

City of Keene
New Hampshire

PLANNING BOARD
MEETING MINUTES

Monday, September 26, 2025

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Roberta Mastrogiovanni, Vice Chair
Councilor Michael Remy
Sarah Vezzani
Armando Rangel
Kenneth Kost

Staff Present:

Mari Brunner, Senior Planner

Members Not Present:

Harold Farrington, Chair
Mayor Jay V. Kahn
Ryan Clancy
Randyn Markelon, Alternate
Michael Hoefer, Alternate
Tammy Adams, Alternate
Stephon Mehu, Alternate
Joseph Cocivera, Alternate

Vice-Chair Mastrogiovanni called the meeting to order at 6 PM and a roll call was taken

I) Motion to Rehear

- A) 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.**

Senior Planner, Mari Brunner, stated this issue is something that the Planning Board is not familiar with. Ms. Brunner stated Staff have reviewed this item with legal counsel to put together a memo for the Board outlining the standard of review for this evening. She noted this is not a public hearing. This is a meeting for the Board to decide whether or not there is reasonable basis for scheduling a rehearing. Ms. Brunner noted State Statute RSA 155-E:9 is the statute that addresses appeals, which also references RSA 677:3. Both of these RSAs set the standard as to whether the Board's decision was unlawful or unreasonable. She stated, in consideration of the motion for rehearing, the Board should review whether the motion has set out facts of law that the Planning Board has overlooked or misapprehended. The Planning Board should only grant a rehearing if the requester could demonstrate that the Planning Board committed technical error

or that there is new evidence that was not available at the time of the first hearing. Ms. Brunner noted that to assist with this analysis, there are four questions outlined in the Board's packet.

1. Is there new evidence that is being offered that the requesting party could not have had available to them through reasonable diligence at the last hearing?
2. Is there a legal standard that was misapplied?
3. Was there evidence or facts that were misstated or misunderstood?
4. Were there factual determinations made for which there was no written evidence or testimony provided in support?

Ms. Brunner continued by stating that there was a response to the motion for a rehearing that was submitted by the attorneys for the applicant, G2 Holdings, and then a subsequent response to that response was submitted by the petitioner, Mr. Manley, through his attorney. This information has been provided to the Board but noted it was only provided to the Board a few minutes ago. Ms. Brunner added representatives from both entities are here this evening, should the Board wish to hear from them, but the Board is not compelled to do so as this is not a public hearing.

Councilor Remy stated the initial response letter calls into question the standing of the individual requesting the motion for rehearing and their right to ask for a motion for rehearing because they are not an abutter in the City of Keene. Mr. Remy asked whether staff had any comment on that. Ms. Brunner stated her understanding is RSA155-E:9 states that *any interested person affected by such decision may appeal to the regulator for hearing on such decision or any matter determined thereby*. In this instance, the person who submitted the appeal is a direct abutter to the overall property. The property is bifurcated by a town line, so they are not a direct abutter to the portion of the property that is in Keene. She stated this is something for the Board to consider.

Ms. Vezzani agreed the language is vague with reference to interested party and perhaps it is designed as such so that the interested party would be just that. With respect to the response, the narrative indicates they are an interested person and they explain.

Vice-Chair Mastrogiovanni stated the other option would be to listen to the parties.

Vice-Chair Mastrogiovanni asked where Sullivan stands on this project. Ms. Brunner stated Sullivan's public hearing is not until around October 15. The Vice-Chair asked what impact the Sullivan decision has on Keene's decision. Ms. Brunner stated the Sullivan decision would impact the portion of the expansion that is proposed to be in the Town of Sullivan, and it would not impact the portion that is in Keene. The applicant can get to the portion that is within Keene from Keene. The inverse is actually not true, because the portion of property that is in Sullivan cannot be accessed unless you go through the portion of the property that is in Keene. The Vice-Chair asked if Sullivan was to not vote in favor, then what happens to regional impact. Ms. Brunner stated, in that instance, the applicant would have to keep their operation just on Keene's side.

Mr. Kost referred to the response to the response. Specifically, Mr. Manley states that G2 erroneously relies on a standard of requirements from RSA 677, rather than RSA 155-E:9. Mr. Manley indicated he does not have time to read and find out which one really matters. Ms.

Brunner explained RSA 155-E is the section of State Code that deals specifically with earth excavation operation. This is the portion of State Statute that regulates and gives the Planning Board the authority locally to regulate earth excavation operation. Within the earth excavation regulations, section RSA 155-E:9 is the paragraph that deals with appeals. It references the procedures specified in RSA 677:4-15. The point that is being made here is that it does not reference RSA 677:2. She indicate the complicating factor is that if you go to RSA 677:4-15, there is a reference to RSA 677:2, which is very common in State statutes—they often cross reference each other. Staff look to RSA 155-E:9 in which it states that any *interested person has standing to appeal*.

Vice-Chair Mastrogiovanni stated, absent legal advice, she felt the abutter appears to have the right to appeal according to these statutes. Councilor Remy referred to RSA 677:4, which identifies that this person didn't have standing, and refers back to RSA 677:2, which he felt was a circular reference error, but RSA 155-E:9 does tie back to RSA 155:2.

Ms. Vezzani asked to clarify if the statutes refer to *any interested party*, why is a hearing not automatically granted when an interested party asks for a hearing. She asked whether each one of the four questions need to be reviewed by the Board to grant a rehearing.

Mr. Kost noted the Board went through intense engineering studies, which were technical in nature, but the Board went through that and came up with a vote. Nothing in those engineering studies will change as those have been reviewed and voted on. He stated, when he looks at what is summarized in the motion—dust, noise, vibration—and determined would likely have an impact on abutters, visual impacts could perhaps be reviewed again. He continued by stating if vehicle trips were more than the agreed number, the applicant would have to go back to the City for review. Mr. Kost added, if this project was in visual Zone 1 and 2, it would have been of concern to him, but the project is in Zone 3, which the Board determined as being of least importance. He agreed the visual impact would change and overtime there will be cliffs. He stated he cannot see a reason that would require a rehearing.

Ms. Vezzani agreed she could not think of any new evidence or facts that were misunderstood.

Councilor Remy echoed what Mr. Kost stated.

Mr. Rangel stated the Board did cover many of these points but did not feel the application addressed all of them. He did not feel the application addressed loss to property values that property owners will experience because of this project. They did address monitoring of vibration, but there is still going to be a lot of noise that wasn't addressed. Traffic was addressed to a certain extent, but there is a difference of opinion as to whether or not those trips were accurate. With respect to visual impacts, this was also discussed to a certain extent, but there is going to be lasting effects from this this project, which the public is not happy about. He felt the original application did not address all these concerns.

Councilor Remy stated the Board is not here today to vote on whether it agrees with the decision it originally made. What is being discussed is if there was something new that has been brought forward that was missed that the Board didn't talk about, which would be a cause for a rehearing.

The Board did discuss the view; there isn't new information that has been brought forward. A decision would be based on the same information that is in front of the Board today. Councilor Remy stated the same is true with noise.

Councilor Remy continued by addressing property values. There were scientific studies submitted by the applicant for the property values component and a letter from a local real estate agent. Taking those expert opinions into consideration is how the Board was required to make its decision. He agreed there are many in the public that don't necessarily like the decision that was made. The Councilor stated he does not see any new information presented tonight that would require a re-hearing to be granted.

Ms. Brunner stated there are two considerations that the Board should review. The first is whether or not there is new information the Board missed. The Board is doing a good job covering that. The second is whether or not the Board made any mistakes. This is an opportunity, if the Board feels there were errors made, to correct them. If the Board feels this is what has happened, the Board has the ability to limit the rehearing to that one topic.

The Vice-Chair asked if the Board feels there has been any new evidence provided. Ms. Vezzani stated she does not see any new evidence; however, to Mr. Rangel's point, the misstated or misunderstood portion of the application is something she felt the Board should discuss. She referred to the first motion for a rehearing on page five, which calls into question whether or not focus has been placed on protecting the health, safety and welfare of residents of Keene as well as Sullivan. Additionally, the narrative questions whether or not the Board violated this issue by voting to approve the project. She stated she wasn't sure how to address this item for Mr. Manley.

Vice-Chair Mastrogiovanni asked how the Board feels making these legal decisions. Mr. Kost, in response, stated he did not feel comfortable, but there is a lot of information the Board might not be acting necessarily on as a legal issue. The Board could be looking at whether the Board might have missed something or made a mistake. The Vice-Chair asked Ms. Vezzani to define the items she would like the Board to discuss. Ms. Vezzani referred to the motion, which discusses the Board violating its own regulations:

The Planning Board should not grant approval for an excavation permit in the following instances: Health, safety and welfare under Article 25 of the LDC – (page five, paragraph 2) Potential hazard to human health, safety and welfare. The environment caused by adverse impacts associated with an excavation project.

Ms. Vezzani felt the Board leaned on the experts and added many additional stipulations for this particular application. She felt the Board addressed them all, but it was important to discuss them again.

Mr. Kost stated how he understands Mr. Manley's request is that Mr. Manley is stating that the applicable standard does not require an actual hazard, but rather a mere potential of a hazard to require denial. Mr. Kost felt anything we do could be a hazard, such as crossing the street. He felt this was an impossible standard.

Ms. Vezzani asked for Article 25 of the LDC. Councilor Remy stated Article 25.2 refers to Prohibited Projects: *The planning Board shall not grant approval for earth excavation permit in the following circumstances.*

Article 25.2.B when all necessary local, state and federal permits have not been obtained.

25.2.C when the issuance of a permit would represent a potential hazard to human health, safety and welfare, or to the environment caused by adverse impacts associated with the excavation project.

25.2.E when the existing visual barriers in the area specified under NH RSA 155-E:3 would be removed except to provide access to the excavation. The Councilor noted the applicant is not removing the front visual barrier.

Mr. Kost stated dust control was addressed and how that was going to be managed. He added vibration and other hazards were also addressed.

Councilor Remy asked if the Board was ready to make a motion if the item needs to be opened for public comment. Mr. Brunner stated this was entirely at the discretion of the Board.

Ms. Vezzani stated she did not need any more information to move forward but wanted to make sure the items were addressed and felt the Board has done so.

Vice-Chair Mastrogiovanni clarified that the Board was comfortable that the four topics were discussed. She asked whether the Board feels all legal standards have been met, including the following: Were there any facts or evidence that were misstated or misunderstood? Were factual determinations made where there was no written evidence or testimony provided in testimony? She stated if the Board does not have an objection to what she has outlined, then a motion could be made. Councilor Remy asked for a roll call vote.

A motion was made by Councilor Remy that the Planning Board deny the motion for rehearing for PB-2024-20 relative to a major amendment to an issued Earth Excavation Permit for the properties located at 21 and 57 Route 9. Upon review of the request for rehearing and arguments raised therein, the Board determined there were no points of law or fact misunderstood or misapprehended. The Board did not commit any technical errors and there was no new evidence presented that was not available to the moving party at the time the Board issued its decision. The motion was seconded by Sarah Vezzani. The motion carried on a 5-0 roll call vote.

II) Adjournment

There being no further business, Vice-Chair Mastrogiovanni adjourned the meeting at 6:38 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Reviewed and edited by,
Emily Duseau, Planning Technician