

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

- Call to Order:** Chair Denis Hebert called the March 24, 2014 meeting to order at 6:35 p.m.
- Present:** Vice Chair, Mike Marconi; 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 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; John Robinson, NH DOT Rail Inspections; Philip Sherman, P.E., Fire Protection Engineering and Building Code Consulting; Kim Eric Hazarvartian, P.E., Transportation Engineering, Planning and Policy; Newington Fire Chief, Andrew Head; Steven Haight, Haight Engineering; David Allen, Deputy City Manager for Portsmouth; Peter Britz, Environmental and Sustainability Planner for Portsmouth; Senator Martha Fuller Clark; Portsmouth Residents: Catherine and Richard DiPentima; Pat Ford; Bob Gibbons; Jane Sutherland; Newington Residents; Mr. Paul Bagley; Jack O'Reilly; Bill Sweeney; Greenland Resident: Laura Bygero; Jeff McMenemy with the "Portsmouth Herald"

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.

Alternate Board member, Peggy Lamson opened the meeting by thanking Mr. Rich DiPentima and his wife, Catherine of Portsmouth for all their research that they shared.

Mr. Dave Allen, Deputy City Manager for Portsmouth read Portsmouth City Manager, John Bohenko's email to Newington Town Planner, Tom Morgan regarding a preliminary inventory on the condition of rail infrastructure in Portsmouth, which would cost approximately \$2,400,000 for upgrades. He also pointed out that there was over a mile and a half of excepted track, which was the lowest condition grade of track, running through the most densely populated sections of the City.

### A) Track Inspection – Report by John Robinson, of NH DOT

Chairman Hebert introduced Mr. John Robinson, railroad safety inspector for the NH Department of Transportation Rail and Transit Bureau. Mr. Robinson mentioned that he had recently discussed track inspections with the City of Portsmouth.

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

Mr. Leonard Schwab of 59 Great Bay Drive in Greenland asked Mr. Robinson to address a report that was published in the "Portsmouth Herald" regarding the removal of I.D. tags from the crossties. Mr. Robinson said date nails were something that had been used in the past to monitor the manufacturers and lifespan when rail ties were changed more frequently, but had been phased out and were not required by the FRA. Mr. Robinson couldn't say why they were removed, but they were a popular item with rail fans and were often pillaged. He said a seasoned rail person would be able to tell the age of railroad ties, however.

Mr. Schwab asked Mr. Robinson how he assessed the percentage of ties that were punky or rotten on a 15 mile run. Mr. Robinson said there were between 3,000 and 3,200 railroad ties per mile and Federal regulations were written to address 39 feet at a time. He said in Class I classification eight non-defective crossties in 39 feet were required. He said the location of the ties had to be effectively distributed to support the track, for instance, out of twenty-five ties on a Class I railroad track, five had to be classified as non-defective. Mr. Schwab asked Mr. Robinson if that would mean 20 ties could be defective and Mr. Robinson confirmed that was correct. Mr. Robinson stated that a certain amount of deflection was engineered into tracks to prevent steel failure. Mr. Schwab said he could appreciate the engineering, but it was hard to feel comfortable with those figures.

Mr. Bob Gibbons of 135 Spinnaker Way said the report said he inspected 21 segments and asked if the 39 feet was a segment. Mr. Robinson said the track inspection was done by units and different appliances were considered units. Mr. Gibbons asked if the inspection was from Rockingham Junction to Newington and Mr. Robinson said it was. Mr. Gibbons said there was no mention in the report of excepted track in downtown Portsmouth and Mr. Robinson said they looked at it, but only certain regulations applied. Mr. Gibbons asked how the track in its current condition would handle the proposed propane tanker traffic. Mr. Robinson stated that excepted tracks were available to transport hazardous materials with no more than five cars, but not passenger service. Mr. Gibbons said the proposal was for sixteen cars. Mr. Robinson said that was correct and it would create an operational challenge for the railroad.

Mr. Gibbons asked what it would take to build the tracks back up to Class I standards and Mr. Robinson said generally the replacement of ties, leveling and aligning the track better. Mr. Gibbons asked if it would require a substantial upgrade and Mr. Robinson didn't think so as the difference between excepted tracks and Class I was nominal.

Mr. Rich DiPentima of 16 Dunlin Way said Sea-3's proposal was for twelve to sixteen cars a day. Mr. Robinson stated that Pan Am would only be able to move five cars a day with the tracks in their current condition. Mr. DiPentima asked where the cars would stay and Mr. Robinson said they could resort to leaving the cars at Rockingham Junction, bringing five cars at a time or they could leave some of the cars at the beginning of Portsmouth rail yard, but they could not have more than five cars at a time on an excepted track. Mr. DiPentima said the cars would be unprotected and unguarded. Mr. Robinson said that was correct if the tracks were not upgraded.

Mr. DiPentima read from the Newington Master Plan that stated the railroad tracks in town were not up to par. Chairman Hebert responded that the tracks appeared to be in poor condition, but it was not a qualified statement as Newington had no railroad inspector giving that information.

Mr. DiPentima asked about the safety of track defects and Mr. Robinson said a certain number of defects were not outside the realm of other Class I tracks and they were considered safe.

Ms. Catherine DiPentima of 16 Dunlin Way asked if the six months between inspections was the typical period of time between inspections, saying it seemed like a long time. Mr.

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

Robinson agreed that it did. Ms. DiPentima said she lived 100 feet from the tracks and they looked in terrible condition. Mr. Robinson said his focus had revolved around the Down Easter passenger service over the past 10 years and freight lines in this area were standard to low. He said the DOT and the Federal Railroad Association (FRA) did joint inspections, and he had recently mentioned to the FRA inspector that it was time to focus on other lines now that the Down Easter was squared away with the Portsmouth and Newington branch being front and center. He said they walked three miles of track in 2012 and the 32 defects found were promptly repaired within 30 days. Ms. DiPentima said a lot of propane could travel over the tracks in 30 days. Mr. Robinson said the railroads were on notice that they could still conduct business at the designated speeds, but they could not go beyond the 30 days to repair the defects and the inspectors could not go back for another inspection until the 30 days were up.

Ms. DiPentima asked if they reviewed the inspection reports that were released. Mr. Robinson said a "Portsmouth Herald" reporter that requested the reports from the Freedom of information Act sent him a couple of pages of the FRA summary document. He admitted that the document was very hard to follow. He stated that some defects were more severe than others.

Mr. Raymond Faulkner said he lived across the Piscataqua River from Sea-3 in Eliot, Maine and had worked for the U.S. Coast Guard and with environmental compliance for many years and was concerned with the safety of the LPG ships. Mr. Faulkner reminded everyone living close to the rails that Portsmouth had an active rail yard for 67 years. He said all transportation methods had some risk, but he didn't think Pan Am wanted any incidents on their watch.

Mr. Faulkner said there was a speed limit for the Portsmouth traffic circle yet people still went at different speeds. He said roads were in bad repair, the bridge over the Piscataqua was in poor condition, but it was still used. He said there were dangers at railroad crossings and no railroad crossing had a right of way for cars - there were yield signs that said, "Look, Listen and Live" and people had to take some responsibility for their own safety.

Mr. Bill Sweeney of 90 Patterson Lane said there were trees growing between the rails past Sea-3 and asked if there were plans for the trains to continue on that line. Mr. Robinson said the Newington branch ended at the Sprague, but was out of service and it would only be put into use by making the required repairs. Mr. Sweeney said many hunters walked those tracks. Mr. Sweeney asked if there were plans to put them back in use and Mr. Robinson said it was not a secured area.

Mr. Jack O'Reilly asked if there was adequate line of sight and stopping distance at the crossings and Mr. Robinson said trains have the right of way, there was little a train could do if someone crossed in front of it.

Ms. Pat Ford of 135 Spinnaker Way handed out a map of Pease Development and displayed the map with highlighted areas showing the existing rail lines going to Newington, and a proposed line that would return the train line to a former line through Pease. Ms. Ford said this alternate route could eliminate crossings in Greenland, running through downtown Portsmouth, Maplewood Avenue, Christian Shores, Dunlin Way, Atlantic Heights, Spinnaker Way and Osprey Landing, reducing the hazard of railcars going through their backyards and providing for access in case of emergency. Mr. Robinson said he started his position in 2000 and he was not familiar this plan and could not speak on Pan Am's business plan.

Chairman Hebert said the Master Plan discussed what could potentially be done if someone wanted to throw money at it, but the line never continued all the way through Pease and that would take quite a lot of money and time to complete. He said he liked that people

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

were throwing ideas out and understood people were concerned with the track, but reminded them that it was not Pan Am that was before the Board.

Ms. Ford said there was a fund called the Railroad Rehabilitation Fund from the U.S. Department of Transportation under the FRA for loans to finance railroad infrastructure that would give public benefits for safety, the environment and economic development with loan terms and repayment periods at current interest rates. She added that Pan Am owned a subsidiary that manufactured railroad ties. Ms. Ford said she had no idea what the cost or time frame would be, but it seemed someone could come up with an alternative route through Pease to reduce the safety risk for residents and improve their business. She asked Pan Am if they would be willing to consider the feasibility. Ms. Cynthia Scarano, Pan Am Executive Vice President said that she didn't believe Pan Am owned that property through Pease any longer. Chairman Hebert said it probably always belonged to the U.S. government and now the State probably owned it. Alternate Board member, Peggy Lamson agreed that the rail was always part of the Federal government. She said continuing the line from Pease to the port was considered, but it was determined that it was not feasible because it was owned by the U.S. government and put away on the shelf. Chairman Hebert said the Master Plan listed a passenger service for consideration, but Pease Development Authority and the State and Federal Government would have to be on board with completing the line, and he didn't see that happening anytime soon. He said the Board had forty-five days to make a decision on the Sea-3 proposal and they probably couldn't even get on the PDA agenda in forty-five days.

Chairman Hebert asked Mr. Robinson who owned the railroad crossings and who was responsible for the costs according to RSA: 373 for municipalities. Mr. Robinson said RSA: 373 was probably the least clear RSA, but it did say that the railroad was responsible for the right of way, the maintenance of signage, signals, and tracks. As for road surface, the acid test was historic documentation on what came first, the railroad or the public way. He said the duty of the railroad was to provide suitable crossings for the public, but the railroad says they build railroad not roads. He said as part of a hearing process, a town official could petition the transportation commissioner for a change of protection. Mr. Robinson would testify on road traffic, number of trains and speed of trains, and the commissioner would make a decision on who was responsible for upgrades and distribution of costs. Chairman Hebert said Route 33 was an example of a major highway with a crossing in front of Lowe's and he didn't know if there were enough signals there and they would need to have further discussions as time went on.

Mr. Jeff Barnum, Great Bay Piscataqua Water Keeper said the railroad was only as good as the bridges. He said there were crossings over waterways in Stratham, Pickering Brook, over Winnicut River in Greenland, and in Portsmouth. Mr. Barnum asked Mr. Robinson who did inspections, how often and where the reports were kept for the Planning Board to review before they passed judgment. Mr. Robinson said he was not a licensed engineer, but he made cursory inspections with railroad personnel. He said he did not do subterranean or underwater inspections himself. He said Federal law required that annual, comprehensive bridge inspection be in place with records, ratings and results of changes available to the FRA and himself. Mr. Barnum said he heard the Planning Board couldn't get a hold of the reports and asked if DOT could review the reports. Mr. Robinson said he would be privy to look at the records and numerical rating system, but it was not likely that a licensed engineer from DOT would do the inspections. Mr. Barnum asked if the Planning Board had to go to the FRA who would get that information from Pan Am. Mr. Robinson said that was correct.

Mr. Richardson said he read RSA: 373:3 and looked online for the DOT regulations for calculations and he couldn't find them. Mr. Robinson said RSA: 373 was listed under the Public Utilities Commission and up to 1985, the railroad went under Public Utilities oversight and then

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

was given to DOT. Mr. Richardson asked how the Planning Board would determine cost to municipalities for the project and upgrades to crossings. Mr. Robinson said he thought the City of Portsmouth was exploring the Federal Section 130 Program that a lot safety upgrades and there would be a match with the City. He said the railroad often participates with construction forces for the installation or upgrade of signals at crossings.

Mr. Richardson said the Board was running out of statutory time to make a determination and asked the City of Portsmouth representatives if they would work out those costs, so not to throw a burden on the City's shoulders. Mr. Allen, Portsmouth's Deputy City Manager nodded that they would. Chairman Herbert said the process was new, but Pan Am mentioned they sometimes supplied labor if the towns supplied materials. He said after that the railroad owned and maintained it.

Chairman Hebert said like it or not how this was how the U.S. government set up the railroads and it was not within the Planning Board's purview to tell Pan Am what to do. He said it was they had to get engineering involved and trust the FRA guidelines and what DOT would do and it was in their best interest to begin that process as soon as possible. Ms. Scarano said they were meeting with town of Greenland to begin the process. She said towns and the railroad used to work separately, but they were now trying to sit down together to discuss what to do at crossings and how to proceed.

Chairman Hebert said every crossing needed to be assessed to determine what needed to be done, and to set priorities. He said he didn't know how much it would cost, but the Board was trying to make everything safer if this project was approved. He said the Board had to move away from the railroad, which was not in their purview and look at the site to consider if site changes were necessary. Mr. Robinson said he heard they might consider a third party inspector, but clarified that as the railroad safety inspector for the State, he was free to inspect private and industrial railroad tracks on a State level outside if they felt there was any reason for concern.

Mr. Mark Willis of 16 Caswell Drive in Greenland expressed concern that the railroad trestles were self-inspected and wanted to know why those reports were not available to all citizens. Mr. Robinson said rail bridges were private infrastructure going over public waters and that was why it had come under Federal scrutiny recently so he thought the records would be available through the Federal Freedom of Information Act. He said one of the problems with making inspection reports available to the public was they were open to interpretation that required a certain amount of expertise for proper understanding. He went on to say that a competent inspection would take training beyond his training and he was not an engineer. He said the reports were numerically rated, and if a situation were beyond his knowledge, he would refer to an engineer for his opinion to validate his concern. Mr. Robinson said a railroad employee accompanied a majority of the inspections. He said they were signing off and if he saw anything that was a peril, he would call the FRA immediately and impose an emergency order to stop operations on Federal order.

Mr. Richardson said he understood the railroad was under Federal jurisdiction and the Board couldn't tell the railroad what to do, but he wondered if the Board might be able to discuss the offsite costs and municipal share of highway improvements. Mr. Robinson said DOT could play the role of facilitator, but he never recalled the railroad offering to improve crossings because their top priority was not ride quality, although the railroad did want safe crossings. Mr. Robinson said the railroad owned their own tie company, but they were not road builders so they often referred to contractors. Mr. Richardson asked who would pay for widening the lane if it was necessary on the Maplewood Avenue crossing where major developments were being proposed. Mr. Robinson said DOT made decisions how costs would be allocated. He said after

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

a new signal went in at the cost \$150,000 to \$200,000, the railroad had a continuing expense of \$5,000 per location per year to inspect and maintain that signal that the highway uses free of cost from there out. He said the railroad always starts contentiously, but they do want safety, as does the Town of Newington. He said they might like signals at every crossing in the State, but they could not engineer out poor judgment and complacency. He said if gates and bells malfunction, they operate in the most restrictive mode closing town roads. Mr. Richardson asked if signal requirements increased with Class II tracks and Mr. Robinson said the crossings, speed, and the number of trains were a determination, but signalization was not class specific to a class standard.

### B) Fire Safety Analysis – Report by Philip Sherman

Mr. Philip Sherman, P.E., Fire Protection Engineering and Building Code Consulting said he reviewed the Sea-3 design against the New Hampshire fire code. He said there was a requirement for a fire safety analysis that was intended to include LPG release and fire to coordinate with local response to consider the safety of workers as well as the public. He said it was centered on product control to keep the product in the piping and equipment where it belonged to minimize hazards. He said an analysis of exposure to other properties, analysis of water supply and protection measures were also reviewed.

Mr. Sherman said Mr. Paul Bogan, Sea-3 Vice President of Operations sat on the board and they came to a meeting of the minds with some modifications to ensure sufficient water to support the installation, relocation of the hydrants as necessary, and fire access through Sprague and the rail right of way. Mr. Sherman said they looked at all the required setbacks at the site and adjacent structures off site and a decision was made to provide fixed water spray so someone at the control booth could press a button and everything could be sprayed and cooled, depending where the incident was.

Chairman Hebert asked Mr. Sherman if he was a P.E. and if he put his stamp on the plans. Mr. Sherman said he did put his P.E. stamp on the plans, and Chairman Hebert said another P.E. would review the plan before approval.

Board member, Jack Pare asked where the existing fire monitors would be relocated for flexible use. Mr. Sherman said the existing monitors were on a nozzle attached to hydrants. He said they were of some use in a fixed site, but of no use for multiple sites. He said that was part of what drove them to a fixed water spray system directed at the tanks. The hydrants would be used in conjunction with the fire dept. Mr. Pare asked if fire monitors would not be reutilized and Mr. Sherman said they would not.

Mr. Pare asked if the UV detectors detected flame or non-odorized vapor. Mr. Sherman said there were flame detectors. Mr. Pare asked if there were any sniffers and Mr. Sherman said there were not. Mr. Bogan said UV and gas detectors were already in place and they would duplicate that with state of the art equipment for the new construction.

Mr. Pare referred to increasing the number of LPG trained firefighters and asked about training firefighters in Newington and surrounding communities. Mr. Sherman said Newington had a small number of firefighters on duty so firefighters from surrounding areas would respond. He said they took a conservative view of available labor that included firefighters and first alarm people on duty. Mr. Bogan said they provided training in the past and would again for Newington, Portsmouth, Greenland and Stratham.

Mr. Pare asked if there were a train accident, would the training address that kind of effort. Mr. Bogan said yes, there was an emergency response plan to address off site incidents, which was on their website as well. Mr. Richardson asked what resources that Sea-3 had on

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

site should an accident occur and what Sea-3's role would be. Mr. Bogan said Sea-3 had equipment and personnel available to go to the scene. Ms. Chairman Hebert asked Pan Am if they provided training to fire fighters to respond to an accident off site. Ms. Scarano said they often worked with the FRA to provide a day of training for local fire departments.

Chairman Hebert said there was a mutual aid agreement with different towns. He said there would be an on scene commander, which was usually the fire department head that would call for assistance with their apparatus and equipment to stabilize the scene. Newington Fire Chief, Andrew Head agreed. Chairman Hebert said hazardous and flammable materials like jet fuel or heating fuel could contaminate the soil and environment, but these responders would control propane that usually remained contained.

Chief Head said if something happened down the track off the Sea-3 site, they would be called to assist, but it would not be their responsibility and the railroad police would be there quickly to respond. Mr. Richardson said there had been an incident with an engine fire that Newfields or Newmarket responded to and had to burn for a while because the equipment was in the way and they couldn't put it out. He asked what the local fire departments would do to respond to a fire. Chief Head said they would have the party in charge of the equipment explain what the best way to put the fire out would be. He said they might use lots of water to keep a tank cool, or if necessary, allow the spill to vaporize or burn off depending on the circumstances. Ms. Lamson asked if it would be the Newington fire chief's responsibility to seek the assistance of Sea-3 if there was a disaster on the rail line once the tank filled with propane left Sea-3. Chief Head said they could look to Sea-3 for information, but their doing anything more would be a liability.

Chairman Hebert asked if the fire department had what it needed for training and equipment to respond. Chief Head said they were in the preliminary stages, but he thought they were all set. He said he hadn't seen the system yet, but there was only a short distance of track in Newington off the facility. He said if the proposal was passed, they would review the full plan, but everything in their area should be in place, along with the fire trucks. He said they would also seek any training available. Mr. Bogan said funding from the National Propane and Gas Association would pay for the training.

Mr. Pare noted that they listed the public water supply, but asked if it would be worthwhile to install a dry stand pipe for the nearby Piscataqua if there was not enough pressure. Mr. Sherman said the intent was to see if there was enough water and the intent of the flow test was to see if there was enough pressure. Chairman Hebert asked if the nearby salt water could be used. Chief Head said there was too much of a draft pull and it didn't work. Vice-Chair Marconi asked Mr. Bogan if the facility had a backup tank and Mr. Bogan said they did. Mr. DiPentima said there was a derailment of a propane tank car in near Woodbury Avenue and Market Street in August 2001 that fortunately didn't have any loss of product, but that might change at 25 miles per hour. He asked if they had written evacuation plans for the hotels, restaurants and shops within a one-mile radius in a catastrophic event of an LPG explosion that addressed how long it would take and where people would go. Chief Head said Newington was his jurisdiction and it would be up to Portsmouth to set up their own evacuation plans. Chief Head said two years ago they did drills with the State for evacuation for an incident at the Seabrook nuclear power plant. Mr. DiPentima said he helped write the Seabrook evacuation plan in the 1980's for a stationary site, but this was a mobile hazard going through densely populated areas and thought they needed plans in place for a catastrophic event of regional impact to prevent the loss of life and destruction of property. Chief Head said the State emergency management plans included evacuations with escape routes for the whole area, but he didn't know of any drills.

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

Mr. Richardson said it was his understanding that part of the Clean Air Act was an emergency response plan for the Sea-3 facility that Newington participates in. Chief Head said they would receive a 911 and they would investigate any reports of leaks and recommend an evacuation of everyone in the area, including the malls with the assistance of the police department to get everyone on the highway. He said they were working on a phone tree system in conjunction with some of the other industrial facilities.

Chairman Hebert summed up by saying the fire chiefs from each town were responsible for emergency responses for their area and would call for assistance from other towns. He said it would be similar to the emergency response required for any incident involving an LPG tanker going down the highway. He said he was not trying to defend Sea-3 or Pan Am, but scenarios change, so they prepared with apparatus, equipment, personnel, and chains of command and practiced what they could on a regular basis. Chairman Hebert said the simulators used for putting out fires were all propane, which they could control better than oil fires, which were hazardous to the environment.

Mr. O'Reilly said the chief was co-director of the town's emergency plan, which included flooding, hurricanes, etc. and suggested they work with Sea-3 to include propane fires if they didn't already have that in place.

Mr. Richardson said there were requirements for separation distances and fencing in their plan and asked if there were any concerns with security. Mr. Bogan said that would be part of their upgrade with security, fencing, lighting, and surveillance. He said U.S. Homeland Security governed them and they would have to upgrade their plan if they went forward with the project.

Senator Martha Fuller Clark said the emergency response booklet to communities was developed in the 1980's and she wondered if it had been updated. Mr. Joe Rose, President of the Propane and Gas Association of New England said they updated their plan twice a year. He said the focus of the plan was to provide resources and tools for fire services that they might need to control situations should they occur. He said they had three day practice sessions with live fire and an actual rail car and rail car head with valves and fittings to teach fire fighters what would actually happen. Senator Clark asked who would address the plan for evacuation and Mr. Rose said that would be the local fire chief and the emergency management plan.

Board member, Chris Cross asked if the fire trucks were expected to drive over the railroad tracks for emergency access. Chief Head said Shaftmaster would have to lose some parking spaces for the trucks to fit and they were also concerned with where rails cars would be stored. Mr. Cross said driving over rails would be constraining and he thought a suitable secondary route would need to be available, plowed and maintained. Mr. Sherman said fire safety code required fire access roads before they could obtain a legal permit. Mr. Bogan said a second access would be built to code beside the tracks so trucks wouldn't have to go over ties.

Mr. Cross said the site plan for compressors, pumps and other facilities appeared to use overhead lines and he wondered if they might run underground. Mr. Bogan said Public Service lines were already running over them, and they could run future lines from the pole underground. He pointed out that fire codes from the Propane and Gas Association that would determine how many feet away electric lines would have to be from the equipment and that would be reviewed. Chief Head said the power lines to compressors would run underground.

### C) Traffic Study – Report by TEEPP, LLC

Mr. Kim Hazarvartian, P.E., with Transportation Engineering, Planning and Policy reviewed his traffic assessment regarding truck traffic. He said the site had a waterside



# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

component with bulk transport vessels, the rail side, and the land side component with LPG transport trucks. Mr. Hazarvartian said the trucks left the site, went down Avery Avenue, down Shattuck Way and then split directions up the Spaulding Turnpike or down I-95. He said site modifications would not materially affect the trucking component, which would stay the same with a capacity of filling ten trucks per hour. Mr. Hazarvartian reviewed the truck transportation history from February 2002 to present with an average of 103 to 161 trucks per day for all years except 2012 and 2013 due to market conditions. He said the site changes would not increase those volumes, as the site capacity was limited to ten trucks an hour.

Mr. Richardson asked how many trucks could be on the site at once, and asked where trucks queuing at the gate would go. Mr. Bogan said they had five transport loading spots, but they had an agreement with Newington Energy to stack trucks if they were backing up on Avery road.

Mr. Hazarvartian said at ten trucks an hour in a sixteen hour day, there could be as many as 161 trucks. Discussion ensued whether it would be possible for more trucks to come in and out of the site. Mr. Bogan said they had to factor in the time for drivers to pull on and off the rack. He also said they didn't have capacity to store rail cars, so they would unload product and store it in tanks.

Chairman Hebert asked about ships. Mr. Bogan said they would fill local market contracts and demands in the winter months first and then they could export any remaining product in summer months.

Mr. Morgan asked if they had any idea where the customers were and the percentages of product going north and south. Mr. Bogan said he thought it might be an even distribution between, New Hampshire, Maine and Massachusetts. Mr. Morgan said they relied on historic data for truck trips, but the propane market was expanding and he thought it might be helpful to get some information on consumer trends. Mr. Rose said New England was the only place in the United States where the demand for propane was increasing at a rate of 8% over the last five years because customers were converting from oil for clean and cheaper propane. He said Sea-3 distribution was constrained by the reality of a twenty-four hour day with a maximum of 200 trucks a day at peak capacity.

Mr. Morgan wondered if they could increase more than one train per day to supply product for export if recent events in Ukraine created a bigger demand in Europe, and how that would affect traffic. Mr. Bogan said the capacity of their chilling, drying and storage equipment could only handle sixteen cars a day and they would have to expand, but he didn't believe there was room at their site for required setbacks. Mr. Rose said they would have to have space for extra rail cars. He said New England's propane supply was 75% dependent on rail, but 87 million gallons came in by ship this winter because rail cars were not available and couldn't keep up. He said most of the gas for Europe came in quicker and cheaper from North Africa, across the Mediterranean. Mr. DiPentima said he didn't see how they could meet the increasing demands of propane without increasing truck traffic beyond historic levels. Mr. Hazarvartian said the decrease in traffic in 2012 and 2013 was an anomaly and they were only returning the level of traffic that they had previously, not increasing it from that number. Ms. Laura Bygero of Greenland expressed concern that Sea-3 might expand as an exporter to foreign markets that would bring in more propane tankers over the rails and that Sea-3 would return to the Board at a later date with a request to expand their capacity. Mr. Bogan reiterated that they had to comply with fire and safety setback regulations and they couldn't expand beyond 16 tankers a day because of the size of the property.

Ms. Bygero said it was harder to build a gas pipeline than rail lines so the shortage of rails was a national issue that was being looked at to address the increase of supply coming out

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

of fracking. Mr. Bogan said there was a difference between LPG and natural gas. Chairman Hebert asked if natural gas could be brought in and processed as Sea-3 for shipment, and Mr. Bogan said they could not be mixed and they were only doing LPG. Chairman Hebert said by law no board could restrict a business from making expansion proposals; they could only evaluate them fairly by law.

Mr. Richardson said he understood there was a limit to how much propane could be processed, but they couldn't use that as a stipulation for approval any more than they could require the railroad to upgrade to a Class II or limit the number of trains. Chairman Hebert said they couldn't regulate the rails, but they were reviewing the traffic study on the number of trucks going in and out of the facility, which had a limitation on how much product it could process due to the site limitations. Mr. Bogan again stated that the equipment could only handle 16 cars per day, unless there was a change in design and they were not doing that.

Mr. Mark Willis of Greenland said he was confused because the number of tankers and trucks reported was inconsistent. Chairman Hebert said the operation would be sending out the same average number of trucks a week depending on the demand as it had in the past. He added that the site had a limited capacity for processing and storage so there was a limited number of tankers that could come in as well. Ms. Scarano said there might be fewer tankers sent out some weeks, but those were the maximum numbers. Board member, Bernie Christopher asked Mr. Bogan to elaborate on what their storage capacity was. Mr. Bogan said they were bringing in 180 million gallons a year by ship and were proposing 16 tankers a day, but they would fall short during a peak year so additional product would be pumped out of the summer storage to make up difference during the heating season. He said eventually the tanks would be empty and then they would only operate on 16 tankers a day.

Mr. O'Reilly said it came down to economics – it was cheaper to buy domestic propane than importing foreign supply, so it was a matter of increased profit, but capacity was still capacity and that was not changing. Mr. Bogan said that was correct, that the expense of foreign supply had priced them out of the market over the last couple of years and this was an attempt to keep up the domestic supply at an affordable price.

Ms. Jane Sutherland of Dunlin Way said she thought the application was for export, not regional distribution. Chairman Hebert read Sea-3's application to reconfigure their LPG terminal to accommodate rail deliveries, truck shipments throughout New England *and* export via ocean going ships. Ms. Catherine DiPentima asked if there was a change of process if the application included export. Chairman Hebert said even if they were changing the method that they did business, it was still the same business with the same number of trucks going out so the Board could only look at changes to the site. Mr. Richardson said the zoning ordinance and site regulations applied to the site changes to accommodate the rail to plant changes, but the existing use for trucking LPG was approved in 1996 and it was in effect grandfathered as an existing, lawful use. He said the Board could only revoke approval if they were to expand beyond that 1996 agreement that would have to come back to the Board or Energy Board.

### D) Emergency Response – Report by Fire Chief Andrew Head

Chairman Hebert said the fire safety details of an application were worked out with the Fire Chief and the State Fire Marshall. If issues were not addressed, the Planning Board backed the Fire Marshall up.

Mr. DiPentima said he read about the Pan Am incident that occurred recently in Westford, Massachusetts where propane tankers were teetering on a bridge and Pan Am didn't notify local officials. He said the only way it came to their attention was when the local Fire Chief

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

drove by. Ms. Scarano said local fire and police were notified, but the town manager was not notified. Mr. DiPentima said he heard there was no Federal regulation to notify local officials. Ms. Scarano said that was true, but she was not going to have a disagreement with the town manager in the newspaper.

Board of Selectmen representative, Rick Stern asked Chief Head how many people a year they sent out for the propane safety training. Chief Head said they try to send out two in the spring and two in the fall, but everyone in the department went through the training two years ago. Mr. Stern asked if he had been to the training and Chief Head said he had not, but others in the department had.

Portsmouth Assistant Mayor, Mr. Jim Splaine said he was chair of the traffic safety commission in the late 70's when Sea-3 was starting and they were quite concerned with the rail track conditions at that time. The police chief and the fire chief at the time worked out an informal arrangement to receive notifications of the Sea-3 rail traffic, which they shared with local fire departments. He said it seemed quite useful to the planning and preparation for any emergency that might occur, and he wondered if Chief Head would find such an arrangement with Sea-3 and Pan Am agreeable. Chief Head said there were few rails that came into Newington, but they received lists of ships once a day, including propane shipment notices from the Coast Guard so he imagined a list from the railroad would be helpful.

Chairman Hebert said the Board couldn't regulate or restrict the railroad, but he thought it was reasonable for Pan Am to work out a schedule voluntarily out of consideration of the noise impact to the local community. Ms. Scarano said the railroad operated on an as needed basis that was not scheduled, but they did give as much information as possible on what was going over the rails to the fire department. Chairman Hebert said they had said they planned on upgrading and replacing 10,000 cross ties, and he was asking if they would set up a liaison with the community and voluntarily avoid noises such as running engines in the yard unnecessarily. Ms. Scarano said she personally took calls from the community and they wanted to do what they could. She said they had a safety person who would work with local fire departments, but they were not a scheduled service so they would not be willing to make an agreement at anytime. Chairman Hebert said there were some things about the railroad that were outdated and needed to be reviewed, but that was not within the Board's purview. However, he did think there were some things the railroad could do to keep a good community relationship going.

Ms. Bygero said as a Great Bay steward she was asked by their president to express their concern for the environment and supported a request by the Portsmouth community to request a comprehensive safety and environmental impact study. She said they would also like to ask Pan Am to release their bridge inspection reports. Ms. Scarano said the bridges were inspected all the time, but they did not release their findings publically. Ms. Sutherland said no one understood how they could do an objective and thorough study on their own equipment without a conflict of interest.

Attorney Ratigan said Federal law was clear that local government had no say over environmental regulations in regards to rail improvements. Chairman Hebert said the reason these powers were given to the railways that were built across the country a long time ago was that they weren't going to ask for permission from every town they went through and those Federal laws hadn't changed. He suggested the only way to change things was to ask representatives in Washington to change the laws. He said they had discussed it with legal counsel for many hours and the Board could not consider anything to do with the rails, not even on site, but he hoped Pan Am would cooperate voluntarily to mitigate the impact on the communities.

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

Mr. DiPentima asked about the issues that affected the public health, safety and welfare. Attorney Ratigan said they listened to fire and traffic studies and the Board would review their finding with an independent consultant, but purview of the Board was limited to the Sea-3 site and they had no jurisdiction over the rails and rail traffic.

Chairman Hebert said cheap fuel could come through ship, but the Jones Act said they couldn't go from U.S. port to U.S. port unless it was piloted and crewed with a U.S. made ship and there were none. He said the Jones Act was another law with unintended consequences that was hurting the country. He said they could only go to their elicited officials to change laws. He said it had been an educational process for everyone.

Mr. Gibbons said there were many subjects that could not be discussed or disputed by the Planning Board, but there was an economic impact that will be thrown on all the abutting communities to protect citizens from increased traffic and speed hazards by building gateways across Maplewood Avenue and Market Street where there was high traffic. He said the expected time of travel would be in the early morning hours after bars let out, which would require an increase in safety considerations. Chairman Hebert said Pan Am worked with towns in the past to share costs, and Mr. Robinson said the State set up the process. He said unfortunately, there was more traffic as towns and cities grew. He said everyone liked the region and resources, and sometimes that meant that something like a railroad or a power line was proposed near people's homes in the interest of benefiting the larger community as a whole.

Senator Clark said she understood there were some difficulties with an alternate line, but asked if there was any way that Newington could reach out to the PDA to discuss a solution if it was practical and responsible to find an economic and safe solution to avoid dense residential and traffic areas. Chairman Hebert said they would ask those questions.

Mr. Richardson said they had been told that the lines would be upgraded to Class II and he thought it fair to say that these things would be done. He said the zoning ordinance called for determinations that they make sure projects were safe for neighborhoods. He said cases had been cited, and the idea that the Board could do nothing was something he would look into. Attorney McEachern said Pan Am said the lines would be upgraded to Class II, not the applicant. Ms. Scarano agreed that Pan Am came because they were asked to and they did not have an application before the Board.

Mr. DiPentima said this project had been declared as a development of regional impact and other towns had limited abutter status. He asked why the Planning Board couldn't ask the Portsmouth City Council and other planning boards to vote to see if they were in support or not. Chairman Hebert said there were near the end of the road regarding new information and the Board would need to make a decision soon and they could continue the discussion at the next meeting on Monday, April 14, 2014.

### **2) New Business: PSNH Transmission Lines**

Chairman Hebert said the Town had just begun communicating with PSNH who was doing preliminary land surveys, borings, identifying types of soil in the river in consideration of replacing their distribution lines with transmission lines from Durham through Gundalow Landing to Hannah Lane. He said they were proposing going above ground by Hannah Lane and were told the town wouldn't accept the lines above ground. He said they were also looking at alternative routes. He said the schedule was for this and next year to be completed by 2015.

Mr. Paul Bagley of Hannah Lane said the right of way was already there and thought they could do whatever they wanted. Chairman Hebert said their right of way was for a distribution line and they might over burden their right of way with transmission lines, but he

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes – Monday, March 24, 2014

wasn't sure what the easement said. Attorney Ratigan said PSNH might talk to residents while they were doing their surveys about acquiring additional land to widen their right of way and it would be helpful to let the Planning Board know so they could negotiate with them. He said PSNH had the right, but they typically didn't like to use eminent domain. Mr. Bagley said it sounded like they were similar to the railroad, but he had a little hope that he would get compensation.

Chairman Hebert said there was legislation in the State to regulate above ground power lines. He said they tried to put language in that would require them to show why they couldn't go underground. Mr. Bagley said the lines had to be buried underground on the Frink farm because of air traffic, but Mrs. Abbott's lot was right in front of Hannah Lane. Chairman Hebert said the Abbott property on Hannah Lane could be in a good position because there was more land. Mr. Stern said needing more land could encourage them to bury the lines instead of buying the land.

Chairman Hebert said they were staying in contact and the Town wanted to be involved in the process of routes chosen. Mr. Bagley asked if there was a better route. Chairman Hebert said possibly on the other side of Arboretum Drive, or at the edge of Great Bay Wildlife Refuge. Mr. Richardson asked why would need to go near the refuge. Chairman Hebert said it was near the river following the boundary of the refuge. Ms. Lamson said she believed they were surveying beyond Welch's Cove and agreed that the refuge boundary could be a good spot.

**Minutes:** *Mike Marconi motioned to approve the Planning Board Minutes for March 10, 2014 with changes. Ms. Lamson seconded the motion, and all members voted in favor.*

**Discussion:** Chairman Hebert recommended having a work session with Attorney Ratigan before the next meeting

**Adjournment:** *Mike Marconi motioned to adjourn. Bernie Christopher seconded, and all were in favor. The meeting adjourned at 10:15 p.m.*

**Next Meeting:** Monday, April 7, 2014

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