

A Regular Meeting of the Marilla Town Board was held April 14, 2005 at 7:30 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York. Officials present were:

John R. Foss, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
Warren Handley, Councilman  
George Gertz, Councilman

Supervisor Foss called the meeting to order and the Pledge of Allegiance to the Flag was given.

### **Communications**

Communications were received and read from:

- a. Clarence Gerhardt requested approval for the Special Use Permit for a Horse Boarding Facility on 1825 Four Rod Road.
- b. Tri-Town Soccer Club requested use of the Eastwood Road Soccer Fields for Monday, Tuesday, Wednesday and Thursday evenings for the season.
- c. Water District #3 extension customers requested the Town Board to add them on as no cost extension customers.

### **Committee Reports**

Supervisor Foss reported for Highway Superintendent Dave Pierce that Dan Gabalski is working on the new park shelter. The men have been cleaning and raking getting things in shape around the Town Hall, Community Center and Pavilion.

Councilman Spanitz reported that the next Planning Board Meeting will be held April 21<sup>st</sup> at 7:00 p.m. in the Town Hall. She stated that Iroquois High School Parent Association will host a post prom alcohol and drug free party on June 10<sup>th</sup>, contributions are welcome, see her for who to send them too.

Councilman Gertz reported that he attended another Disaster Coordinators Meeting, the Federal Government has rejected our hazmat Mitigation Plan we reworked it and resubmitted a large stack of paper work and hopefully they will accept it this time.

Councilman Handley reported that the next CAB Meeting will be held on May 3<sup>rd</sup> at 6:30 p.m. and there is still a position open on that Board. The Marilla Memorial Pavilion rules and regulations are finished. The Memorial Day Parade letters to participants will be sent out tomorrow. The celebration will be held on Monday, May 30<sup>th</sup> beginning at 11:00 a.m. We received notice that our grant for PACE program was not approved, we will try again next year.

Councilman Specht reported that he attended a meeting about the car show which will be held on July 31<sup>st</sup> 2005 proceeds to benefit Mercy Flight. The firemen have agreed to close Two Rod Road from Bullis to East Ave. for the day. The Town received \$36,984 from Time Warner for their franchise fee.

Supervisor Foss reported that the Town received its snowplow check of \$55,000 from the County of Erie that was due last December 15th on March 23rd. We were also notified by letter that sales tax revenue will now be sent quarterly instead of monthly. The late check and change of sending out sales tax revenue was done without any consultation with town or village officials. It seems like the more they (County Executive and Comptroller) can hurt local government and make our job more difficult, the happier they are. The cash flow problems this is going to cause for School Districts, Towns, Villages, and Cities could be serious and cause short-term borrowings that are expensive. Fortunately the Town of Marilla has enough reserves to cover its bills while it waits for these funds but wouldn't it be better to sit down with officials of local governments to work out a solution together that would help the county and not hurt local governments. The excuse was with all the layoffs we don't have the time to do it more often and some obscure law they located from back in the seventies allows the Comptroller to do this. I can't believe with all the new technology available today that this sales tax disposition couldn't be done in a relatively short time. I believe the real reason is they plan to keep our money a

longer time is to alleviate their money problems. I do hope we receive our funds in a timely manner each quarter, but I am suspicious and very skeptical. The Town's second snowplowing payment is due April 15th or tomorrow. I will be surprised to see the check. Maybe more time spent doing their job and less time spent on the dog and pony show of wheeling boxes of useless information to the County legislature would get our funds to us on time.

The Town held its annual borrowing April 7th and was able to borrow \$1,855,000 at a rate of 2.84%. The County at the same time borrowed \$80,000,000 and got a rate of 3%. Some people and newspapers keep telling me that regionalism or big government is better and cheaper but if we had borrowed the money for the county we would have saved them \$128,000.

County Government-the Towns and Villages are meeting on a regular basis to try and see what we can do to make sure local residents get the services they need. One thing is very clear is that rural areas will find their services will be the first things cut. We have been threatened with the complete elimination of Sheriff's patrols and a severe cutback in road repair, maintenance, and snowplowing plus many other cutbacks or elimination of services. The one issue I consider a major issue is where does the County stand financially. We are in the middle of April and the County Executive and Comptroller and their staffs still don't know what happened in 2004. This is our County or regional government at work and it just isn't working. I have now and for the past 8 months been advocating going back to a board of Supervisors and hire a County Manager to run the County Government. This would eliminate all pork and patronage and maybe something would get done. I will be pursuing this in the coming months.

### **Open Board Presentations From the Public**

Supervisor Foss stated that the Town Board Members had received a letter from the residents on Greenwood Terrace, he commented that someone cited section 210-11a-3a6 about access roads, that's referring to private driveways or flag lots. For a regular driveway it has no bearing. He also stated that someone indicated in the letter that Walter Schmidt applied for a permit to have two wells drilled. There are no permits necessary to drill wells and never has been. He asked if anyone wished to make a comment.

Town Attorney Nathan Neill commented that what ever is allowed to be done the person has a right to do it, the fact that you don't like it is not the germane factor to it.

Supervisor Foss explained to eliminate some of your fears Mr. Schmidt was in and he realizes now that he can only build one house and he has to wait 5 years, he indicated he is not applying for any flag lots.

Edward Riedel of Greenwood Terrace asked what the intent of Mr. Schmidt is?

Town Attorney Nathan Neill replied he can do what the law allows him to do, anything else he will have to wait the five year period to split it off again.

Mr. Riedel asked what the definition to a subdivision is?

Nathan Neill said a subdivision definition is three new lots over and above the original lot within a five year period constitutes a subdivision.

Mr. Riedel stated that last year the Town had twelve new houses if you multiply that times fifteen years that's 180 houses, don't you think that's excessive?

Supervisor Foss responded no, we had the least of any town in Erie County. There is very little land in town zoned RR for subdivisions. This Board has restricted development more than any Board in the history of the town and than any other town in Erie County. You can't stop all growth if you don't get some increase in assessment and some new businesses coming in this will end up being like the City of Buffalo. You would see very strong increases in your tax rates. It's a ticklish problem to try and control growth and control the tax rate.

Building Inspector John Fronczek stated that last year the Town had 12 new homes, for the previous three years we had 16 new homes and the years before that we averaged between 19 and 20, this shows that the growth has slowed down.

Bob Breidenstein on Greenwood Terrace asked if Elma's 40 new homes were on 5 acre lots?

Supervisor Foss responded no, they are on all different size lots. A lot of Towns are going by the State code which allows you to put as many five acre lots as you want. We have restricted this with our zoning laws and not allowed it. The other choice that the Town allowed was 4 splits every three years with a lot size of 125 by 250. This Town Board in 1996 increased the minimum lot size to 200 by 300 and put the limit of 2 splits every five years. This is the most restrictive in Western New York by far.

Terry Dare of Greenwood Terrace asked if Walter Schmidt has approached the Town with what his intent is for the parcel behind Greenwood Terrace? When she had spoke to Mr. Schmidt he implied that he wanted to put up 8 homes quickly.

Supervisor Foss responded that Mr. Schmidt would have to apply to rezone the property to RR to even begin the process for a subdivision. He would need 200ft frontage by 300 ft depth to make a legal lot, he will only be allowed to make 2 splits from the original parcel, and then wait five years for 2 more.

Terry Dare stated that she wanted on record that she was told by the Building Inspector that Mr. Schmidt approached him regarding possibly putting in 6 building lots.

David Dare of Greenwood Terrace asked what the current classification of the land is?

Supervisor Foss stated Agricultural and it is prime farmland even if its not being farmed.

Edward Riedel of Greenwood Terrace stated he feels the code should be more restrictive and not allow any building on prime farmland. He thinks the Town Board is only looking a few years down the road and should be planning for 20 years ahead.

Supervisor Foss stated we also have to look at the landowner and farmers rights, they have lived here all their lives and look at their land as their retirement. He doesn't feel it's fair to take that away from them. It's this Town Board's job to represent everybody.

Mr. Riedel asked Mr. Foss what he thought Marilla would look like in 20 years?

Supervisor Foss responded he thinks you will see farming get bigger with less farms, the competition from over seas makes it very difficult for local farmers. Imported foods are not under the same rules that our farmers have to adhere to, it makes it difficult to compete. If the farms can't be competitive and stay profitable they will stop farming and something has to be done with that land. No one can afford to pay the taxes on that land without some source of income.

Planning Board Member and Resident Dan Handy stated that he guarantees in 20 years Marilla won't look like Lancaster. It will still have a lot of open spaces, you cannot say no growth, it's slowed down as much as possible right now.

### **Old Business**

Motion: Councilman Specht moved, seconded by Councilman Spanitz to approve the minutes from the Regular Board Meeting held on 3/10/05, Bid opening on 3/22/05 and the Public Hearing and Special Meeting held on 3/29/05. Motion Carried.

### **New Business**

Motion: Councilman Gertz moved, seconded by Councilman Handley to declare the 1996 Ford Truck with plow surplus. Motion Carried.

Motion: Councilman Spanitz moved, seconded by Councilman Specht to approve a resolution recognizing the week of May 1<sup>st</sup> through May 7th as Municipal Clerks Week. Motion Carried.

- Motion: Councilman Gertz moved, seconded by Councilman Handley to authorize Town Officials to attend Southern Tier Conference on May 12<sup>th</sup> at a cost of \$30 per person. Motion Carried.
- Motion: Councilman Handley moved, seconded by Councilman Gertz to authorize the Supervisor to sign a contract with Good Riddance, located at 2663 Seneca Street, West Seneca to spray the Town Park and the Memorial Pavilion 3 times for the 2005 season for protection against wasps, hornets and spiders at a cost of \$805. Motion Carried.
- Motion: Councilman Gertz moved, seconded by Councilman Spanitz to approve the rules and regulations for the Marilla Memorial Pavilion as follows:
- A. Hours: No unauthorized person shall for any reason enter the park prior to dawn or to remain within the park after dusk. The Park shall be open to the public from Memorial Day until October 1<sup>st</sup>, unless otherwise posted.
  - B. Firearms: No unauthorized person shall take or otherwise transport any firearms, airguns, slingshots or bow and arrow in the park.
  - C. Preservation of property: No person shall injure, deface, disturb or defoul any part of the park, any walkways, monuments, any of the buildings, signs equipment or other property found therein or remove, injure, peel, cut or destroy any trees, flowers, shrubs, flora, rocks or other minerals.
  - D. Fires: No person, unless authorized by the Park Board, shall light any fire for any purpose in any part except in a stove, oven or circle provided for that purpose, nor shall any lighted matches, cigarettes, cigars or burning tobacco be deposited or left where a likelihood of fire may exist.
  - E. Garbage and refuse: Park grounds and facilities must be maintained in a clean and sanitary condition. Littering of any kind is strictly prohibited. Garbage and refuse must be deposited in receptacles provided. No glass non-returnable beverage containers of any type are allowed in the park.
  - F. Dogs: No owner or person harboring any dog shall permit or allow such dog to run at large in the park, unless such dog shall be effectively restrained by a leash not exceeding six feet in length and accompanied by its owner or a responsible person able to control the animal. Dog waste must be removed immediately by the person in charge of the dog.
  - G. Hunting or trapping: No person shall hunt or trap within park boundaries.
  - H. Gambling: Gambling, as defined by the Penal Law of the State of New York, is prohibited in the Park.
  - I. Horses and riders: Horses and their riders are prohibited from using park areas.
  - J. Behavior: No person shall engage in any conduct which is disorderly, unruly or offensive to such a degree that the same shall constitute an offense under the Penal Law of the State of New York. The use of loudspeaker systems in the park must be approved by the Park Board. The level of noise should not be too disruptive to the residential community. No person shall consume alcohol on park property in violation of any law of the State of New York, nor shall any person operate any motor vehicle, snowmobile or other apparatus by any power other than muscle power on park property while his ability to operate the same is impaired by the consumption of alcohol or drugs.
  - K. Speed limit and parking: No person shall drive or cause to be driven along or over any road within the park any motor vehicle, snowmobile or other apparatus at a speed in excess of 15 miles per hour or in a manner which endangers the life or limb of any person. No person shall park any vehicle in any place where a sign prohibiting parking has been erected or in any area other than that designated and posted as a parking area. Motorcycles, motor bicycles, motor scooters, bicycles, snowmobiles, winter sledding equipment such as, but not limited to sleds, toboggans are strictly prohibited within the park

boundaries. The West Avenue parking lot is reserved for event attendees only on concert days.

- L. Commercial enterprises: No person, firm or corporation shall sell, solicit or offer for sale any item, property or privilege within the park, unless authorized by the Park Board.
- M. Pavilion Fees: Reservations for the Pavilion will be made on the basis of the calendar year. Reservations for the Pavilion will not be made by the general public until after April 1<sup>st</sup>. This will allow the committee to book the concert series. The Pavilion may be reserved on a first come basis by request made to the Town Clerk, who shall keep a log of all persons requesting the same. There is no fee for use of the Pavilion, this usage includes Marilla Residents who would like to exchange their wedding vows or use the Pavilion for wedding pictures. Groups in excess of 25 persons must notify the Town Clerk of their activity and the number of persons anticipated prior to such event. No decorations are allowed to be taped, tacked or nailed at anytime, but placed or tied –on decorations will be permitted.
- N. Penalties for offenses: A violation of any subsection of this article shall fall under the same penalties as written in the Marilla Town Park’s rules and regulations under Section III and Section IV.  
Motion Carried.

Motion: Councilman Handley moved, seconded by Councilman Specht to authorize the men’s Buffalo and District Soccer League (BDSL) to use the Eastwood Road facilities on Sunday evenings at 6:00 p.m. Motion Carried.

Motion: Councilman Gertz moved, seconded by Councilman Spanitz to authorize the Town Clerk to advertise for bid the new roofs for the Community Center and the Town Hall. Motion Carried.

Motion: Councilman Specht moved, seconded by Councilman Gertz to authorize the Supervisor to sign the L.A.M.P. agreement, a domestic not-for-profit corporation with an office at 2655 Eldridge Road in the Town of Marilla. Motion Carried.

Motion: Councilman Handley moved, seconded by Councilman Spanitz to approve the following resolution:

WHEREAS, the Town Board of the Town of Marilla is considering an application, under Chapter 210 of the Town of Marilla Code (more specifically Section 210-62), of Clarence Gerhardt, Jr. (the “Applicant”), for a special use permit for the construction and operation of a horse boarding business including: indoor and outdoor riding arenas, riding trails, and forty (40) stalls in a 72 foot by 124 foot barn to cover 41 acres of a larger parcel of real property commonly known as Four Rod Road, Marilla, New York and further identified by SBL 139.00-6-1.1 (the “Proposed Action”); and

WHEREAS, the Planning Board has reviewed the proposed and recommended approval and

WHEREAS, the Town Board of the Town of Marilla has determined that the Proposed Action is an Unlisted Action under SEQRA.

WHEREAS, the Town Board of the Town of Marilla believes that the Town of Marilla is; the agency primarily responsible for undertaking decisions as to site plan review; is the agency with the broadest governmental powers for investigating the impact of the Proposed Action; has the greatest capacity for providing the most thorough environmental assessment of the Proposed Action; and is the most local agent with permitting authority;

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the Code of the Town of Marilla, Chapter 9D, the Town has prepared the Long/Short Environmental Assessment Form, which is now on file with the Town Board and the Town’s SEQR Intake Officer;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Board has determined that the Proposed Action is an Unlisted Action under SEQRA.
2. The Town Board further directs that notice of the application for a special use permit be sent to the County Planning as required under Section 239-m of the General Municipal Law.
3. This Resolution shall take effect immediately.

Roll Call Vote:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Handley – Aye

Supervisor Foss – Aye

Motion Carried.

### **Report of Town Officials**

Town Engineer Mike Smith reported that he hadn't heard anything further from the income surveys for Water District V, they are still working on that.

Building Inspector John Fronczek submitted a written report with 10 building applications received with fees totaling \$1,963.00, 10 building permits issued with a total value of \$570,200.00, 10 inspections were made and 4 complaints were received for the month of March 2005. One Special Use Application was issued for the sum of \$125. The Code Enforcement log indicates a total 185 activities.

Town Attorney Nathan Neill reported that Tony Difilippo will represent the Town on the Schlossin lawsuit if the Insurance company authorizes him to do so.

Hazel Dabb, Earl's wife stated that she goes with Earl for the field work and sometimes when people aren't home and they see foot prints all around the home it can be alarming.

Planning Board Chairman Debbie Zimmerman stated that the next meeting will be April 21, 2005 at 7:00 p.m., they will be working on flag lots.

The Conservation Advisory minutes have been received and posted.

Lenny Blizniak from the Marilla Fire Company reported that they have resumed installing the house number signs and will hopefully get caught up. The Firemen's Carnival will be held on June 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> with special ride prices on Thursday.

Town Historian Hubert Kutter stated that the Historical Society has been preparing for the Civil War Re-enactment at the Town Park this summer. There will be a Civil War fashion and costume program at the Community Center on April 26<sup>th</sup> at 7:00 p.m. He thanked Pierce and his men for fixing the shoulders on Three Rod Road and Williston Road.

### **Open Board Presentations**

Councilman Specht suggested that the Towns should start processing DMV transactions instead of the County.

Councilman Handley stated that when the road frontage is all built on the back land will be all locked up. He has concerns about development in the Town and feels the horse boarding facility by Gerhardt's is perfect for the Town. He would like to limit the road frontage development in town.

Supervisor Foss stated he had attended a meeting with Mr. Giambra who is now saying that next year Towns will be charged for County Sheriff road patrols or we may have no patrols. Mr. Giambra is also proposing to do all the snow plowing by the County or to privatize it. The County is saying they will not fix any problems with the bridges they will just close them down, they have no money to rebuild them. Fortunately Mr. Foss thinks it is the County Legislature decision to make these changes not the County Executive. When the time comes and these proposals are made people will have to stand up against these changes. He stated the Town Newsletter will be out next week.

Resident Gloria Specht stated how nicely our roads are plowed by our Town Highway Department unlike the County plowed Roads.

A resident asked if our Town could bid on plowing the County Roads.

Supervisor Foss responded he didn't think so.

Debbie Specht Gardon stated in the last snow storm they drove to Buffalo to see the Lion King at Sheas and nothing was plowed until they entered Marilla then the roads were great.

Motion: Councilman Gertz moved, seconded by Councilman Handley to approve the claims as follows:

General Fund Claims, Vouchers 95-143	\$ 19,793.05
Highway Fund Claims, Vouchers 55-75	\$ 10,379.01
Special Districts	
Sanitation (SR), Vouchers 27-40	\$ 8,527.01
Special Fire Voucher	\$ .00
Water District #2, Vouchers 8-10	\$ 2,903.81
Water District #3 Voucher 3	\$ 1,353.40
Water District #4 Voucher 3	\$ 817.40
Community Develop. PACE Voucher 1	\$ 941.00
Community Develop. HUD	\$ .00

Motion Carried.

Motion: Councilman Spanitz moved, seconded by Councilman Specht to adjourn the meeting at 8:45 p.m. Motion Carried.

Respectfully submitted,

_____	Town Clerk	_____	Supervisor
_____	Councilman	_____	Councilman
_____	Councilman	_____	Councilman