

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, February 10, 2014

- Call to Order:** Chair Denis Hebert called the February 10, 2014 meeting to order at 6:31 p.m.
- Present:** Vice Chair, Mike Marconi; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner
- Absent:** Bernie Christopher
- Public Guests:** Sea-3, Paul Bogan, Cynthia Scarano, Executive VP & Robert Culliford, Senior VP & General Counsel of Pan Am Railways; Steve Haight, Haight Engineering; Attorney Alec McEachern; Nick Cricenti, SFC Engineering; Senator Martha Fuller Clark; Portsmouth City Officials: Manager, John Bohenko; Deputy Manager, David Allen; Environmental and Sustainability Director, Peter Britz; Mayor, Robert Lister; Assistant Mayor, Jim Splaine; Councilor Ester Kennedy; Councilor Jack Thorsen; Councilor Stefany Shaheen, Portsmouth Herald Reporter, Joey Cresta; Greenland Resident, Laura B; Newington Resident, Paul Reardon; Portsmouth Residents: Lewis Brown; Joe Calderola; Rich and Catherine DiPentima; Pat Ford; Bob Gibbons; Jean Heino; Richard Langan; and John Chagnon, P.E., Ambit Engineering

1) **Informal Discussion:** Update by Seacoast Growers' Association to run a farmers' market at the Crossings.

No one appeared for this discussion so the Board moved on to the next item on the agenda.

2) **Public Hearings:** Proposal by **Sea-3** to reconfigure its terminal at **190 Shattuck Way** (Tax Map 14, Lot 2; and Map 20, Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

Due to the large number of regional impact officials and residents in the audience, Chairman Hebert requested that the meeting adjourn from the DeRoachmont Room to the Town Hall auditorium where the meeting reconvened at 6:40 p.m.

Town Planner, Tom Morgan introduced Mr. Richard Cricenti with SFC Engineering who had been engaged by the Town to complete an assessment of Sea-3's site plan. Mr. Cricenti said his review of the site was based on NH State codes as well as comments from the National Fire Protection Association to arrive at an impartial consensus. He said the NFPA would take a vote whether they approved of the site or not and give reasons for their decision. He said local government could not reduce those standards, but they could add requirements.

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Portsmouth City Mayor Robert Lister read his February 10, 2014 letter addressed to Chair Hebert and Planning Board members. Mayor Lister's letter said, "The City was primarily concerned about the public safety implications of increased rail traffic carrying hazardous materials close to neighborhoods and business areas." He also announced the City's web page: <http://cityofportsmouth.com/Sea-3.html> and the City's Environmental Planner, Peter Britz coordination of the City's interest in the project.

Portsmouth City Manager, John Bohenko also addressed the Chair and Board, expressing the City's concerns with the impact that the Sea-3 terminal expansion would have on Portsmouth and its citizens. Mr. Bohenko said they heard from the DOT, but had not heard from the FRA. He said they would meet with the Department of Transportation in the near future for a better understanding of the condition of the rails, and would coordinate their efforts with surrounding towns.

Chairman Hebert said the findings of the Federal Railway Association and the NH DOT were crucial. He said he had informed Sea-3 and Pan Am Railways that they needed to get the FRA to work with the Town.

Board member, Justin Richardson said Newington had received the opinion that they could take no action with Pan Am Railways. Chair Hebert agreed that they could not tell Pan Am what to do, but he said citizens had a right to public commentary and a right to know what the safety conditions of the rail tracks were. He said if the tracks were found to be unsafe, they would want to know what the FRA would do to make Pan Am resolve the issues. He said the FRA had offered to meet Town officials privately, but he would not consider a non-public meeting so there would be no question of transparency. Town could also deny the application if the FRA did not agree to a public meeting and provide them with an inspection report. Cynthia Scarano, V.P. of Pan Am Railways said they were determined to have safe tracks.

Alternate Board member, Peggy Lamson said they did not want to prevent the expansion of this business, but they needed confirmation of its safety. She said this transport would go through several states and NH towns and she felt the time had come to solicit the assistance of their Congressional delegation as well as local representatives and those from Concord.

Mr. Richardson asked Mr. Cricenti if he had discussed the review with the Town fire chief and Mr. Cricenti said he had not, but in the early 1990's the NFPA had changed the fire code to prevent fires by design. He said tanks were designed to absorb heat and the biggest fire would be confined to the longest pipe run so it would burn out. Mr. Richardson said the report mentioned that there was some additional information needed, and said it would be important to get answers to any questions before approval. Chairman Hebert said they wouldn't receive the State's approval until all the information was provided.

Ms. Lamson asked if the U.S. government required the use of odor in gasoline, and Mr. Cricenti said they did not. Ms. Lamson asked how anyone would know if leaks occurred if they didn't add odor to the LPG and how they could make sure that it did. Mr. Cricenti said odor was typically added in tanks, but the Town could make it a stipulation of approval.

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Mr. Paul Bogan, VP of Operations for Sea-3 identified the uses of the structures on the site, and explained their plans for the water-cooling systems. Vice-Chair Marconi asked how often they tested their safety systems, and Mr. Bogan said he believe they were required to test once a year, but they tested the system in the spring and fall.

Mr. Paul Reardon of Patterson Lane in Newington said there was an article in the “New York Times” that said tank cars didn’t meet Federal standards. Mr. Bogan said those were a different type of tanker car for oil transport, but all propane tankers had to meet upgraded safety standards that included interlocking couplings so they would not puncture the tanks in the case of a crash, as well as insulated tanks with steel heat shields on the tankers to prevent puncture in case of accidents.

Mr. Rich DiPentima of Dunlan Way, Portsmouth agreed, but said the American Railroad Association supplied extensive studies that there would be “...no loss of product from tanks that traveled less than 5 mph.”

Mr. Bogan said propane was a non-pollutant, but Mr. Richard Landry of Laurel Court said the diesel engines were polluting. Chairman Hebert said he understood what he was saying, but they had no jurisdiction over railroad operations because it was already in place and grand fathered.

Mr. Richardson said he thought Newington and Portsmouth should seek legal counsel. Mr. Morgan said the City of Portsmouth had a copy of Pan Am’s legal opinion posted on the City website. Ms. Lamson said they should pass that on to their congressional delegation as well.

Mr. Reardon asked why they didn’t look at alternate means of transporting the propane on freighters up the Piscataqua River. Mr. Bogan said in 1927 the U.S. Government enacted the Jones Act that said commodities could not be transported from one port to another unless it was U.S. built and crewed and there are no propane freighters built in the U.S.

Ms. Catherine DiPentima of Dunlan Way, Portsmouth passed out a list of safety data on railway accidents and incidents with Pan Am Railways in New England that showed increases over time.

Mr. DiPentima said he was sure the Town would fight against nuclear waste transport, and Board of Selectmen Chair, Rick Stern said there already is nuclear waste transport on the rail lines from the Portsmouth Naval Shipyard.

Mr. DiPentima went through a list of rail accidents and evacuations in various parts of the country. Mr. Richardson asked how much weight they should give to an incident that occurred in Canada and Mr. DiPentima said Canada’s standards were higher than U.S. standards. He said 4,000 homes were evacuated as a result of an incident in Lincoln, CA in 2011. Chairman Hebert said there were no explosions in these incidents, but Mr. DiPentima said people were displaced for days and the town revoked the conditional use permit after the incident because the rail failed to apply proper safety procedures. Vice-Chair Marconi asked what the FRA’s response was to the incidents, and Mr. DiPentima attributed the incidents to environmental, human or mechanical errors, but none of their own.

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Chairman Hebert reiterated that he was asking Ms. Scarano with Pan Am and Mr. Bogan with Sea-3 to assist the Town in getting the FRA to meet with them. He said the citizens had a right to know the safety condition of the rails and the Town also needed to hear assurances from the FRA before a decision on the site could be made. Ms. Scarano said the FRA did inspections and would act if there were any issues, including drug and alcohol issues and hours of service. She said they would provide correspondence. Chairman Hebert said they needed to see a face and Ms. Scarano said they were a Federal agency. Chairman Hebert said they would go through Federal representatives if necessary to get a response. Mr. Richardson asked if they could get a copy of the last inspection, and Chairman Hebert said they needed the findings as well as what was being done to improve conditions. Ms. Scarano said the inspection report was done by the FRA and was not Pan Am's document to provide.

Mr. Lewis Brown of Laurel Court said Portsmouth filed a Freedom of Information Act petition and the FRA had dodged the request. He suggested the proposal be put on hold until they received more information.

Ms. Jean Heino asked if Pan Am would be financially responsible in case of a disaster. Board member, Mr. Richardson said they could request a bond from Sea-3, Chairman Hebert said they couldn't ask Sea-3 to be financially responsible for Pan Am.

Mr. Gibbons said Seacoast Media received a response from that the FRA had a backlog of requests. He said he also read that Pan Am would not be responsible for any accidents. Ms. Scarano said the railroad carried a substantial amount of liability insurance.

Mr. Richard Langan asked if an environmental study needed to be done. Mr. Joe Calderola said he hadn't heard much about ground water recharge on the site plan. Chairman Hebert said this was a cursory review, and all of the information was not available yet, but they would get more information as they moved forward.

Ms. Laurie B, from Greenland said one of her concerns was that the tracks be improved to accommodate the increase in propane freight traffic. She asked if the trains would be running at a speed of 25 mph. Board member, Jack Pare said it sounded like they needed to do upgrades to travel at an increase speed, and Ms. Scarano acknowledged that they did. Ms. Scarano said the tracks were currently set up as a Class I for 10 mph, but they would be doing improvements to bring the rails up to a Class II that could go up to 25 mph, though they only intended to run them at 10 mph at this time.

Ms. Pat Ford of Spinnaker Point asked if there were be fewer trucks going out. Mr. Bogan said they used to send out 100-200 trucks a day when they were importing fuel, but this operation would only send out 50 trucks a day. Mr. DiPentima asked how they could verify a certain percentage would be shipped overseas, and Chairman Hebert said the Planning Board was not a regulatory commission.

Mr. Lou Salomi of Portsmouth asked what Sea-3's construction time table would be if approved. Mr. Bogan said they expected the project to take a year before it would be operational.

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City Councilor Jack Thorsen asked what action they might take to pursue the use of freighters as an alternate to rails. Chairman Hebert said that would involve changing the Jones Act. Vice-Chair Hebert said that would also require a presidential signature. Mr. Bogan said they had looked into that alternative and were told they could get a short-term waiver, but they would also have to build a vessel in that time period, and they were not in that business. Mr. Thorsen said that was all the more reason to insist that the rails be safe.

Chairman Hebert said the Board could not deny Pan Am's operations, but they could say they needed more safety information from the FRA before they approved Sea-3's proposal for expansion. He said the FRA agreed to meet informally, but they said they wouldn't meet in public. He said the FRA was a servant of this country and they needed the FRA to meet in public for transparency so there would be no perception of behind door deals being made. Vice-Chair Marconi agreed with what Ms. Lamson said that a letter should be written to the congressional delegates to put pressure on the FRA to respond. Mr. Morgan said he had been working with Carol Shea-Porter's staff and Senator Shaheen to gain cooperation and they were preparing a letter to the FRA.

Chairman Hebert informed Sea-3 that they could voluntarily request an extension in writing until more information became available, or the Board of Selectmen or the Planning Board could vote for an extension. Mr. Bogan said he understood the concerns and they weren't avoiding the safety issue of a report from the FRA. Chairman Hebert said Mr. Bogan had been very cooperative with the Board.

Chairman Hebert continued the public hearing to March 10, 2014.

Justin Richardson asked if they would get comments on the project from the Fire Chief and Chairman Hebert said he would meet with the new Fire Chief himself. Mr. Stern said they might also need to review the standards with a qualified consultant.

3) Curb Cut Application: Request by **Victoria & Ben Auger** for a driveway off of **Swan Island Lane**, Tax Map 53, Lot 16.

This item was postponed to March 10, 2014 at the applicant's request.

4) Request for Comments pursuant to RSA 674:41 regarding a proposal by **Great Bay Marine, Inc.** to obtain a building permit to construct a residence off a private road, Tax Map 6, Lot 5.

No one appeared for this discussion so the Board moved on to the next item on the agenda.

5) Old Business: Request by **KWA, LLC** for an extension of site plan approval for office building development off **Shattuck Way**, Tax Map 7, Lot 2A.

John Chagnon, P.E., Ambit Engineering appeared before the Board requesting a two year extension for their application that was first approved in January 2010 and received an extension on December 2011.

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Chairman Hebert asked if there had been any changes. Mr. Chagnon said all their permits were still in place. Chairman Hebert said they would need to return if there were any changes to the plans.

Vice-Chair Marconi asked if they were still planning on using glass on the building. Mr. Chagnon said they were. Vice-Chair Marconi said he was concerned with sun reflecting off the building and blinding drivers along the Spaulding Turnpike.

Vice-Chair Marconi asked when they intended to begin their project and Mr. Chagnon said they hoped to begin in two years once the Spaulding Turnpike expansion was done.

A discussion ensued as to how long the application should be extended.

Mike Marconi moved to extend site plan approval for an office building development off Shattuck Way, Tax Map 7, Lot 2A to 24 months from January 25, 2014 to January 24, 2016. Peggy Lamson seconded the motion. Rick Stern abstained as an abutter and all others were in favor.

6) Preliminary Discussions: Proposal by **Barbara Hallett** to expand the parking lot at **105 Gosling Road**, Tax Map 28, Lot 1.

No one appeared for this discussion. Chairman Hebert continued the discussion to the next meeting.

Minutes: ***Mike Marconi motioned to approve the Planning Board Minutes for January 27, 2014 with corrections as noted. Peggy Lamson seconded the motion. Mike Marconi was absent from meeting and abstained from voting and the motion passed with all others voting in favor.***

Discussion:

Mr. Morgan excused himself from the rest of the meeting while the Board discussed Warrant Article 6 that would eliminate the position of Town Planner and would hire a consultant on an as need basis.

Mr. Richardson said he didn't think the Town could operate properly with out a Town Planner. He said it would also affect the Planning Board.

Mr. Stern said there was a suggestion that Newington operate with a planning consultant as Seabrook does, but he said Seabrook has a full-time, paid technical review board. Ms. Lamson said Mr. Morgan started out as a consultant and the position grew into a full-time position. She said he attended and assisted with most all the land use boards.

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Chairman Hebert moved that the Planning Board supported the position of a Town Planner. Peggy Lamson seconded, and all were in favor with one abstention.

Adjournment: ***Rick Stern motioned to adjourn. Justin Richardson seconded, and all were in favor. The meeting adjourned at 9:25 p.m.***

Next Meeting: Monday, February 24, 2014

**Respectfully
Submitted by:** Jane K. Kendall, Recording Secretary