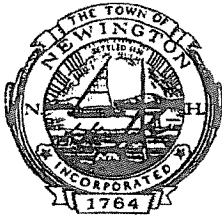


EXHIBIT H



PLANNING
BOARD

The Town of Newington New Hampshire

Incorporated 1764

May 21, 2014

Paul Bogan, Vice President
Sea-3
190 Shattuck Way
Newington, NH 03801

RE: Proposed Terminal Expansion, 190 Shattuck Way,
Tax Map 14 Lot 2, and Map 20, Lot 13

Dear Mr Bogan:


On May 19, 2014, the Newington Planning Board voted to approve your proposal to reconfigure your terminal in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and to export same via ocean-going ships and via truck to customers in New England. The vote was subject to the following stipulations:

- 1) Trucks exiting the SEA-3 facility shall make a right hand turn only and shall travel north on Shattuck Way to the Spaulding Turnpike's Exit 4.
- 2) The SEA-3 facility shall be authorized to receive no more than 16 rail tank cars carrying LPG per day. Any proposal by SEA-3 to receive more than 16 tank cars carrying LPG per day shall require further site plan review and approval by the Newington Planning Board.
- 3) Any lease between SEA-3 and Pan Am (or their successors or assigns) on land leased to SEA-3 for the siting of the unloading racks and other improvements to be constructed and operated by SEA-3 on such leased land, shall contain a provision that SEA-3 shall remove all such improvements prior to any termination of the lease. The lease shall further provide that if SEA-3's operation is ever moved or discontinued, such improvements shall not be transferred to Pan Am. These required lease provisions shall be submitted to the Planning Board for review and approval by the Board and its legal counsel, and any proposal to amend such lease provisions shall require the pre-approval of the Planning Board.
- 4) The final design and plan shall meet the requirements of the N.H. Fire Code and the NFPA Code, per the opinion of the Newington Fire Chief and the Town's Fire Safety Consultants.

- 5) Several safety plans were adopted in conjunction with the original SEA-3 site plan approval. They shall be reviewed by SEA-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.
- 6) If, after the track has been upgraded to a Class II status, SEA-3 learns, or has reason to know, that the Class II track has degraded to a lower level of service, or there is a carrier mandated reduction in rail car deliveries to 5 cars or less, the Selectmen and the Planning Board shall be notified in writing by SEA-3 of this reduction in the level of service within seven (7) business days of receiving such information. This is to allow Newington officials to notify the proper authorities.

Should you have any questions on this matter, feel free to contact me, or Town Planner Tom Morgan, at 436-1252.

Yours truly,



Denis Hebert, Chairman
Newington Planning Board

cc: Alec McEachern, Esq.
Cynthia Scarano, Pan Am Railways

**TOWN OF NEWINGTON
PLANNING BOARD FINDINGS AND CONDITIONS OF APPROVAL
SEA-3, INC. SITE PLAN APPROVAL
190 SHATTUCK WAY**

FINDINGS

1. The applicant's proposal seeks to improve the site's existing rail off-loading facilities for liquefied propane gas ("LPG") and add additional LPG rail off-loading facilities on its property and on property to be leased from Pan Am Railways.
2. The purpose of the proposed site improvements is to allow the applicant to continue its historical LPG distribution operations by increasing the capability to receive domestically sourced LPG, which is only available by railroad. The existing capacity to receive internationally sourced LPG from ocean vessels would be unchanged.
3. The Board finds that the shipment by rail of LPG via rail to the SEA-3 facility at 190 Shattuck Way has been occurring since 1995, consistent with the existing site plan approval that SEA-3 has obtained from the Planning Board.
4. If constructed, the proposed site improvements would not materially change operations on the site, which would continue to meet local propane gas distribution needs through its existing truck distribution facilities.
5. LPG is a combustible, non-toxic gas that evaporates into the atmosphere upon discharge.
6. The applicant's site is manned 24 hours a day, 365 days a year, by personnel who are trained in emergency safety response procedures.
7. The Board finds that SEA-3 has a long history of facilitating and providing LPG fire safety training and incident response training to its personnel and to other public safety personnel, both in Newington and in the region. Further, that Mr. Bogans of SEA-3 has represented that these training opportunities would continue to be available to Newington's firefighters and public safety professionals, and to other communities in the region.

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

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

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

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

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

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

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

12. That Ms. Scarano of Pan Am represented to the Board, on the issue of fire incident response training and safety, that Pan Am

often worked with the Federal Railroad Administration [FRA] to provide a day of training for local fire departments.

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

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

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

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

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

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

19. The proposed site improvements would add a second means of emergency access to the site over the property of Pan Am Railways.

20. The proposed site improvements would maintain the site's existing vegetative buffers and add a 6-8' earthen berm at the southeastern corner of the site, within the existing fence line, where the site abuts a residential use.

21. The proposed site improvements will result in no change to the site's existing motor vehicle parking or truck distribution facilities.

22. Mr. Hazarvartian, P.E. of Transportation Engineering, Planning and Policy, performed a traffic assessment for the applicant and concluded that the proposed site plan would not alter the historic truck traffic volume which averaged 103 to 161 trucks per day, from 2002 to the present (excepting 2012 and 2013, which were substantially below these numbers due to market conditions).

23. Mr. Bogans testified that there are site constraints that limit the number of LPG rail cars that SEA-3 can receive to 16 rail car tankers with LPG per day, even with the site improvements proposed by this application. (3/24/14 PB mtg. minutes).

24. Mr. Grotenhuis, Senior P.E. of RSG, reviewed for the Planning Board the applicant's traffic assessment and concluded that the truck traffic volume would remain essentially the same, at 160 trucks on average per day. He further found that ongoing changes to the Spaulding Turnpike may alleviate some of the traffic down Woodbury Avenue and through Portsmouth.

25. Based on the evidence presented, the site plan proposal will not increase the truck traffic to and from the site.

26. The proposed site improvements will not change the site's existing distribution capacity or increase traffic impacts associated with existing uses on the site.

27. The motor vehicle area of the proposed site improvements is currently hard packed gravel and will remain hard packed gravel, with the exception of where the improvements are affixed to the ground.

28. The proposed site improvements will result in no adverse change to existing dust, erosion or run-off conditions.
29. The proposed site improvements will upgrade the existing storm drainage system.
30. The applicant has received Shoreland Impact Permit No. 2014-00105, a copy of which was provided to the Planning Department by e-mail dated March 24, 2014.
31. The applicant has received Alteration of Terrain Permit No. AoT-0695, a copy of which was provided to the Planning Department by e-mail dated March 24, 2014.
32. The proposed site improvements will not alter the existing security lighting, which was installed in accordance with a security lighting plan required and approved by the U.S. Department of Homeland Security.
33. In its April 21, 2014 letter to the Planning Board, Pan Am Railways confirmed in writing that it will lease a portion of its land to the applicant for a portion of the proposed site improvements, but advised the Board of its position that Pan Am Railways is not the applicant. It is not asking the Board for any approvals and it is not subject to the Town's land use regulations. Pan Am is assenting to this application to the extent that a portion of the improvements are located on property that it will lease to SEA-3.
34. John Robinson, the N.H. Railway Safety Inspector at the N.H. Department of Transportation, testified that he met with Portsmouth officials to discuss track inspection issues.
35. Mr. Robinson testified that Pan Am would only be able to move 5 tank cars at a time to the SEA-3 facility over the tracks north of Rockingham Junction while the tracks were in their current condition (3/24/14 PB mtg. minutes).
36. Mr. Robinson said that he (as N.H. DOT's representative) and the FRA over joint track inspections of the Portsmouth and Newington branch line.
37. Mr. Robinson testified that N.H. RSA Chapter 373 governs the process by which N.H. municipalities can request a change of safety protection at railroad-roadway crossings. This is a N.H. DOT administrative hearing process that would examine whether the safety protections at the crossing are adequate, and if not,

who would be responsible for the upgrades and how that cost would be allocated.

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

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

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

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

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

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

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

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

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

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

48. While the Planning Board received and reviewed a report prepared by the Massachusetts Department of Transportation entitled, "Report on the Safety Impacts of Ethanol Transportation by Rail" dated March 29, 2013, the Board finds that the circumstances of this study are not related to this application, as the product being transported in Massachusetts is different (ethanol in Boston vs. LPG in N.H.). The Massachusetts Legislature adopted a law in 2012 that required the Massachusetts DOT to commission this study; there are Massachusetts state permits required to transport ethanol through Boston that are not pertinent to New Hampshire. Most importantly, the rail lines within the Massachusetts study area over which the ethanol would travel are owned by the MBTA, and not by private rail carriers such as Pan Am.

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

50. The Board expressly finds that this proposed expansion of a long-standing use that is permitted in the Industrial Zone is consistent with the aim of Newington Zoning Ordinance Article V,

section 5, A, which anticipates that land zoned Industrial will be able to accommodate "expansion of existing industry...and to enhance economic development and employment opportunities."

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

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

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

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

CONDITIONS OF APPROVAL

1. Trucks exiting the SEA-3 facility shall make a right hand turn only and shall travel north on Shattuck Way to the Spaulding Turnpike's Exit 4.

2. The SEA-3 facility shall be authorized to receive no more than 16 rail tank cars carrying LPG per day. Any proposal by SEA-3 to receive more than 16 tank cars carrying LPG per day shall require further site plan review and approval by the Newington Planning Board.

3. Any lease between SEA-3 and Pan Am (or their successors or assigns) on land leased to SEA-3 for the siting of the unloading racks and other improvements to be constructed and operated by

SEA-3 on such leased land, shall contain a provision that SEA-3 shall remove all such improvements prior to any termination of the lease. The lease shall further provide that if SEA-3's operation is ever moved or discontinued, such improvements shall not be transferred to Pan Am. These required lease provisions shall be submitted to the Planning Board for review and approval by the Board and its legal counsel, and any proposal to amend such lease provisions shall require the pre-approval of the Planning Board.

4. The final design and plan shall meet the requirements of the N.H. Fire Code and the NFPA Code, per the opinion of the Newington Fire Chief and the Town's Fire Safety Consultants.

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

6. If, after the track has been upgraded to a Class II status, SEA-3 learns, or has reason to know, that the Class II track has degraded to a lower level of service, or there is a carrier mandated reduction in rail car deliveries to 5 cars or less, the Selectmen and the Planning Board shall be notified in writing by SEA-3 of this reduction in the level of service within seven (7) business days of receiving such information. This is to allow Newington officials to notify the proper authorities.

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