

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
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April 22, 2014

HAND DELIVERED AND EMAILED to Jane.Murray@des.nh.gov

Martin P. Honigberg, Chairman
Alex Speidel, Acting Chairman
NH Site Evaluation Committee
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

RE: SEC Docket Number 2015 – 01
Request of SEA-3, Inc. for Exemption from the Approval and Certificate
Provisions of RSA Chapter 162-H

Dear Chairman Honigberg and Acting Chairman Speidel:

Enclosed for filing is the City of Portsmouth's Petition to Intervene in the above-referenced matter.

Thank you for your assistance.

Sincerely



Jane Ferrini, Staff Attorney
City of Portsmouth

Enclosure

cc:

Jane Murray, NH DES (emailed and Hand Delivered)
Michael J. Iacopino, Esq.
Peter C.L. Roth, Assistant Attorney General
Alec McEachern, Esq. (Hand Delivered)
John P. Bohenko, City Manager
Robert P. Sullivan, City Attorney

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-01

***REQUEST OF SEA-3, INC. FOR EXEMPTION FROM THE APPROVAL AND
CERTIFICATE PROVISIONS OF RSA CHAPTER 162-H***

CITY OF PORTSMOUTH'S PETITION TO INTERVENE

Now Comes the City of Portsmouth ("City"), by and through its attorneys, and petitions the Site Evaluation Committee, pursuant to RSA 541-A:32 and N.H. Code Admin R., 202.111, to allow the City to intervene in the above captioned matter for the following reasons:

1. The City of Portsmouth ("City") is a municipal corporation with an address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801.
2. On Monday, April 20, 2015, the Portsmouth City Council voted unanimously to file a Motion to Intervene. See attached Agenda, City Manager's Comments on City Council's Agenda and Action Sheet attached and incorporated as Exhibits A, B and C. Minutes of the meeting were not yet prepared at the time of submission of this Motion.
3. On January 7, 2015, Sea-3, Inc. ("Sea-3"), filed a Request for Exemption from the Approval and Certificate Provisions of RSA Chapter 162-H ("Request") with the New Hampshire Site Evaluation Committee ("Committee").
4. The Committee deemed the Request incomplete and requested additional information from Sea-3, including all pleadings relative to the City's appeal of the Newington Planning Board's granting site plan approval of Sea-3's application for expansion of its facilities. This appeal is multi-pronged and includes the City's appeal to the Newington Planning Board, the City's appeal to the Newington Zoning Board and the

City's appeal to the Rockingham County Superior Court, along with Sea-3's Petition for Declaratory Order before the Surface Transportation Board and the Order denying the Petition due to lack of standing. See Superior Court pleadings filed by Sea-3 on February 27, 2015 and See Exhibit B of Sea-3's letter submitted on April 1, 2015.

5. The expansion proposed by Sea-3 is to expand its current facility to accommodate the receipt, storage and distribution of LPG on the site; the expansion would include the construction of five additional rail unloading berths, three 90,000 gallon above ground storage tanks, a condenser, cooling unit, dryer and heater, mechanical building, refrigeration equipment and associated pipelines and accessory equipment.

6. The site includes two parcels owned by Sea-3 and a third parcel that bisects the two parcels by a rail line and land owned by Pan Am, which Sea-3 intends to lease if the project is approved.

7. The City is a neighboring community of Newington and shares common transportation routes with Newington. If Sea-3 expands, these routes will be used to transport an increased volume of LPG through City roads, rail lines and rivers. There has not been a comprehensive safety /hazard study of the site and the expansion's impact on the environment and surrounding communities in the event of a catastrophic event. Federal, State and local regulations and ordinances have not provided adequate safeguards to protect the health and welfare of City residents and the public.

8. As a result, the rights, duties, substantial interests of the City and its residents may be affected by the present proceeding for the following reasons:

A. Safety of Product

Sea-3 currently receives deliveries of LPG by ship; LPG transported by ship is not odorized. Transport by ship of unodorized LPG poses a substantially smaller risk to public safety than if unodorized LPG leaks from rail cars traveling through densely populated areas. The proposed expansion would result in 16 rail cars traveling in and out of the City to the site, 365 days a year. Each rail car carries 33,000 gallons of unodorized LPG. A train carrying 16 rail cars is carrying 528,000 gallons of unodorized LPG. See Sea-3's Request at page 6. It is impossible to detect unodorized LPG without special detection equipment, posing a risk to residents of the City and members of the public along the rail route.

The Newington Planning Board discussed adding a condition to its site approval that LPG delivered to the site be odorized. See Minutes of Planning Board dated February 10, 2014, page 2, Certified Record of Planning Board at page 90. The Planning Board failed to make this a condition of approval. See Decision of Newington Planning Board dated May 19, 2014, Certified Record of Zoning Board at page 71 and 72 and Certified Record of Planning Board at pages 519-527 and 530-543. The risk to residents along the rail line is significant because the LPG will be unodorized, and as such, undetectable to residents and business along the rail route.

The rail route enters Portsmouth by crossing under Interstate 95 south of Exit 3. It then crosses under Route 33 west of Griffin Road and roughly parallels Borthwick Avenue before crossing over the Route 1 Bypass and following Islington Street to the downtown rail yard along North Mill Pond. From there, the rail line crosses Maplewood Avenue, Green Street and Market Street at grade, then curves to the west, passing under

the approach to the Sarah Mildred Long Bridge and the I-95 bridge. Finally, the tracks pass under Kearsarge Way and between the Laurel Court and Spinnaker Way/Osprey Landing neighborhoods before exiting the City at the PSNH property. There are seven rail crossings in the City along this rail route. Not only do the tracks cross or pass under major thoroughfares (I-95, Route 33, Route 1) but these trains pass near and through some of the City's most populated neighborhoods and the busy downtown commercial district.

Portsmouth is a destination location for tourism in the State. It is responsible for generating approximately 77 million dollars in meals and tax revenue to the State last year. None of its residents, tourists or businesses would have any way to detect an LPG leak from rail cars passing through the City, putting citizens and tourist, their vehicles, homes, places of businesses and vital City infrastructure at risk. The rail line in the City, unlike other towns, passes through or under major thoroughfares and densely settled neighborhoods and the downtown business districts. The health and welfare of the City and its residents and visitors is put at risk because failsafes that could have been put in place by the Newington Planning Board, namely requiring the site to be an odorized site, were not implemented. As such, the health and welfare of the City and its residents may be at risk from this expansion, and Sea-3 should not be exempt from the procedures set forth in RSA 162:H.

B. Safety of Site

Through the public hearing process on Sea-3's application for site review approval, the City requested that the Planning Board require a comprehensive safety and/or security review of the full scope of Sea-3 proposal, including but not limited to a

hazard identification and vulnerability assessment, an environmental risk assessment and an analysis of emergency response for the impacted communities, physical security assessments and incident /hazards response analysis. (“safety/hazard assessment”). See City’s Petition For Appeal of Planning Board Decision as Exhibits A and City’s Petition For Appeal of Zoning Board of Adjustment Decision as Exhibit J in the Superior Court pleadings submitted by Sea-3 on February 27, 2015. Newington Site Plan Review Regulations authorize the Planning Board to require “any other exhibits or data that the Planning Board may require in order to adequately evaluate the proposed development for site review.” Section 8, (q), Town of Newington Site Plan Review Regulations. The Planning Board uniformly denied all requests from the City for a safety/hazard assessment and granted Sea-3’s site plan application. The only mention by the Planning Board regarding a safety/hazard plan is in one of its conditions of approval dated May 19, 2014. See Certified Record of Planning Board at pages 519-527 and 530-543. The fifth condition provides as follows:

5. Several safety plans were adopted in conjunction with the original Sea-3 site plan approval. They shall be reviewed by Sea-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.

Sea-3 last expansion was in 1996. In 1996, the Newington Planning Board reviewed over 200 pages of safety/hazard reports. These reports included the following:

1. *SEA-3, Inc. Newington, New Hampshire. LPG Import Terminal, Hazard Modeling Study for Additional Tankage*, May, 1996, by Fluor Daniel, Inc.;
2. *Sea-3 Process Safety Management Manual*, July 15, 1996;
3. *Sea-3 Inc. Newington Marine Terminal, Initial Process Hazard Analysis, Final Report*, October 6, 1995 by LGA Engineering;
4. *Sea-3, Inc. Newington Marine Terminal Fire Safety Analysis, Draft Report*, July 1996;
5. *Mooring Policy and Procedure Manual, Newington Propane (LPG) Terminal*, May 1993;

6. Marine Safety Office, Portland Maine, Liquefied Petroleum Gas (LPG) Contingency Plan.

During the last expansion of the site in 1996, the project was deemed a “development of regional impact” and the City and the Rockingham Planning Commission requested that the Newington Planning Board hire an independent expert. The Town of Newington, under its then site plan regulations, required Sea-3 to pay for two consultants to review and comment on Sea-3’s “safety/hazard report”. These reports were not rail safety studies but were studies focused on the evaluation of the safety and potential hazards of the expansion of Sea-3’s facility at the site. The two consultants’ evaluations and excerpts of the Hazard Modeling Study is also attached and incorporated as Exhibits C through I to the City’s Memorandum in Support of its Objection to Sea-3, Inc.’s Motion to Dismiss dated March 2, 2015 and submitted by Sea-3 in its April 1, 2015 letter as Exhibit A.

The City appealed the Newington Planning Board’s decision, in part, because no such similar safety study of the site was done prior to approval of the site plan application even though this present expansion was also deemed a development of regional impact pursuant to RSA 36. The Town’s requirement of an “update” of Sea-3’s original safety plans makes no reference to which safety plan is to be updated, and this post-approval review will not be performed by the Planning Board and will be outside public comment and process.

The requirement that this safety plan be submitted directly to “public officials”, after site plan approval and outside the scope of any public hearing process violates the intent and purpose of RSA 36, which requires that Newington to give prompt and effective notice to affected communities of “development of regional impact” in order to

facilitate comment on the project. The communities impacted by the expansion will not be allowed to review or comment on these safety studies because it will be provided to “appropriate public officials” only, not even members of the Planning Board that approved the site.

The City submits that local ordinances and regulations did not protect the City’s residents and the public because the Newington Planning Board refused to request, and will not review, any comprehensive safety/hazard study of the site. Any project that has a negative impact on public health and safety and the environment does not comply with the purpose of RSA 162-H and should not be exempt. For the reasons stated above, the rights, duties, substantial interests of the City and its residents may be affected by the present proceeding and Sea-3’s request for exemption should be denied.

C. Import or export facility

Sea-3 alleges that the purpose of the expansion is to convert the facility from one that imports LPG by ships to one that receives LPG domestically by rail. However, the reason for this expansion has nothing to do with supply and everything to do with profit. Sea-3 has not been making a profit over the last several years because the cost of imported LPG has increased. From 2009 through 2014, Sea-3 has voluntarily purchased less LPG each year from suppliers. See chart on page 5 of Sea-3’s Request. Sea-3 seeks to expand its facility to increase its profits because the cost of domestic LPG has decreased dramatically. However, it is important to note that Trammo, Inc., of which Sea-3 is a whole owned subsidiary, is a privately owned company that operates through wholly owned subsidiaries and according to their website, their Gas Division reported

sales of \$1,200,000,000 in 2013. The corporate bottom line has not seemed to be substantially affected by the decrease in Sea-3's distribution of LPG.

Sea-3 alleges that the purpose of the expansion is to facilitate the delivery and distribution of LPG by rail to ensure sufficient reserves to supply New England. However, when the expansion was originally requested, Sea -3 alleged that the expansion was to increase its capacity to export LPG overseas. See Minutes of Newington Planning Board dated November 18, 2013, Certified Record of Planning Board at 90.

Information has been presented to this Committee regarding how exporting LPG will hurt domestic pricing of LPG. See letter dated February 18, 2014 from Attorney Tucker, Certified Record of Planning Board pages 157-164. Further information is needed on the issue of whether the facility's expansion is for import or export because if the proposed expansion has a negative impact on the local economy, it will not fulfill the stated purpose of RSA 162-H.

As such, the rights, duties and substantial interests of the City and its residents may be affected by the present proceeding and further information regarding the purpose of the expansion is required and Sea-3's request for exemption should be denied.

D. Increased Rail Traffic

The rail line that will deliver and distribute the LPG to Newington passes through the City as described in paragraph A. There are seven rail crossings in the City that the rail cars must cross. As previously stated, the site expansion will substantially increase the number of rail cars passing through the City on a daily basis. Sea-3 stated in its Request for Exemption that it had 99 tank cars make deliveries in 2014. The expansion would allow 16 tank cars a day (365 days a year) bringing the total potential amount of

tank cars from the 99 in 2014 to 5840 upon completion of expansion. This is an increase of 589 % from 2014. Even if Sea-3 operates at half capacity it could receive 2920 more tank cars a year and this is a 294% increase from 2014.

Not only will the number of rail cars increase, but the speed the rail cars travel will also increase. The rail cars will be able to more than double their speed due to rail improvements required by the expansion. The City's tracks were classified as "excepted" or Class 1. Trains may travel at 10 miles an hour on Class 1 tracks. In order to allow 16 rail cars to travel on the rail route per day, Pan Am must upgrade the tracks from either "excepted" and Class 1 to Class 2. Some of these upgrades to the tracks have already taken place. Class 2 tracks permit rail travel at the speeds of 25 miles per hour. See Summary of City meeting with Pan Am at Exhibit D. Doubling the speed of trains traveling through the City poses a risk to residents and visitors, particularly when these tracks have been rarely utilized.

The cost of rail upgrades will be paid by Pan Am. However, the City is responsible for paying part of the cost associated up upgrading the rail crossings. Part of the costs of the rail crossing upgrades will be borne by the State, and the remaining costs of the upgrades will be borne by the City's taxpayers. This means that City tax dollars, paid by City residents, will be paying for rail crossing upgrades mandated not by vote of our City Council, but by the Town of Newington and two private for profit corporations, Pan Am and Sea-3, all of whom will increase their profits or tax base from the expansion.

The 5840 rail cars a year will not only bring LPG through the City but the rail cars will also bring increased noise, lights, and diesel fumes along the rail route.

Previously inactive rails or infrequently utilized rails will see a substantial increase in rail

traffic through residential neighborhoods and busy downtown business center. Since Sea-3 filed its original application for expansion, there have been three rail car derailments in the City; the City was never notified by Pan Am about these derailments. These derailments were discovered by City residents.

It is also unclear whether the rail cars that deliver LPG will be loaded after making their deliveries and used to distribute LPG further along the rail route. If so, no study was done on the impact of noise, light and air on trains idling waiting to off load and reload LPG.

Because the City is required to pay for a portion of the rail crossing upgrades required by this expansion, will experience increase train speeds that pose a threat to safety of its residents and increase train traffic will increase noise, light and fumes, the rights, duties and substantial interests of the City and its resident may be affected by the present proceeding and Sea-3's request for exemption should be denied.

E. Increased Truck traffic

No traffic study was ordered by the Newington Planning Board. Sea-3 states that currently it takes 119 days to fill the storage tanks at the site, roughly 1/3 of a year. After the expansion, it will take 45 days to fill storage tanks, roughly 1/8 of the year. See Request at page 7. What happens to the LPG once the tanks are full? The LPG will be distributed. Sea-3 provided a chart on page 5 of its Request and indicates annual truck traffic was as follows:

2009	17,287
2010	14,710
2011	8,227
2012	2,829
2013	436
2014	297*

(* This calculation is based on Sea-3's representation that it received 99 tank rail cars in 2014. Each rail car carries 33,000 gallons so 99 rail cars would bring 3,267,000 gallons. Each truck carries 11,000 gallons so it would take 297 trucks to distribute 3,267,000 gallons.)

If it takes 45 days to fill the storage tank completely, there would be 320 days remaining in the year for daily LPG deliveries of 528,000 gallons (from 16 rail cars) would need to be distributed. If trucks are used to transport these 528,000 gallons of LPG a day, 48 trucks a day would be needed to distribute the LPG because each truck holds 11,000 gallons. This would translate to 15,360 trucks a year, a 5,171 % increase in truck traffic from 2014, a 3,522 % increase in truck traffic from 2013, 542% increase in truck traffic from 2012 and a 186 % increase from 2011.

Also, these figures assume the tank will stay completely full. If the goal is to distribute half of the tank's capacity, another 11,760,000 gallons a year would need to be distributed. This translates to an additional 1,069 trucks per year. However, there was no traffic study or any impact studies done on the impact of this substantial increase in truck traffic on the City or the region by the Newington Planning Board. No study of noise, air and light pollution was requested or performed to examine the impact of the increase in truck traffic or idling trucks. The City share common transportation routes with the site. Any increase in traffic, and any idling, noise and light caused by these trucks directly impact the City. For the reasons stated above, the rights, duties, substantial interests of the City and its resident, may be affected by the present proceeding and Sea 3's request for exemption should be denied.

F. **Federal, State and Local laws, Regulations and Ordinances Did Not Provide Adequate Safeguards for Public**

The Surface Transportation has no jurisdiction, and consequently no oversight over Sea-3's expansion in Newington. The Surface Transportation Board found that Sea-3 had no jurisdiction to bring the Declaratory Action. The Surface Transportation Board has jurisdiction over "transportation by rail carrier" pursuant to 49 U.S.C. § 10501 (a). Federal preemption applies under 49 U.S.C. § 10501 (b) when the activities at issue relate to "transportation" and are performed by or under the auspices of a "rail carrier". The Surface Transportation Board, in its March 17, 2015 Decision, made a part of the record as Exhibit B to Applicants letter dated April 1, 2015, denied Sea-3, Inc.'s request for a declaratory order, finding:

1. That Sea-3 is not "a carrier" within the Board's jurisdiction and is not "performing transportation related activities on behalf of Pan Am or any other rail carrier at a transloading facility." (See Decision of Surface Transportation Board at page 5);
2. That "...the only regulatory action at issue in this case is a local government's participation in zoning litigation over the expansion of a non-carrier facility." at page 6); and
3. That Portsmouth may "...apply nondiscriminatory regulations to protect public health and safety, but only provided that its regulations do not have the effect of foreclosing or unduly restricting Pan Am's ability to conduct operations over its Newington and Portsmouth Branches, or otherwise unreasonably burden interstate commerce." at page 6

The Surface Transportation Board's decision is, in substance and in fact, a vindication of the position taken by the City and its residents, allowing the nondiscriminatory application of local land use regulations to the Sea-3 expansion request. Because the Surface Transportation Board has determined that Sea-3, Inc. lacks standing to raise the federal preemption issues, there is no oversight by the Surface Transportation Board over the project.

Because the Surface Transportation Board has no jurisdiction, and the Newington Planning and Zoning Board did not comply with its site review regulations and zoning ordinances (as more fully set forth in the City's superior court filings submitted as Exhibits A and J of the Superior Court pleadings incorporated hereto), the expansion has not been adequately regulated by federal, state and local ordinance and regulations, and as such, for the reasons stated above, the rights, duties, substantial interests of the City and its residents may be affected by the present proceeding and Sea-3's request for exemption should be denied.

9. The interests of justice and the orderly and prompt conduct of the proceeding would not be impaired by allowing the City's intervention.

WHEREFORE the City of Portsmouth respectfully requests that this Committee:

- A. Allow it to intervene in the above captioned matter;
- B. Copy the undersigned attorney on all notices and proceedings of the Committee in this case; and
- C. Deny Sea-3's Request for exemption; and
- D. To grant such further relief as the Committee deems just and necessary.

Dated this 22nd day of April, 2015

Respectfully submitted,
The City of Portsmouth
By its Counsel,



Jane Ferrini, Staff Attorney

NHBA 6528

City of Portsmouth

1 Junkins Avenue

Portsmouth, NH 03801

(603) 610-7256

jferrini@cityofportsmouth.com

Certificate of Service

I hereby certify that a copy of the foregoing Petition to Intervene has been emailed and hand delivered to Chairman Martin P. Honigberg and Acting Chairman Alex Speidel, NH Site Evaluation Committee, mailed this day by first class mail to Michael J. Iacopino, Esquire, counsel for the NH Site Evaluation Committee, and Peter C. L. Roth, Assistant Attorney General, Counsel for the Public and hand delivered to Alec McEachern, Esquire, counsel for Sea-3, hand delivered and emailed to Jane Murray, NH Site Evaluation Committee.

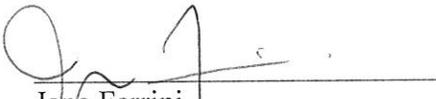

Jane Ferrini

EXHIBIT A

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, APRIL 20, 2015 TIME: 6:00 PM

AGENDA

- 6:00PM – WORK SESSION RE: PROPOSED NEW PARKING FACILITY LOCATED AT 165 DEER STREET

I. CALL TO ORDER (6:00PM)

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

PRESENTATIONS

1. Wastewater Treatment Facility at Pease – Brian Goetz, Deputy Public Works Director & Terry Desmarais – City Engineer

2. Review Response to the Heroin Epidemic – Police Chief Dubois & Police Commission

V. ACCEPTANCE OF MINUTES – APRIL 6, 2015

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARING

A. RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF UP TO TWENTY THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$23,200,000.00) FOR THE CONSTRUCTION OF A NEW PARKING FACILITY (*Sample motion – move to keep the Public Hearing open on the proposed Resolution until the May 4, 2015 City Council meeting*)

VIII. APPROVAL OF GRANTS/DONATIONS

(There are no items under this section of the agenda)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

A. Adoption of Resolution Authorizing a Bond Issue and/or Notes of up to Twenty Three Million Two Hundred Thousand Dollars (\$23,200,000.00) for the Construction of a New Parking Facility (*See motion listed under Public Hearing above for action*)

City Manager's Items Which Require Action:

1. Request for First Reading of Character Base Zoning – North End Ordinance
2. Requesting Approval for the City to Intervene in SEA-3 Site Review Evaluation
3. Request for License Encumbrance of Sidewalk and Parking Spaces Re: 275 Islington Street

Informational items

1. Events Listing
2. Wastewater Treatment Master Plan Update – Work Session April 27th at 6:30 p.m. in Council Chambers
3. Reminder Re: FY16 Budget Schedule
 - On or about April 27th, FY16 Budget delivered to Council
 - Wednesday, May 6th at 6:30 p.m. Review of Water/Sewer Budget – Eileen Donder Foley Council Chambers
 - Saturday, May 9th from 8:00 a.m. – 2:30 p.m., – Police, Fire, Schools and General Government Budget Presentations – Portsmouth Library Levenson Room
 - Monday, May 11th at 7:00 p.m. – Budget Public Hearing – Eileen Dondero Foley Council Chambers
 - Wednesday, May 20th at 6:30 p.m. – FY16 Budget Review – Eileen Dondero Foley Council Chambers
 - Tuesday, May 26th at 6:30 p.m. – FY16 Budget Review *(if necessary)* – Eileen Dondero Foley Council Chambers
4. Household Hazardous Waste Day – May 30th
5. Senior Activity Center – Winter/Spring Update
6. Public Meetings Video Coverage

B. MAYOR LISTER

1. Appointments to be Voted:
 - Reappointment of Ronald Poulin to the Cable Television and Communications Commission
 - Reappointment of MaryAnn Blanchard to the Conservation Commission
 - Reappointment of Gibson “Mike” Kennedy to the Portsmouth Housing Authority
 - Reappointment of Kathryn Lynch to the Recreation Board

C. ASSISTANT MAYOR SPLAINE

1. Public Transparency and Openness in Presentation of the Webber Investigation Report

D. COUNCILOR LOWN

1. Parking & Traffic Safety Committee Minutes of March 12, 2015 *(Referred back from April 6, 2015 City Council meeting)* ***(Sample motion – move to approve and accept the Minutes of the Parking & Traffic Safety Committee meeting of March 12, 2015)***

EXHIBIT B

2. **Requesting Approval for the City to Intervene in SEA-3 Site Review Evaluation.** The City Council voted unanimously on June 2, 2014 to authorize the City Manager to direct the Legal Department to take any and all action necessary and appropriate to appeal the decision of the Newington Planning Board to approve the site plan for Sea-3, Inc.'s expansion. The matter has been appealed to the Superior Court and the City is waiting for a hearing date. In addition to getting the approval of the Newington Planning Board for expansion of its site, Sea-3, Inc., must receive approval and certification from the State of New Hampshire's Site Review Committee or be granted an exemption. The procedure for approval and certification for the siting and expansion of any energy facilities in the State is governed by RSA 162-H. Sea-3, Inc., has filed a Request for Exemption From the Approval and Certificate Provisions of RSA Chapter 162-H. In addition to the City Council's concern over the lack of a safety study of the site, the Council has also expressed its concern regarding the impact the site expansion will have on City roads, river and rails. Of particular concern is the impact of the substantial increase in rail traffic throughout the City, the safety of the rails, the cost of improving rail crossings and the vibration and noise caused by increased rail traffic and its disruption of the lives of the residents and businesses along the rail line. In order to oppose Sea-3, Inc.'s request for an exemption, the City would need to file a Motion to Intervene with the Site Evaluation Committee in the matter of SEC Docket No. 2015-01, SEA-3, Inc. Authority to intervene would come through a vote of the City Council. The Motion to Intervene must be filed before the public hearing on Sea-3, Inc.'s request for an exemption scheduled for May 7, 2015 at 6:00 p.m. at the Newington Town Office.

The City Council may authorize the City Manager to direct the Legal Department to take any and all action necessary and appropriate to intervene on behalf of the City in the pending matter before the Site Evaluation Committee.

3. **Request for License Encumbrance of Sidewalk and Parking Spaces Re: 275 Islington Street.** On March 23, 2015, Green & Co. Real Estate, on behalf of owners Dale and Sharyn Smith, obtained site plan approval from the Planning Board for the demolition of an existing building and construction of 14 new townhouse type units in five separate buildings and associated site improvements on property located at 275 Islington Street, Tax Map 144, Lot 8. Attached is a copy of a letter from Green and Co. Real Estate requesting a license to encumber the sidewalk and six parking spaces abutting 275 Islington Street, and the sidewalks on Cornwall and Rockingham Streets closest to Islington Street depicted in yellow in the attached License Plan. See also aerial photograph of encumbered area. The Applicant seeks to encumber the area depicted to facilitate demolition and construction activities for the first phase of the project from May 4, 2015 through December 7, 2015. The license area will be used as a staging and delivery area. There will be no meter bag daily fees charged for the encumbrance of the six parking spaces because there are no meters currently at the site.

The Applicant also requests a license to encumber the sidewalks abutting the length of the lot along Cornwall Street and Rockingham Street depicted in blue in the attached License Plan from May 4, 2015 through November 15, 2016. The encumbered area will be used as a staging and delivery area for the second phase of construction for the project.

EXHIBIT C

- C. Request for License from Jay McSharry, owners of The Franklin Oyster House for property located at 148 Fleet Street for a projecting sign on an existing bracket (**Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Jay McSharry, owners of The Franklin Oyster House for a projecting sign at property located at 148 Fleet Street and, further, authorize the City Manager to execute License Agreements for this request**)

Planning Director's Stipulations:

- **The license shall be approved by the Legal Department as to content and form;**
- **Any removal or relocation of the projecting sign, for any reason, shall be done at no cost to the City; and**
- **Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works**

- D. Letter from Jay Diener, Co-Race Director, Seacoast Half Marathon, requesting permission to hold the half marathon on Sunday, November 8, 2015 (**Anticipated action – move to refer to the City Manager with power**)

10. Letter from Attorney Thomas Watson, DrummondWoodsum, requesting a long term License or Rental Arrangement to a dedicated dock to accommodate the property owners Charles and Susan Lassen of Round Island their vessel on a 24/7 basis, that will also provide access to a city street, parking for motor vehicle, trash disposal and a mailbox – Voted to refer to the City Manager for report back to the City Council and would like to know if this is an exclusive issue. Councilor Kennedy abstained from voting.
11. Letter from Chuck Rhoades, Seacoast Outright, requesting permission to hold a community-based, family-friendly Pride event on Saturday, June 27, 2015 and further seeking permission to block off Pleasant Street from State to Congress Streets from 1:00 p.m. to 4:00 p.m. – Voted to refer to the City Manager for report back to the City Council.
12. Letter from Gregg Hopkins, Newmarket International, Inc., requesting permission to hold a 5K Fun Run/Walk on Thursday, May 14, 2015 at 6:30 a.m. to 7:30 a.m. – Voted to refer to the City Manager with power.
13. Request for First Reading of Character Base Zoning – North End Ordinance – Voted to authorize the City Manager to bring back for first reading the proposed amendments to the Zoning Ordinance and the Zoning Map, as presented, at the June 1, 2015 City Council meeting, and further, to refer the proposed amendments to the Planning Board for recommendations.
14. Requesting Approval for the City to Intervene in SEA-3 Site Review Evaluation – Voted to authorize the City Manager to direct the Legal Department to take any and all action

necessary and appropriate to intervene on behalf of the City in the pending matter before the Site Evaluation Committee.

15. Request for License Encumbrance of Sidewalk and Parking Spaces Re: 275 Islington Street – **Voted** to authorize the City Manager to negotiate and enter into a license with Green & Co. Real Estate to facilitate demolition and construction activities at 275 Islington Street.

16. Informational Item #6 - Public Meetings Video Coverage – City Manager Bohenko stated given the public interest in the Taxi Commission meetings we could hold the meetings in the Chambers along with Parking & Traffic Safety Committee and Site Review Technical Advisory Committee so they are televised for the public to view.

17. **Voted** to suspend the rules in order to continue the meeting briefly beyond 10:00 p.m.

18. Appointments to be Voted – **Voted** to reappoint Ronald Poulin to the Cable Television and Communications Commission until April 1, 2018.

Voted to reappoint MaryAnn Blanchard to the Conservation Commission until April 1, 2018.

Voted to reappoint Gibson “Mike” Kennedy to the Portsmouth Housing Authority until April 1, 2020. Councilor Shaheen abstained from voting on this appointment.

Voted to reappoint Kathryn Lynch to the Recreation Board until April 1, 2018.

19. Public Transparency and Openness in Presentation of the Webber Investigation Report – On a roll call vote 4-5, motion that the City Council requests that the investigative report into the Webber Estate matter conducted by the Roberts task force panel be submitted jointly to the City Council and the Police Commission when it is completed, and that it become fully public and transparent at that time **failed** to pass. Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Morgan voted in favor. Councilors Lown, Dwyer, Spear, Thorsen and Mayor Lister voted opposed.

20. Parking & Traffic Safety Committee Minutes of March 12, 2015 (Referred back from April 6, 2015 City Council meeting) – **Voted** to approve and accept the minutes of the Parking & Traffic Safety Committee meeting of March 12, 2015. Assistant Mayor Splaine and Councilor Kennedy voted opposed.

EXHIBIT D

SEA- 3 EXPANSION RAILROAD RELATED ISSUES

March 5, 2014 MEETING

TIME: 11:00 AM

PLACE: CONFERENCE ROOM A, PORTSMOUTH CITY HALL

In attendance representing municipal interests were: For the City of Portsmouth

John P. Bohenko, Portsmouth City Manager

David Allen, Portsmouth Deputy City Manager

Rick Taintor, Portsmouth Planning Director

Bob Sullivan, Portsmouth City Attorney

Peter Britz, Portsmouth Environmental Planner;

John Penacho, Greenland Chair of the Board of Selectmen

Paul Deschaine Stratham Town Administrator

Martha Roy, Newington Town Administrator

Tom Morgan, Newington Town Planner

Clay Mitchel, Newfields Town Planner

Michelle "Shelly" Winters, NHDOT Bureau of Rail and Transit

Cynthia Scarano, Pan Am Railways Executive Vice President

Robert Culliford, Pan Am Railways Chief Council

Leonard O'loughlin, Pan Am Track Inspector

Steve Achilles, Portsmouth Fire Chief

Background:

On February 12, 2014 a coordination meeting between communities was held. At the end of that meeting the communities agreed to invite Pan Am railroad to a meeting to discuss issues of the rail line from Newfield to Newington. Specifically the meeting would give community officials a chance to ask questions of Pan Am regarding capital projects along this section of rail. Therefore the goal of the meeting held on March 5, 2014 was to speak with Pan Am about the current condition of the rail line and any proposed upgrades.

Meeting summary:

Mr. Bohenko called the meeting to order at 11:05am March 5, 2014 and discussed the intention of the meeting which was to bring staff and municipal officials together to discuss the proposed Sea-3 project in Newington and in particular to allow the communities to discuss the project and ask questions of Pan Am railways specific to the increase in rail traffic which would come about if the Sea-3 project currently before the Newington Planning Board were approved. Mr. Bohenko introduced himself and asked others to go around and introduce themselves.

Tom Morgan then gave a brief overview of the Sea-3 proposal in Newington including some background on the company and where the Company's application was in the Municipal review process. Mr. Morgan stated that in November the Newington Planning Board declared this a project of regional significance which gave the communities along the rail from Newfield abutter status in the Town's review. Morgan stated that the Sea-3 proposal is still before the Newington Planning Board and would next be heard on Monday March 10, 2014 at 6:30 in Newington.

Ms. Scarano from Pan Am then stated that she was here with two other Pan Am employees to answer any questions. She specifically wanted to add that Pan Am was not looking for any agreements or permits with communities but would like to provide information as about their operation and how it relates to the Sea-3 project.

The communities went around and gave a brief description of how the rail moves through their communities and a brief description of their concerns.

Ms. Scarano said the Mr. O'Loughlin was the one who is in charge of track inspections and that PanAm is on this branch three times each week and they currently move six cars to Sea-3 and other customers along the line. She explained that the Sea-3 proposal would increase the traffic to six times each week with 12-16 cars each trip. Ms. Scarano has stated that Mr. O'Loughlin was slated for an upgrade of the tracks to include 10,000 new ties from Newfields Junction to Newington. She also stated that Mr. O'Loughlin was present during the latest inspection of the lines with the Federal Rail Administration on January 23, 2014 and that there were three minor repairs needed which were taken care of. At that time there were no major deficiencies found and service was not stopped or interrupted. Mr. Penacho asked if the rail was covered in snow and did that limit the inspection. Mr. O'Loughlin said that they were only able to inspect what they could see. They would go back in the spring and be able to do a more complete inspection. Ms. Scarano mentioned that the president of Pan Am Mr. Fink invited the FRA inspectors to bring their ultrasonic inspection car to check the tracks before the Sea-3 project begins.

Mr. Deschaines from Stratham stated that they have a small amount of track in their community but they have a key crossing at Sandy point a trestle over the Squamscott and the tracks go very close to a couple of neighborhoods. He has real concerns about incidents which could occur with the increase in traffic and the need for mutual aid if they do occur.

Mr. Penacho had questions about whether Pan Am had any plans to upgrade the tracks and asked for an explanation of the class of tracks currently. Pan Am stated that the tracks are currently a Class I track which means they need to be inspected every week and are limited to speeds up to 10mph. They are planning on upgrading the tracks to a Class II. Class II tracks must be inspected twice a week and allow for speeds up to 25 miles per hour. Mr. Penacho stated that Greenland has ten crossings and would not like to see the tracks upgraded to class two because people are not familiar with trains going so fast and this would introduce a serious safety concern for his community. Will Pan Am upgrade signs and crossings when they upgrade the tracks. Ms. Scarano said that she

would talk with communities about crossings but that the crossings were considered as part of the roadway not necessarily the railroad.

Mr. Bohenko asked if there were plans to gate crossings, to which Ms. Scarano said she is willing to discuss this with communities or the State depending on the type of crossing but it is typically done on a case by case basis. Mr. Allen asked about the section of excepted track in Portsmouth and whether trains would be allowed to idle overnight. Pan Am stated that they had no plans to allow trains to idle overnight in Portsmouth and that the portion of excepted track in Portsmouth would be upgraded if the Sea-3 project is approved.

There was fairly lengthy discussion about emergency response and emergency spill plans along the route. Pan Am said they have extensive safety protocols in place and they also train and work with local fire departments and regional response teams to make sure all training protocols are up-to-date. Chief Achilles stated that they sent some staff to training in Dover and they also are part of the regional response team. However, he thought it would be important for each community to receive individual haz mat training to make sure each department has some staff trained in hazardous response to rail incidents.

Mr. Deschaines had some questions about the safety of tank cars and the inspection process. Pan Am stated that the tank cars are not owned by Pan Am, that the shipper may own the cars or they lease them. There are fairly strict inspection protocols and the Federal Rail administration checks up on these. Mr. Deschaines asked if they had pressure tests on the cars and if there was a record of these. Pan Am said that there are specific rules in the AAR rules or FAA tank car rules which deal with tank car inspections and inspection records which may address how to insure tank car inspections are up-to-date but it is dependant on the companies to insure the tank cars inspections and records are up-to-date.

Mr. Mitchell stated they recently had an incident in Newfields junction and one concern for them is the lack of water at that site so putting out fires could be problematic in the future.

The discussion then turned back to rail crossings and PanAm stated that each crossing status was determined by the amount of traffic and the type of roadway crossing the rail. Ms. Scarano said that the basic rule is that what makes it a railroad is their duty to keep up and what makes it a road is the duty of the private, local or state to maintain. She stated there may be some state money for state crossing but she knew this was somewhat limited. Mr. Culliford stated that there are specific AASHTO standards for rail crossings and that if you do a little research you will see that standards that regulate crossings have a decent amount of safety built into them. Mr. Deschaines and Mr. Bohenko let the railroad know that they would be interested in having them come before their Select Board and City Council respectively to answer questions in the future. Pan Am was agreeable to that and stated they would send out a packet of information to try to anticipate frequently asked questions about the Railroad. Mr. Bohenko thanked everyone for coming and concluded the meeting.