

**City of Keene**  
**New Hampshire**

**PLANNING BOARD**  
**MEETING MINUTES**

**Monday, June 26, 2023**

**6:30 PM**

**Council Chambers,  
City Hall**

**Members Present:**

Harold Farrington, Chair  
David Orgaz, Vice Chair  
Mayor George S. Hansel  
Councilor Michael Remy  
Emily Lavigne-Bernier  
Roberta Mastrogiovanni  
Armando Rangel  
Ryan Clancy  
Randyn Markelon, Alternate  
Kenneth Kost, Alternate

**Staff Present:**

Mari Brunner, Senior Planner  
Evan Clements, Planner  
Megan Fortson, Planning Technician

**Members Not Present:**

Gail Somers, Alternate  
Tammy Adams, Alternate

**I) Call to Order – Roll Call**

Chair Farrington called the meeting to order at 6:30 PM and a roll call was taken.

**II) Minutes of Previous Meeting – May 22, 2023**

Chair Farrington offered the following corrections:

Line 214 amend the word “conversation” “*conservation*”

Line 552 amend the word “butter” to “abutter”

Line 852 add the word *interesting*

A motion was made by Mayor George Hansel that the Planning Board approve the May 22, 2023 meeting minutes as amended. The motion was seconded by Councilor Michael Remy and was unanimously approved.

**III) Final Vote on Conditional Approvals**

Chair Farrington stated as a matter of practice, the Board will now issue a final vote on all conditionally approved plans after all of the “conditions precedent” have been met. This final vote will be the final approval and will start the 30-day appeal clock. He asked staff whether there were any applications tonight that are ready for a final vote.

Ms. Brunner stated there were applications ready for a final vote tonight. The first one is a boundary line adjustment S-02-23 between the properties located at 190 & 196 South Lincoln Street. This application had four conditions precedent: Submittal of the required number of copies; Owner’s signature appears on the plan; Submittal a check to cover the cost of recording the plans; Inspection of lot monuments by the Public Works Director. Ms. Brunner stated all these conditions have been satisfied and the applicant is looking for final approval.

Ms. Lavigne-Bernier asked to be recused from voting on this item, noting that she has a conflict of interest as an owner of one of the subject properties.

A motion was made by Mayor George Hansel that the Planning Board issue final site plan approval for S-02-23 boundary line adjustment. The motion was seconded by Councilor Michael Remy and carried on a unanimous vote. Emily Lavigne-Bernier did not participate in the vote.

The second item is the site plan application for Covenant Living of Keene – SPR-11-16, Modification # 10 for properties at 95, 100, and 118 Wyman Road. Ms. Brunner indicated this came before the Board more than six months ago for modifications to the walkways and landscaping on the site. There were four conditions precedent but one of them took some time because it required getting a license from City Council to place infrastructure within the public right of way. Ms. Brunner indicated all conditions have been met, which include: Owner's signature on the plan; Submittal of the required numbers of copies, and conditions 3 and 4 were met through the same action which was to get the license from City Council and that license documentation includes written acknowledgement that the proposed pedestrian improvements do not serve the general public and will not be maintained by the City. All conditions have been met.

A motion was made by Mayor George Hansel that the Planning Board issue final site plan approval for SPR-16, Modification #10. The motion was seconded by Councilor Michael Remy and was unanimously approved.

#### **IV) Review of Developments of Regional Impact**

The Chair indicated this item was moved up on the agenda as this item will have an impact on the rest of the items on the agenda and asked for staff comments.

Ms. Brunner stated this item came up at the NHPA - New Hampshire Planners Association Spring meeting. Staff was in attendance during the legislative session and heard an update on a recent Supreme Court decision. She indicated the actual Supreme Court decision is not the issue. The issue was that staff became aware of the fact that reviewing and making a determination on developments of regional impact is a requirement under state law. If it is not done and an

approval is later challenged and is discovered the development had regional impact and the Board did not follow the correct process – this could become an issue later on. Hence, staff is recommending as a matter of practice the Board start making a determination as to whether or not any project that comes before the Board has regional impact. If staff sees something that they think could be a development of regional impact, it will be referred to the Board right away so the process can get started.

Ms. Brunner explained if the Board decides an item is a development of regional impact (DRI), it means that the Board has now accorded abutter status to the Regional Planning Commission as well as any affected municipalities. There are strict timeframes in state law that need to be followed, including within five business days of the date when the determination of regional impact was made, the City has to provide minutes of that meeting to the Regional Planning Commission and the municipalities by certified mail and then within 14 days of the public hearing the City has to send them notice of the public hearing by certified mail.

In terms of what is a development of regional impact, it is not very specific in the RSA. The RSA provides some guidance. The RSA does say that Regional Planning Commissions can publish guidance on that topic. Ms. Brunner stated she has not been able to find anything for Southwest Region Planning Commission and has not had the opportunity to discuss this item with the Commission. She noted, however, there is some guidance published by the Rockingham Planning Commission as well as the Strafford Regional Planning Commission. What the RSA is trying to provide is whether a large development near a municipal boundary could be impacting another municipality in terms of water resources or other services, such as schools, solid waste disposal facilities, or a proposal that will generate a large amount of traffic compared to what is normally in that area etc. Ms. Brunner stated Regional Planning Commissions that have published guidance have specific numbers that they have proposed as thresholds which this Board could consider using. However, she added she is still hoping to hear back from Southwest Region Planning Commission to see if they have specific guidance for our region.

Chair Farrington asked whether the Board will vote as to whether a project is a development of regional impact. Ms. Brunner stated if there is a doubt or if someone raises a question then it should be a vote and the language in the RSA says if there is doubt the Board should find it to be a DRI.

Mr. Clements added the Supreme Court case in question is that because that Planning Board deliberated the potential for the project to be a DRI; that was enough to meet the intent of the RSA. Mr. Clements reiterated the reason this is an important issue is if a project gets appealed and it gets determined it was a development of regional impact, then the Court can completely void the approval and send it back to the beginning of the process.

Mr. Kost asked whether there will be added clarification of the six items outlined, which seem vague. Ms. Brunner stated the only guidance the RSA provides is what is included in the Memo. She added she does have a checklist prepared by Regional Planning Commissions in other parts of the state but has not yet been able to find anything specific for our region and has not had the opportunity to speak with anyone from Southwest Region Planning Commission yet.

Ms. Brunner went over some of the checklist items from the Rockingham Planning Commission as follows:

1. *Does the development create significant new student population affecting a regional school district?* \_\_\_ Yes \_\_\_ No
2. *Will the project generate more than 500 vehicle trips per day?* \_\_\_ Yes \_\_\_ No
3. *Does the development provide the opportunity to create a more efficient road network for the regional area or potentially affect regional travel patterns?* \_\_\_ Yes \_\_\_ No

She indicated there are approximately 12 questions and if the answer is yes to any of these questions, then the proposed project has regional impact. The City does not have similar guidance at this time and it would be up to the Board based on what the RSA says but added she will also reach out to Southwest Region Planning Commission for more guidance.

V) **Continued Public Hearing**

- 1) **SPR-967, Modification #7A – Site Plan – Railroad Land Parking Lot Landscaping Modifications – 0 Cypress St - Applicant and owner Railroad Street Condominium Association proposes to remove and replace seven trees with thirty-four shrubs on the property at 0 Cypress St (TMP #574-041-000). The site is 5.54 ac and is located in the Downtown Core District.**

A. **Public Hearing**

Mr. Keith Thibault of Southwestern Community Services (SCS) who manages the Railroad Street Condominium addressed the Board and stated he was before the Board last month to discuss replacing some plantings with a different species on one of their islands. He indicated they had discussed this item with some professionals in the field. Given the size of the island and the location of the island, the trees are having a difficult time “keeping their feet wet”. There are seven trees that have failed in this location and there is no way to get additional water to this location. Mr. Thibault stated their request is to replace these seven trees with what has thrived in the location; Dwarf Inkberry. This plant will provide a nice cover and color for the area.

Vice-Chair Orgaz asked whether the stumps of the trees will be removed. Mr. Thibault answered in the affirmative.

The Chair asked for staff comments.

Ms. Brunner stated staff does not have much to add to what the applicant has stated. Staff was waiting for the applicant to make their final decision.

The Chairman asked for public comments next. With no comments from the public, the public hearing was closed.

B. **Board Discussion and Action**

A motion was made by Mayor George Hansel that the Planning Board approve SPR-967, Modification #7A as shown on the plan identified as “Proposed Plantings, SCS Railroad St. Condo, Southwestern Community Services, 63 Community Way, Keene, NH” prepared by SVE Associates at a scale of 1 inch = 10 feet on March 24, 2023 and last revised on April 28, 2023, with the following conditions precedent prior to final approval and signature by the Planning Board Chair:

1. 1. Owner’s signature appears on the final plan.
2. 2. Submittal of five full-size paper copies and one digital copy of the final plan.
3. 3. Submittal of a security to cover the cost of landscaping in a form and amount acceptable to the Community Development Director or their designee.”

The motion was seconded by Councilor Michael Remy and was unanimously approved.

Councilor Remy noted there was no regional impact from this development. Ms. Brunner agreed that staff did not feel there was any regional impact from this project.

**VI) Boundary Line Adjustment**

- 1) **S-04-23 – Boundary Line Adjustment – 26 Prospect St & 361 Court St – Applicant James Knight, on behalf of owners James & Anne Knight & 361 Court St LLC, proposes a boundary line adjustment between the properties at 26 Prospect St & 361 Court St (TMP #s 537-057-000 & 537-056-000). This adjustment will result in the transfer of ~0.03 ac from the ~0.775 ac parcel at 361 Court St to the ~0.305 ac lot at 26 Prospect St. Both properties are located in the Medium Density District.**

A. Board Determination of Completeness

Planner Evan Clements stated the applicant has requested exemptions from submitting a drainage report, traffic analysis, soils analysis, and all other technical reports. Staff has determined that the requested exemptions would have no bearing on the merits of the application and recommend that the Board accept the application as complete.

A motion was made by Mayor George Hansel to accept Application S-04-23 as complete. The motion was seconded by Councilor Michael Remy and was unanimously approved.

B. Public Hearing

Mr. James Knight and Ms. Anne Knight, applicants addressed the Board. Mr. Knight stated they have had conversations with prior owners and the Board of Directors at Prospect Place in the past and these individuals have not had any interest in their proposal. He indicated there are trees on the neighbor’s boundary line that are impacting the safety of their home. He noted they have spent nearly \$70,000 on roof work on their home and want to take down these trees because of the structural condition of the trees. Mr. Knight indicated they have had conversations with potential owners of the property who have been amiable to the proposal, but none of them ended up purchasing the property. However, Ryan Gagne and his LLC have been amiable to this transfer.

Mr. Knight stated nothing will be done to the property except for perhaps trimming brush and upkeep of the property. No structures will be constructed on the property.

Ms. Knight stated the reason they are asking for this boundary line adjustment is because their home was constructed in 1850 and at that time there were no regulations regarding lot size etc. She noted at the western side of the property the boundary line is only five feet from their house; the top of their hedges are going over the boundary line and hence the request to adjust the boundary line. She added they are not asking for their property to be larger but a small adjustment on that side of the property.

Staff comments were next. Mr. Clements stated the request is straight forward. The request is for a boundary line adjustment with a transfer of a little under 1,500 square feet of property from 361 Court Street to 26 Prospect Street.

Mr. Clements went on to say after reviewing the application, staff have made a preliminary evaluation that the proposed boundary line adjustment does not appear to have the potential for “regional impact” as defined in RSA 36:55. The Board will need to make a final determination as to whether or not the proposal, if approved, could have the potential for regional impact.

He added there is no development being proposed so the development standards don’t apply. Mr. Clements stated there is an easement at the present time that is solely located on 361 Court Street for a utility box which was owned by the telephone company; Consolidated Communications might currently own the box. By moving the boundary line, the easement would be located on both properties. This however does not impact the City and is an issue that would need to be resolved between the property owners.

Mr. Clements reviewed the recommended conditions precedent as follows: Submittal of four (4) full-sized paper copies, two (2) mylar copies, and a digital copy of the final plan; Owners’ signatures on the plan; \$51.00 made out to the City of Keene to cover the cost of recording the final plat; City Engineer will need to inspect pins after they have been set.

Councilor Remy stated he agrees with staff that he does not see any regional impact from this application.

The Chair asked for public comment.

Ms. Jane Miller from Consolidated Communications addressed the Board and indicated they own the easement. She indicated she had checked with her legal department as to whether a new easement would be required based on this adjustment, but they have indicated the current easement would go along with the lay of the land and both property owners will be responsible and added she has copies of documentation she could provide to the Knights and once the adjustment is made an amended copy will be provided to them.

With no further comment from the public the Chair closed the public hearing.

C. Board Discussion and Action

A motion was made by Mayor George Hansel that the Planning Board approve S-04-23 for a boundary line adjustment between the properties located at 361 Court St. (TMP# 537-056-000) and 26 Prospect St. (TMP# 537-057-000) as shown on the plan identified as “Boundary Line Adjustment Plan” prepared by David A. Mann Survey at a scale of 1” = 20’ dated August 31, 2022, with the following conditions precedent to final approval and signature by the Planning Board Chair:

1. Submittal of four (4) full-sized paper copies, two (2) mylar copies, and a digital copy of the final plan.
2. Owners’ signatures appear on the plan.
3. Submittal of a check in the amount of \$51.00 made out to the City of Keene to cover the cost of recording the final plat.
4. Inspection of lot monuments by the Public Works Director or their designee following their installation or the submittal of a security in an amount deemed satisfactory to the Public Works Director to ensure that the monuments will be set.”

The motion was seconded by Councilor Michael Remy and was unanimously approved.

#### **VII) Staff Updates**

Ms. Brunner reminded the Board that the Master Plan update is coming up soon and staff will be providing an update.

#### **VIII) New Business**

Councilor Remy asked whether regional impact needs to be addressed before Completeness due to stacking clocks that might happen. Ms. Brunner stated this is something staff is looking at as well and felt it could be done either way. However, state RSA does provide extra time to consider regional impact (an extra 30 days). She added going forward, to avoid this issue if staff feels an item could have regional impact it will be referred to the Planning Board right away for a DRI determination. Ms. Brunner explained the deadline for a Planning Board meeting is six weeks ahead of time, which will give staff enough time to get it on the Board agenda for the earlier meeting. If it is determined to be a DRI, that will provide enough time to get all required noticing done before the Planning Board meeting where the public hearing will be opened.

For projects where staff do not think an item is likely to have regional impact, it will move forward following the usual process. However, there is always the extra time should the Board disagree with staff.

Mayor Hansel felt until the Board has information as to what would constitute regional impact locally, it can probably be done via consensus.

#### **IX) Upcoming Dates of Interest**

- Joint Committee of the Planning Board and PLD – July 10, 6:30 PM

- Planning Board Steering Committee – July 11, 11:00 AM
- Planning Board Site Visit – July 19, 8:00 AM – To Be Confirmed
- Planning Board Meeting – July 24, 6:30 PM

**X) Adjournment**

There being no further business, Chair Farrington adjourned the meeting at 7:11 PM.

Respectfully submitted by,  
Krishni Pahl, Minute Taker

Reviewed and edited by,  
Mari Brunner, Senior Planner