

Public Hearing was held October 9, 2008 at 7:30 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York. The purpose of the meeting was to get public opinion on the adoption of proposed "Local Law No. 4 of the Year 2008". The proposed Local Law will regulate alarm devices in the Town of Marilla setting forth minimum standards for alarm devices and systems and setting forth penalties for avoidable alarms. The Town Clerk published the notice of the public hearing in the Alden Advertiser, the Elma Review and East Aurora Advertiser as well as posting it on the Official Bulletin Board pursuant to the provisions of the Town Law. Officials present were:

George Gertz, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
Warren Handley, Councilman

Approximately (23) persons were in attendance. Supervisor Gertz asked if there was any interested person who desired to be heard.

Hearing no comment the Public hearing was closed at 7:32 pm.

---

Public Hearing  
October 9, 2008

Public Hearing was held October 9, 2008 at 7:33 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York. The purpose of the meeting was to get public opinion on the adoption of proposed "Local Law No. 5 of the Year 2008". The proposed Local Law will clarify the Zoning Law by eliminating references to cats and to animals in provisions strictly intended to refer to dogs. The Town Clerk published the notice of the public hearing in the Alden Advertiser, the Elma Review and East Aurora Advertiser as well as posting it on the Official Bulletin Board pursuant to the provisions of the Town Law. Officials present were:

George Gertz, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
Warren Handley, Councilman

Approximately (23) persons were in attendance. Supervisor Gertz asked if there was any interested person who desired to be heard.

Hearing no comment the Public hearing was closed at 7:35 pm.

---

Public Hearing  
October 9, 2008

Public Hearing was held October 9, 2008 at 7:36 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York. The purpose of the meeting was to get public opinion on the adoption of proposed "Local Law No. 6 of the Year 2008". The proposed Local Law will clarify the jurisdiction of the Zoning Board of Appeals as being appellate only. The Town Clerk published the notice of the public hearing in the Alden Advertiser, the Elma Review and East Aurora Advertiser as well as posting it on the Official Bulletin Board pursuant to the provisions of the Town Law. Officials present were:

George Gertz, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
Warren Handley, Councilman

Approximately (23) persons were in attendance. Supervisor Gertz asked if there was any interested person who desired to be heard.

Hearing no comment the Public hearing was closed at 7:38 pm.

Supervisor Gertz stated that a public hearing had been called for this meeting at the Town Hall, 1740 Two Rod Road, Marilla, New York, at 7:40 o'clock P.M. (Prevailing Time) to consider the increase and improvement of facilities of the Refuse and Garbage District, consisting of the acquisition of a garbage packer truck, and to hear all persons interested in the subject thereof concerning the same and for such other action on the part of the Town Board with relation thereto as may be required by law. The Town Clerk presented affidavits showing that the Notice of said public hearing had been duly published and posted pursuant to the provisions of Article 12 of the Town Law.

Approximately (23) persons were in attendance. Supervisor Gertz stated that the hearing in the said matter was now open and asked if there were any interested persons present who desired to be heard.

Hearing no comment the Public hearing was closed at 7:41 pm.

---

Public Hearing  
October 9, 2008

A Public Hearing was held October 9, 2008 at 7:42 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York. The purpose of the hearing was to provide an opportunity for citizens to express community development and housing needs and to discuss possible projects or programs to meet those needs, particularly projects which would benefit low and moderate income persons in the Town of Marilla. The Town Clerk presented affidavits showing that certified copies of the Order Calling a Public Hearing had been published and posted pursuant to the provisions of the Town Law. Approximately (23) persons were in attendance. Officials present were:

George Gertz, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
Warren Handley, Councilman

Supervisor Gertz stated that the Public Hearing regarding the use of Federal Community Development funds in the Town of Marilla was now open. Supervisor Foss asked for public comment.

Resident Shirley Limpinsel asked how much money is available?

Supervisor Gertz responded it depends on the project and amount of money you are requesting.

Hearing no comments from those in attendance, the hearing was closed at 7:44 p.m.

---

Regular Meeting  
October 9, 2008

The regular meeting of the Marilla Town Board was held on Thursday, October 9, 2008 at 7:45 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York. Officials present were:

George Gertz, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
Warren Handley, Councilman

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

**Communications**

None

### **Committee Reports**

Deputy Highway Superintendent Ron Unverdorben reported that the Town Park will close for the season on October 13<sup>th</sup> and will be winterized. He stated that the surplus equipment can be inspected at the Town Highway Garage but interested persons should call first. They are beginning to winterize the buildings and get the snow plow equipment ready. He stated that he will now have an additional office in the Town Hall to be better able to communicate business with the Secretary, use the fax and an online computer. His phone extension is 408.

Councilman Spanitz reported that the next Planning Board will be meeting on Thursday, October 16<sup>th</sup> at 7:00 pm.

Councilman Specht reported that the CAB is still working on the Right to Farm Sign and a bike path at the Town Park.

Councilman Handley reported that the Pavilion Committee finished with the last concert on Ag Day. They had a great response and Lucy Janiga did a great job on the farm display which is still up at the Community Center. He wanted to thank Earl Gingerich Jr. for use of the tent. He stated the Elma Review did a great photo shoot of the day and a good time was had by all. He reported that the Veteran's Day Parade will line up at 11:45 a.m. on November 9<sup>th</sup>. Hot dogs and soft drinks will be available at the Pavilion.

Supervisor Gertz reported that he attended the Water District 5 Meeting on September 30<sup>th</sup> and they are still a few short for signatures. If the District goes thru we may try to add on an extension (Eastwood and Williston). The Water District is receiving a check for \$155,000 from Dale Volker. This will not reduce the cost for Marilla Residents it will only allow us to put in 12 inch lines which enables the Town of Bennington and Alden to tap in. He also stated that he attended a Supervisors meeting in Elma on Tuesday. The major topic is regionalism and they are discussing a campaign to inform residents.

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

None

### **Old Business**

Motion: Councilman Specht moved, seconded by Councilman Spantiz to approve the minutes of the Public Hearings and Regular Board Meeting held on 9/11/2008. Motion Carried.

### **New Business**

Motion: Councilman Specht, seconded by Councilman Handley to approve the following resolution to approve the SEQRA for Local Law No. 4,

WHEREAS, the Town Board of the Town of Marilla is considering adoption of a Local Law to regulate alarm devices in the Town of Marilla and has determined that such action is Type II action under SEQRA and therefore no other action is required

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Marilla, after considering the action proposed herein, in reviewing the criteria contained in Section 617.11 of the Rules and Regulations of the SEQRA Regulations and thoroughly analyzing the proposed regulation with respect to potential environmental concerns, determines that the action will not have a significant effect on the environment and that no further action is required by the Town of Marilla

The question of the adoption of the foregoing order was duly put to a vote on roll call, which resulted as follows:

Councilman Spanitz – Aye                      Councilman Specht – Aye  
Councilman Handley - Aye                      Supervisor Gertz – Aye  
Motion Carried.

Motion: Councilman Spantiz moved, seconded by Councilman Handley to approve the following resolution approving Local Law No. 4 of the Year 2008 entitled “Alarm Device Law of the Town of Marilla” as follows:

A Local Law known as Local Law No. 4 of the Year 2008 entitled “Alarm Device Law of the Town of Marilla”

Be it enacted by the Town Board of the Town of Marilla as follows:

SECTION 1. TITLE

This Law shall be known as Local Law No. 4 of the Year 2008 entitled “Alarm Device Law of the Town of Marilla”.

SECTION 2. PURPOSE

The purpose of this chapter is to protect and promote the health, safety and general welfare of the residents of the Town of Marilla by reducing the number of avoidable alarms of fire, intrusion, holdup or other emergencies which contribute to ineffective utilization of police and fire emergency agencies, require emergency responses which are susceptible to high accident rates, interfere with genuine emergencies (responses) and produce unnecessary alarm noise to the surrounding community.

SECTION 3. DEFINITIONS.

For the purpose of this chapter, the following words and phrases shall have the meanings respectfully ascribed to them by this section:

**ALARM SYSTEM** - A device or an assembly of equipment which is designed to detect smoke, an abnormal rise in temperature, fire, medical emergency or an entry into or exit from a building, structure or facility and by reason thereof emits an audible response intended to alert persons outside of the premises and/or transmit a signal or message to an emergency agency either directly or through a private answering point.

**AUTOMATIC DIALER** - A device that automatically dials and relays a prerecorded message to an emergency agency.

**EMERGENCY AGENCY** - The Erie County Sheriff, New York State Police, fire company, central fire dispatch or other emergency dispatch center.

SECTION 4. EXISTING SYSTEMS OR DEVICES.

The owners and lessees of premises having alarm systems shall comply with all provisions of this chapter on or before one year from the effective date of this chapter.

SECTION 5. AUTOMATIC CUTOFF SYSTEM.

- A. No person shall install or maintain an external audible alarm device which does not contain an operational automatic cutoff system which turns off the external audible alarm after a period not to exceed 10 minutes.
- B. An automatic dialer connected directly to an emergency agency shall automatically disconnect and/or terminate its message after the message has been transmitted a maximum of two times. Notwithstanding the foregoing however, the total transmission time of all messages shall not exceed five minutes.

SECTION 6. ENHANCED 911 OR 911 EMERGENCY.

- A. No alarm system shall have an automatic dialer feature or other type of alarm alert which connects automatically to enhanced 911 or 911 emergency telephone systems.

- B. There shall be no automatic alarm system with direct communication of any type to an emergency agency without prior, written authorization from the emergency agency where the alarms terminate.

#### SECTION 7. AVOIDABLE ALARMS.

- A. The activation of an alarm system through mechanical failure, malfunction, improper installation or the negligence of the owner, user, custodian or lessee of an alarm system or of his employees requiring an emergency response when in fact an emergency does not exist constitutes an avoidable alarm. An avoidable alarm also includes intentional activation of an alarm system when the activator knows an emergency situation does not exist.
- B. An avoidable alarm does not include alarms activated by violent conditions of nature or similar causes beyond the control of the user, owner or operator of the alarm system. The activation of an alarm system under any circumstances in which the activator reasonably believes that the emergency situation exists shall not be deemed to be an avoidable alarm.

#### SECTION 8. KEYHOLDER REQUIREMENTS.

- A. A list of responsible persons (minimum of two) with access to the protected building must be provided to the Town Building Department for systems that do not transmit a signal to a central station. It must contain the following:
  - (1) Name.
  - (2) Home phone number.
  - (3) Business phone number.
- B. Protected buildings which automatically transmit a signal to a central station shall provide the required keyholder information to that agency.
- C. Responsible persons should reside within a reasonable distance from the protected building.

#### SECTION 9. CHARGES FOR AVOIDABLE ALARMS.

An owner or lessee of real property to which an emergency agency responds as a result of avoidable alarm shall pay a fee for each such response in each calendar year as follows:

- A. Police agency response.
  - (1) First through third avoidable alarm responses: no charge.
  - (2) Fourth through sixth avoidable alarm responses: \$35 for each.
  - (3) For each avoidable alarm response after the sixth, the fee shall increase by \$10 from the fee of \$35 provided at Subsection A(2). Example: Avoidable alarm response:
    - (a) Seventh: \$45.
    - (b) Eighth: \$55.
- B. Fire Department response.
  - (1) First avoidable alarm response: no charge.
  - (2) Second avoidable alarm response: \$50.
  - (3) Third and over avoidable alarm responses: \$100 for each.

#### SECTION 10. NOTICE OF EXCESSIVE USE.

The owner or lessee of real property which receives an emergency response by reason of an avoidable alarm shall be notified in writing by means of first class mail of all avoidable alarms up to three police alarms and/or one fire alarms in a calendar year. The letter shall inform the owner or lessee of the times and types of emergency responses provided to the address location and shall contain with it a copy of this chapter.

#### SECTION 11. ADMINISTRATIVE REVIEW.

A committee consisting of a Marilla Code Enforcement Office, a representative of the Marilla Fire Department and a representative from the Town Board shall establish policies and procedures whereby an owner of real property or lessee thereof on which an alarm system has been installed and who has been notified of an avoidable alarm may present evidence as to why any such alarm should not be classified as an avoidable alarm. The committee shall receive such evidence and make recommendations and findings of fact concerning such classification. The Committee shall make the final determination concerning a classification, which determination shall be reviewable only pursuant to procedures under Article 78 of the Civil Practice Law and Rules. To challenge the classification of an alarm as an avoidable alarm, the real property owner or lessee thereof shall, in writing, notify the Committee within 20 days after receipt of notice of the avoidable alarm. The failure to give timely notice shall be deemed a waiver of the right to review the determination.

#### SECTION 12. PAYMENT OF CHARGES.

Avoidable alarm charges shall be paid to the Town Clerk's Office which is hereby authorized to collect such charges by the Town Board from time to time.

#### SECTION 13. FAILURE TO REMIT FEE.

Failure of a real property owner or lessee of property on which an alarm system is installed to pay the avoidable alarm charge, within 30 days from notice of the amount due shall be served with a summons and shall be deemed a violation of this chapter.

#### SECTION 14. ENFORCEMENT.

The Town of Marilla Building Department shall enforce this chapter for alarm systems which detect medical emergencies and entry or exit from a building, structure or facility and for alarm systems which detect smoke, fire or an abnormal rise in temperature.

#### SECTION 15. PENALTIES FOR OFFENSES.

Any person, business, firm, corporation, partnership, association or other entity that does not pay the fee as established in this chapter or who violates any other provisions of this chapter shall be subject to a civil penalty not to exceed \$1,000 for each offense. A separate offense shall be deemed committed upon each day during which a violation occurs, continues or is permitted.

#### SECTION 16. SEVERABILITY

If any portion, subsection, sentence, clause, phrase or portion thereof of this local law shall for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions thereof.

#### SECTION 17. WHEN EFFECTIVE

This Local Law shall become effective immediately upon its filing in the office of the Secretary of State.

The question of the adoption of the foregoing order was duly put to a vote on roll call, which resulted as follows:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Handley - Aye

Supervisor Gertz – Aye

Motion Carried.

Motion: Councilman Handley moved, seconded by Councilman Specht to approve the SEQRA for Local Law No. 5 as follows:

WHEREAS, the Town Board of the Town of Marilla is considering adoption of a Local Law to correct certain inconsistent provisions of the Zoning Law which include references to cats and to animals in provisions strictly intended to apply to dogs; and

WHEREAS, the Town Board of the Town of Marilla is duly qualified to act as lead agency with respect to compliance with SEQRA which requires environmental review of certain actions undertaken by local governments; and

WHEREAS, the proposed action appears to be an Unlisted Action pursuant to the Rules and Regulations of the State Environmental Quality Review Act and the Town of Marilla has determined that a coordinated review is not required; and

WHEREAS, County Planning has also been notified as required under Section 239-m of the General Municipal Law as well as all entities required to be notified under Town Law Section 264; and

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Marilla, after considering the action proposed herein, in reviewing the Environmental Assessment Form, reviewing the criteria contained in Section 617.11 of the Rules and Regulations of the SEQRA Regulations and thoroughly analyzing the project with respect to potential environmental concerns, determines that the action will not have a significant effect on the environment; and be it further

RESOLVED, that the Town Board of the Town of Marilla hereby finds that the proposed responses inserted in Part II of the said Environmental Assessment Form are satisfactory and approved; and be it further

RESOLVED, that the Town Supervisor is hereby authorized and directed to complete and execute the Part III of the said Environmental Assessment Form and to check the box thereon indicating that the proposed action will not result in any significant adverse impacts; and be it further

RESOLVED, that the annexed Negative Declaration is hereby approved and the Town Clerk is hereby authorized and directed to file the same in accordance with the provisions of the General Regulations of the Department of Environmental Conservation.

The question of the adoption of the foregoing order was duly put to a vote on roll call, which resulted as follows:

Councilman Spanitz – Aye	Councilman Specht – Aye
Councilman Handley - Aye	Supervisor Gertz – Aye

Motion Carried

Motion: Councilman Spanitz moved, seconded by Councilman Specht to approve the following resolution approving Local Law No. 5 of the Year 2008 entitled “Amendment to the Zoning Law of the Town of Marilla” as follows:

A Local Law known as Local Law No. 5 of the Year 2008 entitled “Amendment to the Zoning Law of the Town of Marilla”

Be it enacted by the Town Board of the Town of Marilla as follows:

SECTION 1. TITLE

This Law shall be known as Local Law No. 5 of the Year 2008 entitled “Amendment to the Zoning Law of the Town of Marilla”.

SECTION 2. PURPOSE

The purpose of this local law is to amend the Zoning Law to correct certain inconsistent provisions including inadvertent references to cats in a provision relating strictly to dogs and to animals in other provisions strictly relating to dogs and to clarify that the Zoning Law of the Town of Marilla is not intended to regulate cats.

SECTION 3. AMENDMENT OF ZONING LAW

(A) Section 700-33. B. (3) is amended to read as follows:

(3) General or specialized farming, truck gardening, greenhouses, nurseries and animal or poultry husbandry, provided that no killing shall be done on the farm other than of animals raised on the farm for the use of farm residents; provided further that on land devoted to the housing or breeding of horses, cattle, swine, poultry, sheep or goats, the shelters for such animals shall not be closer than 30 feet to the boundary of any nonagricultural zoning district. Kennels, including runways, used for the housing or breeding of dogs shall not be closer than 100 feet to the side or rear lot line or closer than 150 feet to the street right-of-way.

(B) Section 700-53 C. and D. are amended to read as follows:

C. Shelters for dogs within kennels shall not be closer than 100 feet to any lot line.

D. No outdoor area enclosed by fences for the use of dogs shall be permitted within the front yard. Fenced areas shall be set back not less than 50 feet from any side or rear property line.

SECTION 4. SEVERABILITY

If any portion, subsection, sentence, clause, phrase or portion thereof shall for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions thereof.

SECTION 5. WHEN EFFECTIVE

This Local Law shall become effective immediately upon its filing in the office of the Secretary of State.

Roll call Vote:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Handley - Aye

Supervisor Gertz – Aye

Motion Carried

Motion: Councilman Specht moved, seconded by Councilman Spanitz to approve the SEQRA for Local Law No. 6 as follows:

WHEREAS, the Town Board of the Town of Marilla is considering adoption of a Local Law to clarify the jurisdiction of the Zoning Board of Appeals of the Town of Marilla; and

WHEREAS, the Town Board of the Town of Marilla is duly qualified to act as lead agency with respect to compliance with SEQRA which requires environmental review of certain actions undertaken by local governments; and

WHEREAS, the proposed action appears to be an Unlisted Action pursuant to the Rules and Regulations of the State Environmental Quality

Review Act and the Town of Marilla has determined that a coordinated review is not required; and

WHEREAS, County Planning has also been notified as required under Section 239-m of the General Municipal Law as well as all entities required to be notified under Town Law Section 264; and

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Marilla, after considering the herein, in reviewing the Environmental Assessment Form, reviewing the criteria contained in Section 617.11 of the Rules and Regulations of the SEQRA Regulations and thoroughly analyzing the project with respect to potential environmental concerns, determines that the action will not have a significant effect on the environment; and be it further

RESOLVED, that the Town Board of the Town of Marilla hereby finds that the proposed responses inserted in Part II of the said Environmental Assessment Form are satisfactory and approved; and be it further

RESOLVED, that the Town Supervisor is hereby authorized and directed to complete and execute the Part III of the said Environmental Assessment Form and to check the box thereon indicating that the proposed action will not result in any significant adverse impacts; and be it further

RESOLVED, that the annexed Negative Declaration is hereby approved and the Town Clerk is hereby authorized and directed to file the same in accordance with the provisions of the General Regulations of the Department of Environmental Conservation.

Roll call Vote:

Councilman Spanitz – Aye  
Councilman Handley - Aye  
Motion Carried

Councilman Specht – Aye  
Supervisor Gertz – Aye

Motion: Councilman Spanitz moved, seconded by Councilman Specht to approve the following resolution approving Local Law No. 6 of the Year 2008 entitled “Amendment to the Zoning Law of the Town of Marilla” as follows:

A Local Law known as Local Law No. 6 of the Year 2008 entitled “Amendment to Chapter 704 of the Code of the Town of Marilla”

Be it enacted by the Town Board of the Town of Marilla as follows:

#### SECTION 1. TITLE

This Law shall be known as Local Law No. 6 of the Year 2008 entitled “Amendment to Chapter 704 of the Code of the Town of Marilla”.

#### SECTION 2. PURPOSE

The purpose of this local law is to amend Chapter 704 of the Code of the Town of Marilla to clarify that the jurisdiction of the Zoning Board of Appeals is limited to hearing and deciding appeals from an order, requirement, decision, interpretation or determination made by the administrative officer of the Town of Marilla charged with the enforcement of the Code of the Town of Marilla and not to allow appeals from determinations that no violation of the Code exists.

#### SECTION 3. AMENDMENT OF CODE

(A) Section 704-6. A. and B are amended to read as follows:

(A) The jurisdiction of the Zoning Board of Appeals shall be appellate

only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision interpretation, or determination made by the administrative official charged with the enforcement of the Zoning Law of the Town of Marilla. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town of Marilla. No appeal shall be allowed to the Zoning Board of Appeals challenging the determination by an administrative official charged with the enforcement of the Zoning Law of the Town of Marilla not to issue a determination of a violation of the Zoning Law. The Zoning Board of Appeals shall also have the power to grant variances in accordance with the provisions of Section 267-b of the Town Law.

- (B) The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation of determination appealed from and shall make such order, requirement, decisions, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of the ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination of appeal is taken. If the Zoning Board of Appeals determines that strict application of the provisions of the ordinance or local law will create an unnecessary hardship, the Zoning Board of Appeals shall have the right to grant variances in accordance with the provisions of Section 267-b of the Town Law and shall have the authority to impose reasonable conditions and restrictions on the granting of such variance in accordance with the provision of Section 267-b of the Town Law.

#### SECTION 4. SEVERABILITY

If any portion, subsection, sentence, clause, phrase or portion thereof of this local law shall for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions thereof.

#### SECTION 5. WHEN EFFECTIVE

This Local Law shall become effective immediately upon its filing in the office of the Secretary of State.

The above resolution was duly put to a roll call vote of which were as follows:

Councilman Spanitz – Aye                      Councilman Specht – Aye  
Councilman Handley – Aye                      Supervisor Gertz – Aye

Motion Carried.

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

WHEREAS, following the preparation of plans and an estimate of the cost thereof, the Town Board of the Town of Marilla (herein called the “Town Board” and the “Town”, respectively), in the County of Erie, New York, on behalf of the Refuse and Garbage District, in the Town (herein called the “District”), has determined that it is in the best interests of the Town and the District to consider the increase and improvement of facilities of the District, consisting of the acquisition of a garbage packer truck at the estimated maximum cost of \$215,000, pursuant to Section 202-b of the Town Law;

WHEREAS, the Town Board adopted an order describing in general terms the proposed increase and improvement of facilities, specifying the estimated cost thereof, and stating the Town Board would meet to hear all persons interested in said increase and improvement of facilities on October 9, 2008 at 7:30 o’clock P.M. (Prevailing Time) at the Town Hall, 1740 Two Rod Road, Marilla, New York, in the Town; and

WHEREAS, a Notice of such public hearing was duly published and posted pursuant to the provisions of Article 12 of the Town Law; and

WHEREAS, such public hearing was duly held by the Town Board on this 9th day of October, 2008 at 7:30 o'clock P.M. (Prevailing Time) at the Town Hall, 1740 Two Rod Road, Marilla, New York, with considerable discussion on the matter having been had and all persons desiring to be heard having been heard, including those in favor of and those in opposition to said increase and improvement of such facilities;

Now, therefore, on the basis of the information given at such hearing, it is hereby

DETERMINED, that it is in the public interest to increase and improve the facilities of the District as hereinabove described, at the estimated maximum cost of \$215,000; and it is hereby

ORDERED, that the facilities of the District shall be so increased and improved and that the District, with the assistance of the Town Attorney, shall prepare a proposed contract for such increase and improvement of facilities of the District, which proposed contract shall be presented to the Town Board as soon as possible; and it is hereby

FURTHER ORDERED, that the expense of said increase and improvement of facilities shall be financed by the issuance of not to exceed \$215,000 serial bonds of the Town, and the cost of said increase and improvement of facilities, including payment of principal of and interest on said bonds, shall be paid by the assessment, levy and collection of assessments upon the several lots and parcels of land within the District which the Town Board shall determine and specify to be especially benefited by said facilities, so much upon and from each as shall be in just proportion to the amount of benefit which the improvement shall upon the same, to pay the principal of and interest on said bonds as the same shall become due and payable; and it is hereby

FURTHER ORDERED, that the Town Clerk record, or cause to be recorded, a certified copy of this Resolution and Order After Public Hearing in the office of the Clerk of Erie County within ten (10) days after adoption thereof.

Roll Call Vote:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Handley – Aye

Supervisor Gertz – Aye

Motion Carried.

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

WHEREAS, after a public hearing duly called and held, the Town Board of the Town determined that it is in the public interest to increase and improve the facilities of the District, and ordered that such facilities be so increased and improved;

Now, therefore, be it

RESOLVED BY THE TOWN BOARD OF THE TOWN OF MARILLA, IN THE COUNTY OF ERIE, NEW YORK (by the favorable vote of not less than two-thirds of all the members of said Board) AS FOLLOWS:

Section 1. The Town hereby appropriates the amount of \$215,000 for the increase and improvement of facilities of the District, consisting of the acquisition of a garbage packer truck. The estimated maximum cost thereof, including preliminary costs and costs incidental thereto and the financing thereof, is \$215,000 and said amount is hereby appropriated therefor. The plan of financing includes the issuance of \$215,000 bonds of the Town to finance

said appropriation, and the assessment, levy and collection of assessments upon the several lots and parcels of land within the District which the Town Board shall determine and specify to be especially benefited by said facilities, so much upon and from each as shall be in just proportion to the amount of benefit which the improvement shall confer upon the same, to pay the principal of and interest on said bonds as the same shall become due and payable.

Section 2. Bonds of the Town are hereby authorized to be issued in the principal amount of \$215,000 pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), to finance said appropriation.

Section 3. The following additional matters are hereby determined and stated:

- (a) The period of probable usefulness of the object or purpose for which said bonds are authorized to be issued, within the limitations of Section 11.00 a. 28 of the Law, is fifteen (15) years.
- (b) The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the Town for expenditures made after the effective date of this resolution, or for expenditures made prior to the effective date of this resolution if a prior declaration of intent to issue bonds has been made. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.
- (c) The proposed maturity of the serial bonds authorized by this resolution will exceed five (5) years.

Section 4. Each of the bonds authorized by this resolution and any bond anticipation notes issued in anticipation of said bonds shall contain the recital of validity prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation said bonds shall be general obligations of the Town, payable as to both principal and interest by a general tax upon all the taxable real property within the Town without limitation as to rate or amount. The faith and credit of the Town are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds, and provision shall be made annually in the budget of the Town by appropriation for (a) the amortization and redemption of the bonds and any notes issued in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 5. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the Town Board relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and the renewals of said bond anticipation notes, and relative to executing contracts for credit enhancements and providing for substantially level or declining annual debt service, are hereby delegated to the Supervisor, the chief fiscal officer of the Town.

Section 6. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the Town is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such resolution, or a summary thereof, are not substantially complied with, and

an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- (c) such obligations are authorized in violation of the provisions of the constitution.

Section 7. This resolution shall take effect immediately and the Town Clerk is hereby authorized and directed to publish the foregoing bond resolution, in summary, in "THE ALDEN ADVERTISER," and in the "ELMA REVIEW," two newspapers, each having a general circulation in said Town, which newspapers are hereby designated as the official newspapers of the Town for such publication, together with the Town Clerk's statutory notice in the form prescribed by Section 81.00 of the Local Finance Law of the State of New York.

Roll Call Vote:

Councilman Spanitz – Aye  
Councilman Handley – Aye

Councilman Specht – Aye  
Supervisor Gertz – Aye

Motion Carried.

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

At a meeting of the Marilla Town Board held on October 9, 2008, the Board authorized George Gertz, Supervisor to sign, submit and execute a contract with Erie County Community Development Block Grant (ECCDBG) program for the following projects upon approval of ECCDBG.

1. Rural Transit Service.

Roll Call Vote:

Councilman Spanitz – Aye  
Councilman Handley – Aye

Councilman Specht – Aye  
Supervisor Gertz – Aye

Motion Carried.

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

THE TOWN BOARD OF THE TOWN OF MARILLA, IN THE COUNTY OF ERIE, NEW YORK, HEREBY RESOLVES (by the favorable vote of not less than two-thirds of all the members of said Town Board) AS FOLLOWS:

**Section 1.** The Town of Marilla, in the County of Erie, New York (herein called the "Town"), is hereby authorized to acquire a snow plow. The estimated maximum cost thereof, including preliminary costs and costs incidental thereto and the financing thereof, is \$165,000 and said amount is hereby appropriated therefor. The plan of financing includes the issuance of \$165,000 serial bonds of the Town to finance said appropriation, and the levy and collection of taxes on all the taxable real property in the Town to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

**Section 2.** Serial bonds of the Town in the principal amount of \$165,000 are hereby authorized to be issued pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), to finance said appropriation.

**Section 3.** The following additional matters are hereby determined and declared:

(a) The period of probable usefulness applicable to the object or purpose for which said serial bonds are authorized to be issued, within the limitations of Section 11.00 a. 28 of the Law, is fifteen (15) years.

(b) The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the Town for expenditures made after the effective date of this resolution for the purpose for which said bonds are authorized, or for such expenditures made on or before such effective date if the Town Board has made a prior declaration of intent to issue indebtedness therefor. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

(c) The proposed maturity of the bonds authorized by this resolution will exceed five (5) years.

**Section 4.** Each of the bonds authorized by this resolution and any bond anticipation notes issued in anticipation of the sale of said bonds shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation of said bonds shall be general obligations of the Town, payable as to both principal and interest by general tax upon all the taxable real property within the Town without limitation of rate or amount. The faith and credit of the Town are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds and provision shall be made annually in the budget of the Town by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

**Section 5.** Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 relative to the authorization of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 of the Law, the powers and duties of the Town Board relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, are hereby delegated to the Supervisor, the chief fiscal officer of the Town.

**Section 6.** The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

(a) such obligations are authorized for an object or purpose for which the Town is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of such resolution, or a summary thereof, are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

(c) such obligations are authorized in violation of the provisions of the constitution.

**Section 7.** This bond resolution is subject to a permissive referendum and the Town Clerk is hereby authorized and directed, within ten (10) days after the adoption of this resolution, to cause to be published, in full, in "THE ALDEN ADVERTISER," and in the "ELMA REVIEW," two newspapers each having a general circulation in the Town, and hereby designated the official newspapers for such publication and posted on the sign board of the Town maintained pursuant to the Town Law, a Notice in substantially the following form:

**Section 8.** The Town Clerk is hereby authorized and directed to cause said bond resolution to be published, in summary, after said bond resolution shall

take effect, in the newspapers referred to in Section 7 hereof, and hereby designated the official newspapers for said publication, together with a Notice in substantially the form as provided by Section 81.00 of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York.

This resolution was duly put to a vote on roll call, which resulted as follows:

Roll Call Vote:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Handley – Aye

Supervisor Gertz – Aye

Motion Carried.

Motion: Councilman Handley moved, seconded by Councilman Spantiz to authorize the Supervisor to sign a maintenance contract for the photo copier in the basement of the Town Hall with WNY Imaging Systems at a cost of \$595 from October 1<sup>st</sup> 2008 to October 1<sup>st</sup> 2009. Motion Carried.

Motion: Councilman Handley moved, seconded by Councilman Specht to authorize the Town Clerk to advertise for bids to repair the Town Hall Elevator. Motion Carried.

Motion: Councilman Specht moved, seconded by Councilman Handley to amend the agenda. Motion Carried.

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

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS;

A hearing before the Town Board of the Town of Marilla, in the County of Erie shall be held at the Town Hall, 1740 Two Rod Road, Marilla, New York at 7:30 p.m. on the 6th day of November, 2008, for the purpose of hearing all persons interested in the proposed Local Law No. 7 of the Year 2008; and

BE, IT FURTHER

ORDERED, that the Town Clerk is directed to (a) publish a notice of public hearing in the Alden Advertiser and the Elma Review, designated by the Town as its official newspapers for this publication, such publication to be not less than five days before the date of the public hearing; (b) post as required by law one copy of the Notice of Public Hearing no later than the day such Notice is published; and (c) notify by mail all parties of interest pursuant to the General Municipal Law and the Town Law of the Public Hearing, not less than five days before the date of the Public Hearing and notify County Planning as required under §239-m of the General Municipal Law; and

BE, IT FURTHER

ORDERED, that the Town Clerk is to make copies of the proposed “Local Law No. 7 of the Year 2008, entitled “Cold War Veterans Law of the Town of Marilla”, available at her office for inspection and distribution to any interested person during business hours.

The question of the adoption of the foregoing order was duly put to a vote on roll call, which resulted as follows:

Roll Call Vote:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Handley – Aye

Supervisor Gertz – Aye

Motion Carried.

Motion: Councilman Specht moved, seconded by Councilman Handley to declare the 1989 Wheelhorse 516H w/48” Deck and a 1996 Western Stainless Steel Hitch Mount Salt Spreader. Motion Carried.

Motion: Councilman Handley moved, seconded by Councilman Spanitz to amend the agenda a allow Mr. Schenne to make his presentation under old business.  
Motion Carried.

### **Old Business**

Mr. Schenne stated that Mr. Rohl wanted him to formally present to the Town Board a new layout for the B-1 Business District on the corner of Clinton Street and Two Rod Road owned by Richard Rohl. He stated this layout has been through the Planning Board and they gave no recommendation because they didn't like the layout. He stated that Mr. Rohl and himself feel that this layout complies with the letter of the Zoning Law and they think it would be arbitrary for the Board to just deny this layout that meets all the requirements that the Zoning Code asks. He stated he is here tonight to ask the Town Board to formally consider it and give them an answer one way or another.

Councilman Specht responded that this really isn't a development plan it is a division of property and the intent of B-1 was a development plan.

Mr. Schenne responded this is their development plan, it consists of carving this up into these 8 lots.

Councilman Handley responded that the Town Board had already approved a previous sketch plan and asked if this is now a new sketch plan be presented? He asked the Town Attorney if they would have to go through the whole process again?

Attorney Nathan Neill stated that the Planning Board had looked at it already.

Mr. Schenne stated they looked at it and didn't like it but made no recommendation.

Supervisor Gertz asked Planning Board Member Dan Handy if he wanted to comment on that?

Planning Board Member Dan Handy stated that generally the Board did not like it but they didn't put it up for a vote.

Town Attorney Nathan Neill stated that if the Town Board wants the Planning Boards recommendation they should ask them for it. The Planning Board should make a recommendation, the Town Board is looking for them to give feed back. The question is if it meets the code requirements we can't just deny it. If somebody meets our code requirements and fits everything we have in the code it would be arbitrary to deny it. If it doesn't meet the code or there is an area we have discretion then that is different. He thinks it would be useful for the Planning Board to come up with their objections and explain them rather than just say they make no decision. That's why the Planning Board was created to help the Town Board make these decisions. The issue is if it meets the code requirements , if there is something they don't like about it or some issue that doesn't meet the code requirements they should let the Town Board know what those issues are, but if its just that they don't like it because they have a different idea in mind for development, this would not be much of a reason not to recommend it.

Mr. Schenne stated that is their point, they feel this meets the Town's code.

Councilman Handley asked if the old sketch plan would have to be amended?

Town Attorney Nathan Neill responded that they abandoned the old one and this is the new one.

Councilman Specht stated that was the reason he voted for the B-1.

Town Attorney responded the B-1 is only a zoning which is what it is now. We have to live with our law the way it is. We have the right to review the site plans but the site plans have to be reviewed in lieu of what the zoning law requires. If you meet the zoning law requirements, there are some areas you can question; such as location of driveway in terms of site line and things like that. But basically if they meet the requirement of the code we just can't deny it. People have property rights and they have to be accommodated, but if they don't meet those codes then we can use discretion and say we like this but you have to do

something about this. We just can't say no, if there is a reason why it doesn't comply, if there is a question on the site plan itself or there is an objection to it, or some safety issue that would be an issue we could raise. It's not arbitrarily completely yes or no but you have to explain what the reasons are. You can't just say you don't like it, you have to say why.

Motion: Councilman Specht moved, seconded by Councilman Handley to send the proposal back to the Planning Board. Motion Carried.

### **Report of Town Officials**

Building Inspector John Fronczek submitted a written report with 15 building applications received (1 Manufactured Home, , 1 Accessory Bldg., 7 Misc., 4 additions, 1 sign) with fees totaling \$1,212, 14 building permits issued with a total value of \$362,000, 19 inspections were made and 5 complaints. A total of 207 official acts of business were conducted for the month of September 2008.

Town Assessor Kandace Wittmeyer stated that taxable status date has been now moved backed to March 1<sup>st</sup> 2008. A mass mailing was done to inform everyone. The Assessors Association has been doing a study and will have the facts and figures out shortly to show that it is not cost effective for County wide assessing.

The Planning Board minutes have been received and posted and the next meeting will be held on October 16<sup>th</sup> at 7:00 p.m..

The Conservation Advisory minutes have been received and posted Member Bud Pearce stated that they had a table set up on Ag Day and several residents asked why the Town Park couldn't remain open on weekends all year long.

Supervisor Gertz stated that the Marilla Fire Company received a \$40,000 Grant in which they purchased a pick-up truck with. They have received \$250,000 in grants over the last few years.

Town Historian Hubert Kutter reported that Former Town Clerk Dorothy Reichert donated some old farm implements to the Historical Society. He also thanked Ron Unverdorben and his men for bringing them to the Museum. He reported that Jonathan Roth from Troop 290 is working on an Eagle Scout project and placing Historical Markers on several sites in Town. They will be going up in the next few weeks at; Willis Hotel, Cheese Factory, Apple Dryer, and the Blacksmith Shop.

### **Open Board Presentations**

Resident Elaine Argauer thanked everyone for supporting the Library Book sale which raised \$2100.

Zoning Board Member Jake Argauer asked if the Town had looked at the wind turbines.

CAB Member Joe Lankes reported the Car Show Committee wanted to thank the Town Board and the Citizens for their help and patience for this years show it raised \$30,000 for Mercy Flight and also received a check from Dale Volker for \$50,000.

Resident Shirley Limpinsel asked if the Town had been reimbursed from the damages to the vehicles or was the Town denied.

Supervisor Gertz responded that we had received the money for the two damaged trucks.

Mrs. Limpinsel asked if we had been reimbursed for all of the Town's losses.

Supervisor Gertz stated that we are still working on getting reimbursed. The Insurance Company stated we had to file within 120 days and the investigation started 2 years ago.

Mrs. Limpinsel stated that she heard the claim was rejected by the Insurance Company because the previous Supervisor knew what was going on and didn't address it.

Supervisor Gertz stated that we have received a rejection letter but our Insurance Agent said that would happen and to bear with him.

Resident Marsha Cannetti stated that she has lived in Marilla for 30 years and raised her family. She stated that she had attended the meetings on the Rohl Property. A lot of residents were upset with what was going on. The Town Board went a head and passed this even though residents were against it. The Previous Supervisor, Mr. Foss's wife is now building a business on it. We are suppose to trust the Town Board and that is criminal what is going on, its awful. There are a lot of good people in this Town and you let this happen. This was a definite conflict of interest. The residents didn't want it and now we know why Mr. Foss was pushing so hard.

Councilman Specht asked Town Assessor Kandace Wittmeyer when are the Assessors accepting exemptions for the new March 1<sup>st</sup> date.

Assessor Kandace Wittmeyer responded right now.

Town Historian Hubert Kutter stated that Mary Beth Serafin informed him that we need easements for the home signs, we need to get the Town Attorney the descriptions.

Councilman Handley questioned John Fronczek about the survey for the Foss property in the B-1 property purchased from the Rohl. He stated that he has seen 6 different sizes for that lot and asked if we have a deed that states the size, he would like some clarification.

Building Inspector John Fronczek stated it takes 3-4 months to get the deed description.

Supervisor Gertz stated that the County has a Public Notice of a 30 day period for inclusion of lands into an Agricultural District for 2008, it is from November 1<sup>st</sup> to November 30<sup>th</sup>. The Landowner must submit a request. He has submitted his budget, it reduces spending by \$55,000, all employees and Officials will get a 3% increase. Sanitation will go up from \$130 to \$135 due to increased fuel costs. The Fire Tax will increase from \$1.75 to \$1.77.

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

General Fund Claims, Vouchers 446-500	\$ 42,054.95
Highway Fund Claims, Vouchers 143-149	\$ 6,124.04
Special Districts	
Sanitation (SR), Vouchers 99-106	\$ 11,710.04
Special Fire Voucher 13	\$ 2,832.40
Water District #2, Vouchers 21-24	\$ 5,018.87
Water District #3 Vouchers 11-12	\$ 2,706.80
Water District #4 Vouchers 9-10	\$ 1,634.80
Community Develop. PACE Vouchers	\$ .00
Community Develop. HUD	\$ .00

Motion Carried.

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

Respectfully submitted,

\_\_\_\_\_ Town Clerk \_\_\_\_\_ Supervisor  
 \_\_\_\_\_ Councilman \_\_\_\_\_ Councilman  
 \_\_\_\_\_ Councilman \_\_\_\_\_ Councilman