

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

Call to Order: Chair Denis Hebert called the March 10, 2014 meeting to order at 6:32 p.m.

Present: Vice Chair, Mike Marconi; Bernie Christopher; 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 Christopher Cole; Attorney Alec McEachern; Attorney John Ratigan; Paul Bogan, Sea-3 Vice President of Operations; Cynthia Scarano, Pan Am Executive Vice President; Robert Culliford, Pan Am Senior Vice President and General Counsel; Steven Haight, Haight Engineering; John Killoy, Federal Railroad Administration Representative; Nick Cricenti, SFC Engineering; John Bohenko, City Manager for Portsmouth; David Allen, Deputy City Manager for Portsmouth; Peter Britz, Environmental and Sustainability Planner for Portsmouth; Portsmouth City Councilors, Esther Kennedy and Stefany Shaheen; Senator Martha Fuller Clark; Portsmouth Residents: Joe Calderola; Catherine and Richard DiPentima; Pat Ford; Bob Gibbons; Jane Sutherland; Newington Residents; Nancy Cauvet; Jack O'Reilly; Melissa Prefontaine; Paul Reardon; Greenland Resident: Laura Bygero; Jeff McMenemy with the "Portsmouth Herald"; Doug LaRosa and Robert Stowell, Trittech Engineering; Attorney Dave Brown; Westinghouse Facility Manager, Fred Miller; David Choate with Choate International

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

No one from Seacoast Growers Association appeared for this discussion.

2) **Public Hearings:**

A) 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.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

Chairman Hebert opened up the hearing and welcomed guests, introducing Portsmouth City Manager, John Bohenko who read a letter from Portsmouth Mayor Robert Lister who was not in attendance.

Chairman Hebert asked Ms. Cynthia Scarano, Pan Am Executive Vice President if it was true that Pan Am Railways intended to upgrade their tracks from Class I to Class II, but still keep to 10 mph. Ms. Scarano said that was correct that they intended on replacing approximately 10,000 ties and a number of cross ties. She said they were planning on upgrading to Class II, which could go up to 25 mph, but they were committed to staying to 10 mph. Chairman Hebert asked if there would be any reason to change the speed, and Ms. Scarano stated that they would not at this point though regulations allowed them to go up to 25 mph. Alternate Board member, Ms. Peggy Lamson asked Ms. Scarano to elaborate on her remark. Ms. Scarano replied that they didn't see any reason to go up to 25 mph at this point, but they couldn't guarantee that they would never go up to 25 mph. Chairman Hebert asked if they would stick to 10 mph for propane. Ms. Scarano said they would, but repeated that the regulations allowed them to go up to 25 mph.

Board member, Justin Richardson asked which portion of the tracks they would be traveling at 10 mph. Ms. Scarano stated that they would travel 10 mph from Rockingham Junction in Newfields to the Sea-3 Plant in Newington.

Chairman Hebert introduced John Killoy, Federal Railroad Association (FRA) Employee and Track Safety Administrator for the New England Region. Mr. Killoy said the FRA regulates the railroad and their partners to improve their tracks and employee safety.

Mr. Rich DiPentima of 16 Dunlin Way said the National Transportation and Safety Board made the recommendation that the transportation of hazardous routes be expanded to avoid populated areas. He said they were increasing the transportation of 20 propane tanks to 3,700 a year on the same route and wondered if the increase was consist with national increases. Mr. DiPentima then asked if twelve cars carrying propane were not considered hazardous materials. Mr. Killoy said the reports were for crude oil, but these cars would be carrying propane. Mr. DiPentima pointed out that they would be going through people's back yards.

Mr. Jeff Barnum, Great Bay and Piscataqua Water Keep said he understood DOT or FRA had not inspected the bridges, and Pan Am's inspection records were only available from the FRA by request. He asked if the FRA had looked at the records. Mr. Killoy said each railroad was responsible for their own bridges and several people would review those records with the railroad.

Chairman Hebert asked if there was any plan to follow up with the inspection findings. Ms. Scarano said both the bridges and the tracks have inspection schedules that were audited by the FRA. Chairman Hebert said he was under the impression that the FRA did inspections with DOT. Ms. Scarano said Pan Am did the inspections on an annual basis. Chairman Hebert asked if Pan Am did inspections and provided reports or if the FRA did the inspections. Mr. Killoy replied that they only had a few inspectors, but they did look at the structure of the tracks.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

Mr. Richardson asked what it would take to upgrade the railroad track to a Class II status and if they submitted a capital improvement plan to the FRA for review or if it was an internal process. Mr. Richardson said he wanted it to be an approvable project, but he wanted to know how the process worked. Mr. Killoy said the railroad owns and maintains the track to whatever standards they set. Mr. Killoy said the tracks would be inspected after the upgrade was done. Mr. Richardson asked when the tracks would legally become Class II and if there was more than one way to upgrade. Mr. Killoy said it would all go together.

Chairman Hebert again asked at what point the tracks would switch from one class to the other and if Pan Am made that decision. Ms. Scarano said whatever they decided to do, they would have to meet the FRA's regulations. Chairman Hebert asked how they would know if they were at that level. Ms. Scarano stated that the tracks would be taken out of service or they would be fined if they didn't meet the FRA standards.

Chairman Hebert asked if they had a capital improvement plan and Ms. Scarano said they needed new ties and cross ties, but they would wait until they had the business before they made the upgrade.

Mr. Richardson asked who would pay for the upgrades and Ms. Scarano said they were privately owned and would pay for their own upgrades.

Mr. Richardson said a utility would have a rate agreement for improvements and asked if there would be a document to show the public a plan for what improvements would be made. Ms. Scarano stated that the last inspection was done in January and the track was not taken out of service. Mr. Richardson said it was his understanding that portions of the tracks were designated as "excepted". Ms. Scarano said cars could still travel on "excepted" tracks so they were meeting regulations. Mr. Richardson said they were being asked to take Pan Am's word even though there was no documentation. Ms. Scarano said the railroad was regulated and they didn't expect town officials to understand railroad design and engineering. Mr. Richardson said experts would clearly understand the operation best, but even utilities had to show plans for improvements, document details and show budgets for the municipalities they were in. Ms. Scarano said various plans were filed with the FRA, including drug testing, speeds, cars, analysis of town populations, etc. and the FRA could audit them. Mr. Richardson asked if they could see a copy and Ms. Scarano replied that they could provide a copy of the regulations that were required to obtain a Class II rail line status. Ms. Scarano said that report wouldn't be available because it was part of the track design. Mr. Richardson said there would always be a budget document, however. Board member, Bernie Christopher said he understood Pan Am was a private organization that didn't want to give out information, but he assumed they gave information to the FRA so wondered why the Town couldn't get that information from the FRA.

Chairman Hebert said it was his understanding that engineers went along the tracks and replaced bad ties as they were found. Mr. Killoy said someone marks the bad ties ahead of time and then someone is sent out to replace them, but no plans would be submitted because the rails were already there. Chairman Hebert said Pan Am went on record saying they would put in 10, 0000 ties and the FRA was supposed

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

to enforce the maintenance or they would be shut down. Ms. Scarano said the railroads had to stay within the regulations and they would be subject to fines if they didn't comply. Mr. Killoy said Pan Am owned the track, but the FRA did the inspection and that information was available through the Freedom of Information Act by request through the 96 Form.

Ms. Lamson asked Mr. Barnum, the Great Bay and Piscataqua Water Keeper for his comments regarding the bridge near the Great Bay Discovery Center. Mr. Barnum said the bridge was a wooden structure in the middle of nowhere crossing over the Squamset River at the head of Great Bay. He said he hoped the Board would continue to ask questions until they could get reports and plans for the bridge inspections. He said his understanding from DOT was that Pan Am had bridge inspection reports that were only available to the FRA and he was hoping they could get copies of those reports for review. Mr. Killoy said the FRA would audit their bridge inspections. Ms. Lamson said it was an extremely sensitive area and they needed to be concerned for the estuary that went into the Great Bay water system. Mr. Killoy said the inspectors take their jobs seriously. Ms. Lamson said she took her job representing the Town of Newington seriously too. Mr. Barnum said the same inspection would be required for the bridge in Portsmouth near the State pier.

Mr. Matthew Nania of 18 Dunlin Way said he wanted a better understanding of the inspection process. He asked if they inspected the entire line or just a section, and asked how they could find deficiencies during their January inspection when the ties were covered by snow. Mr. Killoy replied that they don't expect any plans for repairs right after the January inspection when the tracks were covered with snow. He said the FRA inspectors typically make an appointment to go back after the snow melts in the month of May to look at ties that hold rails together. He said defects found during the inspections in January were repaired immediately, however.

Mr. Nania asked if the inspection recommendations were for the current standard. Mr. Killoy said it depended on the current class and if standards were not met, the class could be dropped down.

Ms. Laura Bygero from Greenland said the "Portsmouth Herald" asked the FRA for inspection records from Pan Am in December and wanted to know how responsive Pan Am had been. Mr. Killoy said those records could be obtained from Washington, DC through the Freedom of Information Act. Chairman Hebert said Newington had not submitted a request, but he understood that the "Portsmouth Herald" had. "Portsmouth Herald" representative, Jeff McMenemy said they had not yet heard back from the FRA. Ms. Bygero said letters had been sent to the senators asking for records to be released also. Mr. Killoy said the senators would have to go through the same procedures to request information as well. Chairman Hebert said he read the letter from the senators and didn't get the sense that they asked for safety records. Ms. Bygero asked if they would. Mr. Killoy said he would send Chairman Hebert the link and show him the process for requesting the information.

Ms. Catherine DiPentima of 16 Dunlin Way said everyone, Sea-3, Pan Am, and various representative from the cities and towns were saying they were concerned with safety and the Planning Board had an enormous responsibility for the expansion of

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

potentially explosive materials given that Pan Am had five incidents in last the month. She said her house was less than 100 feet from the railroad tracks. She said she was concerned for her family's safety and didn't think she was unique, that others with homes, families and businesses were also concerned. She said with such environmentally sensitive, densely populated residential and commercial areas, there was no reason not to conduct comprehensive studies. Mr. Killoy said the FRA didn't get involved in environmental impact studies.

Ms. Scarano said many goods moved through the country without incident. She said they had no deadlines or plans for any environmental impact studies, but some inspections were done weekly. She said Class I tracks were inspected once a month and Class II tracks were inspected twice a week.

Mr. Joe Calderola of Dennett Street asked if there were any FRA regulations prohibiting the railroad from releasing inspection audits from Rockingham Junction to Sea-3 over the last five years. Mr. Killoy's information could be obtained by going through the proper channels, but they would have to be specific.

Mr. Calderola asked when they did the last audit of Pan Am's internal inspection reports. Mr. Killoy said he thought they did an audit two years ago, but he couldn't remember for certain. Ms. Scarano said Pan Am just completed a hazardous material, a drug and alcohol and dispatchers audit. Mr. Killoy said the track and equipment inspection was done last spring.

Mr. Calderola asked about the safety of the railroad crossings and the cause of a recent accident in Pennsylvania. Mr. Killoy said the crossings were set up for speed and a broken rail caused the accident in Pennsylvania. Mr. Killoy said Pan Am tests crossings, but the upgrades of approaches are from states & towns. Ms. Scarano said states and towns also pay for gates if they are on state and town roads. Mr. Killoy said the railroads sometime donate their labor.

Mr. Bob Gibbons of 135 Spinnaker Way asked Mr. Killoy if he was familiar with the local tracks. Mr. Killoy said he looked at map, but hadn't seen the tracks himself. Mr. Gibbons asked if he was familiar with where the area of "excepted" tracks was and what the limitations were. Mr. Killoy said he had seen the inspection reports and the track on a map, but had not seen the track himself. He said "excepted" tracks were different than Class I and a certain level of degradation was allowed. Mr. Gibbons said he had read that only five hazardous cars were allowed to travel at one time, but then he read a conflicting statement on the FRA website that said there could be a risk of derailment with this amount of hazardous material traveling through a populated area. Mr. Killoy said he thought he was referring to unitrains, but this was a Class I track and incidents were usually as a result of a wheel falling off. He went on to say that events were usually not very significant with propane transportation going about 10 mph. Mr. Gibbons said he thought that would depend how close and how many people were in relation to an incident involving hazardous materials. Mr. Killoy said he thought the tanks were very safe.

Mr. Gibbons asked what the time line was for repairs to the tracks and Mr. Killoy said the rails could be left as they are forever, but it would be in their best interest to upgrade them.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

Mr. Lou Brown of 65 Laurel Court said the existing tracks that passed by his house were grandfathered even though they were on wetlands. He said concerns with freeze thaw cycles would be taken under consideration if new tracks were built there now. Mr. Killoy said the railroads put ballasts under the rails to stabilize and keep them from sinking and heaving in the interest of running the cars smoothly. For clarification, Vice-Chair Marconi said the area was dry before Mariner's Village was built.

Mr. Alhamdan Abdallah of 12 Dunlin Way said he was concerned with safety because the tracks pass by his backyard and his work place in Newington too. He asked if the propane tanks were required to be odorized. Mr. Killoy said the FRA inspects the tanks for safety appliances and structural integrity. He said odorizing depended on the customer and the product, for instance the product would not be odorized if used in a spray can,

Chairman Hebert asked Mr. Paul Bogan, Sea-3 Vice President of Operations to elaborate. Mr. Bogan said their product at the terminal was deodorized. He said propane could be labeled as deodorized when shipped, or equipment could be installed to deodorize it once delivered, and they hadn't decided yet which they would do. Board member, Jack Pare asked why they didn't use an odorizing agent in the refrigeration process. Mr. Bogan replied they didn't use an odorizing agent because it would congeal and cause the system to malfunction.

Mr. Abdallah asked if the FRA inspected tanks and how they rated them for safety and compliance. Mr. Killoy said the customers owned the cars, not the railroad, which just moved them, but they were inspected and typical defects were brake shoes or hand holds. Ms. Scarano added that they would tag a tank found with a defect so it couldn't be moved. Mr. Abdallah asked if Pan Am made sure the tanks cars were compliant. Ms. Scarano said they only did a visual inspection of the outside of the cars or tanks, but rest of the inspection would be up to the person who leased or owned the car.

Mr. Richardson asked if they would agree to put a note on the site plan that the railroad would be upgraded to Class II standards within a given period of time. Ms. Scarano said the capital plan was to upgrade over the coming summer. She went on to say that Sea-3 could put whatever they wanted on the plan, but Pan Am had no control over Sea-3 and they has no control over Pan Am. Attorney Alec McEachern, representing Sea-3 said the issue was that Sea-3 had no authority over Pan Am and couldn't put a condition that the railroad line be upgraded to Class II.

Mr. Richardson said the Board had to consider the health, safety and welfare of the public when reviewing the ordinance and regulations. Attorney McEachern said there was a lot of case law on the issue of jurisdiction and the ability of Planning Boards to regulate the operation of the railroads beyond their jurisdiction. He said he submitted a four page legal memo in reply to Attorney Christopher Cole's letter to the Board that came down to the Town having jurisdiction over what happens on Sea-3's site after Pan Am delivers the product, but Federal law had exclusive jurisdiction over the rails that brought the product to and from the site. Mr. Richardson said he read the cases and thought it was a valid point that the Board had the authority to approve or deny uses on Sea-3's property depending on the hazards to the surrounding community. He said the

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

only recourse they would have to protect the public's safety would be to deny the application. Attorney McEachern said it would be illegal to do so because the town did not have the authority to regulate railroad operations. He said they could only enforce their zoning in respect to Sea-3's property, and could not deny the application based on the railroad lines, which was under Federal jurisdiction only. Mr. Richardson said some of the cases ruled that towns were in their authority to deny an application when it did not comply with the zoning ordinance when considering the health, safety and welfare of the public. Mr. Richardson asked if they were to accept that there was a capital improvements plan to upgrade the railroad without any documentation. Attorney McEachern said they had to rely on Federal law in respect to their jurisdiction of the railroad.

Chairman Hebert said he understood what Attorney McEachern was saying in regards to Federal jurisdiction of the railroad lines, but asked if Sea-3 if they would be willing to tell Pan Am they would not accept LPG delivery by rail unless they brought the railroad lines up to safe standards. Attorney McEachern replied that they were suggesting another party besides the FRA regulate the rails and that was illegal.

Ms. Susan Parker of 23 Bayridge Road in Greenland asked if an environmental study be done and what the change of classification might do to the environment. Mr. Killoy said the railroad owned the tracks and it was in their interest to make the tracks stable. Ms. Parker said as a former executive for the Department of Labor she knew how regulations change over time based on new science. She said she thought she heard Mr. Killoy say senators had to go through the same process to obtain information from the Freedom of Information Act just as citizens did. Mr. Killoy said senators couldn't release information without going through the process. Ms. Parker said her experience was that if a Senator Harkin sent a letter, an answer would be expected.

Attorney Chris Cole, a representative for several citizens of Portsmouth said neither he nor his clients were trying to regulate the rails, but they were trying to help the Town regulate this site because it had important safety implications. He asked to look at site-specific questions and didn't think Federal law would agree that was the limit of the Planning Board's power. He said they also wanted to ensure the site could handle the ingress and egress of traffic with propane. Attorney Cole referred to his letter requesting a comprehensive study for the 20 million gallons of propane they were bringing in annually. Chairman Hebert said he planned on asking Pan Am those questions later as they progressed through the review of the proposal.

Mr. Lou Salomi of Spinnaker Way asked what it would take to get the rails to Class II and who would decide if the speed would stay at 10 mph or if it could go up to 25 mph. Mr. Salomi read from a study that said out of 40,000 incidents, there was no loss of product when the train's speed was less than 5 mph, but even at 10mph there was a great risk of damages.

Chairman Hebert asked Pan Am for clarification on whether they were only keeping their speeds at 10mph prior to an upgrade and when they would be upgrading. Ms. Scarano said Pan Am was there to answer questions, but repeated that they were

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

not before the Board looking for approval. She went on to say their construction season ran to frost, and if Sea-3 told them their proposal for expansion was approved and they were ready for operation, they would complete their rail upgrade in four to six weeks.

Mr. Richardson said it was his understanding that a Class I rail standard couldn't meet Sea-3's requirements to bring in propane. Ms. Scarano it was correct that they would need to upgrade to meet Sea-3's requirements for a sixteen car train, but she pointed out that Pan Am didn't need approval of Sea-3's building permit to travel seven days a week as a common carrier if a customer called for a pick up and delivery.

Mr. Richardson said it was a conundrum because the regulations said they had to determine there would be no impact on the public safety, and yet they were told they can't regulate the railroad. He said he heard them say they were upgrading to a Class II, but they had no agreement to keep their commitment. Ms. Scarano said towns did not make determinations as shown in case law. Vice-Chair Marconi asked if it would be their determination when they went up to 25 mph once they upgraded to a Class II and Ms. Scarano said that was correct.

A resident from Tidewater Farm Road in Greenland asked if there was any intention of exporting and Mr. Bogan explained that their main focus would be for domestic sales, but they might do some exporting in the summer when demands in the New England region were lower so long as they fulfilled their contractual domestic commitments. Mr. Bogan said they were requesting the installation of three additional towers with a future projection of two, but they didn't know if they would ever do that. Chairman Hebert said they would have to return to the Board for any additional expansion.

Mr. Barnum asked if there were any insurance requirements for propane carriers and Mr. Killoy said there were not. Mr. Barnum asked who would carry the insurance to cover accidents and Ms. Scarano said Pan Am had a considerable amount of insurance and Class II would have more coverage than Class I. Mr. Barnum said he thought the Planning Board would like documentation. Chairman Hebert said he knew Sea-3 had insurance and wanted to know what kind of insurance Pan Am had in case of a catastrophic event. Mr. Culliford said they had a \$25,000,000 insurance policy and had significantly more, but they couldn't make a commitment because of market fluctuations. Attorney Ratigan said this was Sea-3's application, not Pan Am's application.

Mr. DiPentima asked Mr. Killoy to respond to his comment that there had been no accidents at 10 mph considering the American Railroad Institute's findings. Mr. Killoy said he wasn't familiar with that study, but he thought a derailment at 10 mph wouldn't be the same as at 40 mph. Mr. DiPentima said there was no ability to control when Pan Am went up to 25 mph and asked what kind of incident would happen at 25 mph. Mr. Killoy said tank car integrity was typically solid and accidents usually occurred when wheels fell off. Mr. DiPentima said he felt they were being told they wouldn't discuss the results of a catastrophic incident. Mr. Killoy said there could be a lot of variables, but Ms. Scarano said they would be staying at 10mph on a track that could handle 25 mph. Chairman Hebert said he knew the Federal government was reviewing railroad safety.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

Ms. Melissa Prefontaine of McIntyre Road, Newington said they had discussed management plan costs and asked if there was any plan for education for local resources such as the fire and police departments to prepare in case of an emergency and how would pay for that. Mr. Bogan said they provided education to local fire, police and emergency responders over the years in case of accidents at the terminal as well as on the road. He said the Propane Gas Association of New England put together an emergency response document and twice a year they had three days of intensive training with live fire at the NH Fire Academy and in Massachusetts. Mr. Bogan said they have had discussions with the fire chief from Rockingham Junction who has been training his people for the project.

Ms. Prefontaine asked how they would mitigate a spill and Mr. Bogan said they did a little bit of environmental training during the program. Mr. Bogan said propane is a noncontaminant gas. Chairman Hebert added that propane evaporates.

Chairman Hebert said the meeting would continue on March 24, 2014 when the State would come in with more information on inspections.

Dr. Kozinski of Health Harbor on Deer Street said she had a sense that they cared for their customers and as a business owner, she found good will to be paramount, but was not hearing from Pan Am that they were concerned for people's safety. She said they were only seemed to be following the letter of law with limited regulations. She said the rail cars ran 5-10 feet from her parked car and there was a concern for her patients and employees.

Ms. Scarano said she was sorry that she felt that way and pointed out that they were regulated by agencies that knew the design of tracks and bridges and they were going beyond the regulations that were required of them. She said they were making a commitment to go below speed limits on other rails as well. Mr. Killoy said it was true that the FRA regulated a minimum standard, but railroads typically went above that standard, which was in their best interest.

Mr. Jack O'Reilly of Fox Point Road, President of Board of Trustees of Great Bay Stewards that was dedicated to the preservation of Great Bay said they were concerned with the effects that potential accidents and spills might have on Great Bay. He said their board generated a letter that was hand-carried to both senators in Washington, DC. He said they also sent a letter to the FRA who responded with the names of NH contacts, Mr. O'Reilly said he read that a Class I track had a certain site line, and asked if the site line would be met if the tracks were upgraded to Class II and traveled faster at 25 mph. Mr. Killoy replied that towns had to clear brush from crossings, but he didn't think there were any site line requirements. Mr. O'Reilly said that might be, but it stood to reason that a train could only go so fast on a blind curb, and Mr. Killoy agreed.

Ms. Jane Sutherland of 8 Dunlin Way said she lived 100' from the track. She said they heard a lot about track safety, upgrades and regulations. She then shared statistics from an FRA report that listed 140% increase in total accidents by Pan Am in 2013, a 200% increase in track caused incidents, a 166% increase in derailments, and a 200% increase in accidents with reportable damage of over \$100,000. In the previous ten years there was an increase of over 2,400 cars carrying HAZMAT materials. She asked how that happened if all the cars were as safe as they were told, and the tracks

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

were inspected regularly then how did that happen and if it raised any concern for the review process. Mr. Killoy said he was not familiar with those statistics, but he knew there were people in Washington, DC that reviewed the statistics. He added that the more materials that were moved, the greater the likelihood that more things would happen.

Portsmouth City Councilor, Esther Kennedy of 41 Pickering Avenue, Portsmouth said she spent a lot of time on the Piscataqua River and was concerned with how the FRA looked at the pilings that the tracks crossed. She also encouraged the Planning Board to ask Sea-3 to put a safety plan together for all the surrounding communities. She said Portsmouth had a fireboat and asked where that fit in. Mr. Bogan said the Propane Gas Association put together an emergency response plan to cover the entire New England area that was distributed to every fire department in New England. Mr. Bogan said it was on the propane gas website and available for any fire dept to bring up on their computer in their fire track. Ms. Kennedy said she was looking for them to support the training and asked the Planning Board to make the agreement as part of their documentation.

Ms. Pat Ford of 135 Spinnaker Way asked for clarification on why Sea-3 was increasing the number of cars they were bringing in and Mr. Bogan explained that they were changing their supply to domestic from foreign import due to domestic market changes. Mr. Bogan explained that they were attempting to supply propane to the New England area at a more reasonable price. In response to further questions as to what was driving the need for site expansion, Ms. Scarano explained that the product didn't need to be chilled when it came in by ship, but did when coming in by rail.

Chairman Hebert asked if Pan Am owned the tracks on Sea-3's property and Ms. Scarano said they did not. Chairman Hebert then asked if the tracks on Sea-3's property were under their regulation. Mr. Steve Haight, of Haight Engineering said Sea-3 owned the existing rail siding, but Pan Am owned everything else. Chairman Hebert asked if Pan Am was responsible for the rail lines as they entered and left the property. Mr. Culliford, Counsel for Pan Am said regardless of who owned the underlying property or where the sidetrack was, all side tracks were regulated under the exclusive jurisdiction of the Surface Transportation Board.

Town Counsel, Attorney John Ratigan said he understood in order to have Federal jurisdiction the rail traffic had to be done by a licensed carrier on a railway, and thought the control of the rail cars shifted to Sea-3 when it was on their property and they were not a licensed rail carrier. Mr. Culliford said that was correct, but the jurisdictional statutes covered transportation by rail car and over sidings, facilities, grounds, yards and tracks that were necessary for transportation and operation regardless of ownership. He said even though those operations did not have licensing for rail operations, the rail operation was still under Federal jurisdiction.

Attorney Ratigan asked if that was independent whether or not there was agreement on the shift of responsibility and Mr. Culliford said that was correct. Attorney Ratigan asked for a description of how that would occur on the site physically once the cars were decoupled, the product was managed and handled by Sea-3 and then the cars were recoupled. Mr. Culliford said Sea-3 had a right to use the side rail as a

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

customer, but any attempt by a town to regulate Sea-3's ability to receive rail traffic with a cease and desist, then they would be out of their jurisdiction as was found in the case of the City of Winchester. Attorney Ratigan asked for a letter spelling out the basis for their exemption from town jurisdiction. Mr. Culliford said they already had in their reference to the City of Winchester decision and the customer had a right to request common carrier service by Federal law and any attempt to regulate would be a conflict. He said towns and states realized they couldn't regulate the rails so they had seen attempts to regulate end users, which still met the conclusion that railroads wouldn't exist anymore if they weren't allowed to service customers.

Vice-Chair Marconi asked how long it would take a train to stop at 10pm or 25 mph. Chairman Hebert said it would depend upon the mass Vice-Chair Marconi clarified the question by asking how long it would take to stop a sixteen car train. Ms. Scarano said she didn't know the answer, but was sure she could find it.

Chairman Hebert said was not sure they could satisfy everyone's desire, but he wanted to be sure everyone had a voice and that was why they invited a representative from the FRA to answer everyone's questions.

Chairman Hebert said it was important to bring in propane to the area, but they needed to do it safely. He said the propane would be delivered by another method like tractor trailer trucks if trains didn't do the deliveries and that would put twice as many propane trucks on the roads which would be a lot more unsafe. He said if they couldn't do it safely, then the Board wouldn't vote for it, so they needed more discussion. He said they also needed to resolve truck traffic coming out of Newington with the NH DOT and Sea-3 needed to supply data on where trucks parked, lined up and idled. He said he was very concerned with the condition of bridge crossings and wanted to hear DOT's response to that as well.

Chairman Hebert said he would check with fire chiefs to be sure the operation was as safe as possible and asked Pan Am if there was any training for fire fighters, as they exist. Ms. Scarano said they did classes for towns.

Mr. DiPentima said Section 2A of the site plan regulations said the Board could request safety studies and could ask the applicant for reimbursement. Chairman Hebert said that was correct except they couldn't do studies on the railroad tracks that were under Federal jurisdiction. Ms. DiPentima asked about reviewing the impact to the wetlands and Chairman Hebert said the Board had no authority over the environmental impact of an existing railroad that was under Federal jurisdiction as well, but the Board would look into whatever controls they did have.

Chairman Hebert announced that the public hearing would continue on March 24, 2014.

B) Proposal by Bruce C. Belanger for a 3-lot subdivision at the corner of Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2.

This item was postponed until April 14, 2014.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

C) Proposal by the Estate of Paul J. Beane for a 3-lot subdivision at 233 Nimble Hill Road, Tax Map 17, Lot 4.

Mr. Doug LaRosa and Mr. Robert Stowell with Trittech Engineering appeared before the Board on behalf of the owners. Mr. Stowell presented changes to their plans to configure the lots with a common drive, which has since been reconsidered. Mr. Stowell presented a new plan showing new driveway plans.

Mr. Richardson asked if their new proposal met all the criteria for street construction. Mr. Morgan reminded the Board that they needed to determine if the application was substantially complete before proceeding further. He went on to remind the Board that it was determined at the last meeting that the applicant needed to supply a copy of the deed and a letter from utilities.

Mr. Morgan said he reviewed the subdivision file and believed the application to be mostly complete although he had a couple of concerns with the design such as the drainage analysis that was for a shared drive, but not a street that would cause more hot top. Mr. LaRosa said the drainage study had been upgraded.

Mr. Richardson asked Mr. Morgan what the requirements were for the line of site from the curb cut. Mr. Morgan said the requirements called for 100 feet. Mr. Richardson expressed concern over additional traffic issues on that section of Nimble Hill Road. Chairman Hebert said that was a serious concern that they needed to review carefully. He wondered if it made sense for the curb cut to come off Nimble Hill Road or if it could go through the Town Hall parking lot. Mr. Pare said that would be a problem because the parking lot was not built to the same standard as Town roads.

Further discussion ensued regarding the line of site. Mr. Richardson said he wouldn't mind accepting the application as substantially complete, but they needed a study on the speed, safe stopping distance, line of site, traffic, etc. Chairman Hebert said it was up to the applicant to show the Board a study with the line of sight and then the Town's engineering consultant would review the study.

Chairman Hebert said the applicant would need to restore the stonewall if it was removed for the curb cut. Mr. Morgan said this was one of the most pristine historic properties in Newington with one of the most impressive stonewalls. He said ordinarily applicants were encouraged to have informal discussions before the Board before scheduling public hearings and he regretted that they had not because he had a few design concerns, one of which was where the road ingress was presented. Mr. Stowell said the problem was that they couldn't meet the site distance requirement if they put the driveway in another place.

Chairman Hebert recommended a site walk and to have a wetlands expert review the property because it appeared that they were trying to squeeze a lot of development into a very wet lot. Mr. Morgan said West Environmental had reviewed the property before, but they needed to look at the plan. He said Mr. West reviewed the lot three years ago and said it could support two lots, but not three.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

Mr. LaRosa said the homes would be built on two knolls and there would be adequate drainage. Mr. Stowell said they did test pits highlighted the wetlands. Chairman Hebert said he understood subdivisions and land development was about a person making a living, but some of the land was marginal and he wanted to make sure developments were sustainable and livable.

Mr. Richardson said the statute said the Board had to vote to accept the application as substantially complete or not before going further. Chairman Hebert said they would normally have a work session prior to a public hearing. Mr. Pare said they had not received enough information and he was not comfortable in making a decision yet. Mr. Christopher said his main concern was with the site lines over the hump on Nimble Hill Road.

Mr. LaRosa and Mr. Stowell told the Board they had presented a subdivision plan with drainage, house placement, septic and wetlands and asked why they were being delayed. Chairman Hebert said a lot of paperwork had been done, but it had not been presented to the Board for review. Further discussion ensued whether the application was substantially complete, and how the Board should proceed. Mr. Richardson agreed that he didn't like the way the developer presented the application, and the Board could disapprove, but in a nutshell it looked substantially complete.

Chairman Hebert said they could continue the hearing next month after they did a site walk and had West Environmental and their engineering consultant review the plan. Mr. Richardson said the application was submitted on March 7, 2014 and they had to make a decision if the application was substantially complete before 30 days was up. Chairman Hebert said they still didn't have enough information to make a complete decision to approve the proposal however.

Rick Stern moved to accept the proposal by the Estate of Paul J. Beane for a 3-lot subdivision at 233 Nimble Hill Road, Tax Map 17, Lot 4 as substantially complete. Bernie Christopher seconded and all were in favor.

Chairman Hebert continued the public hearing to April 14, 2014.

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

Victoria and Ben Auger postponed this application for a later date.

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.

Attorney Dave Brown appeared before the Board on behalf of Great Bay Marine President, Ellen Griffin to build on a vacant residential lot.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

Attorney Brown said they reviewed the history and did some title work so they could sell the lot. He said there was plenty of acreage and 500 ' frontage. He said it had been taxed as a buildable lot since 1973 and a subdivision plan with a private road was approved in 1977. He said the private road would have straight site lines and low traffic.

Chairman Hebert asked why the Board of Selectmen were involved. Attorney Brown said it was required by State statute. Mr. Morgan said the Board's function was to review and comment. Mr. Richardson asked if they should have gone to the Board of Selectmen first. Additional discussion ensued whether the road was a Class 6 road or not. Mr. Morgan said it had been determined to be a private road.

Chairman Hebert suggested Attorney Ratigan review the application for a correct interpretation with Mr. Richardson and then go ahead to the Board of Selectmen once everything was in place except the utilities and perk tests, the siting and well.

Mr. Richardson said at some point the fire chief would need to determine if a fire truck could gain access. Mr. Stern said he wasn't sure if that was required if it was a private road. Mr. Richardson said the statute said the applicant would have to waive emergency access if approved. Mr. Morgan said the applicant could tell the Board of Selectmen that the applicant had been paying taxes for many years. Mr. Richardson said Attorney Ratigan should explain further. Chairman Hebert suggested that a surface for a fire truck be able to gain access, and a turnaround would be a factor. Attorney Brown said the fire chief would need to look at the road. Mr. Richardson asked that they bring in the deed and the right of way agreement.

5) Preliminary Discussions:

A) Proposal by Westinghouse to place an office trailer at 25 Shattuck Way, Tax Map 19, Lot 14.

Westinghouse Facilities Manager, Fred Miller came before the Board requesting approval for an office trailer for office space for visiting foreign nationals outside of the main building. He said the building would be three feet off the main building facing Shattuck Way. He said they planned on having a small transformer, self-contained with a restroom with a water holding tank that would be pumped weekly. Vice-Chair Marconi said they wanted to make sure no one would be spending the night. Mr. Miller said no one would be spending the night, but someone might work at night.

Mr. Miller said it would be a standard William Scotsman trailer in use for a period of 24 months. Vice-Chair Marconi said the ordinance normally allow trailers beyond a year. Mr. Morgan recommended that the Board take no jurisdiction because the alternative would be to notify abutters.

Chairman Hebert said permits were based on square footage and asked if the building inspector was aware of the application and would charge accordingly. Vice-Chair Marconi said they also needed to inform the building inspector that they would be there for two years. Mr. Richardson said they could recommend that the building inspector allow a temporary use. Chairman Hebert said that was what take no jurisdiction meant. Mr. Stern said that could mean longer than 24 months. Mr. Morgan

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

asked Mr. Miller if he would write the Board a letter that said the trailer would not remain on the site longer than 24 months, and Mr. Miller said he would.

Vice-Chair Marconi moved to take no jurisdiction on the proposal by Westinghouse to place an office trailer at 25 Shattuck Way, Tax Map 19, Lot 14. Bernie Christopher seconded and all were in favor of the motion.

B) Proposal by American Medical Response to garage ambulances in the old Neslab paint shop, now owned by 25 Nimble Hill Road LLC, Tax Map 12, Lot 16.

Mr. David Choate reminded the Board that New England Parts had purchased the building at 25 Nimble Hill Road from Thermo Fisher Scientific and Thermo had leased back 3,500 s.f. for their remaining operation. He said New England Parts ended up moving to another location and was now trying to lease out more space to another tenant, akin to the way Allard Park did to tenants.

Mr. Roland said they planned on using the space to house five to six ambulances and three to four wheelchair vans for their service which transported patients from one medical facility to another, 3-4 wheelchair vans. He said it was a 24 /7 operation of overnight services, primarily transported patients to Portsmouth Regional Hospital.

Mr. Morgan said he considered one of the permitted uses in the office district was storage.

Chairman Hebert asked if the vehicles would be stored inside. Mr. Roland said the State of NH required that all ambulances be housed inside, but the wheelchair vans might be housed outside. Chairman Hebert asked if they would use exhaust or ventilation systems and Mr. Roland said they were looking at both.

Mr. Richardson asked if they needed a variance and Chairman Hebert said they already received a variance when New England Parts Warehouse applied for the space.

Mr. Stern asked how long the shifts would be and Mr. Roland said there would be eight, ten and twelve hour shifts over 24 hours. Mr. Stern asked if anyone would be sleeping there and Mr. Roland said they would not.

Mr. Choate addressed the parking and presented a plan. Chairman Hebert said he would like to see something to scale to show how fire trucks could get in and out. Mr. Choate said the fire chief was there and he had no problems. Mr. Morgan passed out a letter from the fire chief.

Chairman Hebert asked that they put their plans together and work with Mr. Morgan. He said the earliest they could schedule a public hearing would be on April 7, 2014 at the earliest.

Minutes:

Vice-Chair Marconi moved to accept the minutes of February 24, 2014 as corrected. Rick Stern seconded and all were in favor.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

Adjournment: ***Rick Stern motioned to adjourn. Bernie Christopher seconded, and all were in favor. The meeting adjourned at 10:35 p.m.***

Next Meeting: Monday, March 24, 2014

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary

(The Board approved these minutes on March 24, 2014 with minor corrections.)