

Call to Order: Executive session called to order by Chair, Albert Hislop at 6:00 PM.

Present: Chair, Sandy Hislop, Board members, Chris Cross, Bob Simms, Jack Pare, Denis Hebert and Town Planner Tom Morgan. Board member, Peg Lamson recused herself from the session. Attorney Malcolm McNeil present to advise the Board.

Hebert expressed concern that the Board was trapped between the Bureaucracy of the PDA and the owner wanting fair-market value for the property in question. What ramification would there be to shoot down the development proposal? Attorney McNeil said he had reviewed the materials, as he knew only what was in the newspaper. He met with Lynn Hinchey this afternoon to hear her side of the story. He feels the dilemma is in what seat the Board is sitting. The time when 150 was initiated, it was presumed the Town would take some land use limitations control in regard to some properties that could be impacted by the airport. Newington has always been reluctant to do that. He advised the Board that their duty was to construe that the plans met with Town regulations. On the issue of safety, if the Board turns the plan down, what evidence do you have? The Board would have to document how it violates safety. Attorney McNeil had asked Ms. Hinchey if she had presented the Board with any evidence and she said she had not. The mere fact that it's at the end of the runway; is that sufficient? If you turn this down, the Board would have to document evidence in context with the regulations. He believes there is a realistic effort by the PDA to negotiate based on information he has been given, some of which he could share, some he could not. He was not convinced that this would happen. The Attorney's sense of the process is that this is not an eminent domain issue. PDA will only approve if FAA approves. Attorney said he believed it would be known in the next 15-30 days whether this will work out. He stated, if he were the developer, he would ask for approval for the project and if it wasn't approved; why not? How does Newington come out not being the bad guy? What are your regulations, where are the regulations not being met, what is Town policy? Board members asked about the probability of being sued. McNeil felt the probability of being sued would be based on the issue of being denied approval, not on the issue of malice. He feels Board has given both parties plenty of time to come to an agreement. Maybe a little more time is appropriate. If there is mutuality of an extension, then you can do an extension. If the applicant doesn't want an extension, then you must make a decision, based on the facts presented and the Law. Morgan asked hypothetically, if some Board members voted no, what would happen if the Town had to go to Court? McNeil said, if he were the applicant, he would look at the Zoning Ordinance. The Runway Protection Zone is not binding on the Board. PDA/FAA will not take the land; their intent is to negotiate with the owner. McNeil does not feel negotiations of PDA factor in to the Boards role of approval or denial of subdivision. He stated he felt the Planning Board was in a tough spot. Pare asked if the Board could do anything to require that the land be given to Land Development. McNeil doubted that could happen. Morgan suggested a 30-day delay. He feels this is a sloppy applicant and the Board should not be signing something like this. McNeil commented that the Board has

delayed several times to allow the applicant to negotiate with the PDA. He feels this is not the Board's responsibility or right. The Board should be looking at the applicant's request. There was additional discussion regarding safety, the Runway Protection Zone and the Town's liability. In addition there were comments regarding FAA taking the property by eminent domain. Cross asked if the Town could sue PDA or FAA for failing to enforce the Runway Protection Zone. Attorney McNeil said he doubts that this avenue would be available to the Town. Hebert asked if the Board could impose conditions of approval. Response – as with any approval, conditions can be imposed. He also feels the Board is overstepping its bounds getting involved with the negotiations between the applicant and the PDA. It is not the Board's business. McNeil does not feel PDA/FAA's negotiations are based on the Board's approval or disapproval. He feels they are truly trying to negotiate and feels a decision will be made within 30 days. Closed session ended at 6:45 p.m. for the scheduled Planning Board Meeting.

Respectfully submitted,

Sandra W. Sweeney
Secretary