

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

Call to Order: Chair Denis Hebert called the May 19, 2014 meeting to order at 6:35 p.m.

Present: Mike Marconi, Vice Chair; Bernie Christopher; Christopher Cross; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Public Guests: Attorney Alec McEachern; Attorney John Ratigan; City of Portsmouth, Attorney Jane Ferrini; Paul Bogan, Sea-3 Vice President of Operations; Steven Haight, Haight Engineering; Cynthia Scarano, Pan Am Executive Vice President; Robert Culliford, Pan Am Senior Vice President and General Counsel; Sandy Sweeney; Jeff Barnum, Great Bay Water Keeper; Laura Bergeron; Bob Gibbons; Lou Salome

1) Public Hearing: 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.

Chairman Hebert passed out the most recent updates conditions and findings draft by Town counsel, Attorney John Ratigan. Alternate Board member, Peggy Lamson asked if the Board agreed on the findings and Chairman Hebert said the point of the non-binding straw vote was to allow Mr. Morgan and Attorney Ratigan to determine the conditions based on the findings to date for the Board to review. He said he didn't know which way the Board wanted to go and it could still change.

Attorney Ratigan said he and Town Planner, Tom Morgan drafted the list after the last deliberation, and Mr. Morgan's suggestions were also incorporated. He said another issue came up on the last page of Condition 5 which read "...that several safety plans were adopted in conjunction to the original Sea-3 site plan..." would now read that the "...safety studies shall be reviewed by Sea-3, updated and submitted to public officials, including the Newington Fire Chief..." to show that there were several safety studies instead of just one. Chairman Hebert said the original study was done in increments and included emergency management practices. He said each study could stand alone, but some needed updating to present day standards. He said the fire chief said they also needed some equipment updates, but the plan itself needed to be updated as well. Ms. Lamson said Dale Sylvia was fire chief at the time and asked Chief Head if he conferred with former Chief Sylvia before he departed. Chief head said he did not.

Chairman Hebert commented that the rails would be safer once Pan Am upgraded the tracks because there would be one instance of 16 cars traveling to and

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

from the side instead of five cars at a time. Board member, Justin Richardson said he was confused because Pan Am wasn't the applicant, but the applicant was operating on Pan Am property where some of the improvements would occur. Board member, Chris Cross said that was the intent of the lease. Mr. Richardson said it was significant that part of the project was on Pan Am property, yet Pan Am made statements that they were not applicant. Chairman Hebert said he thought he was satisfied that they were only leasing the land and weren't doing anything with the equipment.

Attorney Ratigan summarized Pan Am's letter of April 21, 2013 that said they would lease a portion of its land to the applicant, but advised the board that they were not the applicants, were not asking the Board for any approvals and were not subject to the town's land use language. However, he did think it appropriate to add Mr. Richardson's language stating that a portion of the improvements were on Pan Am's property. Mr. Richardson read through the conditions and Attorney Ratigan agreed to change the wording to say "Pan Am was consenting to the application to the extent that a portion of the improvements were on their property leased to the applicant"

Mr. Morgan said they had received an update from Pan Am earlier stating that Pan Am was now recognized as one of property owners. Mr. Cross said Pan Am was the owner of the property, but they were not the owner of any of Sea-3's improvements on the leased property.

Mr. Richardson recommended that the wording on #45 at the bottom of page 6 that said the Board found that public safety would be enhanced and add "Pan Am has to upgrade..." Chairman Hebert recalled that Ms. Cynthia Scarano, Pan Am Executive Vice President said if the Sea-3 expansion was approved, they would upgrade the tracks, although he understood it was a non-binding statement. Mr. Morgan said the correct verb to use would be "declared". Mr. Richardson agreed that they should strike "have to" and separate their intent and regulatory requirements by clarifying that this would need to be done in order to accommodate 16 cars per day. Board member, Jack Pare said they needed clarification on the number of rail cars traveling five at a time, noting that more than five cars could travel in a day, but only five at a time could travel on accepted tracks. He said Sea-3 stated that they would have to come back if wanted to receive more than 16 cars a day, but they were still limited to five at time if improvements were not made. Mr. Pare pointed out another instance of a reference to five cars per day on the top of page 7. Chairman Hebert recommended the wording say, "...based on evidence before them, the Board finds that...Pan Am declared that they would upgrade to Class II status. Attorney Ratigan said the limit of cars was five at a time on excepted tracks, but they were proposing up to sixteen cars per day if they improved the track to Class II.

Mr. Morgan pointed out that Pan Am could still transport sixteen cars a day on Class I tracks. Mr. Richardson referred to paragraph 40 on page 6 and said Ms. Scarano expressed the intention to upgrade the rails with 10,000 new railroad ties. He recommended adding that the Board was relying on the representation that the upgrade would promote public safety if upgraded from excepted tracks to Class II. He said that understanding was the cornerstone of public safety. Chairman Hebert said the Board had many discussions and the Board had no authority to make any of those statements

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

binding. Board member, Bernie Christopher agreed, but said those statements were still part of the Board's findings.

Attorney Ratigan said he didn't recollect any discussion by the Board linking their findings to safety and he thought the Board was trying to walk close to that line while remaining within their jurisdiction. Mr. Cross disagreed that safety did not depend on the number of ties because it was clear there would be an increase in traffic, but to do so they would have to meet FRA regulations. He said he didn't believe anyone had the ability or legal standing to make that point, but everyone was aware of the site development and he had confidence that they would meet the regulations. Vice-Chair Marconi agreed that they couldn't get to that area.

Ms. Lamson said she agreed with Mr. Richardson because of her concerns for safety. Mr. Richardson said he specifically addressed the safety issue when they went into deliberations at the previous hearing, which he thought the minutes would reflect. He said it was much easier to approve a project than to say they couldn't determine if upgrades would be made and then asked if safe to bring 16 cars over, which created a dilemma and paradigm. Chairman Hebert said couldn't agree. Mr. Richardson said they had to determine safety improvements would be made for the community and he wasn't sure he could vote in favor of the project if they couldn't agree. Mr. Cross said the FRA would make sure safety improvements would be made if necessary.

Mr. Richardson said there had been many discussions on railway accidents, which had the attention of the public, Senator Shaheen, Senator Ayotte, and Carol Shea-Porter, but he had to ask what would happen ten years from now when that attention was gone and the tracks became excepted again. He said it would be important to include that there had been a statement that the excepted tracks would be eliminated in the residential areas.

Chairman Hebert said he was surprised when informed at the beginning of the process that the Board had no say concerning the operation and condition of the tracks, which were solely under FRA and State jurisdiction, but several attorneys agreed. He said he was hearing him say that the Board should put a finding that they would vote based on being swayed on what Pan Am said they would do. He said he was afraid that he was suggesting they would try to hold them responsible as part of the regulation responsibility. Mr. Richardson said he just wanted to include a statement that they were relying on Pan Am's statement that they would upgrade the tracks. He said he was not suggesting any jurisdiction over the rails, just on the site. Chairman Hebert recalled a discussion about including a similar note on the site drawings and thought they came to an understanding that they could not make any stipulations that involved the operation of the rails. Mr. Richardson said in March and April they discussed the Sea-3 amplification and then a letter sent on April 21, 2014 showed that Pan Am was part of the land on which some of the improvements would be made so thought he their status shifted from a member of public. For that reason, Mr. Richardson was suggesting that the project would promote the safety of the public based on the finding that the railroad tracks would be upgraded.

Attorney Ratigan said at the conclusion of the meeting on May 5, 2014, the Board discussed a possible condition that Sea-3 would notify the Town and the

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

Planning Board if they learned that the track degenerated. He said that statement could satisfy protecting public safety without going beyond their jurisdiction. Board of Selectman Representative, Rick Stern said #45 already addressed the finding for public safety. Mr. Richardson said one characterized a basis for a finding and the other addressed the mechanics. He said he agreed with Attorney Ratigan's comments. Chairman Hebert said he recalled discussions of making a condition that Sea-3 would have to come back if the tracks degraded. Mr. Richardson said it shouldn't be a cat and mouse game where if only five cars showed up, then the applicant would know if there were rail impairments that limited their ability to transport sixteen cars at a time.

Mr. Cross asked if it was Mr. Richardson's intention that the Board would review and withdraw approval. Mr. Richardson said the Board's jurisdiction ended with the approval, but suggested that if the track deteriorated, then someone could go to Sea-3 and say the approval was based on an understanding of upgrade. Mr. Cross said he thought problems would be reported to the FRA, but he didn't think that would vacate Sea-3's approval. Chairman Hebert said if the applicant noticed the tracks deteriorated, then the Board could notify DOT or the FRA, but code enforcement had no jurisdiction. Ms. Lamson said she didn't have a lot of faith in the FRA. Chairman Hebert said any town notified could go through the proper channels to notify the FRA, but the building inspector had no authority. Ms. Lamson said the building inspector only had jurisdiction over the site and then asked if Greenland saw a problem they could work with the FRA and the State. Chairman Hebert agreed and said Sea-3 could also notify the proper authorities.

Mr. Richardson said they had wandered from the intent of the language, which was limited to Sea-3 in paragraph 40. He suggested adding the sentence, "...that the Board relies on this representation in determining that the project would promote public safety as required by the zoning ordinance..." Chairman Hebert said the railroad was not the applicant and they didn't apply to town boards and the Board had no jurisdiction over the railway. Mr. Richardson said the zoning ordinance required that they make finding that the project would promote public safety in the neighborhood and was not limited to the site. Mr. Pare said that language was already in #45. Chairman Hebert said it would cross the jurisdictional line, but the condition that Attorney Ratigan wrote up made sense and could be added.

Attorney Ratigan read #6 that said, "...if, after the track has been upgraded to Class II status, and Sea-3 learns that the Class II track has degraded to a lower level of service, then the Board of Selectman and the Planning Board shall be notified in writing by Sea-3 of this reduction and level of service within 7 days of learning. This is to allow Newington to notify the proper authorities." Chairman Hebert suggested adding "...for purpose of notifying the proper authorities." Mr. Richardson said he wanted to be sure the building inspector had all the tools necessary to review the safety of the site. Chairman Hebert said he had no problem if they were talking about the site, but the rail was beyond the building inspector's jurisdiction.

Chairman Hebert said he didn't like that the FRA only had jurisdiction over the rails coming in and out of the site, and town having none, but that was how it was. Attorney Ratigan said if the track wasn't upgraded, or was, but then degraded, then the

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

railroad could only run five tankers at a time and it would be under utilized, but there was no jurisdiction over the rail operation any more than it could be said that the railroad had jurisdiction over the site. Mr. Richardson said approving an expansion with the number of trains going over the tracks significantly could have an effect on public safety. Attorney Ratigan said the Board could only determine if the site could handle the receipt of those tanks. Mr. Richardson said if there was no plan to upgrade, and the zoning ordinance required the Board to find the project would promote public safety in the neighborhood, then the Board could deny the application. Chairman Hebert said he couldn't see how they could make that determination. Mr. Richardson asked if they could deny the application on the basis that it affected public safety based on the condition of the track. Attorney Ratigan said the applicant had the right to present a plan, build and have an underutilized plan. He said it would be self-executing if the track degraded or something like the market changing so that Sea-3 could no longer bring propane in anymore, which would be addressed under Condition # 6. Mr. Richardson agreed that the market would see-saw.

Ms. Lamson said the site review procedures required the Board to look at the health, safety, welfare and environment and she was concerned that they were not following site review procedures. Mr. Richardson said if the based approval on the intention to upgrade rails, and they did not upgrade the rails, then they could say they were not in compliance. Attorney Ratigan said they could not make any decisions regarding the rails. Chairman Hebert said Pan Am could deliver one train at a time, but they had said they would upgrade the tracks to Class II if Sea-3 were approved. He said they could consider the statement as showing good intent, but the Board still had to decide whether the proposal was acceptable without taking the railroad into account.

Mr. Richardson asked Attorney Ratigan if the Sea-3 could be considered an agent of the Boston and Maine Corporation that was listed on the site plan. Attorney Ratigan said the railroad's property was being leased, and they only had jurisdiction on the portion of land that was being leased for non-rail improvements.

Ms. Lamson said she didn't see any sense in listing #48 regarding the Mass DOT Transport report because an independent study on the local rails was requested and it had nothing to do with this case. Chairman Hebert, Mr. Pare, Mr. Cross and Mr. Richardson all agreed that they wanted to leave in to show similarities and nothing further could be done.

Mr. Richardson said for him the threshold was the excepted rail. Chairman Hebert thought they should stick to Class II because that was what was represented. Vice-Chair Marconi said the railroad inspector required the rails address the issue if he found something wrong. Mr. Richardson said the problem was that no one outside the railroad could get the inspection reports. Mr. Richardson said they needed a basic agreement that Sea-3 would notify them if the tracks fell into disrepair. He said he didn't want them to sit on the information so he wanted there to be an obligation to make officials know as soon as possible in case there was a situation where someone needed to respond, which couldn't happen if they were ignorant of the situation. Attorney Ratigan said they could make it less ambiguous by changing the wording from "...if they

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

should learn...” to “...if Sea-3 learned or had reason to believe...” because they couldn’t ignore what was in front of them.

Mr. Cross said Pan Am ran the rails, not Sea-3. Chairman Hebert said they didn’t expect Sea-3 to inspect the tracks, but the purpose of the condition was to inform the Town if they become aware of a problem, and then move forward.

Mr. Stern said they might want to make not if their rate of delivery changed which would indicate a problem with the tracks. Chairman Hebert said he was especially concerned if the track standard went below Class II, but they could list both. Mr. Richardson said they could specify notification if the rate of delivery dropped to five cars per day. Chairman Hebert said the rails could do self-inspection. Mr. Pare said the FRA was to be informed if the rate of delivery dropped to five cars per day. Mr. Richardson said the FRA said repairs only had to be done within thirty days. Attorney Ratigan read the changes that specified notification if there was a carrier reduction of service to five or less.

Vice-Chair Marconi said it was beyond the Board or Sea-3’s jurisdiction to regulate the rails. Mr. Cross agreed and said they couldn’t pull site approval if a trucking company came in less often because there were hazards that were under DOT jurisdiction. Mr. Stern said it was the same thing with ships coming in. Mr. Richardson said the corollary was that the Board could say that they would only allow deliveries to vehicles that had proper inspections. Chairman Hebert said the problem was that he was suggesting that Sea-3 do the regulation.

A majority of Planning Board members agreed to the adoption of the following Findings:

1. The applicant’s proposal seeks to improve the site’s existing rail off-loading facilities for liquefied propane gas (“LPG”) and add additional LPG rail off-loading facilities on its property and on property to be leased from Pan Am Railways.
2. The purpose of the proposed site improvements is to allow the applicant to continue its historical LPG distribution operations by increasing the capability to receive domestically sourced LPG, which is only available by railroad. The existing capacity to receive internationally sourced LPG from ocean vessels would be unchanged.
3. The Board finds that the shipment by rail of LPG via rail to the SEA-3 facility at 190 Shattuck Way has been occurring since 1995, consistent with the existing site plan approval that SEA-3 has obtained from the Planning Board.
4. If constructed, the proposed site improvements would not materially change operations on the site, which would continue to meet local propane gas distribution needs through its existing truck distribution facilities.
5. LPG is a combustible, non-toxic gas that evaporates into the atmosphere upon discharge.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

6. The applicant's site is manned 24 hours a day, 365 days a year, by personnel who are trained in emergency safety response procedures.

7. The Board finds that SEA-3 has a long history of facilitating and providing LPG fire safety training and incident response training to its personnel and to other public safety personnel, both in Newington and in the region. Further, that Mr. Bogans of SEA-3 has represented that these training opportunities would continue to be available to Newington's firefighters and public safety professionals, and to other communities in the region.

8. The applicant's site is regulated by the U.S. Department of Homeland Security, as overseen by the United States Coast Guard, and is required to comply with these agencies' regulations for security lighting, surveillance and fencing.

9. In his October 9, 2013 interoffice memorandum to the Planning Board, then Fire Chief, Dale Silva, stated with regard to the proposed site improvements that:

"In reference to SEA-3's request to expand their rail capability, we have been researching this a great deal. I met with N.H. Fire Marshal's office to discuss the operation with two Fire Marshals, we inspected the proposed site. In addition to fire protection, we are reviewing federal laws and how this may affect our neighboring communities. From a fire department view, I believe this is a positive for Newington, because it gives us the opportunity to update and increase fire protection systems that are already in place but outdated. The operation they are proposing is not dramatically different than their current operation.

Working with the Fire Marshal's office, we are also going to require a third party Fire Engineer review, but one that specializes in propane operations. The State is researching potential engineers for us.

Having said that, we recommend conditional approval in concept. If approved by the Newington Planning Board is to go forth, SEA-3 will have numerous requirements set by Newington Fire, with the assistance of the State Fire Marshal's office and an Independent Engineer."

10. The proposed site improvements will update and modernize the site's existing fire protection systems.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

11. That Newington Fire Chief Head testified that his department has the resources that it needs to respond to an incident, whether it be a SEA-3 facility, or along the railroad tracks. Chief Head said that his department would continue to take advantage of any training that it may require and that the final plan designs would be reviewed and approved by his office, and by the N.H. State Fire Marshal's office.

12. That Ms. Scarano of Pan Am represented to the Board, on the issue of fire incident response training and safety, that Pan Am often worked with the Federal Railroad Administration [FRA] to provide a day of training for local fire departments.

13. Chief Head stated that as to jurisdiction over incident response, his department handles Newington, and jurisdiction for incidents in Portsmouth or other communities lies with the Fire Chiefs in those communities. Each community can call upon neighboring communities for mutual aid, if such aid is advisable. He also indicated that there are emergency management plans that include evacuation plans which have been put in place by the State of New Hampshire for the seacoast region, should an event occur of such magnitude that the plan is activated.

14. It has been reported from several sources that Portsmouth Fire Chief Steven Achilles has stated that he currently has the resources and training necessary to respond to a LPG incident in Portsmouth related to the LPG rail traffic that currently travels through the City, and that the Portsmouth Fire Department's current resources and training are sufficient to meet the risks presented by the proposed increase in LPG traffic presented by this site plan application.

15. Based on its review of the proposed site plan, the Town's retained safety expert, SFC Engineering Partnership, Inc. ("SFC"), concluded in its January 29, 2014 report, "Overall the site plan appears to be in general compliance with NFPA 58 and 54. In terms of fire safety compliance, no significant problems have been found with this layout."

16. The applicant's Fire Safety Analysis determined that there is adequate water volume and pressure on site to service the proposed fire suppression system.

17. In its written review of the applicant's Fire Safety Analysis ["FSA"] dated April 9, 2014, SFC concluded, "This FSA document appears to be in general compliance with NFPA 58, and NFPA FSA manual. No significant problems have been found with the proposed system or the FSA at this point; however, the above listed detailed documentation should be submitted and reviewed prior to the issuance of a building permit and system commissioning."

18. The applicant has represented that the final design and construction of the site improvements would comply with NFPA 58 and 54.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

19. The proposed site improvements would add a second means of emergency access to the site over the property of Pan Am Railways.
20. The proposed site improvements would maintain the site's existing vegetative buffers and add a 6-8' earthen berm at the southeastern corner of the site, within the existing fence line, where the site abuts a residential use.
21. The proposed site improvements will result in no change to the site's existing motor vehicle parking or truck distribution facilities.
22. Mr. Hazarvartian, P.E. of Transportation Engineering, Planning and Policy, performed a traffic assessment for the applicant and concluded that the proposed site plan would not alter the historic truck traffic volume which averaged 103 to 161 trucks per day, from 2002 to the present (excepting 2012 and 2013, which were substantially below these numbers due to market conditions).
23. Mr. Bogans testified that there are site constraints that limit the number of LPG rail cars that SEA-3 can receive to 16 rail car tankers with LPG per day, even with the site improvements proposed by this application. (3/24/14 PB mtg. minutes).
24. Mr. Grotenhuis, Senior P.E. of RSG, reviewed for the Planning Board the applicant's traffic assessment and concluded that the truck traffic volume would remain essentially the same, at 160 trucks on average per day. He further found that ongoing changes to the Spaulding Turnpike may alleviate some of the traffic down Woodbury Avenue and through Portsmouth.
25. Based on the evidence presented, the site plan proposal will not increase the truck traffic to and from the site.
26. The proposed site improvements will not change the site's existing distribution capacity or increase traffic impacts associated with existing uses on the site.
27. The motor vehicle area of the proposed site improvements is currently hard packed gravel and will remain hard packed gravel, with the exception of where the improvements are affixed to the ground.
28. The proposed site improvements will result in no adverse change to existing dust, erosion or run-off conditions.
29. The proposed site improvements will upgrade the existing storm drainage system.
30. The applicant has received Shoreland Impact Permit No. 2014-00105, a copy of which was provided to the Planning Department by e-mail dated March 24, 2014.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

31. The applicant has received Alteration of Terrain Permit No. AoT-0695, a copy of which was provided to the Planning Department by e-mail dated March 24, 2014.

32. The proposed site improvements will not alter the existing security lighting, which was installed in accordance with a security lighting plan required and approved by the U.S. Department of Homeland Security.

33. In its April 21, 2014 letter to the Planning Board, Pan Am Railways confirmed in writing that it will lease a portion of its land to the applicant for a portion of the proposed site improvements, but advised the Board of its position that Pan Am Railways is not the applicant. It is not asking the Board for any approvals and it is not subject to the Town's land use regulations. Pan Am is assenting to this application to the extent that a portion of the improvements are located on property that it will lease to SEA-3.

34. John Robinson, the N.H. Railway Safety Inspector at the N.H. Department of Transportation, testified that he met with Portsmouth officials to discuss track inspection issues.

35. Mr. Robinson testified that Pan Am would only be able to move 5 tank cars at a time to the SEA-3 facility over the tracks north of Rockingham Junction while the tracks were in their current condition (3/24/14 PB mtg. minutes).

36. Mr. Robinson said that he (as N.H. DOT's representative) and the FRA over joint track inspections of the Portsmouth and Newington branch line.

37. Mr. Robinson testified that N.H. RSA Chapter 373 governs the process by which N.H. municipalities can request a change of safety protection at railroad-roadway crossings. This is a N.H. DOT administrative hearing process that would examine whether the safety protections at the crossing are adequate, and if not, who would be responsible for the upgrades and how that cost would be allocated.

38. Mr. Robinson testified that federal law required annual, comprehensive bridge inspections by Pan Am to be in place with records, ratings, and results available to the N.H. DOT and to the FRA.

39. Ms. Scarano of Pam Am stated that Pan Am was currently working with the Town of Greenland to begin the process of examining road crossing safety protections and reiterated that Pan Am would work constructively with communities on road/rail crossing issues.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

40. Ms. Scarano of Pan Am testified that if SEA-3's application is approved, Pan Am intends to replace approximately 10,000 ties from Rockingham Junction to the SEA-3 facility, and that it would upgrade its tracks Class II status along this section of the railway.

41. Mr. John Killoy, Track Safety Administrator for the New England region of the Federal Railroad Administration (FRA) testified that the FRA regulates rail safety and employee safety. He stated that the railroad owns and maintains the track to whatever standards it sets for its use, and that tracks would be inspected by the FRA, once an upgrade of track has been completed to a new track class. (3/10/14 PB mtg. minutes).

42. The Board finds that rail safety regulations and inspections lie solely with the Federal Government under the jurisdiction of the FRA and the State of New Hampshire, through N.H. DOT. The Planning Board has heard lengthy, detailed testimony from John Killoy of the FRA and John Robinson of N.H. DOT. Each reaffirmed the Board's understanding that exclusive jurisdiction over rail safety, inspections and operations lies with these governmental bodies and not with N.H. municipal planning boards.

43. While Pan Am has supplied the Board with important information, SEA-3, and not Pan Am, is the applicant before the Board.

44. The Board finds that there are existing safety studies which detail the safety protocols and procedures to be followed on the SEA-3 property in the event of a LPG incident.

45. Based upon the evidence before it, the Board finds that public safety will be enhanced by this application, as Pan Am declared it will upgrade its tracks to Class II status. This will have to be done in order to accommodate a proposed increase to 16 tank car deliveries per day of LPG to the SEA-3 site, above the present limit of 5 cars at a time.

46. Public safety will also be enhanced by the new, state-of-the-art safety improvements that are to be installed on-site as proposed by the applicant.

47. The Planning Board has conducted 7 public hearings on this application. The Board has encouraged and received substantial public input from neighboring communities and their residents, after having declared this project to be a proposed development that has a potential for regional impact per N.H. RSA 36:57.

48. While the Planning Board received and reviewed a report prepared by the Massachusetts Department of Transportation entitled, "Report on the Safety Impacts of Ethanol Transportation by Rail" dated March 29, 2013, the Board finds that the circumstances of this study are not related to this application, as the product being transported in Massachusetts is different (ethanol in Boston vs. LPG in N.H.). The

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

Massachusetts Legislature adopted a law in 2012 that required the Massachusetts DOT to commission this study; there are Massachusetts state permits required to transport ethanol through Boston that are not pertinent to New Hampshire. Most importantly, the rail lines within the Massachusetts study area over which the ethanol would travel are owned by the MBTA, and not by private rail carriers such as Pan Am.

49. The Board expressly finds that the requirements of Newington Zoning Ordinance Article 5, Section 6 have been satisfied, that the contemplated use would constitute a development of sustained desirability and stability, that it would be in harmony with the character of the surrounding area, and consistent with the overall long range plans for the community, that it would not result in an over-intensive use of the land, that it would not result in undue traffic congestion or traffic hazards, and that the plans indicate that it would be adequately landscaped and otherwise promote the health, safety and welfare of the community.

50. The Board expressly finds that this proposed expansion of a long-standing use that is permitted in the Industrial Zone is consistent with the aim of Newington Zoning Ordinance Article V, section 5, A, which anticipates that land zoned Industrial will be able to accommodate “expansion of existing industry...and to enhance economic development and employment opportunities.”

51. The Board expressly finds, as is required by Newington Zoning Ordinance Article V, section 5, B that per the terms of this site plan application, “the proposed location, construction and operation will not injure present or prospective industrial development in the district, or the health and welfare of residential districts in the vicinity.” The Board expressly finds that this application is precisely the type of business development and land use that the Industrial District is intended to protect and promote.

52. The Board expressly finds and recognizes that, in the aftermath of the recent economic recession, the importance of supporting business in the Industrial District, and promoting economic development and local employment, cannot be understated as an important purpose of this Industrial District.

53. That the Board finds that SEA-3 helps to provide a variety of energy sources to the N.H. seacoast area and the region, and to the extent that this approval will continue to allow SEA-3 to provide energy alternatives to local energy customers, Newington and the region benefit by having enhanced competition in the energy marketplace.

54. The proposed site improvements meet all applicable requirements of the Town of Newington’s Site Plan Review Regulations.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

Mr. Richardson moved to grant site plan approval in order to permit 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 consistent with the Sea-3 site plans dated November 4, 2013 (revised May 19, 2014), subject to the following conditions:

1. Trucks exiting the SEA-3 facility shall make a right hand turn only and shall travel north on Shattuck Way to the Spaulding Turnpike's Exit 4.
2. The SEA-3 facility shall be authorized to receive no more than 16 rail tank cars carrying LPG per day. Any proposal by SEA-3 to receive more than 16 tank cars carrying LPG per day shall require further site plan review and approval by the Newington Planning Board.
3. Any lease between SEA-3 and Pan Am (or their successors or assigns) on land leased to SEA-3 for the siting of the unloading racks and other improvements to be constructed and operated by SEA-3 on such leased land, shall contain a provision that SEA-3 shall remove all such improvements prior to any termination of the lease. The lease shall further provide that if SEA-3's operation is ever moved or discontinued, such improvements shall not be transferred to Pan Am. These required lease provisions shall be submitted to the Planning Board for review and approval by the Board and its legal counsel, and any proposal to amend such lease provisions shall require the pre-approval of the Planning Board.
4. The final design and plan shall meet the requirements of the N.H. Fire Code and the NFPA Code, per the opinion of the Newington Fire Chief and the Town's Fire Safety Consultants.
5. Several safety plans were adopted in conjunction with the original SEA-3 site plan approval. They shall be reviewed by SEA-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.
6. If, after the track has been upgraded to a Class II status, SEA-3 learns, or has reason to know, that the Class II track has degraded to a lower level of service, or there is a carrier mandated reduction in rail car deliveries to 5 cars or less, the Selectmen and the Planning Board shall be notified in writing by SEA-3 of this reduction in the level of service within seven (7) business days of receiving such information. This is to allow Newington officials to notify the proper authorities.

Bernie Christopher seconded the motion.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 19, 2014

Mr. Richardson said he was uncertain if he would vote in favor of the proposal, but he thought the Board did all it could to protect the public safety, health and welfare and he thought the conditions discussed, particularly #6 went as far as possible. Vice-Chair Marconi agreed, including having the trucks turning onto exit 4 to keep trucks out of Portsmouth.

Chairman Hebert called for the vote. ***The Board voted to pass the motion unanimously.***

Ms. Lamson commented for the record that they had a full board and as an alternate she could not vote, but if she could have, she would not have because she felt they didn't look into the health and safety or environment of the area.

Chairman Hebert said he was bothered to discover they had no jurisdiction over the rail. He said it put them in a tough place along with the surrounding towns. He said he commended everyone for sticking to their positions no matter what their positions were. He said they covered a lot and it was best public hearing he had ever seen. He said Mr. Morgan had done a lot of work too.

Mr. Richardson said Portsmouth officials had told them they needed money for their railroad crossings, but they never came forward with information on what portions would be attributable to this project. He said the only thing he heard was that the City Council voted to put the rail line through Pease, which was a non-starter because it was impossibility for this project. Mr. Christopher said it was all political. Chairman Hebert said the alternate route was a political hot potato and there was barely anything left of former track. Mr. Richardson said it was too bad because the real issue on the table was if the rail crossings were safe. Ms. Lamson said Greenland had ten crossings. Mr. Cross said there was a State application process for upgrading town crossings. Mr. Richardson said if anyone was aware of an unsafe intersection, then they should have been informed with the specifics to consider.

Chairman Hebert said the surrounding towns were aware of the process and it was up to each town to contact the DOT and FRA if there were any concerns. He added that it was up to individuals to contact officials for change if they didn't like the laws.

Chairman Hebert said the FRA had told him that they had never been to a town before and wasn't sure if the DOT bridge inspector had ever been to a town hearing before either. Mr. Cross said they had visited with the Rockingham Planning Commission before.

Mr. Pare said he would like to see an invitation to participate with the Rockingham Planning Commission to study alternate routes for the rail line. Chairman Hebert said they sent a letter out previously and would consider if separately. Mr. Stern also recommended that the fire departments participate in training with Sea-3. Vice-Chair Marconi thought they should put a notice in local papers. Chairman Hebert said it would become public knowledge once they sent the letters to surrounding towns. Ms. Lamson said the Beckett plan for future economic development that including the rail coming from Portsmouth to Pease was still referred to on the plan.

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Chairman Hebert passed out a chronological listing of what the Board did while reviewing application. He said he wanted to capture what the Board had tried to do for those who were not present for all meetings. He said he also wanted to send out a synopsis to abutting towns on the Town letterhead and signed as chairman of the Board. Chairman Hebert asked if anyone was opposed to the letter and with no one raising their hands, he said would send it out.

Vice-Chair Marconi said he wanted to be sure that any calls or correspondence went through the chairman, the town planner or town attorney.

Mr. Richardson presented an example of a letter from the Moultonborough town planner's office listing staff recommendations on projects. Vice-Chair Marconi said he liked the checklist. Ms. Lamson asked how large Moultonborough's staff was and Mr. Richardson said they had a staff as one and Mr. Pare said their town was the same size as Newington. Chairman Hebert said he liked, but Newington only had one town planner on staff so he asked Mr. Morgan to review and comment for the next meeting.

Vice-Chair Marconi thanked Mr. Morgan for all his work and Chairman Hebert agreed and also thanked Town counsel, Attorney Ratigan along with many talented people that had reviewed evidence.

Mr. Paul Bogan, Sea-3 Vice President of Operations thanked the Board for their time and effort on behalf of himself and Sea-3. He said he would do his best to pull the project off and comply with the Board's conditions. He said the Sea-3 would be available to train the fire departments in the surrounding towns.

Chairman Hebert said the oil and gas delivery was keeping the rails so busy that they were too busy to deliver food.

Minutes: ***Vice-Chair Marconi motioned to approve the Planning Board Minutes for May 12, 2014 with changes as discussed. Peggy Lamson seconded the motion, and all members voted in favor.***

Adjournment: **Vice-Chair Marconi moved to adjourn and Ms. Lamson seconded. All were in favor and the meeting adjourned at 8:25 p.m.**

Next Meeting: Monday, June 9, 2014

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