

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, April 14, 2014

Call to Order: Chair Denis Hebert called the April 14, 2014 meeting to order at 6:45 p.m.

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

Absent: Justin Richardson

Public Guests: Attorney Alec McEachern; Attorney John Ratigan; Paul Bogan, Sea-3 Vice President of Operations; Steven Haight, Haight Engineering; Cynthia Scarano, Pan Am Executive Vice President; Robert Culliford, Pan Am Senior Vice President and General Counsel; Dirk Grotenhuis, Senior PE, RSG Traffic; Portsmouth Assistant Mayor, Jim Splaine; Peter Britz, Environmental and Sustainability Planner for Portsmouth; Senator Martha Fuller Clark; Jeff Barnum, Great Bay Water Keeper; Andy Jones, Toxic Actions Center, Portland, Maine; Portsmouth Residents: Abdullah; Lou Brown; Catherine and Richard DiPentima; Pat Ford; Bob Gibbons; Beth Moreau; David Rheume; Lou Salomi; Jane and John Sutherland; Greenland Resident: Fred Mason

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

Chairman Hebert commented that the Board had heard from many people in regards to their concerns with the safety of the rails. He said the Town's legal counsel were told by Pan Am Railways legal counsel that the Board only had jurisdiction over the Sea-3 site and jurisdiction of the rails came under the Federal Railroad Association and the rail inspector from the New Hampshire Department of Transportation. He said the Board would continue to review information as it came in, but at this point the Board needed to move forward with the Sea-3 site review. He asked that anyone speaking from the public keep their remarks to new information that the Board could act upon.

Portsmouth Assistant Mayor, Jim Splaine said the City of Portsmouth sent a letter that they were opposed to the expansion of Sea-3

He said he was Assistant Mayor in the 1970's when Sea-3 was first proposed, and they were concerned with the safety of the rail lines then. He said he was also involved with the Pease Redevelopment Authority in the early 1990's and at that time they considered Pease as a transportation hub for the industrial corridor.

Assistant May Splaine said Newington has done great job developing of developing industry along the river, but asked if they really wanted an Energy North

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, April 14, 2014

Central in Newington feeding NH, ME, NE for the next 20-30 yrs. He said if the Board agreed to the expansion, they would have to allow further expansion if they returned, and asked if that was what they wanted for the community. He wondered what the younger generation to look back and say they could have stopped it, but they didn't.

Mr. Rich DiPentima of 16 Dunlin Way said the City of Portsmouth, neighborhood representatives and the Great Bay Stewards have asked for environmental and safety studies of the Sea-3 site and the subsequent rail lines on two different occasions. Chairman Hebert reminded Mr. DiPentima that the Board had been told that they had no authority to request or base their decision on environmental or safety studies. Mr. DiPentima said there was a decision in November that the proposal had regional impact and out of the five categories listed in the RSA, one of the impacts included transportation networks. He said they were told that they could not interfere with interstate commerce, and yet the Massachusetts Department of Transportation received a rail transportation safety report even though both states were covered by Federal jurisdiction. Chairman Hebert said he understood the question and would look into it.

Mr. Andy Jones of Hyde Street in South Portland, Maine said he was a community organizer from Toxic Actions Center, an public health and environmental non-profit that worked with communities to clean up neighborhoods. He said they were concerned with the review of the Sea-3 expansion that was rushing past environmental and safety impact studies.

Mr. Jones said he grew up and lives in South Portland, Maine where there was an oil pipeline that passes from Coos County in New Hampshire and up to Montreal. He said there was a proposal to use the pipes for the export of tar sands that would cross three states. The reverse process would put strains on old pipes. He said because the pipes passed through three states and an international border, they were told it was not their concern and the commerce laws prevented local evaluation. He said they were also told they would be sued if took any actions. They passed a moratorium on the construction tar sands infrastructure, their city council has appointed legal experts to draft a zoning ordinance to block tar sands from their community, and a lawsuit has not materialized.

Mr. Jones said local officials and residents have been told they have no power over their own safety. He said he was sympathetic to market changes and the need for businesses to be flexible. He said if a project was feasible, they needed to get buy in from the community and be forthcoming with safety reports. He said Sea-3 needed to demonstrate expansion is safe before they get approval.

Mr. Bob Gibbons of 130 Spinnaker Way said the Sea-3 expansion would impose an economic impact upon all the abutting communities that would have to provide for the safety of those on the major thoroughfares such as Market Street and Maplewood Avenue. He asked why residents should subsidize the project, and suggested Sea-3 cover the costs instead. Chairman Hebert said the Board invited an FRA representative and the rail line inspector for the NH DOT, and communities could contact the State with questions about railroad crossing impacts. He said that process was set up by the U.S. Government and pre-empted local jurisdiction.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, April 14, 2014

Mr. Gibbons said railroad crossings were not the only concerns. He said he was also concerned that communities were not adequately equipped for the types of emergencies that would occur if anything went wrong on the rails. Chairman Hebert reminded Mr. Gibbons that they were talking about rails again. Mr. Gibbons said he was talking about the impact Sea-3 on the safety of citizens and he was asking if they had a right to impact fees, whether it was on communities or through the State.

Catherine DiPentima said she was also concerned about living with for generations with things like emergency preparedness and thought Sea-3 should cover the costs.

Mr. David Rheame and Ms. Beth Moreau, members of Islington Creek Neighborhood Association said they both served on land use boards in Portsmouth and would like to talk about the hours Sea-3 would be allowed to accept deliveries. Mr. Rheame asked if Pan Am could operate any time they wanted and Chairman Hebert said there were court cases dealing with rail operations and the Board could not interfere with rail operations.

Mr. Jeff Barnum, Great Bay Water Keeper and speaking for the Conservation Law Foundation said most people didn't understand that the trestle that went over the Squamset River was not a single trestle, but was actually two trestles 455 feet long, separated by a causeway in between and on either end, totally 1500 feet. Chairman Hebert said he was talking about the rail bridge and they had already discussed. Mr. Barnum said he thought he heard Chairman Hebert say he wouldn't make a decision on the proposal unless he had bridge inspection. He said NH DES oil recovery could not respond to an accident in less than two hours in the summer and could not respond in the winter whatsoever. Chairman Hebert said they were not discussing the transportation of other hazardous materials over the rails. He said the proposal before the Board was for propane, which evaporated.

Mr. DiPentima said when Mr. Paul Bogan, Sea-3 Vice President of Operations was asked in November 2013 what the worst case scenario on the Sea-3 site would be, he said a boiling vapor catastrophe. Mr. DiPentima asked if the Town of Newington had the ability to respond or if they would rely on surrounding communities. Chairman Hebert said the fire chief addressed that at the last meeting and he would be able to handle the situation and all the fire chiefs in the region said the same. Mr. DiPentima said Sea-3 should provide the infrastructure for a mutual aid agreement that was supported by taxpayers.

Mr. Lou Salomi of 142 Spinnaker Way asked if the Board allowed the Sea-3 expansion would the propane would have to stay on the storage site, and the rail could not move it. Chairman Hebert said they keep going back to the railroad. Mr. Salomi said suggested the approval for the storage of propane could not be separated from the railway operation. Chairman Hebert said the proposal was for the propane coming in by rail, being trucked out and also exported by ship. Chairman Hebert said the expansion was not for storage, but for changing drying and refrigeration to support the receipt of the propane. He said nothing else was changing on their site. Mr. Salomi said the additional rail cars coming in was a change, and it was not correct to say there was no change coming in, at or leaving the facility. Chairman Hebert said they had no say on

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, April 14, 2014

the rail. Mr. Salomi said there had been a broad regional safety review inviting surrounding communities to share their opinions up until this point, but then a veil was brought down and he asked why that changed.

Chairman Hebert said they would go on to the traffic study. Chairman Hebert asked Mr. Dirk Grotenhuis, Senior PE, of RSG who was hired by Newington to share their responses to the applicant's traffic assessment memo. Mr. Grotenhuis said he normally reviewed traffic impact studies, but a memo was provided, which did not provide complete information. He said it appeared the traffic would remain the same as what was seen in the past with 160 trucks on an average day. He said they looked at how the truck traffic affected intersections, including changes with changes to the Spaulding Turnpike, which might alleviate some of the traffic down Woodbury Avenue and through Portsmouth. He said they also looked at the impact of trucks to and from site and rail crossings.

Mr. Bogan said a few trucks might go by way of Route 33. Alternate Board member, Peggy Lamson asked if there would be one or how many. Mr. Bogan there would be a few and Ms. Lamson asked for an exact number of how many. Mr. Bogan said between five and ten. Ms. Lamson said she would like to know because they would be crossing in front of Target. Chairman Hebert asked why they would travel Route 33 and Mr. Bogan said they would pick up Route 101 for the southern route. Chairman Hebert why they weren't taking Route I-95, Mr. Bogan said they could. Ms. Lamson said Route 33 was a shorter connection to Route 101 for them, but it would impact more communities.

Vice-Chair Marconi asked if there were any river traffic studies and Mr. Grotenhuis said they mostly did land traffic studies.

Mr. John Sutherland of 8 Dunlin Way said he asked if they were increasing the truck terminal within the site. Mr. Bogan said they were using the same slots they used since mid 1980's.

Mr. Sutherland asked if there would be an expansion to handle more rail cars and Mr. Bogan said they were expanding their rail car offloading to unload ambient temperature product that could go into ambient storage or into chiller.

Mr. Lou Brown of 56 Laurel Court asked if there would be increased volume and traffic going out from the refrigerated product. Chairman Hebert explained that the truck traffic would not increase and it had already been approved in a previous application.

Ms. Jane Sutherland of 8 Dunlin way asked Mr. Grotenhuis if he incorporated any studies of non-propane traffic, general traffic, and mail traffic that had increased over the last ten years. Chairman Hebert said the Town built an industrial corridor for Con Ed to reduce truck traffic going onto the highway. Mr. Grotenhuis said they didn't produce the study, but reviewed the study that the applicant prepared. Chairman Hebert said the Town did a traffic study in 1999.

Abdullah Alhamdan of 12 Dunlin Way said he was an engineer and relied on data. He said the memo provided by the applicant was not really a study and asked if they could see a more comprehensive report because the math for the number of trucks going out didn't account for all the propane coming in. Chairman Hebert said they only had five slots to load the trucks and couldn't load any more. He said they already had

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, April 14, 2014

permission for that same number of trucks and they weren't changing the number of trucks for the last 30 years. He said the increased propane coming in by rail would be chilled and stored. Mr. Bogan said the chilling would cause the liquid to contract a little for storage at very low pressure and then they would heat it up when they took it out so that would be the same volume that came in. Chairman Hebert said higher temperatures would cause the product to evaporate, but it could be shipped out at higher temperatures in tankers with thicker walls. Board member, Jack Pare said there was confusion because they were receiving more product by rail, but not increasing the number of trucks, but they were only replacing the foreign supply that had been shipped in with domestic rail supply. He said they would refrigerate and store some of the product to send out later during higher demand.

Mr. Fred Mason of Tidewater Farm in Greenland said he understood that Sea-3 might export a shipload during the summer season, and wondered if they would return to the Board for another expansion if they were able to ship out more. Mr. Bogan said they never said they would only export one ship, but they did say they would have to return to the Board if they wanted to expand the rail car unloading facilities.

Mr. Gibbons asked for clarification with the volume of rail cars, truckloads and ships, and asked if it wasn't possible for them to expand. Chairman Hebert said the offloading capacity of the trucks was not possible. Mr. Bogan said they would bring in sixteen cars, fill storage in 45 days, and load trucks as well. Once they had used up the stored product, they would still only be able to get sixteen cars a day based on the time it took to offload.

Mr. Gibbons said there was no way they could furnish enough propane to supply regional demands. Chairman Hebert said they only said they would contribute to regional demand, not supply the entire region. Mr. Gibbons asked if they would stop accepting ships and Mr. Bogan said they would still accept ships if foreign prices came down. Mr. Gibbons calculated that it might be possible to increase to 17 cars a day and Mr. Bogan said he would have to return to the Board if they were to do that.

Mr. Mason asked what factors the Board used when assessing a future expansion. Chairman Hebert said to be fair, he could not say what would be proposed in future or how future boards would decide, but he could say they would have to follow or what the ordinances. Board member, Chris Cross said any proposal for Sea-3 would be evaluated by whether the site could handle and process more than sixteen cars. Mr. DiPentima asked if accepting sixteen cars were inherent in the application or a condition. Chairman Hebert said it was not posted, but he thought the Board could make it a condition if approved.

Chairman Hebert commented that they had reviewed a tremendous amount of information, and they needed to review new information because the law said their time to make a decision was running out. He said they couldn't review it all at the last minute, but they would review it. Ms. Lamson said the information helped the Board to do due diligence. Vice-Chair Marconi said will need time to review material to assist with their decisions.

Chairman Hebert said when they started, he thought they could request safety improvements on the rails a condition, but found out they were completely dependent

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, April 14, 2014

on U.S. and State representatives to change the laws. Chairman Hebert said the laws in the country were as they were and with no limitations of product, just speed on certain standards of track. He said the value of a public hearing was tremendous and he hoped Pan Am would bring the rails up to Class II from excepted and Class I for greater safety. Ms. Cynthia Scarano, Pan Am Executive Vice President said there would be one trip up and back.

Mr. Pare said most of the concerns were with railroad safety and not so many over the Sea-3 site. He said the existence of heavy freight rail was there, but things could be done to mitigate concerns in the long term, whichever way this decision went. He suggested the public could ask their State representatives to reroute through the rail line through Pease without crossing Route 33. He said it wouldn't be quick, but it could be done. He said the largest holder of instate track mileage was the State of NH all the way north of Concord to Canada so there was a precedent. Chairman Hebert said a letter was sent regarding alternate routes, but it would not be a two-year process,

Senator Martha Fuller Clark said she was also a resident of Portsmouth and was meeting with the DOT Commissioner to look at a variety of steps. She said it was something to pursue and she would work with the Newington Planning Board. She agreed it would not be something that could be done quickly, but she was also looking into additional legislation to expedite the process.

Mr. Cross said he was a returning Board member as of March and had some site-specific questions for applicant to catch up on his understanding of the proposal. He asked if there would be an evening crew to offload evening deliveries. Mr. Bogan said there would be a crew of three on site overnight. Additional discussion ensued regarding the unloading process.

Mr. Cross asked if there was an easement from the power plant on the south side for underground piping for seawater. Mr. Bogan said it was an electric company easement with no road. He said he assumed it was sleeved so the rails could go over. Mr. Cross asked if there was an emergency assess road and Mr. Bogan said there was a second exit off Shaftmaster Road on the property. Mr. Cross asked if heavy fire trucks could cross over the easement and Mr. Bogan said they could, but he didn't think they would get that close.

Mr. Cross asked if Pan Am owned the rail corridor. Ms. Scarano said that was correct. Mr. Cross asked if the five new off loading stations were within the Pan Am corridor and Mr. Bogan said that was correct. Mr. Cross said they were building a new offloading delivery site on Pan Am's property and asked if Pan Am assumed any liability for that operation. Mr. Bogan said Sea-3 was leasing the Pan Am property. He said he thought Sea-3 would assume liability. Mr. Cross asked if there was a condition on the lease that Sea-3 would vacate their equipment from the property if their operation ever moved. Mr. Bogan said he assumed that would be correct. Mr. Cross suggested the Board see a copy of the lease.

Chairman Hebert said the drawings the Board received were different than what was just described. Mr. Morgan asked if the Board had the correct plan. Mr. Steven Haight of Haight Engineering said the Pan Am corridor had always been on the plan.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, April 14, 2014

Chairman Hebert said he had been under the impression that all offloading stations were on Sea-3 properties. Mr. Cross said he thought it was probably a frequent occurrence between businesses and the railroad. Chairman Hebert asked who would own the off loading station and Mr. Bogan said Sea-3 would own them. Chairman Hebert said wanted it to be on record that the infrastructure would be removed from Pan Am property if the lease ended so Sea-3 wouldn't walk away from the operation and Pan Am could take over. Ms. Scarano said this was a different scenario than Pan Am building for a customer. Mr. Bogan said they could make it part of the lease agreement or a stipulation. *(Board of Selectman Representative, Rick Stern arrived at this point of the meeting at 8:45 p.m.)*

Mr. Cross asked if the storage tanks could be placed end to end for additional safety where they were the strongest in case of an accident, rather than side-by-side. Mr. Bogan said the property had only so much acreage available to work with so that was the only configuration they could do. He said the tanks themselves would have a water system for fire protection cooling purposes.

Mr. Cross asked if the piping going up to the offloading stations or chillers would go over or under the ground. Mr. Bogan said the pipes were able to handle more than 200 psi. He said the line **coming off tank and chillers would go to the existing** pipe rack, go over the railroad and continue to the refrigerating system. Mr. Cross asked if the FRA determined the clearance. Ms. Scarano said that was correct and they had a chief engineer that worked with Sea-3.

Mr. Cross said there had been some discussion regarding the potential of additional cars that couldn't fit on the site because of scheduling being stored at different locations between the Newfields Junction and the Sea-3 site. He asked if any additional cars would be stored at the Georgia-Pacific Gypsum Plant. Mr. Bogan said that area would be deactivated and they wouldn't use it anyhow because it went up a steep grade.

Vice-Chair Marconi asked if a safety bond would be required for liability for the leased property from the railroad. Mr. Robert Culliford, Pan Am Senior Vice President and General Counsel said there were insurance requirements that were standard to the industry.

Mr. Pare asked about the second access point along Pan Am's 85' right of way where there had been discussions about getting fire trucks along side the tracks. He said the fire chief made a comment about the access down Shaftmaster Road. He said a lot of trucks parked in that area and he was not sure who owns what, but there might be a concern if a large ladder truck needed access. He asked if there was willingness to work with the town to improve Shaftmaster for fire access. Mr. Bogan said they would make improvements as needed to get fire trucks to a new access road, but Shaftmaster had already been improved in the last year or two. Mr. Morgan said trailers associated with the fish processing plant parked in that area and there wasn't a lot of room for a fire truck when the trucks were parked. Mr. Bogan said he looked at Pan Am's 85' wide right of way plan and the existing track was not dead center. Mr. Haight said they need 15' but seemed to be more than adequate access for fire truck, if trucks were parked there it could be an enforcement issue. Chairman Hebert said he was not aware of parked

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, April 14, 2014

trucks, but it was a private road with a 75' easement and there should no blockages so enforcement might need to be a condition for approval.

Sea-3 counsel, Attorney Alec McEachren said Mr. Bogan would be out of town traveling and asked if they could continue the hearing to May 5, 2014. Mr. Morgan said extending the deadline would not be a problem if the applicant requested it. Vice-Chair Marconi asked if May 5, 2014 would be a public hearing. Chairman Hebert said the meeting would be for Board deliberations, not a public hearing.

Chairman Hebert informed everyone that they would close the public hearing and took a voice vote with all members approving.

Adjournment: ***Vice-Chair Marconi motioned to adjourn and Bernie Christopher seconded, and all were in favor. The meeting adjourned at 9:15 p.m.***

Next Meeting: Monday, April 21st, 2014

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