be computed when contemplated by the Forestburgh Code. Section 153-6 provides notice to the planning board to not grant approval if “the parties are unable to agree on the terms and conditions of a PILOT Agreement”. §575-b of the RPTL was adopted in 2021 (after the effective date of the Forestburgh Solar Law). The purpose of §575-b is to bring some rationality to the assessed value of New York renewable energy projects. The assessed value per mega-watt (“MW ac”) of projects studied in New York State ranged from zero per MW ac to \$6,000,000 MW ac. §575-b requires the assessed value of a renewable energy project to be based on the discounted cash flow (“DCF”) valuation method. The valuation model developed by the New York State Department of Taxation and Finance (“DTF”) requires information inputs that are not known until the project is interconnected to the NY ISO grid. If you can’t compute assessed value, you cannot compute taxes, so the ninety (90%) percent applies to otherwise payable taxes that cannot be determined during planning board review.

The assessed value of solar projects in two Orange County Towns that share an assessor with Forestburgh have been challenged by project owners. The valuation of these projects, when a tax certiorari proceeding is commenced, involves costly appraisals. This can be avoided.

The County of Sullivan Industrial Development Agency (“IDA”) developed and adopted a Uniform Tax Exemption Policy (“UTEP”) for Community Distributed Generation (“CDG”) which would require a PILOT payment made annually to IDA to be disbursed to the County, Town and School (collectively, the “Taxing Jurisdictions”). Fifteen (15) projects are making PILOT payments under the IDA CDG UTEP and no town with a solar project has voiced any concerns or objections.

The Mamakating project under construction will make a PILOT payment of \$8,500 MW ac when interconnected. A 5MW ac project in Forestburgh (assuming interconnection under current NYSERDA programs) would make a PILOT payment of \$42,500/year which would be ratably disbursed by the IDA to the Taxing Jurisdictions.

The Minimum Design Standards under the Forestburgh Solar Law includes limitations and requirements making it impossible to build a project. The local law at 85.44 H.(3)(a) limits the size of a parcel on which a solar energy system is located to ten (10) acres. 85.44 H(3)(a) requires a setback of two hundred (200’) feet from any property line and lot coverage of not to exceed forty (40%) percent. When you apply a forty (40%) percent lot coverage limitation and two hundred (200’) feet setbacks to a ten (10) acre parcel, it leaves no viable project area. Further, the fixed cost of an inverter, transformer and other interconnection apparatus make a system built on ten (10) acres impossible to justify financially. The current PSC and NYSERDA regulations allow a CDG project of up to 5MW ac. The larger the generation capacity of a project, the more generation capacity in place to absorb fixed costs. Assuming the circuit capacity can accept the power, DRS would seek to develop a 5MW ac project on the subject site. A 5MW ac project with two hundred (200’) foot setbacks required from all property lines would require a project site of approximately fifty (50) acres.

A project on the site under investigation can be designed to respect a two hundred (200’)-foot setback from all property lines. A project on the site under investigation can meet the forty (40%) percent lot coverage limitation.

The project if constructed would interconnect at an existing power pole on 13.2kV circuit on Route 42. Route 42 is a property line. The requirement to locate the inverter (transformer and other interconnection apparatus are not mentioned in the solar law) further than five hundred (500') feet from Route 42 has no advantage and simply adds project cost. Ideally, the inverter should be located as close to the point of interconnection as possible while respecting the required setbacks. In this case, not less than two hundred (200') feet from the Route 42 property line.

Substantially all current projects are built on racking that rotates so the panels capture maximum sunlight. These are called "trackers" vs. prior fixed position panel technology. The Forestburgh Solar Law limits ground-mounted solar energy systems to twelve (12') feet in height. [see 85-44 D.(3)(b)]. Twelve (12') feet is a maximum height that can be respected if this is the average height of panels above ground level.

The section on Abandonment and Decommissioning at 85-44(5) is mostly unnecessary. This section of the Forestburgh Solar Law follows closely to the recommended model local law suggested by NYSERDA at the time of adoption. If a project is built in Forestburgh, DRS would submit a Decommissioning Plan to the Town. Once approved by the Town, the project owner would provide the Town with a Decommissioning Bond as security for compliance with the Decommissioning Plan. The Decommissioning Bond would be in an amount approved by the Town Board, in form approved by the Town Attorney, cover the entire life of the project, and be posted prior to issuance of a building permit.

DRS is willing to address the issues outlined herein, answer any questions, or respond to any concerns at a Town Board meeting or work session. With the currently underway zoning law re-write, this is the ideal time for the Town to decide if the Town wants renewable energy built in the Town and if the project described above which would require PILOT revenue to be paid to the Town while using no Town services is attractive to the Town.

Very truly yours,

Delaware River Solar, LLC

*Richard D. Winter*

By: Richard D. Winter, Chief Executive Officer

RDW/sj

cc: Walter F. Garigliano, Esq.

Henry Anreder

Richard Robbins, Planning Board Chairman

## NEW BUSINESS

### GML sec. 239 exemption agreement with Sullivan County

#### GENERAL MUNICIPAL LAW SECTION 239 REFERRAL EXEMPTION AGREEMENT BETWEEN COUNTY OF SULLIVAN AND FORESTBURGH

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**AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_, 2023, consists of the following terms and conditions:

#### **WITNESSETH:**

WHEREAS, General Municipal Law Sections 239-l, m and n (GML 239) require that certain planning and zoning actions be referred to the Sullivan County Division of Planning before any action is taken by the municipality having jurisdiction; and

WHEREAS, the General Municipal Law Section 239 further requires the County to assess all such implications as to whether the requested action would have a “countywide” or “inter-community” impact and to comment on same; and

WHEREAS, the current referral process results in the ongoing processing and review of applications from Sullivan County’s 21 municipalities, a portion of which have neither countywide or inter-community impact: and

WHEREAS, General Municipal Law, Section 239-m-3-c, authorizes the County to enter into agreements with local municipalities in order to exempt actions deemed to be of strictly local concern from mandatory referral; and

WHEREAS, in an effort to improve governmental efficiency, Sullivan County and \_\_\_\_\_ propose to eliminate the necessity of the County’s review and comment on such local actions; and

WHEREAS, it is hereby mutually agreed by and between the parties hereto as follows:

1. **PARTIES:** This Agreement is by and between the County of Sullivan, a municipal corporation of the State of New York with its offices at the Sullivan County Government Center, 100 North Street, Monticello, New York 12701, hereinafter, designated as "County" and the Town of Forestburgh with an address of 332 King Road, Forestburgh, NY, hereinafter designated as “Municipality”.

2. **TERM OF AGREEMENT:** This agreement shall be effective \_\_\_\_\_, 2023 through \_\_\_\_\_, 2024, unless otherwise terminated as set forth herein. This Agreement shall renew annually, for up to four (4) additional years, unless either party provides written notice to the other at least thirty (30) days before the end of any term.

3. **EXEMPTIONS:** The actions attached in Schedule A shall be eliminated from the General Municipal Law Section 239 referral and review process, pursuant to Resolution No. \_\_\_\_23.



4. **REFERRALS NOT TO BE ELIMINATED:** The following actions shall not be eliminated from the referral and review process:

1. a) Land use plans including comprehensive plans, master plans, and neighborhood, district or corridor plans;
2. b) Amendments to the municipal zoning code or zoning district map;
- c) Other proposed local laws and/or authorizations adopted pursuant to zoning (wetlands, historic preservation, affordable housing, moratoria, etc.);
- d) Site plan review, except for the exemptions detailed in item 3 above;
- e) any action that constitutes a Type 1 action under SEQRA; and
- f) Special permits, use variances, and area variances for all non-residential uses and multi-family developments.

5. **REVIEW REQUEST:** The Sullivan County Division of Planning reserves the right to request a review and recommendation on any of the aforementioned exempt actions, if in their opinion such review and recommendation are warranted due to the specific circumstances of the requested action.

6. **TERMINATION:** Either party may terminate this Agreement upon thirty days prior written notice to the other.

7. **MODIFICATION:** This Agreement may be modified only by a writing signed by both parties. 8.

**AUTHORIZATION:** This Agreement is authorized by Resolution No. \_\_\_\_-19, adopted by the

Sullivan County Legislature on \_\_\_\_\_, 2023.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date noted above.  
[MUNICIPALITY]

\_\_\_\_\_ By: [Supervisor/Mayor]

COUNTY OF SULLIVAN

\_\_\_\_\_ By: Joshua Potosek, County Manager

APPROVED AS TO FORM

\_\_\_\_\_ By: Assistant County Attorney

Motion: by Supervisor Hogue to accept the agreement between the County of Sullivan and the Town of Forestburgh, Seconded by Councilperson Landis. Vote: 5 ayes – 0 nays. Motion carried.

## **Municipal Cleanup agreement**

Waiting for the county to send the town the amount of tonnage that will be allotted to the town and the dates.

Motion: by Councilperson Ellsweig to approve municipal cleanup agreement, Seconded by Councilperson Landis, Vote: 5 ayes – 0 nays. Motion carried.

## **Lost Lake Update**

On November 15 – ZBA issued a 36-page decision affirming building inspector denial for permits. Also finding that the developers own design standards are materially different than what was approved and that the original design standards were incorporated into the SEQRA Findings Statement. On February 2<sup>nd</sup> the Town Board unanimously passed a resolution finding that the developers changes and modifications to the resort project as fully outlined in the ZBA decision, constitutes “Changes in the Project” and therefore requires the developer to prepare a supplemental EIS to attain such approvals for such modifications as required by PDD law. The resolution also suspends all town issued permits and approvals including the 2011 PDD approval and 2013 conditional final approval. It also suspended any construction or land disturbance activities until the developer submits its proposed changes to the town board and undergo additional SEQRA review and obtain necessary and appropriate modifications to terms and conditions of project approvals. The developer has not submitted anything to address this to date.

## **Mowing the Memorial Triangle**

Jim Steinberg has volunteered to mow the memorial triangle on St. Joseph Hill.

## **REPORTS – BOARD MEMBER COMMENTS**

**VACANCIES** – We are currently still looking for a ZBA Secretary and Lifeguards

**Planning Board** – Chairman Richard Robbins, there will be a regular meeting in April and as of yet no additional applications have been submitted.

**Fire Department** – Jim Steinberg, would like the town board to reinstate the local law to State of NY for 911 signs.

Pancake breakfast was changed from May 7<sup>th</sup> to April 23<sup>rd</sup> to 7A.M to 11A.M. Adult \$13 and Children \$8. Corned beef dinner was a great hit sold 242 dinners.  
Burn Ban March 16<sup>th</sup> to May 14<sup>th</sup>.

## **Town of Forestburgh Highway Department**

### **April 2023 Highway Report**

#### **Members of the Board**

##### **Spring**

Let's see if spring has finally arrived, we will be checking roads for repair  
Asphalt plants will be opening between the 10<sup>th</sup> of April and the 15<sup>th</sup> April  
The seasonal roads will be opening up on the 30<sup>th</sup> of April it will be posted  
Will be doing maintenance on the equipment, plows coming off  
Spring equipment such as mowers, leaf blowers etc. to get ready for the season

##### **Salt**

Confirmed the salt tonnage for 2023-2024 through Office of General Services

##### **Spring Clean -up**

Waiting for the county to send the town the amount of tonnage that will be allotted  
to the town and the dates for clean-up will be sent out soon

##### **Burns Road**

Burns Road will be open by the end of next week

Any question you can call the Hwy Dept at (845)794-8069

Thank you



Joseph Ruggeri  
Highway Superintendent

Town of Forestburgh

Notice of Seasonal and Closed Roads

Notice is hereby given that the Town of Forestburgh Highway Department following roads are seasonal and or closed as of 1<sup>st</sup> November – 30 April 2023 limited use and minimum maintenance

1-Eden Road the dirt section

2-King Road from Town Hall to Plank Road

3 Tannery Road from Rt 42 to Sackett Lake Road

4 Carpenter Road from Rt 42 to County Rt 48

5 Whitehead Road off of Hartwood Club Road going into Town of Deerpark

6 Burns Road Hill closed for Winter. Will reopen between 1<sup>st</sup> of April and the 15<sup>th</sup> of April

By Notice of the Forestburgh Highway Department

1401 Sackett Lake Road

Forestburgh, NY 12777

**EXECUTIVE SESSION** – MOTION by Supervisor Hogue, to enter into executive session, for the purpose of Union contract and Litigation and would like to invite Richard Robbins Planning Board Chair and Teresa Collins Deputy Town Clerk at 6.35 P.M.

**MOTION** by Supervisor Hogue to leave executive, reconvene into regular session Second by Councilperson Landis at 8.06P.M.

**MOTION** by Councilperson Ellsweig to adopt a resolution for Adopting SEQRA Positive Declaration and Requiring the Preparation of a Supplemental Environmental Impact Statement for the Lost Lake Resort Property Located on Cold Spring Road, Town of Forestburgh., seconded by Councilperson Budofsky.  
Vote: 5 ayes - 0 nays. Motion carried.

# **Town of Forestburgh**

## **RESOLUTION**

### **Adopting SEQRA Positive Declaration and Requiring the Preparation of a Supplemental Environmental Impact Statement for the Lost Lake Resort Property Located on Cold Spring Road, Town of Forestburgh**

**Dated: March 30, 2023**

At a meeting of the Town Board of the Town of Forestburgh, Sullivan County, New York, held at the Town Hall, 332 King Road, Forestburgh, N.Y., on the 30th day of March, 2023:

Councilperson Karen Ellsweig offered the following resolution and moved for its adoption:

WHEREAS, by Resolution dated February 2, 2023 (incorporated herein), the Town Board adopted the findings and conclusions set forth in a November 15, 2022 Town Zoning Board of Appeals (“ZBA”) ruling and decision on the Lost Lake Holdings, LLC and Mishconos Mazah, LLC (collectively “Developer”) appeal of the denial its building permit applications;

WHEREAS, in the February 2, 2023 Resolution, the Town Board, as the State Environmental Quality Review Act (“SEQRA”) Lead Agency, found that Developer’s changes and modifications to the Resort Project as fully detailed in the ZBA’s November 15, 2022 Decision and undertaken by Developers constituted significant and material “changes in the project” or “a change in the circumstance” as those terms are used in 6 NYCRR § 617.9 (a) (7);

WHEREAS, a notice of violation, stop work order, and compliance order requiring, in part, that Developers cease all construction activities and undergo additional project review was issued on February 1, 2023;

WHEREAS, Developers have elected to ignore the February 1, 2023 compliance order and have not undergone additional project review;

WHEREAS, Developers have already undertaken a course of action, including unilateral and unauthorized amendments to mitigation conditions set forth in the 2011 PDD Approval and 2013 Conditional Final Approval, which the Town Board finds to be material “changes in the project” under 6 NYCRR § 617.9 (a) (7);

WHEREAS, these and other project changes detailed in the November 15, ZBA decision have the potential for one or more significant adverse environmental impacts.

**NOW THEREFORE BE IT RESOLVED as follows:**

1. The Town Board was and remains the Lead Agency under SEQRA;
2. The Town Board finds that Developer's changes and modifications to the Resort Project as fully detailed in the ZBA's November 15, 2022 Decision constitutes "changes in the project" or "a change in the circumstance" as those terms are used in 6 NYCRR § 617.9 (a) (7) which has the potential for one or more significant adverse environmental impacts that were either not addressed or inadequately addressed under the 2010 Draft Environmental Impact Statement ("DEIS") and 2011 Final Environmental Impact Statement ("FEIS"), nor contemplated in the SEQRA Findings Statement adopted in 2011.
3. The Town Board adopts the SEQRA Positive Declaration (attached hereto) and the contents and conclusions therein regarding the potential environmental impacts if the Resort Project is authorized and approved to proceed in accordance with Developer's project changes and modifications.
4. As a result of adopting the SEQRA Positive Declaration, public scoping and the preparation of a Supplemental Environmental Impact Statement ("SEIS") is required.
5. Scoping shall be conducted in accordance with 6 NYCRR §617.8 based on a draft Scoping Document for preparation of a SEIS to be prepared and filed with the Town by Developer.
6. A duly noticed and advertised scoping session will be held by the Town Board on a date and time to be determined after Developer has filed a Draft Scoping Document.
7. The Town Supervisor or his designee shall provide notice and a copy of this Resolution to Developer and all interested and involved parties identified in the Resort Project DEIS and shall make the Resolution accessible on the Town's website.
8. Town Supervisor or his designee is authorized to take such other and further action as might be necessary to meet the Town Board's obligations as Lead Agency or as otherwise might be appropriate in its role as Lead Agency.

On a motion by Councilperson Karen Ellsweig, seconded by Councilperson Susan Landis, the resolution was adopted on a roll call vote, the results which follow:

Supervisor Daniel S. Hogue, Jr.	Aye
Councilmember Steven Budofsky	Aye
Councilmember Karen Ellsweig	Aye
Councilmember Vincent W. Galligan	Aye
Councilmember Susan Parks-Landis	Aye

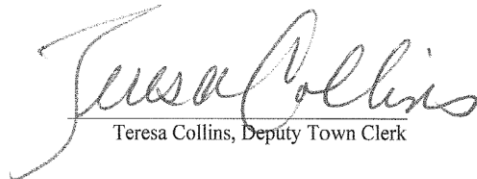
**Adopted this 30th day of March 2023.**

**By Order of the Forestburgh Town Board  
Teresa Collins, Deputy Town Clerk**

I, TERESA COLLINS, Deputy Town Clerk of the Town of Forestburgh, Sullivan County, New York, **DO HEREBY CERTIFY** that the foregoing local law was approved by the Town Board of the Town of Forestburgh on **March 30, 2023** and that the foregoing is a true and correct transcript of the original local law and of the whole thereof and that said original local law is on file in the Town Clerk's office.

**I DO FURTHER CERTIFY** that each of the members of the Town Board had due notice of the said Town Board meeting.

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the Town of Forestburgh this 30th day of March 2023.

  
Teresa Collins, Deputy Town Clerk





**STATE ENVIRONMENTAL QUALITY REVIEW ACT**

**POSITIVE DECLARATION**

**Determination of Significant  
Notice of Intent Requiring Preparation of a Draft SEIS  
for the Project known as Lost Lake Resort**

**Date of Notice: March 30, 2023**

**Project Name:** Lost Lake Resort Planned Development District (“Resort Project”)

**Location:** Approximately 2079.51 acres located on St. Joseph's Road, Town of Forestburgh, Sullivan County, New York

**Lead Agency:** Town of Forestburgh Town Board, Forestburgh Town Hall, 332 King Road, PO Box 114, Forestburgh, New York 12777, Contact: Daniel S. Hogue, Jr., Supervisor

**Project Sponsor:** Lost Lake Holdings, LLC and Mishconos Mazah, LLC (“Developer”), 991 Willoughby Ave, #200, Brooklyn, NY 11221, [ym@mifalhachok.com](mailto:ym@mifalhachok.com)

**SEQRA Status:** Type I

**Scoping:** YES, Public Scoping

**Attachments:** Town Board Resolution dated March 30, 2023

**PLEASE TAKE NOTICE:**

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 State Environmental Quality Review Act (“SEQRA”) of the Environmental Conservation Law.

The Town of Forestburgh Town Board at its March 30, 2023 public meeting determined that Developer’s changes and modifications to the Lost Lake Resort Project as fully detailed in the ZBA’s November 15, 2022 Decision constituted “changes in the project” or “a change in the circumstance” as those terms are used in 6 NYCRR § 617.9 (a) (7) resulting in the potential for significant adverse environmental impacts not addressed or inadequately addressed in the EIS, and therefore Developer will be required to prepare a draft supplemental environmental impact statement (“DSEIS”) and obtain approvals for such modifications as required under applicable law or regulation.

In addition, it is the intent of the Town Board to conduct public scoping including scheduling of a public scoping session. The primary goals of scoping are to focus the DSEIS on potentially significant adverse impacts that may be reasonably expected to result from the proposed project modifications and to eliminate consideration of those impacts that are not relevant or nonsignificant.

The Town Board also suspended all Town issued permits and approvals, including the Resort Project's 2011 PDD Approval and 2013 Conditional Final Approval. Therefore, any construction or land disturbance activities permitted thereunder are no longer authorized unless and until Developer submits its proposed changes to the Town Board to undergo additional review under SEQRA, and obtain necessary and appropriate modifications to the terms and conditions of the Project Approvals.

### **Resort Project History**

In September of 2008, Developer's predecessor Double Diamond proposed a planned resort and residential community on approximately 2,100 acres located in the Town of Forestburgh, Sullivan County, off Cold Spring Road and known as the Lost Lake Resort.

Double Diamond proposed to develop a resort and residential community consisting of 2,557 residential lots, a cluster of 30 single-family cottages, and 40 condos (a total of 2,627 dwelling units), of which more than half being seasonal or second homes, along with mixed-use commercial elements, including a hotel, lodge, restaurant, spa, golf course, public conference facilities, real estate offices, and public recreational elements. The Resort Project also proposed new private roads; a new central water supply from on-site wells; a new central sewage treatment system, electric utilities, and other necessary infrastructure.

Double Diamond's Resort Project was proposed to be constructed on approximately 2,100 acres located entirely within a residential (RR-1) zoning district which required a minimum lot size of 100,000 square feet ("sq. ft.") (approximately 2.3 acres) with 1 dwelling per lot.

Under the Town's RR-1 zoning district bulk standards, however, only 491 single-family lots would have been permitted on the 2,100-acre property under a conventional subdivision. Double Diamond's proposal to construct up to 2627 residential units represented a 435% increase in allowable density under the RR-1 district standards.

After a multi-year review, including the preparation of a 2010 DEIS and 2011 FEIS, the Resort Project's SEQRA review concluded when the Town Board adopted the SEQRA Findings Statement in May 2011. The Resort Project DEIS, FEIS, and Findings Statement addressed potential environmental impacts based on Double Diamond's then proposed resort-community project and representations, including: (1) That Double Diamond's intended target market for the single-family lots was "primarily the investor who may or may not build a home but is interested in purchasing a house lot in the resort to take advantage of the recreational amenities offered at the resort to lot owners"; (2) That the Resort Project will be "built to attract a membership-based, primarily second-home and non-resident population into a unique, recreational setting"; (3) The project developer would construct the roads, infrastructure and resort amenities and market the sale of vacant lots to prospective buyers; and (4) That houses would not be built on the single family lots by the developer but some individual lot owners as their second or retirement home, for recreation and leisure, or as a real estate investment.

Based on Double Diamond's proposed project description and representations, the DEIS and FEIS impact analysis used demographic characteristic assumptions for "a population representing 43% full time residents" for its full build scenario, and that "approximately 57 percent of the houses that are built are used part time as second homes for weekend and vacation use".

The seasonal / second home nature of the Resort Project with only 43% of homes occupied by full-time residents was a material assumption in analyzing the following impacts: (a) grow inducing impacts (Ex. 3b DEIS 7-1); (b) traffic / transportation impacts (Ex. 3b DEIS 8-5, 8-11); (c) population projections (Ex. 3b DEIS 3.9-6); (d) fiscal impacts (Ex. 3b DEIS 1-31); (e) impacts on schools (Ex. 3b DEIS 1-33); (f) community service impacts (Ex. 3b DEIS 3.10-2, 1.34); (g) noise impacts (Ex. 3b DEIS 3.11.9), among others.

Double Diamond also placed great emphasis on the inclusion of strict environmental controls to mitigate or avoid adverse environmental impacts.

The SEQRA Findings Statement contained project specific mitigation measures considered in the SEQRA DEIS and FEIS including strict adherence to standards set forth in the Design Guidelines for Single Family Homes ("2013 Design Guidelines") and the Covenants, Restrictions and Conditions for the Lost Lake Resort and Development ("2013 CC&Rs").

The SEQRA Findings Statement, 2013 Design Guidelines, and the 2013 CC&Rs contained both substantive and procedural requirements that were intended to mitigate or avoid the environmental impacts identified in the DEIS and FEIS.

After completing environmental review under SEQRA and adopting the Finding Statement, the Town Board considered Double Diamond's Resort Project application and took the following actions: (1) adopted Local Law 3 of 2011 on July 7, 2011, amending the Town's existing PDD local law to allow for increased density bonuses to accommodate the Resort Project; (2) granted PDD approval to the Resort Project by resolution dated August 4, 2011 which rezoned the project site from RR-1 to PDD and incorporated the mitigation measures in the Finding Statement as conditions of approval; and (3) granted conditional final site plan and subdivision approval for the first of seven project phases by resolution on June 25, 2013, subject to the mitigation measures in the Finding Statement.

The Town Board's actions were all conditioned on a host of project specific mitigation measures considered in the EIS and incorporated into the SEQRA Findings Statement, including strict adherence to standards set forth in the 2013 Design Guidelines and the 2013 CC&Rs.

#### **Description of the Action:**

In June of 2020, Double Diamond sold the Resort Project to Developers without having completed the infrastructure improvements or constructing any residential dwellings.

Developer sought building permits to construct single-family dwellings that Developer intended to sell to prospective buyers. This was a material change to Double Diamond's proposal that sought to sell vacant lots to prospective purchasers.

Throughout the building permit application review process, the Developer submitted amended Design Guidelines and the CC&Rs removing or materially modifying the many of the mitigation measures and controls in the 2013 Design Guidelines and the 2013 CC&Rs considered in the EIS, incorporated into the SEQRA Findings Statement, and made part of the 2011-2013 Project Approvals. The amended Design Guidelines and the CC&Rs, which Developer filed with the County Clerk's Office, were not approved or authorized by the Town Board. Additionally, instead of the resort-style development proposed by Double Diamond and approved by the Town, Developer represented that it intended to construct "affordable units" in accordance with its unauthorized amended design guidelines.

Developer's building permit applications were denied and Developer commenced an appeal before the ZBA. In the course of the 11-month appeal proceeding, the ZBA developed an extensive hearing record and issued a November 15, 2022 decision affirming the denial of Developer's building permit application.

In its decision, the ZBA provided a detailed review and analysis of the Developers changes to the 2011-2013 Resort Project Approval conditions, terms, and restrictions.

These changes included unauthorized amendments to 2013 Design Guidelines and the 2013 CC&Rs eliminating or modifying material mitigation measures required as a condition of approval, including changes to (1) architectural standards, (2) green building design standards and requirements, (3) site planning requirements, (4) landscape requirements, (5) design review and approval process, (6) construction regulation, and (7) governance provisions.

In addition, the ZBA record established that Developer's target market for the dwellings Developer intends to construct is materially different from Double Diamond's seasonal / second-home market. Specifically, it is Developer's intent to expand and change the purpose of the development from one targeted primarily at the vacation / second-home market to a housing development targeted to a first-home / primary home market as evidenced by Developer's amendments to the 2013 CC&R and 2013 Design Guidelines its admissions during cross-examination testimony.

A copy of the ZBA Decision is available at:

<http://forestburgh.net/wp-content/uploads/2022/11/zba-appeal-determination-w.-appx-1.pdf>.

### **Reasons Supporting this Decision:**

The Town Board, as Lead Agency, has found potential significant adverse impacts are presented as a result of the project changes identified in the ZBA decision and hearing record, including:

- (1) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; or a substantial increase in solid waste production as a result of changing the purpose of the Resort Project from selling vacant lots to the second-home / vacation home market to selling constructed dwellings to a primary-home market.
- (2) the creation of a material conflict with the community's current plans or goals as officially approved or adopted as a result of unauthorized and unilateral changes to the Town approved 2013 Design Guidelines and the 2013 CC&Rs which are essential mitigation requirements established in the SEQRA Findings Statement and expressly incorporated in the 2011-2013 Approvals as a condition of approval.
- (3) the impairment of the character of existing community or neighborhood character as a result of as a result of Developer's changes to the Town approved 2013 Design Guidelines and the 2013 CC&Rs and changes to the overall purpose of the Resort Project.
- (4) a major change in the use of either the quantity or type of energy as a result of changing the purpose of the Resort Project from selling vacant lots to the second-home / vacation home market to selling constructed dwellings to a primary-home market.
- (5) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses as a result of changing the purpose of the Resort Project from selling vacant lots to the second-home / vacation home market to selling constructed dwellings to a primary-home market.
- (6) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action as a result of changing the purpose of the Resort Project from selling vacant lots to the second-home / vacation home market to selling constructed dwellings to a primary-home market.

In addition, any impact analysis in the DEIS/FEIS which relied on the seasonal / second home nature of the Resort Project with the assumption that only 43% of homes would be occupied by full-time residents will require reevaluation, including: (a) grow inducing impacts (Ex. 3b DEIS 7-1); (b) traffic / transportation impacts (Ex. 3b DEIS 8-5, 8-11); (c) population projections (Ex. 3b DEIS 3.9-6); (d) fiscal impacts (Ex. 3b DEIS 1-31); (e) impacts on schools (Ex. 3b DEIS 1-33); (f) community service impacts (Ex. 3b DEIS 3.10-2, 1.34); (g) noise impacts (Ex. 3b DEIS 3.11.9), among others.

Considering the potential environmental impacts outlined above, the Town Board, acting as SEQRA Lead Agency, has determined that the project changes identified in the ZBA decision and hearing record may cause one or more significant impacts to the environment. As such, a DSEIS

must be prepared to address the above impacts and others that may be identified during public scoping. The DSEIS will be prepared in accordance with Article eight of the New York State Environmental Conservation Law and in compliance with all applicable state and local laws and regulations.

**For Further Information**

Contact Person: Town Supervisor  
322 King Road  
Forestburgh, NY 12277  
845-794-0611  
forestburghsupervisor@gmail.com

A copy of the DEIS and FEIS is on file for public inspection at Town of Forestburgh Town Clerk's Office, 332 King Road, Forestburgh, New York 12777.

A digital copy of the DEIS and FEIS is available online at: <https://forestburgh.net/boards-and-committees/zoning-board-of-appeals/lost-lake/>

Copies of this Notice sent to the attached Service List and published on the Environmental Notice Bulletin, 625 Broadway, Albany, NY 12233-1750.

Dept. of the Army Corps of Engineers NY District, Western Permits Section 26 Federal Plaza, Room 1937 New York, New York 10278-0090	Sullivan Co. Division of Public Works Edward McAndrew, P.E., Commissioner 100 North Street P.O. Box 5012 Monticello, New York 12701
US Fish & Wildlife Service New York Field Office 3817 Luker Road Cortland, New York 13045	Sullivan Co. Division of Planning and Environmental Management Attn: Freda Eisenberg, AICP, Commissioner 100 North Street Monticello, New York 12701
NYS Dept of Environmental Conservation Attn: Basil Seggos, Commissioner 625 Broadway Albany, New York 12233-3508	Sullivan County Sheriff's Department Attn: Michael Schiff, Sheriff 58 Old Route 17 Monticello, New York 12701
NYS Dept of Environmental Conservation Region 3, Div of Environmental Permits 21 South Putt corners Road New Paltz, New York 12561-1696	Monticello Central School District Attn: Matthew Evans, Ed. D., Superintendent 150 Wood Avenue Monticello, New York 12701
NYS Department of Transportation Region 9 Attn: Thomas Wiser, P.E., Regional Director 44 Hawley Street Binghamton, New York 13901-3200	Town of Thompson Attn: Marilee J. Calhoun, Town Clerk 4052 Route 42 Monticello, New York 12701
NYS Department of Health Monticello District 50 North Street, Suite 2 Monticello, New York 12701-1171	Crawford Public Library 479 Broadway Monticello, New York 12701-1353
NYS Office of Parks, Recreation and Historic Preservation-Field Services Bureau Attn: Erik Kulleseid, Commissioner Peebles Island, P.O. Box 189 Waterford, New York 12188-0189	Forestburgh Fire Company #1 Attn: Zach Petrowsky, Chief 2674 Route 42 Forestburgh, New York 12777
Delaware River Basin Commission 25 State Police Drive PO Box 7360 West Trenton, New Jersey 08628-0360	Town of Forestburgh Conservation Advisory Board 332 King Road – P.O. Box 114 Forestburgh, New York 12777
Merriewold Board of Governors 2674 State Route 42	The Hartwood Club Attn: Jan Ritzel, President

Forestburgh, NY 12777	195 Baer Road Forestburgh, New York 12777
Lake Joseph Homeowners Assn, Inc. Ihor Mandicz, President P.O. Box 97 Forestburgh, New York 12777	Forestburgh Civic and Taxpayers Assn, Inc. P.O. Box 69 Forestburgh, New York 12777

**MOTION** by Councilperson Ellsweig to adjourn regular session and reconvene executive sessions, second by Councilperson Budofsky at 8.07 p.m.

**EXECUTIVE SESSION** – NO business conducted.

**ADJOURNMENT** – MOTION by Councilwoman Landis to adjourn at 8:30 p.m.

Respectfully submitted,

Teresa Collins  
Deputy Town Clerk



