

A Special Meeting of the Marilla Town Board was held Tuesday April 28, 2009 at 7:45 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York 14102.

Officials present were:

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

Supervisor Gertz called the meeting to order at 7:45 p.m. for the purpose of approve order for Water District 5.

Motion: Councilman Specht moved, seconded by Councilman Handy to approve the following resolution for Water District 5;

WHEREAS, the Town Board of the Town of Marilla (herein called the "Town Board" and the "Town," respectively), in the County of Erie, New York has heretofore duly caused Nussbaumer & Clarke, Inc., competent engineers duly licensed by the State of New York (the "Engineers"), to prepare a map, plan and report relating to the establishment of the District, in the Town, and the construction of a water system therein (the "Water Improvement"); and

WHEREAS, the maximum amount to be expended for the establishment of the District and the construction of a water system therein, as set forth in the resolution duly adopted on February 12, 2004, was originally estimated to be \$824,000; and

WHEREAS, the Town Board has determined that such cost estimate should be revised; and

WHEREAS, a revised map, plan and report have been prepared by the Engineers regarding such increase in cost, which revised map, plan and report have been duly filed in the office of the Town Clerk for public inspection; and

WHEREAS, the increased maximum amount proposed to be expended for the construction of the Water Improvement has now been determined to be \$1,317,230; and

WHEREAS, the plan of financing includes the expenditure of approximately \$157,230 expected to be received from other sources to pay a part of said cost, the issuance of \$1,160,000 in serial bonds to finance the balance of said cost, and the assessment, levy and collection of special assessments from the several lots and parcels of land within the District, which the Town Board shall determine and specify to be especially benefited thereby, so much upon and from each as shall be in just proportion to the amount of benefit conferred upon the same, to pay the principal of and interest on said bonds as the same shall become due and payable; and

WHEREAS, it is expected that the District will receive a grant of approximately \$210,000 and a loan from Rural Development to permanently finance said cost; and

WHEREAS, pursuant to the Order duly adopted on November 18, 2008, the Town Board determined to proceed with the establishment of the District at the increased cost of \$1,317,230 and adopted an Order reciting a description of the boundaries of the District in a manner sufficient to identify the lands included therein as in a deed of conveyance, the improvements proposed, the increased maximum amount proposed to be expended for such improvements, including acquisition of necessary land and rights in land, if any, the proposed method of financing to be employed, the Town's compliance with all applicable laws, rules and regulations with respect to environmental matters, the fact that a map, plan and report describing the same are on file in the Town Clerk's office for

public inspection, and specifying December 11, 2008, at 7:30 o'clock P.M. (Prevailing Time) as the time when, and the Town Hall, in the Town, as the place where, the Town Board would meet to consider an increase in the estimated maximum cost of the establishment of the District and construction of the Water Improvement from \$824,000 to \$1,317,230 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 in relation thereto, as may be required by law; and

WHEREAS, following publication and posting of certified copies of said Order pursuant to Article 12-A of the Town Law and after a public hearing duly called and held by the Town Board at the time and place herein referred to, the Town Board, by resolution duly adopted on December 11, 2008, determined that it is in the public interest to establish the District and construct the Water Improvement at the increase cost of \$1,317,230; and

WHEREAS, the permission of the State Comptroller was required with respect to the establishment of Water District No. 5 and construction of the Water Improvement, which permission has been obtained pursuant to an order of the State Comptroller dated April 16, 2009;

Now, therefore, be it

ORDERED, that the increase in the estimated maximum cost of the establishment of the District and construction of the Water Improvement from \$824,000 to \$1,317,230 is hereby approved and said District shall continue to be designated and known as Water District No. 5, in the Town of Marilla, situated wholly outside of any incorporated village or city, and bounded and described as follows:

**LEGAL DESCRIPTION OF WATER DISTRICT NO. 5**

ALL THAT TRACT OR PARCEL OF LAND, being part of Township 10, Range 5 of the Buffalo Creek Reservation in the Town of Marilla, County of Erie and State of New York, bounded and described as follows:

BEGINNING at the northeasterly corner of the Town of Marilla;

1. Thence westerly along the northerly bounds of the Town of Marilla to the intersection of the said northerly bounds of the Town of Marilla and the centerline of Cayuga Creek;
2. Thence in a generally southeasterly direction, along said centerline of Cayuga Creek as it meanders to the intersection of said centerline of Cayuga Creek with the easterly bounds of the Town of Marilla;
3. Thence northerly along the easterly bounds of the Town of Marilla to the aforementioned northeasterly corner of the Town of Marilla and the point and place of beginning. and be it further

ORDERED, that the expense of the costs of construction, operation and maintenance of the District shall be paid by the assessment, levy and collection of special assessments upon the several lots and parcels of land within the District in proportion as nearly may be to the benefit which each lot or parcel shall derive there from; and be it further

ORDERED, that within ten (10) days after adoption of this Order, the Town Clerk shall record with the Clerk of the County of Erie and file with the Department of Audit and Control in Albany, New York, copies of this Order, certified by said Town Clerk.

Roll Call Vote:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Handley – Aye

Councilman Handy – Aye

Supervisor Gertz – Aye

Motion Carried.

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

WHEREAS, the Town Board of the Town of Marilla, in the County of Erie, New York (the "Town"), has heretofore duly authorized the establishment of Water District No. 5 and the construction of a water system therein, at the estimated maximum cost of \$824,000, which amount was appropriated there for pursuant to the bond resolution adopted by said Town Board on February 12, 2004, and it has been determined that such estimated maximum cost is now \$1,317,230, and it is necessary and desirable and in the best interests of said Town to change the total appropriation there for from \$824,000 to \$1,317,230;

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 members of said Town Board) AS FOLLOWS:

Section A. The bond resolution of said Town duly adopted by the Town Board on February 12, 2004, entitled:

"Bond Resolution dated February 12, 2004

A resolution of the Town of Marilla Town Board dated February 12, 2004, authorizing the establishment of Water District No. 5 in a maximum amount not to exceed \$824,000, and authorizing the issuance of serial bonds in an aggregate principal amount not to exceed \$824,000 of the Town of Marilla, Erie County, New York, offset by any funds received from the United States of America, and/or the State of New York, and/or the County of Erie, and/or neighboring Towns for said object or purpose or redemption of the Town's obligation issued there for, pursuant to the Local Finance Law to finance said purpose and delegating the power to issue bond anticipation notes in anticipation of the sale of such bonds to the Town Supervisor," is hereby amended to read as follows:

**BOND RESOLUTION OF THE TOWN OF MARILLA, NEW YORK, ADOPTED FEBRUARY 12, 2004 AND AMENDED APRIL 28, 2009, APPROPRIATING \$1,317,230 TO PAY THE COST OF ESTABLISHMENT OF WATER DISTRICT NO. 5, IN THE TOWN, AND THE CONSTRUCTION OF A WATER SYSTEM THEREIN, INCLUDING THE EXPENDITURE OF UP TO \$157,230 EXPECTED TO BE RECEIVED FROM OTHER SOURCES, AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$1,160,000 SERIAL BONDS TO FINANCE A PART OF SAID APPROPRIATION**

Recitals

WHEREAS, following submission of an application by the Town Board of the Town of Marilla, in the County of Erie, New York (the "Town"), the Comptroller of the State of New York, by Order dated April 16, 2009, granted permission to increase the maximum amount to be expended for the establishment of Water District No. 5 and construction of water improvements therein, which Order was duly filed with and presented to said Town Board at its first meeting held after said Order was received; and

WHEREAS, the Comptroller of the State of New York has approved the increase in the maximum amount to be expended from \$824,000 to \$1,317,230; and

WHEREAS, said Town Board duly adopted an Order on April 28, 2009, increasing the estimated maximum cost for the establishment of the District, designated Water District No. 5, in the Town of Marilla, and ordered construction of certain improvements therein, at a cost not to exceed \$1,317,230;

Now, therefore, be it

RESOLVED BY THE TOWN BOARD OF THE TOWN OF MARILLA, IN THE COUNTY OF ERIE, NEW YORK (by 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 \$1,317,230 for the establishment of Water District No. 5 and the construction of a water system therein, in accordance with the map, plan and report prepared by Nussbaumer & Clarke, Inc., on file in the office of the Town Clerk and heretofore approved by the Town Board of the Town. The estimated maximum cost of said specific object or purpose, including preliminary costs and costs incidental thereto and the financing thereof, is \$1,317,230. The plan of financing includes the expenditure of up to \$157,230 funds expected to be received from other sources to pay a part of said appropriation, the issuance of not to exceed \$1,160,000 bonds of the Town to finance the balance of said appropriation, and the assessment, levy and collection of assessments from the several lots and parcels of land within the District which the Town Board shall determine and specify to be especially benefited thereby, so much upon and from each as shall be in just proportion to the amount of benefit conferred upon the same. It is expected that the District will receive a grant of approximately \$210,000 and a loan from Rural Development to permanently finance said cost.
- Section 2. Serial bonds of the Town in the principal amount of \$1,160,000 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 "Law"), to finance a part of said appropriation.
- Section 3. The following additional matters are hereby determined and stated:
- (a) The period of probable usefulness of said specific object or purpose for which the bonds authorized by this resolution are to be issued, within the limitations of Section 11.00 a. 1. of the Law, is forty (40) 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 prior to such effective date 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 bonds authorized by this resolution shall 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 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, as amended, shall take effect immediately.

Section B. The amendment of the bond resolution set forth in Section A of this resolution, shall in no way affect the validity of the liabilities incurred, obligations issued, or action taken pursuant to said bond resolution, and all such liabilities incurred, obligations issued, or action taken shall be deemed to have been incurred, issued or taken pursuant to said bond resolution, as so amended.

Section C. The Town Clerk of the Town of Marilla, in the County of Erie, New York, is hereby authorized and directed to publish the foregoing bond resolution, in summary, in the "ALDEN ADVERTISER" and the "ELMA REVIEW," hereby designated as the official newspapers of the Town for such publications, together with the Town Clerk's statutory notice in substantially the form as 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  
Supervisor Gertz – Aye

Councilman Specht – Aye  
Councilman Handy – Aye

Motion Carried.

Motion: Councilman Specht moved, seconded by Councilman Spanitz to adjourn at 7:53 pm. Motion Carried.

Respectfully submitted,

\_\_\_\_\_ Town Clerk