

The regular meeting of the Marilla Town Board was held on Thursday, August 13, 2009 at 7:30 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  
Daniel Handy, Councilman

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

### **Communications**

1. Allied Sportsmen of WNY notified the Town that they were renewing their Liquor License.
2. Town Justice Tom Labin requested to be reimbursed for lodging and mileage to attend the New York State Magistrates Conference on October 19<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup>.

### **Committee Reports**

Highway Superintendent Ron Unverdorben reported that the repaving on Parker Road was complete at a cost of \$66,000, of which \$62,000 will be reimbursed from the State. He said that the 2 Town surplus trucks sold for \$17,000 and the Highway Department purchased a new Bobcat skid steer from State bid for \$21,000, to replace the 1985 Skid steer. He thanked Cullen Plumbing for their quick response in helping with the water pump at the Town Park. He wanted to clarify the rumor that a Town Truck was seen at a residence loading garbage. The homeowner has a blue truck similar to the Town's and works for National Fuel and wears an orange t-shirt like the Town's Highway workers. He stated that no town employee was at that residence loading garbage.

Councilman Spanitz reported that the Planning Board will be meeting on Thursday, August 20<sup>th</sup> at 7:00 pm, she said last month the Town Board gave the Planning Board some issues they would like addressed. The Planning Board set priorities to what they wanted to work with first of what they thought was most important. This month they will be working on medium density zoning, that's the number of units per acre, and the portable storage units, that's the pods and garages. She said and then further on and later in the year they will be working on outside remote wood burning heaters and subdivisions; the egress is more than one way in and out for future subdivisions, and private car sales. She said secondly the Library Board will be meeting on August 18<sup>th</sup> and she wanted to remind residents that they will be hosting a book sale beginning September 18<sup>th</sup>. Residents can donate books for the sale by dropping them off at the Library by September 14<sup>th</sup>.

Councilman Specht reported that at this time he didn't have a dollar value to report from the Car Show but in spite of the weather the Car Show was very successful. As always a few problems occurred he will discuss one of them later. He thanked Vinny Beisiegel for a bang up job as Chairman, he puts an awful lot of time in the show. He wanted to thank the Car Show Committee that was on clean up, and Ron and his crew that put the Town back together pretty quickly.

Councilman Handley reported that they had their Senior Recognition Concert today and they had a great turn out, they cooked a lot of hot dogs for the seniors. They had root beer floats from the Friends of the Marilla Library. He said if residents missed this concert they missed a real moving concert, this guy sings Sinatra like Sinatra. He said he was kidding when he said Sinatra took lessons from this guy, he was that good. He didn't think there was a dry eye in the audience when he sang his last song "My way". He said he has never seen so many seniors that quiet for so long; they were mesmerized by the way this guy performed. Next year they hope to have him back so if residents missed this concert they should see him in action because he was phenomenal. He said the two concerts that they had were Glen Colton and Nickel City Reptiles. Each concert had 300 plus in attendance, they cooked hot dogs at the Nickel City Reptiles event along with cookies and refreshments. With the Glen Colton Concert they also had bounce houses for the kids. He said they tried to gear it toward the kids a little bit more because they are going to be our future and we want to plant these

memories in their minds. He said he is very appreciative for the help he has gotten for these two concerts, a lot of people stood up, the Dabb's and Culley know, Fred knows and Dan knows about cooking hot dogs. When the line is there you've got to keep them coming, you're up against hot fires and cold fires and trays emptying and we tried to maintain that tray being full with hot dogs but he thought they did a very good job. He said hats off to everybody that helped and hats off to everybody that participated. He said the next event will be the annual Ag Day which will be held on September 20<sup>th</sup> and more information will be coming. They will be once again having the clam chowder, the tractor show, the engine show, and the Craig Wilkens Country Band.

Supervisor Gertz stated that he has a few things going, it was reported in the paper that we are looking to change a few things in the Town's health insurance policy to reduce costs. He said costs went up 14% this year and he has found a new plan. He has been talking to the Highway Department, everyone there receives health insurance. He is not finished with it yet, he had hoped to propose something tonight but he is not ready to do it, hopefully next month. This will be a major savings to the Town and there are some concessions for the men which they have agreed to but we still haven't ironed out all of the problems. He said we are looking of savings upward of \$15,000 a year using the same company but a different policy. He stated that he received a letter from the Office of the State Comptroller; they will be coming out in the next few weeks to conduct an audit in the Town of Marilla. He said this is the audit he requested, last year they did a risk assessment, which is a study to see if there is a problem. The Town never did receive a report from that but it is his understanding that they didn't find anything so it wasn't necessary to have a report. He said this isn't something that they are doing on their own it is something he requested. He said they will be out in the next few weeks and it is a major undertaking, he hopes they don't come out in our busy season. He reported that the Car Show was a success, Councilman Specht touched on everything. It was one of the smoothest shows he's been to. He said it always gets easier with experience, this is the show's six year and the Committee did a fantastic job, Vinny did a great job. It is his understanding that Vinny is stepping down, he can understand why, it is a very stressful position to have. He said he wouldn't want it and to quell any rumors the Town of Marilla is not going to run it, we support the Car Show and that is the Town's only function. The Town helps them with the sanitation, the road closing, security and insurance and that's as far as the Town is going to go with it. It is not our intention to take it over, there is nobody on the Town Board that wants it and he hopes they find a new chairman for next year. He is budgeting for the Car Show for next year and increasing it slightly just to make sure they have everything covered.

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

Resident Shirley Limpinsel stated that she would love to say something, that Warren Handley got it handed back at him. He has done a great job with that Pavilion, those people were so happy today at the concert. She said just watching their faces and watching the kids last week get involved. She told Warren that he is doing a great job.

Resident Robert Lemke wanted to thank the Town Board for shutting down Two Rod Road and Bullis Road for the Car Show and for paying for the Sheriffs and the insurance. He said the show was a success even though it rained, the car show people stayed and by the time they went home the roads were dry and they enjoyed themselves even though it rained. He asked the Town Board who is in charge the day of the Car Show? Is it the Car Show Committee or the Town or who?

Supervisor Gertz responded that is a difficult question to answer. The Car Show people are in charge of the Car Show and the Town is in charge of safety and security basically. He said it is not the Town's intention to override what the Car Show is doing but if something were to happen that would become a hazard to the Town, it is the Town's responsibility and the Fire Company's responsibility to make sure no one does get hurt. He said any obstacles that are placed in there way are removed so that fire protection can be done and no pedestrians or cars are injured. He said he doesn't run the car show that is their responsibility but if something did arise Vinny was apprized of it, if something did go wrong, they tried to communicate with everybody. He said but things don't always go down the way they are suppose to. He would say the Committee Chairman is in charge of the Car Show but if something goes down and it has to be corrected it has to be corrected right away so no one gets hurt. He said you can't call everybody every time some little thing happens and expect everyone to come running down and have a group discussion on it.

Bob Lemke asked if the Town Board passed a resolution on that day that vendors can vend in a certain area, they had someone that day vending on a road that was closed. He asked why wasn't that vendor asked to be shut down.

Supervisor Gertz stated that he heard about the incident on Monday morning, he said he can't address something he knew nothing about. He stated what should have happened is that someone from the Car Show should have come to him or the Sheriffs and it would have been investigated. He said that falls under the authority of either the Building Inspector who wasn't there or the State or Erie County Police Department, they are in charge of shutting down anybody who is doing something illegal. He said since he was never notified or the Sheriff was never notified he couldn't do anything about it, Monday morning was too late. If he would have been notified he would have definitely had the Sheriffs investigate.

Bob Lemke said the roads were suppose to be closed at 7:30 am, they weren't really shut down at 7:30 it was probably ten minutes to eight before they were shut down. He said that backed up the registration people. He said it also backs up cars coming down to registration too. He asked if next year could they have the road shut down when they are suppose to be.

Supervisor Gertz said they were a little bit late, they gave out all the information, it was just one of those things. He said he meant to get them out by 7:30, they all left the fire hall at about 6:40 when they got out of there, they were a few minutes late. He said that was a glitch, he apologized for it, he tried to get them out of there as quickly as possible. He said when he looked at his watch the last car he saw coming through town was at about quarter to. He said they were about 15 minutes late, he knows it backs them up a little bit but they tried to get it done as quickly as possible. He said those things do happen, he said he will start the meeting a little bit earlier next year, every year they start a little earlier and there are always a couple of stragglers.

Bob Lemke said Car Show people usually like to get there early. He said down here where there are so many vendors involved they want to get their breakfast, they want to get their parking spot and they want the same spot they got the year before.

Supervisor Gertz said he understands he was here at 5:30 am as well, he knows what was going on. He said he knows they were a little late but he doesn't think it was that bad.

Bob Lemke said he understands but they are just trying to correct these problems that's all.

Supervisor Gertz said and you know that every year we're going to have a problem and next year we will close on time and you will come up with something new. He said he appreciates that, they did everything they could, and if that's the biggest problem they had starting 15 minutes late, little stuff like that, we are doing really well as far as he is concerned.

### **Old Business**

Motion: Councilman Specht moved, seconded by Councilman Handy to approve the minutes of the Regular Board Meeting held on 7/9/2009. Motion Carried.

### **New Business**

Supervisor Gertz stated that a situation has arisen and the Town Board has not been apprized of this because it happened at 3 o'clock this afternoon, he did talk to Nate. He said hopefully they can this resolved, there is a question on the Bullis Road Subdivision. He said he would let Warren explain most of it because he was helping the him work on it. He said it actually happened Wednesday while he was helping with the recovery in Gowanda. He went down for a day, Ronnie went down for two days, it's a mess down there. He said he spent a day doing first aid down there and you can appreciate what we have up here compared to what those people are going through. He said this happened Wednesday and he was in communication with Warren while he was on the ambulance treating somebody and he asked Warren to take care of it and he did. He asked if Warren could explain to the Board what is going on he would appreciate it.

Councilman Handley stated pretty much what has taken place is a few questions came up to the notification of people within 500 feet of that area, whether or not they were notified. That was one question, whether Ag & Markets law, whether an Ag Data Statement was filled out. He had to research and he's been on the phone talking to Environment and Planning and

he has spent hours talking to people trying to find out what the status of all this was without getting Attorneys involved. He said as he kept doing more research he got an opinion from an Attorney and that opinion he gave to Supervisor Gertz and then they were told to talk with Nate Neill and get his opinion on it also. He said basically according to Ag Law any zoning change or subdivision approval within 500 feet of a farm operation you have to fill out an Ag Data Statement and from his understanding everybody within 500 feet of that area needs to be notified. Also the question came up to whether section 264 number 16 was followed; “which service of written notice at least 10 days prior to the date of public hearing. Written notice to any proposed regulations restrictions and boundaries of such districts including the amendments there to, affecting property within 500 feet of the following shall be served personally or by mail by the Town upon each person or persons listed below”. He said the question came up whether that applies also and due to the fact that if these do apply we could be sued by an article 78 if it were the case that information is correct. He said the other thing that came in was information on the water laterals, according to the letter that was given to him dated May 30<sup>th</sup> 1996, it states; “ The Department denotes that final notice states that the Town Board is adopting a resolution which will impose lateral restrictions in all water districts in the Town of Marilla. Laterals of water services for 4 inches in diameter or greater will be prohibited within those areas located in the Marilla Agricultural District and or Agricultural Zone of the Town of Marilla.” He said which would affect that project also which possibly would affect that seqra, he said that is the information he came up with and the question will have to go to Nate.

Town Attorney Nathan Neill said we have to go into Executive Session this is not the place to talk about that here.

Councilman Handley asked what would the reason of Executive Session be?

Attorney Nathan Neill responded we are talking about potential litigation.

Councilman Handley said there is nobody.

Attorney Nathan Neill said you raised the issue of somebody’s potential litigation.

Councilman Handley said no his question is it could possibly lead to an article 78.

Attorney Nathan Neill said he thinks they should talk about it and see what issues you raised and we should discuss it.

Councilman Handley responded that he disagrees with his opinion.

Supervisor Gertz stated he doesn’t think its litigation, he did look at rules governing open Government and we are not talking about litigation we are talking about procedural criteria that wasn’t covered.

Town Attorney Nathan Neill asked didn’t you say that you were talking about potential litigation?

Supervisor Gertz responded, no, Warren just said we could be sued, he thinks the question....

Attorney Nathan Neill said the question is who had to be notified, what agricultural operation is in so many feet, its agricultural operation not everybody. He said it’s not talking about everybody that lives within 500 feet, it agricultural operation in 500 feet.

Councilman Handley said but a statement would still have to be filled out.

Attorney Nathan Neill said but for the people that have an agricultural operation.

Councilman Handley said again, but a statement would still have to be filled out.

Town Attorney Nathan Neill responded yes for an agricultural operation within 500 feet.

Councilman Handley said and there is one right next to that subdivision.

Attorney Nathan Neill said he didn’t think there was one next to it.

Councilman Handley said he showed it at their meeting, he had the diagram right up here from the information Nate gave him that basically showed that area right next to it. He said in fact he stated it at a previous meeting that there was farm land right next to it, in fact it's right here (he held up a map).

Town Attorney motioned to see it and asked if that was active farm land right now?

Councilman Handley responded yeah, yeah, across the street is being farmed also.

Supervisor Gertz stated while looking at the map, this is the subdivision and this is farm land, literally abuts the....

Councilman Handley said it's right next to it, he said that was his comment and his fight was that it was butting agricultural land.

Attorney Nathan Neill said what would be required to be done if there was agricultural operation within 500 feet, identify the particular agricultural operation and give them notice.

Councilman Handley said correct and we would have to send the Ag Data Statement to Environment and Planning along with the residence being notified within that area.

Attorney Nathan Neill said again he was unaware there was an Ag district in that area.

Councilman Handley said the question he has is due to the fact that these things have arisen he thinks they should rescind their original....

Attorney Nathan Neill said his recommendation would be to review it and if they did something wrong do it over again and do it correctly. There is not any point in rushing to do something, check to see if we did something wrong. The point is not to make a mistake again and do it correctly.

Councilman Handley said that is correct, he believes number one they have just addressed the fact that they didn't send out the Ag Data Statement so they have done something wrong already which would definitely mean that they need to change what they have done as far as voting on it and he thinks they should rescind it.

Attorney Nathan Neill said at this point they are talking about a rezoning which is separate from a subdivision, the subdivision is not going forward yet at this point, so nothing is going to happen at this point. He said he would suggest that they review it and if they feel they have done something incorrect they would rescind the resolution and go through the process over again. He said notify the private parties and just do it over again correctly. He said it's always the best thing if you make a mistake you can always fix it.

Councilman Handley asked at what point does the clock run out though. Wouldn't it be better to address it sooner than later?

Attorney Nathan Neill asked when did we approve it?

Councilman Handley responded we approved it last month. He said so within thirty days we're suppose to notify Environment and Planning, within thirty days of our decision and that's why the time clock is ticking. His feeling would be they should rescind it now, go back to the drawing board, do their homework and put it back up and do what their suppose to do procedurally so they can prevent any litigation taken place.

Attorney Nathan Neill said he doesn't disagree with that except he doesn't know if they have to do that tonight. If he finds or we find we made mistakes we should rescind it do the things that we didn't do and then vote on it again.

Councilman Handley said he kind of disagrees, he thinks its clear a day we already made a mistake and if we are going to find more, number one with the laterals would be another thing too.

Attorney Nathan Neill said just so you know his recollection of the laterals is first of all it's a Town policy, it's a Town policy not an Ag & Markets law at all.

Councilman Handley said well this....

Attorney Nathan Neill said ok let me finish, it's Town policy, it's not Agriculture and Markets law it's a Town policy. The second thing is it was his understanding it was clearly intended to be only applied to the County agriculture district.

Councilman Handley stated well no because that.....

Attorney Nathan Neill said well that was his recollection.

Councilman Handley said well he has the full report that went to Rural Development and it came from your office and it basically states that the water laterals on Bullis Road, it's as clear as day. It's as clear as day and he doesn't think ...

Attorney Nathan Neill said he doesn't think that's correct.

Councilman Handley said well I can give you....

Attorney Nathan Neill said it's been a long time since he looked at that.

Councilman Handley said he doesn't expect him to remember every piece of paper.

Attorney Nathan Neill said his recollection was we did the lateral restriction policy to specifically cover anybody in the County Agriculture District. He said they weren't intended to restrict it within properties within it own...

Councilman Handley said this states right here that portion of Bullis Road which lies between Water District Number Two and the point approximately 2200 feet west of Two Rod Road,.....District 1 & 2 which lies between Marilla Water Districts 1 & 2, he means that would include all these properties.

Attorney Nathan Neill said he will tell you he was here when they did it and his recollection was it was clearly designed to limit any development in the County Agricultural District, which was his understanding.

Councilman Handley said it states the water laterals, period. He can give him this information, he can give him copies of the whole packet that he received but it definitely addresses that there is a problem possibly with the water laterals which...

Attorney Nathan Neill stated you have to understand the water lateral restriction is a town restriction its not an Agricultural and Markets restriction , it's a Town policy. The Town has a right to change it if the Town sees it as a problem.

Councilman Handley said we would have to do a separate resolution to do that.

Attorney Nathan Neill said yes we would have to do that.

Councilman Handley said but we didn't do that.

Attorney Nathan Neill said again his recollection was this did not apply to the County Agricultural District, that's what we.....

Supervisor Gertz said he guesses to get the jest of what's going on; the Town Attorney's recommendation, he knows what Warren wants, he said bear with him a minute here.

Councilman Handley stated he is protecting the people.

Supervisor Gertz said he understands what Councilman Handley is doing.

Councilman Handley said he apologized if he is going off here but it's dotting the I and crossing the T and that's his job to do that so.

Supervisor Gertz said he appreciates that and he appreciates what he did, he said your recommendation Nate at this particular moment is to just.

Attorney Nathan Neill said he thinks they should review it, he guesses if they feel it is so important he doesn't object to rescinding the approval, except that he thinks it would be

helpful if they have more information before it got denied so they could do a resolution of some, to just do it orally is not a good way of doing it.

Supervisor Gertz asked Councilman Spanitz her opinion.

Councilman Spanitz said she would like to review it.

Supervisor Gertz asked Councilman Specht.

Councilman Specht asked his opinion with regard to what!

Supervisor Gertz said to what they're next step is.

Councilman Specht said he would go along with Nate, he thinks they should discuss it and then correct it, he doesn't think they should be discussing it here.

Supervisor Gertz said it has to be discussed in public, regardless of whether they do it in a work session or here. He said it just came up Wednesday morning at 10 o'clock he got the first phone call and the second one was at 11 o'clock when he was in an ambulance. So you know they were working on it. He then asked Councilman Handy for his opinion.

Councilman Handy said Warren to throw this on us at the last minute, he thinks they need more time to digest this.

Supervisor Gertz said he knows that but it had to be brought up, and they just couldn't let it go until.

Councilman Handy said they do have phones they could have been called, they could have been apprized.

Supervisor Gertz said he didn't have all the information until 4 o'clock this afternoon and trying to do it on the phone and explain it individually, he would forget something with each individual person. So that's why they brought it up here, it had to be brought up. Its got to be on record.

Councilman Handy said they need to review it.

Supervisor Gertz said ok, having said that he said he agrees with Warren but by the same token they do have to review it and if that's what the board wants to do they will move on, thank you.

Councilman Handley said thank you.

Supervisor Gertz said the second thing is to approve the preliminary plot plan for the Rohl property the SEQRA has been approved. He said this is the preliminary plot plan this does not mean that everything that is in there is 100 percent. It's a hundred percent to show to the fact of what they want to do, there could be some lines moved, drainage still has to be addressed that still has to be done.

Motion: Councilman Specht moved, seconded by Councilman Spanitz to approve the following preliminary subdivision plat for the Rohl B-1 business subdivision as follows;

WHEREAS, the Town of Marilla has received a request for approval of a preliminary subdivision plat for the development of the parcel of land owned by Rohl's in the B-1 Zoning District at the intersection of Two Rod Road and Clinton Street in the Town of Marilla; and

WHEREAS, the Town of Marilla previously zoned the parcel B-1 to allow for commercial development of the site; and

WHEREAS, the development of the parcel is consistent with the Town of Marilla Comprehensive Plan; and

WHEREAS, Erie County Planning has been notified as required under 239-m of the General Municipal Law and has submitted a response indicating

that the proposed subdivision is consistent with the Town of Marilla Comprehensive Plan and the Erie and Niagara County Framework for Regional Growth; and

WHEREAS, by resolution adopted on April 9, 2009, the Town Board undertook to act as lead agency under SEQR and has conducted a coordinated review and has received no objections to its acting as lead agency; and

WHEREAS, the Town of Marilla has adopted a negative declaration in connection with the approval of the preliminary subdivision plat; and

WHEREAS, the Town Board has reviewed the preliminary subdivision plat and has determined that it meets the standards for development as set forth in the Code of the Town of Marilla.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

1. The Town Board does hereby approve the preliminary subdivision plat submitted for the development of the 8 lot subdivision at the intersection of Clinton Street and Two Road located in the B-1 Zoning District.
2. The Town Supervisor is hereby authorized to sign the preliminary subdivision plat.
3. This resolution shall take effect immediately

Councilman Specht said he had a question and a comment, he said he talked to Marie and he talked to John; his concern on that preliminary plot plan is the drainage. The preliminary shows no details and John admitted, he wants the record to reflect that no lots shall be sold until the drainage issue is completely resolved and MC is happy with it. He said he personally saw no receivers no ditch cross sections and until those are addressed he is not happy obviously and he doesn't think anybody it. That's his comment.

Supervisor Gertz said he agrees with Fred but again it's a preliminary plot and it does have to be addressed and it will be in the record.

Councilman Handley stated that he just has a quick note too, in looking at the information for the Zelasko property he also found information too there reflecting the same thing that we did not send notice to people within 500 feet of the Rohl property when this was originally rezoned. The law clearly states that it should be in 264:16 of Town Law and at the meeting he had questioned it, he was told basically that they didn't have to do it. He said Supervisor Foss brought to his attention that the notification is only required for variance applications and flag lot applications. He said that is not the case there is an amendment to the zoning ordinance clearly in this law and 500 feet, everybody within the 500 feet of that property also.

Attorney Nathan Neill stated Agricultural operations within 500 feet.

Councilman Handley said every zoning ordinance and every amendment to a zoning ordinance excluding the map, he said this isn't Ag law now, this is 264 Town Law, this is something different. He said but it basically states in number two; "service of written notice at least 10 days prior to the date of the public hearing, written notice of any proposed regulations, restrictions or boundaries of such districts including any amendments there to affecting property within 500 feet of the following shall be served personally or by mail by the Town by each person or persons listed below". He said he did question it when this did take place and the two answers he got were basically completely opposite of what he was requesting. So he still has a question on that rezoning of that property. He said that's all he has.

Supervisor Gertz thanked Warren, and asked are there any other questions or comments?

Councilman Handy said he wanted a legal opinion on this before he votes.

Attorney Nathan Neill said he has to go through it and he is not going to do it right here in front of everybody, through the sections. His understanding....

Councilman Handley asked if he wanted to see it?

Attorney Nathan Neill said when they did the rezone for the Rohl property, was that 2 years ago, three years ago, he thinks we did it by local law and not by ordinance. He asked if it was a local law.

Councilman Handy said he wasn't on the Board.

Councilman Handley said that we changed it in the book because we created a district so that would have made it a local law. He said we still probably would have had to notify everybody though.

Attorney Nathan Neill said we followed the procedure for the local law enactment.

Councilman Handley said it says amendment to a zoning ordinance.

Attorney Nathan Neill said we are not doing it by ordinance we are doing it by local law.

Councilman Handley said but we changed the ordinance in the local law.

Attorney Nathan Neill said no we did a local law, he said ordinance and local laws are different. There are different procedures for each one. He said we are following the local law procedures. We've codified our law they are all by law now not by ordinances anymore. The law is a higher level of legislative action, you can't amend an ordinance, you can't amend a local law by ordinance but you can amend an ordinance by local law. He said this is basically an ordinance different procedure so we followed the procedure for local law adoption.

Councilman Handley asked so our code book is an ordinance or a law?

Attorney Nathan Neill replied our code book is all laws now. We adopted it by law, everything in our code book is by law. He said we can't amend by ordinance procedure anymore, it's all local laws.

Councilman Handley said he would like clarification on that too, here again its at the last minute.

Supervisor Gertz thanked Warren and asked if anyone else had any other questions?

Councilman Handy asked how can we vote on it, if we are going to make the same mistake we made before we don't want to do it.

Attorney Nathan Neill said we're looking at approving a plot plan, we're talking of voting on it. He said the property's been rezoned along time ago.

Councilman Handley said right, is there a statue of limitations?

Attorney Nathan Neill someone would have had to bring action long before now to challenge it. You would have to challenge the law before now to challenge it.

Councilman Handley asked what is the limitation.

Attorney Nathan Neill said ninety days to challenge an action by the Town Board.

Councilman Handley said so nobody can file an article 78 on that.

Attorney Nathan Neill said he doesn't think they can anyways, he thinks it was done properly. He said its not an ordinance it's a procedure for local law.

Supervisor Gertz asked if that satisfied him.

The above resolution was duly put to a roll call vote at a regular meeting of the Town

Board held on August 13, 2009, the results of which were as follows:

Councilman Spanitz – Aye	Councilman Specht – Aye
Councilman Handley – Nye	Councilman Handy – Aye
Supervisor Gertz – Aye	
Motion Carried.	

Supervisor Gertz stated the next item is regarding Water District 5, he said we haven't received official notification but we are moving ahead with it. He said we received information it is going to be approved, he expected the letter he hasn't received it yet but the Engineers have started their movement on it. This is a resolution for grant funding loans.

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

WHEREAS, the Town of Marilla has obtained grant and loan funding for Water District No. 5 through United States Department of Agriculture Rural Development; and

WHEREAS, in order to obtain the necessary funding, the Town of Marilla is required to adopt a Loan Resolution which is being adopted on today's date and also to execute a Water or Waste System Grant Agreement with the United States Department of Agriculture Rural Utilities Service.

NOW, THEREFORE, be it resolved by the Town Board of the Town of Marilla as follows:

1. That the Town Board does hereby approve the execution and delivery of the Water or Waste Water System Grant Agreement between the Town of Marilla and the United States Department of Agriculture Rural Utilities Service.
2. That the Supervisor of the Town of Marilla is authorized to execute the grant agreement on behalf of the Town of Marilla.
3. This resolution shall take effect immediately.

The above resolution was duly put to a roll call vote at a regular meeting of the Town Board held on August 13, 2009, the results of which were as follows:

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

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

WHEREAS, it is necessary for the Town of Marilla (herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of **NINE HUNDRED SIXTY-SEVEN THOUSAND and XX/100 DOLLARS (\$967,000.00)** pursuant to the provisions of Subject to NYS Municipal Finance Law; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such terms and in such forms as are

required by State statutes and as are agreeable and acceptable to the Government.

2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities, and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$348,730.00 under the terms offered by the Government; that Town Supervisor and Town Clerk of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

Roll Call Vote:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Handley – Aye

Councilman Handy – Aye

Supervisor Gertz - Aye

Motion Carried

Supervisor Gertz stated the Court Clerk has resigned, she moved on to a different position. The Judges have interviewed and came up with a new Court Clerk and made a recommendation to the Board. Tonight he would like to appoint that person upon recommendation from the Court, that is Dawn Stover who lives on West Avenue.

Motion: Councilman Handley moved, seconded by Councilman Handy to appoint Dawn Stover as Court Clerk for 2009 and pay according to the adopted clerks pay scale. Motion Carried.

Supervisor Gertz stated that they are putting in a auxiliary heating system in the Community

Center. The intention is this is not to heat the building to 100 degrees. The idea is to keep the chill off the building. He said it's not a large system, he knows we just put a new furnace in there but those 2 furnaces we can't tap into them because they are both three phase. He talked to the Engineers, Nussbaumer & Clarke, the Engineers from MJ Mechanical that installed that system. He said they both concluded the same as he did that a small furnace in the corner of the room would be large enough to just to take the chill off. That's all they would need in case of an emergency if they had to house people. He got two bids, one from Cullen Plumbing and one from Aaron Bender Plumbing. Cullen was \$4575, and the bid from Aaron Plumbing for \$7500.

Motion: Councilman Handley moved, seconded by Councilman Specht to approve low bidder Cullen Plumbing for heating system at Community Center.  
Motion Carried.

Supervisor Gertz stated that he asked the Highway Superintendent Ron to look into the parking lot, Ron had brought it to his attention earlier in the year. Ron did look at the parking lot, it is under state bid and they did get two accompany bids with it, they don't have to go out and get formalized bids because it is within the realm of state bid. So they are going to repave the parking lot this year, it really does need it. He said there is some work that is going to be done in the drainage which the Highway Department is going to do. They are going to clean it up and we do have to re-stripe. Rather than re-striping it this year and re-paving it next year, our budget allows us to do this so we're going to pave it. He had two bids from Amherst Paving and Occhino Paving. The one from Amherst was for \$11,347.50, and the other bid was for \$10,867.50. He said he needed a motion.

Councilman Handley asked who was the ten thousand from?

Supervisor Gertz replied Occhino.

Councilman Specht said Ronny I don't know anything about that low bidder, are you happy or comfortable with him?

Highway Superintendent Ron Unverdorben said yeah, he was taken right off the state bid sheet. He said both the companies were taken right off the state bid sheet.

Motion: Councilman Handy moved, seconded by Councilman Specht to approve low bidder; Occhino Paving for \$10,867.50 to re-pave the Town Hall parking lot.  
Motion Carried.

### **Report of Town Officials**

Town Engineer Marie Nowak reported that their survey crews will be out in Water District number 5 next week. She said their trucks are marked so residents should be aware and not to worry.

Councilman Specht asked Marie if they will be filming the area again for environment and construction, like they normally do. They usually VCR the road.

Marie Nowak said yes pre-construction photos of every driveway, there will be a video up and down both sides of the street.

Councilman Specht said good idea.

Marie Nowak said the status of everything will be reported prior to any shovel going into the ground. She said that's a ways away.

Someone asked what's the time frame of getting this done?

Marie Nowak responded they are going to start survey work, the biggest issue of this project is the crossing of Cayuga Creek. Which has to be approved by the New York State DEC and the Army Corps of Engineers. The Rural Development money that we are getting is actually part of the American Recovery and Reinvestment Act which is stimulus money, so to speak. The Corps of Engineers has been told that any projects that come to them that are identified as such get a priority. It can still take a month or two to get the Corps approval. She said they expect to be done with the design part of it by mid November, then depending on how long it takes going through the Corps, they could have it out for bid early next year.

Attorney Nathan Neill asked if they know if they will be needing any right of way easements?

Marie Nowak said right now they don't anticipate needing any easements.

Attorney Nathan Neill said he will need to know for sure to start the paper work.

Marie Nowak said they will know right after their survey crews are done.

Building Inspector Scott Rider reported that 9 building permits were issued with fees totaling \$513 and a value of \$247,700. A total of 5 inspections were made and a total of 194 calls were logged. He reported 47 permits to date were issued, 2 new homes, 3 manufactured home replacements, 11 additions, and 31 misc. (decks, sheds, pools)

Supervisor Gertz said he asked Scott to include that in his report so we know what the growth of the Town is; he appreciates Scott putting it in. He said it sort of helps him, he can keep track of what's going on. He thanked Scott.

Town Attorney Nathan Neill reported that he met with RDA, he will be meeting with the Bond Council and is suppose to be getting the necessary papers for the proposed bond and the paper work for the RDA closing. They should get that in probably the next week or two and get started with that process. He said so we should be in pretty good shape.

Town Assessor Earl Dabb said he has nothing to report, unless Kandy does.

Supervisor Gertz asked if everything was filed and we are all up to date now.

Mr. Dabb replied yes.

Planning Board minutes were received and posted. Their next meeting will be August 20<sup>th</sup> at 7:00 p.m.

The Conservation Advisory Board minutes were received and posted and their next meeting will be on August 4<sup>th</sup> at 6:45 p.m.

Supervisor Gertz reported that he had mentioned before; the Marilla Fire Company had been approached by the County, they sent a truck down Monday and Tuesday to do traffic, Ronny went down for two days. He said Ronny did traffic and cellar pumps, he went down for a day and did first aid calls. He took the ambulance down, he had to compliment the County on the great job that they were doing in establishing a command post and keeping everybody moving along. He said the Red Cross was there and the Salvation Army was there. The out pouring from the surrounding Counties was just unbelievable. He said just driving down the road everybody waved to them when they went by; to thank them for the job they did. They did have, he ended up running two calls, nothing major, and those people are in a lot of hurt. He said remember them in your prayers, he said any money that you want to send down, he doesn't know if anything has been set up yet. These people lost everything, the people that lost everything are walking around engulfed in mud because they have no way of taking a shower. They come down to the school to clean up and get food and cleaning supplies and water. Water was major, there was few tractor trailers showed up with pallets of water for those people. He said they are doing well, they hope to be out of there by the weekend. Their recovery is going to be a long time coming, the Army Corps of Engineers was down there doing a great job also. They had just started when he was down there.

### **Open Board Presentations**

Resident Lorraine Martzolf said like Fred they are concerned about the drainage on the Rohl property. She knows it's a preliminary plan but it seems to her there are a lot of questions yet to be answered.

Supervisor Gertz replied it is a preliminary plot plan, before they can move ahead and anything can be done, he has talked to Marie about this. This all has to be, before the

drainage can be approved there will be cross sections, there will be culvert placements, there be DI placements will all have to be addressed.

Mrs. Martzolf said and they will know that when its going to happen. There will be meetings and whatever so that they will know what is proposed.

Supervisor Gertz said this information will be made available to the general public. He said they are not going to just start selling land and start putting houses up or buildings.

Mrs. Martzolf said on Coleman Road the people are concerned.

Supervisor Gertz said and rightfully so it's in your backyard and you should be concerned.

Resident Shirley Limpinsel stated that she like Lorraine has a lot of concerns, her concern is that property on Bullis Road. She still thinks a terrible mistake was made and a can of worms has been opened up here big time. She has asked for foils on this property, she has received information on this property. Those 4 inch laterals do count and she is very concerned about this because she brought this up to the Planning Board and everybody thought she was crazy. It took three or four months for people to finally figure out if it was right or if it says Ag District or Ag Land. She said it's very specific and it came from the Attorney's office, she read it because she requested it. She thinks you people need to rescind that vote until that is taken care of. The people on Greenwood Terrace deserve that and the people on Coleman Road deserve that, they know their land, they know what goes on in that creek bed. This is not a good project, this is not a good place for this project.

Supervisor Gertz replied they are addressing it and he appreciates her comments but it will be addressed. He said this all came up spur of the moment, they had to discuss it to get it on the record that there was a problem they didn't want to wait until next month to bring it up. That's why it was brought up this evening.

Mrs. Limpinsel said it needs to be addressed because there is something very wrong there.

Resident Jake Argauer said he got this letter from a friend of his mailed out by these people. He said he has lived in this Town for 66 years and according to this paper here this Town Board is corrupt. He said he knows Fred he knows everybody on this Town Board and the people who send this stuff out should be prosecuted as far as he is concerned. If there not pleased with this Town Board they should just stand right up here and tell him. These people who's names are on here that send this type of literature out that are saying this Town Board is corrupt should be prosecuted. He wants everybody to take a look at it . He has never seen this kind of garbage in 66 years and he's gone through a lot of town boards. He said another thing he wants is a no loitering sign in the Town Clerk's Office. There are some people that don't belong in there.

Supervisor Gertz replied it is a public place he doesn't think anybody gathers there, they do come in quite frequently asking for information, they're in there for a few minutes. He's never seen anybody major loitering, he doesn't know if Dawn has. He will look into that and keep an eye on it for him, he appreciates his comments.

### **Town Board Presentations**

Councilman Spanitz said she is appalled anybody would think she is corrupt, she thinks things through, she is a fair person . She is a very Christian person and she resents being accused of being corrupt, she did not see the letter. She said it is beyond her that someone would do that. She said it's not an easy job here, there's lots of different aspects to be considered. There is a whole Town full of people not just in this little section or that one, it's the whole Town that has to be considered and the benefit of the whole Town. She is devastated by this it's a terrible thing and she hopes this Town can go forward, she doesn't know where that comes from but it's devastating.

Jake Argauer said obviously it came from the people who signed it, the people that are running, their names are right on it.

Councilman Spanitz said she didn't see it, it was not delivered to her.

Councilman Specht said he wanted to get something off his chest. He mentioned earlier about some problems at the Car Show. He wants everybody to know he has been an active

Committee on that Car Show for 6 years. He said every year they have a problem and every year they meet and try to correct the problem so it don't reoccur. He said a number of years ago they had a problem with unauthorized golf carts, motorcycles, atv's running up and down the road. We went to the Town and asked for a referendum, a resolution, that only vehicles, vendors as set forth that the Car Show Committee approved would be allowed. He said and they got it, they get it every year. He said during the recent show they had an unauthorized golf cart, the Car Committee Chairman went to the Sheriff, Vinny Biesiegel said that's an unauthorized golf cart remove it. He said and the Sheriff said, he will quote "Supervisor Gertz said it was ok" and he would not remove it. He has two questions tonight, number one why did George say ok for that golf cart, number two and more importantly George, you willfully violated a Town resolution.

Supervisor Gertz said Fred you are making an accusation without asking me first.

Councilman Specht said I'm asking you now.

Supervisor Gertz said that's the first I've heard of it.

Councilman Specht said he talked to Vinny yesterday and that was the first he heard about it.

Supervisor Gertz said this is the first he's heard about it, Vinny never said anything to him about it.

Councilman Specht said well this is what the Sheriff and Vinny just told him. So anyway the incident has caused a lot of concern, grave concern among the members of the Car Show Committee and he understands Vinny has resigned because of it. He said his personal feelings is a fund raiser for Mercy Flight there is no place for politics and that's his personal opinion and until that stops he won't participate in that Car Show, it's wrong. He tried to think of words to describe it but the only word he could come up with "IT SUCKED".

Supervisor Gertz said "Fred you know this is the first I heard about it. The same thing he heard the next day that somebody was having illegal whatever they were doing. He said when you come to him after the fact, he never told the Sheriff that any golf cart was ok, as a matter a fact he told the Sheriffs to curtail the golf carts from going on there. He would like to know the Sheriffs name that said that and he will question him on it, because he NEVER, no one ever asked him about a golf cart, this is the first he is hearing about it and all it is it sounds like to him is someone is trying to blackmail him or make him look bad because he never ."

Councilman Specht said "He will have Vinny call George personally with the Sheriffs name".

Supervisor Gertz said "He wishes Fred would and he will look into it because this is the first he heard about anybody looking into a golf cart allowing on the grounds. Last year there was a golf cart incidence but the person was handicapped and we did let it on. That was a totally different story, this year, this is the first he has heard of it, He doesn't know what your talking about, and he I doesn't know who the golf cart was and he doesn't know why it's being brought up now. He should have been called the next day or he should have been called right then and there. All this is, is just mud slinging as far as he's concerned".

Councilman Specht said "He's not going to discuss it right now George but he will be happy to discuss it later with Vinny".

Supervisor Gertz said "This is not the place to discuss problems that should have been brought up weeks ago not today and try to sling mud and make him look bad on something he had nothing to do with, and there's no evidence. You're bringing no evidence, your saying a sheriff said, Vinny said, you know who's the Sheriff, who's the golf cart. He just don't like this when people start throwing things out to make someone look bad when they have no evidence. The same way he gets these phone calls all the time, someone's doing this, well who's doing it, what's their name? It's anonymous and He is dismissing it and he thinks that should be done".

Councilman Specht said "fine".

Supervisor Gertz said "thank you Fred". This isn't the time or place for this but whatever.

Councilman Handy said on a lighter note he enjoyed the Car Show and he hopes everybody else did.

Supervisor Gertz said so did he.

Councilman Handley said he had just one quick comment about the politics in the Car Show, had it not been for politics in the Car Show last year they wouldn't have got that donation to Mercy Flight from Senator Dale Volker. He thinks there is a place for politics as long as it's tastefully done.

A resident stated its Town versus.

Councilman Handley said well then next time Senator Volker comes with a check you tell him you don't want it because he's not welcome in the Car Show.

The resident said no that's different, this is the Town.

Councilman Handley said he didn't want to get into a discussion with her, but that is a fact. Tell him you don't want the money because you don't want him to be part of the Car Show. That's all he has to say.

Resident Jake Argauer said it's not his money it's our money.

Councilman Handley said but he did come and bring it and he was a Senator who is a politician who did have a booth over there. He said he can't speak for him for what he does or who he is but hats off to him for donating that money. He is not here to talk about a politician or get involved with how they feel about him, he just wanted to make that point, thank you.

Supervisor Gertz said he wished he had a bright note but he doesn't have anything to say, he is a little disturbed about what is going on.

Councilman Handley said talk about the concerts in Marilla

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

General Fund Claims, Vouchers 324-391	\$ 49,183.14
Highway Fund Claims, Vouchers 108-123	\$ 11,541.27
Special Districts	
Sanitation (SR), Vouchers 72-84	\$ 19,650.53
Special Fire Voucher	\$ .00
Water District #2, Vouchers 19-20	\$ 2,496.89
Water District #3 Voucher 10	\$ 1,353.40
Water District #4 Voucher 9	\$ 817.40
Community Develop. PACE Vouchers	\$ .00
Community Develop. HUD	\$ .00

Motion Carried.

Motion: Councilman Handley moved, seconded by Councilman Spanitz to adjourn the meeting at 8:33 p.m. Motion Carried.

Respectfully submitted,

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