

Town of Hamburg
Planning Board Meeting
September 19, 2007

The Town of Hamburg Planning Board met in regular session on Wednesday, September 19, 2007 at 7:30 p.m. in Room 7B of the Hamburg Town Hall. Those attending included Chairman Gerard Koenig, Secretary Paul Eustace, Steve McCabe, Sasha Yerkovich, David Phillips, Richard Taber and Karen Rogers.

Others in attendance included Andrew Reilly, Sarah desJardins, Richard Lardo, Attorney Michael Fruth and Attorney Don McKenna.

Public Hearings, Steel Winds II Energy Facility (Special Use Permit and Site Plan Approval)

Chairman Koenig announced that the two public hearings for this proposal (Special Use Permit and Site Plan Approval) would be held concurrently.

Mr. Eustace read the following Legal Notices of Public Hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by BQ Energy, LLC. The applicant proposes to construct five (5) wind turbines on the old Bethlehem Steel property. In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on September 19, 2007 at 7:30 p.m. in Room 7B of Hamburg Town Hall."

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by BQ Energy, LLC. The applicant proposes to construct five (5) wind turbines on the old Bethlehem Steel property. In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on September 19, 2007 at 7:30 p.m. in Room 7B of Hamburg Town Hall."

Mark Mitskovski from BQ Energy, LLC spoke on behalf of the project. Also in attendance were Tim Ryan from BQ Energy, Elizabeth Santacrosse from EME Engineering and Attorney Adam Walters from Philips Lytle.

Mr. Mitskovski stated that five wind turbines are proposed in the Town of Hamburg, three of which would be located along the Lake Erie shoreline and two of which would be located in a second row to the rear.

Mr. Phillips asked why there are times when all of the turbines are not operating at the same time. Mr. Mitskovski replied that it is a matter of the wind pattern, especially in the summer months.

Mr. Reilly reviewed the history of this project from an environmental standpoint, noting that the City of Lackawanna is lead agency for the project. He stated that the Hamburg Planning Board would take input from the public but cannot vote on the project until the City of Lackawanna completes the environmental review process. The City of Lackawanna would like input from the Hamburg Planning Board before it moves forward with its review process.

Mr. Reilly noted that in general the project meets the guidelines of what is required under the Town of Hamburg's windmill law. He added that a review letter was sent to the applicant addressing some minor issues to be addressed and the applicant has submitted responses to that review letter. In addition, the NYS Department of Environmental Conservation has issued a comment letter that will need to be addressed by the applicant.

Attorney Walters stated that he will submit additional comment letters the applicant has received from other involved agencies.

In response to a question from Chairman Koenig, Attorney Walters stated that the distance between the nearest windmill and the closest residence would be 1,512 feet. (The setback requirement is 1,500 feet).

Mr. Eustace stated that he visited the site earlier in the week and feels that the applicant has done a terrific job with the site.

Chairman Koenig declared the public hearings open. He then asked if anyone in the audience wished to speak for or against the proposal. The following spoke:

1. Pat MacAnaney, President of Woodlawn Fire Company, stated that he is looking forward to working with BQ Energy. He further stated that a public meeting was held at the Woodlawn Fire Hall and the response to the project was very favorable.
2. Betty Newell, President of the Hamburg Chamber of Commerce, stated that the Chamber fully supports the project and that there are many positives to it.
3. Fred Harrington, 3330 East Pleasant Drive, stated that he is very much in favor of the project and feels it is a major step forward in addressing global warming and other environmental issues. He presented the Board with a petition signed by approximately 200 people, some of whom are Hamburg residents, who support the project.

4. Chris Stone, Robin Lane, stated that he feels this is the perfect re-use of the old Bethlehem Steel property and a project like this is part of the solution to greenhouse gases and global warming.

Chairman Koenig declared the public hearing closed.

Mr. Phillips made a motion, seconded by Mr. Eustace, to advise the City of Lackawanna that the Hamburg Planning Board has a positive feeling about this project, is anxious to see it built and sees no apparent environmental problems. Carried.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to table the Special Use Permit and Site Plan Approval requests until the Board's October 3, 2007 meeting and authorize the Planning Department to prepare resolutions for approval. Carried.

Engineering Department comments are attached.

Public Hearings, Proposed storage facility-Wanakah Heights (Special Use Permit and Site Plan Approval)

Chairman Koenig announced that the two public hearings for this proposal (Special Use Permit and Site Plan Approval) would be held concurrently.

Mr. Eustace read the following Legal Notices of Public Hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will hold a public hearing on a proposed storage facility at Wanakah Heights 38A. The applicant proposes to store lawn maintenance equipment in an existing barn. In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on September 19, 2007 at 7:30 p.m. in Room 7B of Hamburg Town Hall."

"Notice is hereby given that the Town of Hamburg Planning Board will hold a public hearing on a proposed storage facility at Wanakah Heights 38A. The applicant proposes to store lawn maintenance equipment in an existing barn. In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on September 19, 2007 at 7:30 p.m. in Room 7B of Hamburg Town Hall."

Mr. Ferdinand Garcia, owner of the property, appeared on behalf of the project. He stated that he would like to store his personal equipment in the existing barn and that, because the property is zoned residential and no residence exists on the parcel, a Special Use Permit is required.

Chairman Koenig declared the public hearings open. He then asked if anyone in the audience wished to speak for or against the proposal. No one spoke.

Chairman Koenig declared the public hearing closed.

Mr. Phillips made a motion, seconded by Mr. McCabe, to approve the Special Use Permit and grant conditional Site Plan Approval to this project for Mr. Ferdinand Garcia for the following reasons:

This is a Type II Action under SEQR and therefore no determination of significance is required.

1. The project is in harmony with the general purposes and intent of Article 16 of the Hamburg Town Code.
2. The project will not create a hazard to health, safety or the general welfare.
3. The project will not alter the essential character of the neighborhood nor be detrimental to the residents thereof.
4. The project will not otherwise be detrimental to the public convenience and welfare.

Therefore, the Hamburg Planning Board hereby approves the Special Use Permit for Ferdinand Garcia for the use of an existing barn for storage with the following condition:

1. No business will be conducted out of this barn and the barn will only be used for personal storage of the owner.

Carried.

Engineering Department comments are attached.

New Era Cap Company (4817 Lake Avenue)

Attorney Doug Dimitroff from Phillips Lytle, LLP spoke on behalf of the project.

Mr. Reilly stated that the applicant requests a downsizing in rezoning from M-1 to C-2 in order to re-use the existing building for Inferno Baseball, Inc., a youth baseball/softball sports training facility.

Mr. Phillips made a motion, seconded by Mrs. Rogers, to send a positive recommendation to the Town Board on this rezoning request, as it is a very effective use of the existing structure. Carried.

Public Hearings, Lutz Mobil (Special Use Permit and Site Plan Approval)

Chairman Koenig announced that the two public hearings for this proposal (Special Use Permit and Site Plan Approval) would be held concurrently.

Mr. Eustace read the following legal notices of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Lutz Mobil Convenience store (5073 Camp Road). The applicant proposes to construct a 1,314sq. ft. addition to the existing convenience store and a new 1,827 sq. ft. car wash facility. In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on September 19, 2007 at 7:30 p.m. in Room 7 B of Hamburg Town Hall.”

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Lutz Mobil Convenience store (5073 Camp Road). The applicant proposes to construct a 1,314sq. ft. addition to the existing convenience store and a new 1,827 sq. ft. car wash facility. In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on September 19, 2007 at 7:30 p.m. in Room 7 B of Hamburg Town Hall.”

David and James Lutz, applicants and Tim Arlington from Apex Consulting spoke on behalf of the project.

Mr. David Lutz stated that the proposal is to construct a 1,300 sq.ft. addition to the existing convenience store, 400 sq.ft. of which would encompass a Dunkin Donuts store with a drive- thru, as well as an 1,800 sq.ft. stand-alone car wash with a drive-thru. He further stated that they are still in negotiations with the adjacent Tim Horton’s on Southwestern Boulevard regarding the proposed easement shown to Tim Horton’s to improve its drive-thru.

Mr. Reilly noted that a letter will be required by the Planning Board from Tim Horton’s confirming the easement or the easement must be removed from the site plan for this project. He further stated that there is some concern regarding the small parcel of land shown on the tax map as belonging to Recckio that is included in the site plan. Mr. David Lutz responded that he has the deed to that piece of property. The applicant will resolve the title issue with the Assessor’s office.

Mr. Reilly stated that the biggest issue he sees regarding this project is the internal and external traffic flow on the parcel. Chairman Koenig stated that David Lutz attended the September Traffic Safety Advisory Board meeting and the TSAB's concerns dealt with the internal traffic control. He further noted that the TSAB determined that appropriate signage should be installed to direct traffic flow and no parking should be allowed in front of the convenience store. Additionally, the TSAB looks favorably on the possibility of an easement to Tim Horton's to alleviate the traffic problems there.

Chairman Koenig declared the public hearings open. He then asked if anyone in the audience wished to speak for or against the proposal. The following people spoke regarding the project: No one spoke.

1. Mr. John Wabick from West-Herr stated that he is in favor of the project. He further stated that Camp Road needs revitalization and constant growth.
2. Mr. Mark Kirst stated that he is in favor of the project and feels it will beautify the corner of Camp Road and Southwestern Boulevard.
3. Patty Matlock, Overlook Point, asked where the traffic from the drive-thru lanes will exit the site.

Chairman Koenig declared the public hearing closed.

Mr. Reilly stated that this site is in the Camp Road Overlay district and that, in keeping with the requirements of the Overlay district, the building façade will be improved, landscaping will be added to the site and the car wash facility will be attractive.

Planning Board members were shown elevations of the proposed buildings and were satisfied.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to table the project until the Board's October 3, 2007 meeting and authorize the Planning Department to prepare resolutions for approval. Carried.

Engineering Department comments are attached.

Public Hearing, Kogut Two-Lot Subdivision

Mr. Eustace read the following legal notice of public hearing:

"Notice is hereby given that the Hamburg Planning Board will hold a public hearing on a two-lot subdivision known as Kogut Two-Lot Subdivision to be located at 4353

Fairview Parkway on September 19, 2007 in Room 7B of Hamburg Town Hall at 7:30 PM.”

Mr. and Mrs. Kogut spoke on behalf of the project, explaining that they are requesting approval to subdivide the parcel of land they live on, creating a building lot with frontage on Abbott Parkway. Mr. Kogut noted that they have applied for a variance, as neither lot would meet the Town’s lot width at the building line requirement (59’ is provided; 70’ is required).

Mr. McCabe confirmed that the lots meet the area requirements.

Mrs. Yerkovich stated that the lot sizes would be in keeping with the surrounding area.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak for or against the proposal. No one spoke.

Chairman Koenig declared the public hearing closed.

Attorney McKenna confirmed that the Board could grant Preliminary Approval to this subdivision conditional upon the applicant receiving a variance.

Mr. Phillips made a motion, seconded by Mr. McCabe, to grant Preliminary Approval to this subdivision conditional upon the applicant receiving a variance, issue a Negative Declaration and send a positive recommendation to the Zoning Board of Appeals regarding the Kogut’s request for a variance for the following reason:

1. The request is in conformance with the surrounding lots.

The installation of sidewalks and the filing of a map cover shall be waived. Approval is subject to the conditions of the Engineering Department’s comment letter dated September 19, 2007. Carried.

Engineering Department comments are attached.

Stonebridge Subdivision

Mr. McCabe made the following motion, seconded by Mr. Eustace:

Whereas, on May 16, 2007 the Town of Hamburg Planning Board granted Preliminary Approval to the Stonebridge Subdivision, and

Whereas, condition of approval #3 stated that “the applicant shall deed restrict the +/- 16 acres of open space on the parcel located south of the private drive and in the northeast corner as a permanent easement area in order to assure the Town that this land will remain permanent open space and will never be developed”, and

Whereas, it has come to the attention of the Planning Board that condition #3 contains an error and should be corrected;

Now, Therefore, Be It Resolved, that the Hamburg Planning Board hereby rescinds condition #3 relative to the granting of Preliminary Approval for the Stonebridge Subdivision and issues the following condition of approval:

“The applicant shall deed restrict the 3.7 acres of open space located in the northeast corner of the property as a permanent easement area in order to assure the Town that this land will remain permanent open space and will never be developed (conservation easement in the name of the Town).” Carried.

Public Hearing, Fisher Bus Facility (Site Plan Approval)

Mr. Eustace read the following legal notices of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Fisher Bus Company. The applicant proposes to construct an 18,750 sq. ft. office and a bus maintenance facility of Southwestern Boulevard. In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on September 19, 2007 at 7:30 p.m. in Room 7B of Hamburg Town Hall.”

Andy Gow of Nussbaumer & Clarke, Inc. and Keith Fisher, applicant, spoke on behalf of the project. Mr. Gow stated that the proposal is to construct an 18,750 sq.ft. office and bus maintenance facility, as well as over 100 parking spaces for employees and parking for approximately 80 buses. He further noted that the parcel lies in the Southwestern Boulevard Overlay district, does not require any variances and the applicant proposes a 50-foot buffer to the adjacent residential area.

Mr. Gow stated that Wilson Environmental has been contracted to perform a wetland delineation of the site and that if any small wetland areas are found, they will be mitigated.

Chairman Koenig stated that the Traffic Safety Advisory Board has no adverse comments regarding this proposal.

Chairman Koenig declared the public hearings open. He then asked if anyone in the audience wished to speak for or against the proposal. The following people spoke regarding the project:

1. Patty Matlock, Overlook Point, asked where the proposed site is located.

Chairman Koenig declared the public hearing closed.

Mr. Phillips made a motion, seconded by Mr. McCabe, to table this project until the Board's October 3, 2007 meeting and authorize the Planning Department to prepare resolutions for approval. Carried.

Engineering Department comments are attached.

Gorczyka Three-Lot Subdivision (Pleasant Ave)

Attorney Jay Pohlman appeared on behalf of the applicant. He explained that Mr. Gorczyka resides at 3205 Pleasant Avenue in the Pleasant Avenue subdivision, which is located in the R-A zone and was approved by the Planning Board in 1985. Originally eight lots were proposed, but only five were approved because of the lack of availability of utilities to three of the lots. Subsequently, Mr. Gorczyka built a home on subplot #3 of the Pleasant Avenue subdivision and sold off a portion of the +/- 6 acres of land that encompassed the remaining three unapproved lots. Attorney Pohlman explained that the applicant would like to create an almost four-acre flag lot for his son that would encompass the remaining portion of the land containing the unapproved lots.

Attorney Pohlman stated that subsequent to Mr. Gorczyka receiving approval of the Pleasant Avenue subdivision, the Town of Hamburg increased the minimum lot size in the R-A zone to two acres. Therefore, the three remaining lots are not in conformance with the Town Code. Additionally, the property that Mr. Gorczyka sold off in 1993 is not in his control.

Attorney Pohlman stated that the problems the applicant has encountered regarding this current proposal are the way the lots were laid out and the numbering system, how water service would be provided to the newly created lots, what to do with the parcel he sold off in 1993 and whether septic or sewer is appropriate. He noted that he feels the applicant has addressed all of the above issues by submitting to the Town Engineering Department redrafted surveys showing a three-lot subdivision. Lot #1 reflects the parcel Mr. Gorczyka sold off in 1993, lot #2 reflects the approximately four-acre lot Mr. Gorczyka's son would like to build on and lot #3 is the extension of the backyard of Mr. Gorczyka's present home and would not be a building lot.

Mr. Reilly noted that in January 2007 the Planning Board indicated to the applicant that the Board could approve this minor subdivision layout but that a legal description and map were necessary in order to move forward with the project. However, the applicant still has engineering issues to resolve regarding how utilities would be provided to the newly created lots.

Attorney Pohlman stated that he will notify the owner of the proposed subplot #1 of the date of the public hearing the Planning Board will hold for this proposal.

Mr. Reilly noted that lot #1, which the applicant does not own, will require a variance for lot width at the building line.

Attorney Pohlman stated that the property is not in a sewer district and is large enough to accommodate a septic system. He further stated that the Engineering Department wants the applicant to access water from Pleasant Avenue (in front of lots #1 and #2), which would be cost prohibitive to the applicant. The applicant has requested and received Erie County Water Authority approval for an easement over 25-foot wide strip of his land on the westerly portion of his lot (lot #3) to provide water service to his son's lot (lot #2).

Mr. Lardo requested that Attorney Pohlman contact the Engineering Department for an update and clarification of the utility service and subdivision requirements.

Mr. Phillips made a motion, seconded by Mrs. Rogers, to set a public hearing for this subdivision proposal for October 17, 2007. Carried.

Engineering Department comments are attached.

Public Hearing, Verizon Wireless (Site Plan Approval)

Mr. Eustace read the following legal notices of public hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Verizon Wireless. The applicant proposes to construct an 85" monopole tower and equipment shed on 6,400 sq. ft. of property located at 4115 McKinley Parkway (Monro Muffler). In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on September 19, 2007 at 7:30 p.m. in Room 7B of Hamburg Town Hall."

Mr. Reilly reviewed with the Board that this request for a cellular tower requires a Tower Special Permit, as well as Site Plan Approval, and that when the applicant first proposed the tower to be located on McKinley Parkway, the Board indicated that this is not a preferred location for a cellular tower. The applicant was given direction to investigate alternate sites in the area, which was done, but the applicant has indicated that they were not able to secure leases at any of the alternate sites and would therefore like to proceed with the McKinley Parkway location.

Attorney Jared Lusk from Nixon Peabody spoke on behalf of the project, reviewing what has transpired regarding this request in the past six months. He explained why cellular coverage is needed and how Verizon decided where an additional tower is required to provide the coverage that is needed. He reviewed with the Board the alternate sites that were investigated per the Planning Board's request, and explained why each of these alternate sites is not feasible. Following is a summary of his comments:

1. The Town-owned property south of the Tops site is designated parkland and it would require approval from the State to allow a tower to be placed on the property.
2. There are no industrial zoned properties in the area.
3. The potential site on the ECC Campus fails to provide adequate coverage to the western portion of the desired coverage area. The tower is too close to an existing tower.
4. Representatives from Verizon Wireless have twice contacted the owners of Top's property (by phone and by certified letter dated June 6, 2007) regarding a lease. No response has been received.
5. Commercial property on the north side of Southwestern Boulevard between Big Tree Road and the NYS Thruway (west of the Seven Corners) is owned by Busshart and Metz. There was some initial interest and Verizon representatives made preliminary site visits to analyze the site but lease negotiations were halted on August 22, 2007 when Verizon received an email from Mr. Metz terminating the lease negotiations.
6. The commercial property south of Big Tree Road to the east of Seven Corners is a Toyota Car Dealership. Verizon Wireless has twice contacted the owner of the property (once by phone and once by certified letter dated June 6, 2007) to express an interest in a potential lease. No response was received.
7. Commercial properties on the south side of Big Tree Road east of Seven Corners were considered, including Wal-Mart and the adjoining commercially zoned land which is owned by Seven Corners Development. There was no response to a certified letter to Wal-Mart. Although there appeared to be some interest by Seven Corners Development, they have stopped responding to phone messages, letters and emails from Verizon representatives.

In response to a question from Chairman Koenig, Attorney Lusk stated that there is a possibility that some time in the future the applicant will come back to the Town

for approval of another cellular tower, although he is not aware of any site searches at this time.

Attorney Lusk submitted a revised site plan and reviewed with the Board the changes that have been made to the site plan. They include the following:

1. The previously proposed propane tank serving the on-site generator has been removed and has been replaced by natural gas.
2. The access to Allendale Parkway has been removed from the site plan. However, the applicant would like to install a temporary driveway out to Allendale Parkway during construction that would be abandoned after construction is complete.
3. The revised site plan shows the tower relocated 40 feet to the west in order to increase the distance between the proposed tower and the adjacent mattress store to 72 feet. The distance between the proposed tower and the residence to the north would remain the same. However, the proposed tower would then be located 47.3 feet from the Allendale Parkway right-of-way, which does not meet the Town Code requirement of 85 feet (the height of the tower). Mr. Reilly indicated that the Planning Board can either waive or modify this requirement or direct the applicant to request a variance from the Zoning Board of Appeals. Attorney Lusk indicated that if the tower were ever to fall (very unlikely), it would fall within 45 feet of its base.
4. A series of pine trees is now proposed along the northern boundary of the property to screen the adjacent residence.

Mr. Reilly reminded the Board that in 1996, when the Monro Muffler site plan was approved, the Planning Board stipulated that there will be no clearing of the eastern end of the parcel and it will be left in its natural state. Therefore, if this tower proposal is approved, that restriction from 1996 would have to be removed.

Chairman Koenig declared the public hearings open. He then asked if anyone in the audience wished to speak for or against the proposal. The following spoke:

1. Mr. Warren Joseph, 3670 Pleasant Avenue, asked if an existing tower could be raised or lowered instead of constructing a new tower. Attorney Lusk responded that this is not possible.
2. Mr. Jim Dunn, 4150 Allendale Parkway, had the following comments:
 - He feels the Monro property is too narrow to support a tower.
 - He has concerns regarding where the tower would land if it ever fell.

- He is concerned that the tower would interfere with his satellite dish.
- He is concerned that the tower will be raised to 135 feet eventually.
- He is opposed to the applicant submitting a new plan at this meeting.
- He is worried about children getting caught inside the gates and does not like the way the tower would look.
- He is worried about the danger of living near a tower.
- He is upset that no one called him to ask if he would be willing to place the tower on his property on McKinley Parkway.

Chairman Koenig declared the public hearing closed.

Mr. Reilly noted that the Town of Hamburg is still interested in pursuing the home rule decision for the Town-owned property near the Tops parcel so that a cellular tower can be placed on the Town-owned property.

Mr. Phillips made a motion, seconded by Mr. Eustace, to table this request until the Board's October 3, 2007 meeting. Carried.

Engineering Department comments are attached.

Carubba Collision (5788 Camp Road)

Frank Wailand spoke on behalf of the project, along with Joe Carubba, applicant, and Attorney Robert Mencini. Mr. Wailand stated that the site plan has been revised to show twenty additional parking spaces to the north of the building for employees. He further stated that there will be no further parking in this area to the north of the building and that the rest of the area will be grassed.

Mr. Wailand stated that he feels the applicant has addressed all of the Planning Board's concerns regarding emissions from this project, noise, pollution and how customers' vehicles would be handled on the site.

Mr. Reilly stated that he spoke with Mr. Al Zielinski from the NYS Department of Environmental Conservation, who is responsible for granting the air permits for this facility. Mr. Reilly noted that Mr. Zielinski stated that he is familiar with all of the Carubba Collision facilities in western New York and that Carubba Collision has a very good record, their systems are the top of the line and he sees no problem with this project. In addition, Mr. Zielinski stated that Carubba Collision facilities meet or exceed all standards but he did acknowledge that at times neighbors will be able to smell the paint fumes. However, he stated that the fumes will be within the limits of State of New York and federal regulations.

Mr. Reilly suggested that, if the project is ultimately approved by the Planning Board, the applicant work out an agreement with the scuba business across the street so that perhaps Carubba can withhold painting during the times the scuba business is filling oxygen tanks, as this is a very unique situation.

Attorney Mencini stated that Carubba Collision is a state-of-the-art facility and they use a double filtration system for the paint booth to filter the particulates twice. He introduced Mr. Dave Clark from Clark Air in East Aurora, who stated that the particulates emitted from the paint booth are filtered to 99% by a double staged filter system. He further stated that fumes are taken care of by dispersion, which means that the fumes are vented vertically at a certain velocity so as to disperse any smell. He noted that the high volume, low pressure paint guns Carubba uses put most of the paint on the car and any volatiles are minimized. The fumes are very diluted and by the time they come out of the stack and are ten to twenty feet away, they cannot be detected.

Attorney Mencini stated that the amounts of fumes that are emitted are minimal at best and would have no effect on the scuba business.

Mr. Reilly confirmed with Mr. Clark that it is the paint guns themselves and new technology that alleviates any potential problems with fumes. The filters do not do anything about the VOCs (volatile organic compounds); rather the VOCs are dispersed.

Mr. Wailand confirmed that the paint guns used by Carubba Collision are approved by the NYS Department of Environmental Conservation.

Mrs. Jackie Sargent spoke on behalf of her father, David Johns, owner of the scuba business across the street from the proposed project. She stated that for twenty years her father has been commissioned by the New York State Police and the Erie County Sheriff's Department to service all the emergency water rescue equipment in the area. He is worried about the airborne VOCs coming from the collision shop getting into the compressed tanks, thereby increasing the risk to divers breathing in the VOCs in the oxygen tanks under water. He is concerned about the quality of the air in the tanks he fills and provides for emergency rescue.

Mr. Reilly stated that the Planning Board would have to have a proven legitimate concern in order to disapprove this project. He further noted that the Board has contacted people who are experts in the field and the paint guns meet all State and federal regulations.

In response to a question regarding dust coming from the cement plant near the scuba business, Mrs. Sargent stated that she does not know if her father has ever had any problems with the dust.

Mr. Phillips asked Mr. Wailand where the applicant plans to park vehicles to be repaired. Mr. Carubba responded that the vehicles will mainly be parked inside the

building, although sometimes vehicles may be parked outside. He further stated that at the Carubba Collision location on Niagara Falls Boulevard he is an impound lot for the Town of Tonawanda and therefore stores many cars outside at that location for the Town. However, he guaranteed the Board that this will not be the case at the Hamburg location and that no towed vehicles will ever be stored on the site.

Mr. Alan Yox, representing Campbell's Collision, stated that collision shops are notorious for receiving complaints about smell, unsightliness, banging steel and junked cars, and he has a list of complaints registered against the Carubba Collision shop in Tonawanda. He further stated that Carubba Collision dovetails with Enterprise Rent-A-Car at the Tonawanda location and many Enterprise vehicles are stored on the property there. He wondered if the extra parking spaces proposed are for employees or for Enterprise vehicles. He wants all collision shops to be dealt with equally. In addition, he noted that the doors to the shop are supposed to be closed and he understands that it has been noticed that the facility in Tonawanda's doors are often open.

Mr. Yox expressed concern for the resident who lives adjacent to the building, who has a health issue, and stated that he does not think a Special Use Permit is the right thing to do for this resident or for Campbell's Collision.

In response to Mr. Yox's comments, Mr. Carubba stated that the facility in Tonawanda does lease 1,700 sq.ft. of space to Enterprise Rent-A-Car and as such Enterprise is entitled to the use of ten parking spaces at the site. He stated that at the Hamburg location Enterprise Rent-A-Car will not be leasing space and will not be entitled to using parking spaces there. However, Enterprise Rent-A-Car will be supplying Carubba's customers with rental cars, but will not be storing any cars at the facility.

Mr. Carubba further stated that he is planning to air condition half of the building because of the concerns of the adjacent resident to the south. In addition, plans for the front doors have changed from full glass to solid panel doors so that the cars inside the building will not be visible from the road.

Mr. Delbert Jordan, who lives in the residence adjacent to the building, stated that he has no room for fumes whatsoever.

Mr. Dave Niver, representing Franklin Park Association, asked what recourse the neighboring residents would have if paint fumes from this business become a problem. Mr. Reilly responded that if the property is ever found to be in violation of the Code and of not meeting the standards of the Special Use Permit, the Town could remove the Special Use Permit from the property and not allow the business to continue operating at that location.

Mr. Niver stated that the residents of Franklin Park will not be happy to have this business at this location.

Attorney Mencini noted that the existing building on the site is quite unsightly and that the applicant plans to conform to the Town's requirements and beautify the site.

Mr. Reilly stated that the Planning Board has done a lot of research and due diligence on this proposal and has heard from the public and will take that into consideration as well.

In response to a question regarding the decibel level of the exhaust fans in the building, Mr. Clark stated that they would be 70 decibels within six feet.

A resident expressed concern regarding the noise, flammability of the solids, gas and liquids used by the collision shop, as well as the possibility of a hazardous material spill. In response to this concern, Mr. Carubba stated that all paints are stored in a paint mix room that is sprinklered and that has spill containers.

In response to a question from Mr. Phillips regarding the number of proposed parking spots, Mr. Carubba stated that he does not want to have to return to the Planning Board in the future if he adds employees and needs additional parking spaces.

Chairman Koenig stated that, based on the information provided and the research done by Mr. Reilly, he is satisfied that the requirements of the Special Use Permit have been met. Mr. Phillips concurred.

Mr. Phillips made a motion, seconded by Mr. McCabe, to issue a Negative Declaration for the project, as it will not have a significant effect on the environment, based on the review of the plans, the Environmental Assessment Form and follow-up research of the project. Carried.

Mr. Phillips made a motion, seconded by Mr. McCabe, to approve a Special Use Permit for Carubba Collision for the following reasons:

1. The project is in harmony with the general purposes and intent of Article 16 of the Hamburg Town Code.
2. The project will not create a hazard to health, safety or the general welfare. The paint spray booth will meet all state and federal regulations.
3. The project will not alter the essential character of the neighborhood nor be detrimental to the residents thereof. The area is commercial in nature and is zoned for commercial use. The physical changes to the site will improve the appearance of the property.
4. The project will not otherwise be detrimental to the public convenience and welfare.

The Hamburg Planning Board hereby approves the Special Use Permit for Carubba Collision with the following conditions:

1. There will be no parking of vehicles of any kind on the new grassed area north of the existing building.
2. There will be no storage of damaged vehicles outside of the building.
3. No repair of vehicles will take place in the southwestern end of the building.
4. There will be no other businesses on this site.
5. Carubba will provide all MSDS sheets, DEC permits and EPA permits to the Planning Department and the appropriate fire department.

The vote on the motion was as follows:

Mr. Eustace	aye
Mr. Koenig	aye
Mr. McCabe	aye
Mr. Phillips	aye
Mrs. Rogers	nay
Mr. Taber	aye
Mrs. Yerkovich	nay

The vote on the motion being five (5) ayes and two (2) nays, the motion passed.

Mr. Phillips made a motion, seconded by Mr. Eustace, to grant Conditional Site Plan Approval for Carubba Collision with the following conditions:

1. The site landscaping plan shall be approved by the Planning Department.
2. There will be no parking of any vehicles on the new grassed area.
3. Approval is subject to the conditions of the Engineering Department's comment letter dated August 15, 2007.

The vote on the motion was as follows:

Mr. Eustace	aye
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Mr. Koenig	aye
Mr. McCabe	aye
Mr. Phillips	aye
Mrs. Rogers	nay
Mr. Taber	aye
Mrs. Yerkovich	nay

The vote on the motion being five (5) ayes and two (2) nays, the motion passed.

Engineering Department comments are attached.

Mr. McCabe made a motion, seconded by Mr. Eustace, to approve the minutes of August 1, 2007. Carried.

Mr. Eustace made a motion, seconded by Mr. Taber, to approve the amended minutes of August 15, 2007. Carried.

Mr. Phillips made a motion, seconded by Mrs. Rogers, to adjourn the meeting. The meeting was adjourned at 10:15 P.M.

Respectfully submitted,
Paul Eustace, Secretary
Planning Board