



City of Keene Planning Board

AGENDA

Friday, September 26, 2025

6:00 PM

City Hall, 2nd Floor Council
Chambers

A. AGENDA ITEMS

1) Motion to Rehear

PB-2024-20 – A Motion to Rehear PB-2024-20 relative to a Major Amendment to an Issued Earth Excavation Permit for the properties located at 21 and 57 Route 9 in Keene has been submitted by James Manley of Sullivan, NH.

B. MORE TIME ITEMS

- 1) Potential Modifications to the Site Plan Review Thresholds
- 2) Training on Site Development Standards – Snow Storage & Landscaping

C. ADJOURNMENT

THE STATE OF NEW HAMPSHIRE

CHESHIRE COUNTY

**CITY OF KEENE
PLANNING BOARD**

IN RE: G2 HOLDINGS, LLC

Case No. PB-2024-20

MOTION FOR REHEARING

NOW COMES James Manley, by and through his attorneys, Tarbell & Brodich, Professional Association, and files this *Motion for Rehearing*, and in support thereof states the following:

1. On Monday, September 08, 2025, the city of Keene planning board (board) approved an RSA chapter 155-E excavation permit in favor of applicant, G2 Holdings, LLC (G2). On this 18th day of September 2025, and pursuant to RSA 155-E:9, James Manley respectfully requests the board to reconsider its approval and grant this motion for rehearing.

2. The board violated RSA 155-E:4. It is axiomatic that when used in a statute the word “shall” is a command. When a statute uses the word “shall” there is no discretion. *Whitney v. Watson*, 85 N.H. 238 (1931). RSA 155-E:4 expressly prohibited this board¹ from approving G2’s excavation permit. To be sure, RSA 155-E:4 starts off by stating “[t]he regulator shall not grant a permit” if any one of eight statutorily prohibited conditions exist. *See* RSA 155-E:4, I-VIII. Thus, by its own terms, RSA 155-E:4 prohibited this board from granting G2’s proposal because the uncontroverted evidence before the board demonstrated that G2’s proposal violates RSA 155-E:4, IV and V.

3. RSA 155-E:4, IV prohibits the approval of any proposal that would be unduly hazardous or injurious to the public welfare. It is true the board spent considerable time contemplating,

¹ RSA 155-E:1, III(a) defines “regulator” as a planning board.

reflecting, and understanding evidence relating to ground water and acid mine drainage. Yet, the board's myopic focus on the technical aspects of potential groundwater acidity must be juxtaposed with the board's ignoring of the uncontroverted evidence relating to dust, noise, and a decrease in property values. To point a fine point on it, the board did not at all address –let alone acknowledge– the public's clearly articulated empirical evidence of existing dust and noise at G2's existing excavation operations. The public's testimony was that G2's operations are terribly noisy and negatively affect air quality, and the residents' quality of life. Additionally, the board ignored the public's testimony regarding the decrease in their property values due to G2's existing and proposed excavation operations. Because evidence existed that G2's proposal would be unduly hazardous or injurious to the public welfare, the board was prohibited from approving G2's application. RSA 155-E:4. The board's approval, therefore, violates RSA 155-E:4.

4. The board's approval also violated RSA 155-E:4, V. That provision prohibits approval of any excavation project "[w]here existing visual barriers in the areas specified in RSA 155-E:3, III would be removed, except to provide access to the excavation." RSA 155-E:3, III requires "[a] sketch and description of the access and visual barriers to public highways to be utilized in the proposed excavation." Read together, as they must, *State v. Patterson*, 145 N.H. 462, 464 (2000) (statutory references require reading statutes together); *Franklin v. Town of Newport*, 151 N.H. 508, 510 (2004) (all parts of a statute are construed together to effectuate its overall purpose and avoid an absurd or unjust result), RSA 155-E:4, V and RSA 155-E:3, III prohibit excavation projects that are visible from public highways.

5. First, it cannot be overstated or overlooked that G2 never provided an RSA 155-E:3, III sketch and description. Second, the board heard uncontroverted testimony that G2's existing

excavation operations are visible from Route 9. Route 9 is undeniably a public highway. The board also heard uncontroverted testimony from G2 itself that G2's proposed expansion would be higher up Nims Hill than G2's existing operations –meaning G2's proposed excavation will be more visible from Route 9 than the existing excavation. G2's representative made a very nuanced –and telling– statement about visibility: that visibility is not an issue from the single perspective of standing on the ground at the entrance of G2's operation. The board must notice this distinction of critical difference. Taking G2's representative's statement on its face as one must, all that statement says is that standing at the entrance of G2's site along Route 9 the excavation operations are not visible from the entrance. What G2's representative's statement omitted –and what the public pointed out– is that G2's current and proposed excavation are, and will be, visible from adjacent points along Route 9. RSA 155-E:4, V and RSA 155-E:3, III represent the Legislature's manifestation of New Hampshire public policy regarding excavation sites: such sites are permitted as long as they are not visible from a public highway. Just as G2's existing excavation is visible from Route 9, so, too, will be its proposed, expanded excavation. By approving G2's proposed excavation which will be visible from Route 9 the board violated RSA 155-E:4.²

6. The board violated its own regulations. The board's excavation permit regulations require a study when the proposal contemplates more than 100 vehicle trips per day. In this case G2's application stated there would be no change from its existing 74 trips per day. A trip is one way; two trips is to go and return. Hence, in terms of gravel operations 74 trips means 37 truck loads in and out per day. Yet, in support of its companion application filed with the Town of

² In this respect, the board's approval also violates LDC § 25.2(E), which prohibits approval of any proposal that "When the existing visual barriers in the areas specified in NH RSA 155-E:3, III, would be removed, except to provide access to the excavation." This motion rehearing addresses other regulatory, as opposed to statutory, violations below.

Sullivan, G2's principal expressly stated to the Town of Sullivan zoning board of adjustment that its expanded operations would have in excess of 37 truckloads per day, and in fact testified that it was "60-75 truckloads per day." 60 to 75 truckloads per day translates to 120 to 150 trips per day. The board had this evidence in the form of the official minutes from the Town of Sullivan zoning board of adjustment where at G2's principal made the representation in support of G2's excavation permit special exception to the Town of Sullivan. It was not a stray or superfluous comment. It was a comment made by G2 itself in support of G2's application to obtain a permit to expand its excavation operations into the Town of Sullivan. Plainly enough G2 itself misrepresented to the board the impact and scope of its proposed expanded excavation, the consequence of which was the failure to supply the board the required traffic study. Under the City of Keene's Land Development Code (LDC) § 25.3.18(B) "If an applicant proposes to generate 100 or more vehicle trips per day, the applicant shall be required to provide technical studies to demonstrate compliance with this operational standard." 100 vehicle trips per day is 50 truckloads. Again, G2 testified that it plans 60 to 75 truckloads per day, which is between 120 to 150 trips per day. Importantly, G2 neither sought nor obtained a waiver from the traffic study requirement. It was error for the board to accept and approve G2's permit without G2 submitting the required traffic study. It is truly astonishing –unreasonable– that specific evidence relevant to the LDC requirements and the board's duties was simply ignored.

7. The board's approval also violated Keene's excavation permit regulations. Keene's excavation permit regulations are codified in article 25 of the LDC. (Feb. 2025). Identical to RSA 155-E:4, Keene's LDC prohibits the board from approving an excavation permit application that contradicts any one of the seven types of prohibited circumstances. LDC, Art. 25, §25.2(A)-(G). The operative language states: "The Planning Board shall not grant approval

for an earth excavation permit in the following instances.” One of the seven instances relates to health, safety, and welfare.

8. Under Art. 25, §25.2(B) of the LDC, this board is prohibited from approving an excavation permit “[w]hen the issuance of a permit would present a potential hazard to human health, safety and welfare, or to the environment caused by adverse impacts associated with an excavation project. Examples of such hazards include...adverse visual impacts.” LDC §25.2(C) and (E).

9. The board heard uncontroverted testimony that G2’s existing excavation operations are visible from Route 9, and those visible operations are undeniably adverse: G2 has scarred the natural landscape and that scarring is visible from Route 9. Furthermore, the applicable language is “*potential* hazard...to the environment” (emphasis added). Which is to say, the applicable standard does not require an actual hazard; rather, the mere potential of a hazard requires denial.

10. Here, one can see that G2’s existing operations, which are preview of coming attractions, surpass the mere potential of an environmental hazard in adverse visual impacts, to the actual environmental hazard of adverse visual impacts. The flaw G2 has created at its site is one that cannot be unseen. Furthermore, because much of what G2 proposes in its new application involves the removal of ledge, the flaw G2 creates will be permanent because it is exempt from reclamation. RSA 155-E:5, III. This is so, because ledge and ledge face are statutorily exempt from reclamation. RSA 155-E:5. Therefore, granting the permit is a fait accompli for the destruction of the scenic views that LDC §25.2(C) and (E) were created to protect. *See* LDC §25.1.1(4) (purpose of Art. 25 is to “[p]reserve and protect natural resources and the aesthetic quality of areas located near excavation sites”). G2 provided no evidence to contradict the public’s evidence relative to these issues. The board’s decision was, therefore, in violation of

LDC §25.2. In addition to the illegality of the board's approval, the board's approval was unreasonable because the approval sanctions the creation of unreclaimable ledge all of which is visible from Route 9. Make no mistake, G2's plan calls for the creation of 200' ledge faces into the side of Nims Hill. These ledge faces will be visible from Route 9.

11. The board violated LDC §25.2 when it approved G2's application despite evidence that G2's proposal was contrary to LDC §25.2(D). Under LDC §25.2(D) the board is prohibited from approving an application when "the proposed use will be of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area."

12. At least one abutter noted that the blasting noise at G2's existing operations at a different location are disruptive and adversely affect her enjoyment of her home and the area in which she lives. LDC §25.3.15. Another resident who lives in Gilsum described his experience with G2's excavation operations in Gilsum as cracking his foundation. G2's response was that it was not willing to pay or repair of damage caused by its blasting activities that the property owner should just deal with it through his own insurance. G2 provided no evidence to contradict the public's evidence on these issues.

13. The board further violated §25.2 by approving G2's application which runs afoul of LDC §25.2(F). LDC §25.2(F) prohibits approval of any proposal that will "result in the destruction, loss, or damage of any feature determined to be of significant natural, scenic, or historical importance." More than once the board heard testimony about the naming origin of Nims Hill. Nims Hill honors eponymous Ashael Nims who died at the battle of Bunker Hill. Ashael Nims was the only one of the thirty men who deployed from Keene under the command Captain Issac Wyman who did not return home from battle. The board heard numerous individuals testify to the natural beauty and significance of Route 9 as it runs through the Otter Brooke/Granite Gorge

area. The board also heard individuals testify about the aesthetic importance of Otter Brooke/Granite Gorge area to the City of Keene and New Hampshire in general. Furthermore, the board heard testimony that G2's existing excavation has degraded the aesthetics of Route 9 through Otter Brooke/Granite Gorge area, and that G2's proposed expansion would further degrade the aesthetics of Route 9 through Otter Brooke/Granite Gorge area. Therefore, the board's approval ran afoul of LDC §25.2(F).

14. In addition to the violations of RSA 155-E:4, V discussed in ¶4 *et. seq.* relative to the visual and aesthetic issues, G2's proposal and the board's approval of it violate LDC § 25.3.2. That provision mandates:

Buffers around the excavation perimeter shall be sufficiently vegetated to provide full, opaque, and year round screening of the excavation perimeter from adjacent rights-of-way or abutting properties. The intent of this standard is to avoid adverse visual and noise impacts from excavation operations.

(emphasis added). As already stated, the evidence before the board was that G2's current operations, and its proposed expansion, are visible from Route 9. And to the point of LDC § 25.3.2, the current operations are, and the proposed operations will be visible in the spring, summer, fall, and grossly visible in winter. Therefore, the board's approval is an obvious violation of LDC § 25.3.2.

15. The board's September 08, 2025 decision also presents the problem of an improperly accepted and approved application. LDC § 25.3 (Site Design & Operational Standards) states "[a]ll excavation projects requiring an earth excavation permit shall comply with the design and operational standards set forth in this Section. Among other requirements in section 25.3 is that "[e]xcavation shall not be permitted lower than 6-ft above the seasonal high water table, as indicated by borings or test pits, without the issuance of an exception." LDC § 25.3.3(A).

Importantly, G2 never requested, and the board never granted, an exception from LDC § 25.3.3(A) under LDC § 25.3.3(B).

16. In its application G2 was required to identify the high water line of the seasonal high water table. G2 filed its application in December 2024. At the board's August 25, 2025 hearing, G2 and the board both identified the problem that G2 had never identified the high water line of the seasonal high water table. G2's response was that the high water line is only measurable in Spring, when the seasonal high water table naturally is at its highest level. G2 said it was not able to measure the high water line of the seasonal high water table because of the timing of its application, and would, therefore, determine the high water line of the seasonal high water table after the board approved its application. Yet, G2's application was filed before what even G2's experts and representatives stated was the only time of year to measure the high water line of the seasonal high water table: Spring. Remember, G2 submitted its application in December 2024. Spring was the next season after G2 submitted its application. It was disingenuous at best for G2 to claim it was unable to measure the high water line of the seasonal high water table after it submitted its application and before approval when the very season G2 needed to measure occurred while its application was pending.

WHEREFORE, James Manley respectfully requests this Honorable Board:

- A. Grant this motion for rehearing;
- B. Rehear G2's application for excavation permit; and
- C. Grant him such other relief as this Honorable Board deems fair and equitable.

Dated: September 18, 2025

James Manley
By his attorneys

By: /s/ Friedrich K. Moeckel



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