

A Special Meeting of the Marilla Town Board was held Tuesday October 24, 2006 at 7:30 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York 14102. Officials present were:

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

Supervisor Foss called the meeting to order at 8:40 p.m. and the tentative budget was reviewed.

Motion: Councilman Specht moved, seconded by Councilman Gertz to approve the tentative budget as the preliminary budget for the Town of Marilla for the fiscal year beginning January 1, 2007 and offered the following Resolution:

RESOLVED THAT THE TOWN BOARD OF THE TOWN OF MARILLA does hereby prepare and approve the preliminary budget for the Town of Marilla for the fiscal year beginning the first day of January, 2007 with the itemized statement of estimated revenues and expenditures and that those are made a part of the resolution and be it FURTHER RESOLVED that such preliminary budget should be on file in the Office of the Town Clerk where it shall be available for inspection by any interested persons at all reasonable hours, and be it FURTHER RESOLVED that the Town Clerk give notice of public hearing in the manner provided in Section 108 of the Town Law and such notice shall be published substantially in the following form:

NOTICE OF PUBLIC HEARING ON PRELIMINARY BUDGET FOR THE YEAR 2007 TOWN OF MARILLA:

NOTICE IS HEREBY GIVEN that the preliminary budget of the Town of Marilla, Erie County, New York, for the fiscal year beginning January 1, 2007 has been completed and filed in the office of the Town Clerk of said Town at 1740 Two Rod Road, Marilla, New York at 7:30 p.m. local time on the 9th day of November, 2006 and that at such hearing the citizens of the Town of Marilla may be heard in favor for or against any items there in contained, and

FURTHER NOTICE IS HEREBY GIVEN, pursuant to Section 08 of Town Law that the following are the proposed yearly salaries of elected town officials, to wit:

Supervisor.....	\$27,648.00
Supt. Of Highways.....	\$47,944.00
Town Clerk.....	\$39,752.00
Councilmen(4) each.....	\$ 7,980.00

The meeting room is wheelchair accessible. Those needing special arrangements should call the Town of Marilla at 652-5350 by November 3rd, 2006.

BY ORDER OF THE TOWN BOARD
OF THE TOWN OF MARILLA

Dawn Pearce
Marilla Town Clerk

Roll Call Vote:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Gertz – Aye

Councilman Handley – Aye

Supervisor Foss - Aye

Motion Carried.

Supervisor Foss introduced Leon Berner and David Manko, Operators in the temporary facility for the deposit and processing of debris from the October 2006 snowstorm at property owned by Leon Berner at 11215 Clinton Street, Marilla, NY. Supervisor Foss explained that the site is fully approved by the DEC, the site is not in wetlands, and we are notifying the neighboring towns. This is an emergency situation and public hearings are not required, this is a FEMA designated site. This Special Use Permit would be found in our Town Ordinances under essential services which would allow us to do this.

David Manko stated that the sign stating temporary FEMA Site will be ready tomorrow. He also stated that a lot of energy companies are calling on the phone, they are building bio clean energy plants that burn 60 to 70 percent wood with moisture in it. A lot of these plants are now being built in the Western New York area, Buffalo was going that way but they decided to go with the ethyl alcohol plants instead. A lot of local municipalities are now heating their highway barns with this, they are putting cooker ovens in and supplementing, instead of using fuel they are using mulch products.

Councilman Spanitz stated that she had just seen this on Channel 4 news.

Leon Berner stated that some greenhouses are now using this type of energy as well, they mix mulch and coal. The moisture in the wood chips adds more heat with the coal and is more efficient.

Supervisor Foss stated that there is one change in the resolution, under c, the hours of trucking operation, they will be grinding after dark but we will be monitoring that and we have been assured that the noise will not be obnoxious to the neighbors. Residents seem like they want to help out during this emergency and no one has complained about this site. They have flag men directing traffic at the site.

Leon Berner explained that by 6:30 pm the trucks are all gone. The trucks are stored around at different sites.

Supervisor Foss stated that there is another word change under n, we are changing it from one municipality to any municipality. The key is a million yards, anything beyond that has to come back to the Town Board for approval. This will be easy to check because the FEMA numbers are there.

David Manko responded that every week he has to call in the numbers and they produce a daily work chart that he can supply the Town with.

Supervisor Foss then opened up maps showing how the operation would be working. He showed everyone the mining approved area. He stated that Leon has three years to clean up the mining site and the DEC will monitor this. The DEC will not let him do anymore mining until the mulch is cleaned up.

Leon Berner stated that the DEC said if there was an honest effort to clean up then we can do something, we are actually closing off all of the mining except one section of the lake of about three acres.

Councilman Specht asked Mr. Berner if he has any plans on filling in any of the lakes that have previously been mined with mulch or anything?

Mr. Berner answered that he couldn't fill them with mulch.

David Manko asked if there could ever be homes put back there?

Supervisor Foss responded that that is zoned RR, and he could put a subdivision back there, but not in the area zoned A.

Councilman Handley asked Mr. Berner if he would be allowed to mulch this out and turn it into soil?

Leon Berner responded that yes, the farm is certified organic, and there are several things that we can do; we can sell the mulch for fuel, we can sell it as mulch, we can grind it finer and mix it in with the top soil, or we can spread it on the land. We are allowed to

spread 6 inches deep a year on the land. We have targeted uses for it but he can't say exactly what they are going to do because they have never done this before. Mr. Berner also commented that they have tried to minimize the dirt on the road and the State Police have been pleased. OSHA has been out four times to inspect and the State Police daily.

Resident Debbie Zimmerman asked if the work is being done near or on her land?

Leon Berner stated that there are property stakes back there because of the mine. He stated that his property is in about six feet from the edge of the road and that is from GPS surveyor.

Councilman Specht asked that normally for a Special Use Permit we notify the County, and the surrounding towns, where are we at with that?

Supervisor Foss responded that our Town Attorney took care of the County and The Town Clerk will take care of the Towns once we approve the resolution.

Mr. Manko stated that they targeted 60 days to complete the whole project, if we don't get inhibited with a snow storm, they could have the bulk of the loads of trucks scaled back in about 40 days. After that they would have about one third of their crew. We estimated by house meters, try to figure out how many house meters are in a village, Amherst has 42,000 house meters. The typical measurement of debris is about 10 cubic yards on the first pass and 6 on the second, and 3 on the third. From what we are seeing in Amherst the debris on the roads is over 12 cubic yards and the debris in the backyard is twice as much but the people have no way of getting it out because it's so wet right now.

Councilman Handley asked if we were going to notify the people in that area?

Mr. Manko stated that he has been stopping at all the home in the area, a few each night. He's introducing himself and letting them know what is going on. They are instructing the truck drivers to use Swartz Road and not Townline Road.

Mr. Berner said that some drivers are using Townline because they are getting fuel at Pautler's.

Debbie Zimmerman asked how long will they be grinding at night because you can hear it.

Mr. Manko answered they are going for a few hours after dark, just to try to keep up.

Leon Berner stated that opening his door and listening he could only hear a faint rumble, but you do hear the trucks back up alarms.

Motion: Councilman Gertz moved, seconded by Councilman Specht to approve the resolution authorizing the Special Use Permit for the temporary disposal of wood debris, and to authorize the Supervisor to sign the agreement.

WHEREAS, the Town Board of the Town of Marilla has received a request from Leon Berner to authorize the use of his property located at 11215 Clinton Street SBL #'s 129.00-14-5.1, 129.00-15-13, 129.00-15-14.11, 129.00-15-21 and 129.00-15.5.11 as a temporary site for the deposit and processing into mulch of trees, branches and other wood debris from the Town of Amherst and the City of Buffalo resulting from the October snowstorm; and

WHEREAS, the Town Board has determined that the proposed action constitutes a Type II action under SEQRA as an emergency action taken on a temporary basis for the protection and preservation of life, health, property or natural resources; and

WHEREAS, the proposed action which would normally not be permitted under the R-R and A Zoning Classification constitutes the provision of an "Essential Service" under Section 210-53 of the Code of the Town of Marilla, provided that any materials placed on the site pursuant to this authorization, be placed so on a temporary basis such that

the site may not become a disposal site; and

WHEREAS, the Town Board has considered the dire circumstances impacting the Town of Amherst and the City of Buffalo with having to remove the storm damaged vegetation on an expedited basis prior to the normal winter snowplowing season and desires to assist such municipalities to solve this problem and has determined that it is in the public interest to permit the Berner site to be used as a temporary site for the deposit and processing of trees branches and other wood debris from the October storm provided the Town of Marilla receives those assurances that it deems necessary to protect the interests of the Town of Marilla and to insure that the action undertaken for this site is only temporary in nature and that the Town of Marilla is protected from any liability as a result of the agreement of the Town of Marilla to allow this use of the Berner property; and

WHEREAS, due to the need to act immediately and because the proposed special permit is of limited duration, the Town Board determines that a public hearing will not be required for the Temporary Special Permit.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That the Town Board determines that the approval by the Town Board of a Temporary Special Permit to allow the property owned by Leon Berner to be used as a site for the deposit and processing of trees, branches and other wood debris constitutes a Type II Action under §617 (b) (33) of the SEQRA Regulations and that therefore no further action is required under SEQRA.
2. That the Town Board authorizes the issuance of a Temporary Special Permit to Leon Berner to allow his property located on the North side of Clinton Street to be used as a site for the processing of tress, branches and other wood debris resulting from the October snowstorm from the Town of Amherst and the City of Buffalo, and other municipalities subject to subsequent resolution of the Town Board, subject to the conditions as set forth in the Temporary Special Permit, including, but not limited to the following conditions.
 - a. That a sign must be erected on the Site indicating that it is a Temporary FEMA Disposal and Processing Site.
 - b. Leon Berner shall provide a letter of approval from the New York State Department of Environmental Conservation to the use of the site as a temporary location for the deposit and processing of trees, branches and other wood debris.
 - c. That the hours of trucking operation shall be limited between the hours of daylight and sunset, as such time may change with the onset of winter.
 - d. That access to the site must be from Clinton Street.
 - e. That a flagman and sweeper must be on site at all times to direct traffic and to insure that debris is not deposited on Clinton Street.
 - f. This Temporary Special Permit shall expire on January 31, 2007 but may be extended by the Town Board by resolution.
 - g. Leon Berner and any other entity that is to operate such facility in connection with Leon Berner must enter into a written agreement setting forth in detail the agreement to comply with all the provisions of the Temporary Special Permit and as part of such agreement agree to add the Town of Marilla as an additional insured upon its insurance policy, which insurance policy must have terms, conditions and policy limits acceptable to the Town of Marilla in its sole discretion and be provided to the Town of Marilla and

- agree to indemnify and hold harmless the Town of Marilla from any claims of any nature relating to or resulting from the granting of the Temporary Special Permit.
- h. Leon Berner shall provide a site plan showing the location of the entrances and exits, where the grinders/chippers are to be located, where the mulch resulting from the grinding/chipping operation is to be deposited.
 - i. The Town Board reserves the right to limit the quantity of materials that are brought on site if it determines that the quantity of materials deposited constitutes a hazard or is contrary to the best interest of the Town of Marilla and the property owners owning property in the vicinity of the site.
 - j. As a specific condition of the Temporary Special Permit, the Town of Marilla, its officers and/or employees including its Code Enforcement Officer shall be allowed access to the site at all times for the purpose of inspecting the site and insuring that the site is not constituting a hazard.
 - k. Leon Berner shall pay into escrow the sum of \$.10 per cubic yard into an escrow account with the Town of Marilla to be held until Leon Berner completes the restoration of the site as required by the Town of Marilla
 - l. Upon completion of all the grinding on the site, Leon Berner and David Manko will make a total donation of \$20,000 or .02 cents per cubic yard which ever is greater to the Marilla Fire Company to fund costs that may result to such Marilla Fire Company as a result of the issuance of the Temporary Special Permit.
 - m. Leon Berner shall use his best efforts to remove the mulch from the site as quickly as possible and shall provide the Town of Marilla with his estimated schedule for removal and shall report to the Town of Marilla from time to time and upon request of the Town of Marilla as to the status of the removal.
 - n. Debris that will be deposited and processed will be limited to one million yards from any municipality as approved by the Town Supervisor, unless the Town Board, by subsequent resolution, approves in excess of one million yards.
3. This resolution shall be contingent upon receipt of a recommendation from County Planning that the proposed action has been reviewed and determined to be of local concern and the commencement of operations on the site shall be contingent upon the issuance of the Temporary Special Permit by the Building Department of the Town of Marilla, satisfaction of the terms and conditions of the Temporary Special Permit and the execution of a written agreement with Leon Berner and any other parties that may be involved with the operations as required under 2. g. above.

The above resolution was duly put to a roll call vote at a Special Meeting of the Town Board held on October 24, 2006, the results of which were as follows:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Gertz – Aye

Councilman Handley – Aye

Supervisor Foss – Aye

Motion Carried.

Motion: Councilman Specht moved, seconded by Councilman Spanitz at 9:10 pm.
Motion Carried.

Respectfully submitted,

Town Clerk