

CITY OF DOVER, NEW HAMPSHIRE ETHICS COMPLAINT

Please type or print legibly and attach additional pages, if necessary.

Date Filed: 11/26/24

Your Name: Caitlin Wilkie

Address: 568 6th Street Dover

Your Telephone Number [REDACTED]

Name of person about whom you are filing.

board, Fergus Cullen

City Council member and
designee to the planning

Type of Allegation(s). Check the appropriate box(es) below indicating the type of allegation(s) stated in this complaint.

ARTICLE X OF THE DOVER CITY CHARTER

- ☐ ELIGIBILITY FOR ELECTIVE OFFICE (10-1)
- ☒ CONFLICTS OF INTEREST (C10-2)
- ☐ DISQUALIFICATION FROM DECISION MAKING PROCESS (C10-2)
- ☐ PRIVATE USE OF CITY PROPERTY (C10-4)
- ☐ ACCEPTANCE OF GIFTS AND GRATUITIES (C10-5)
- ☐ DISPOSITION OF FEES (C10-6)
- ☐ MISUSE OF INFORMATION (C10-7)
- ☐ FUTURE EMPLOYMENT (C10-10)

CHAPTER 21 OF THE CITY CODE

- ☒ CONFLICTS OF INTEREST (21-2)
- ☐ REPRESENTATION OF PRIVATE INTERESTS BEFORE CITY AGENCIES (21-3)
- ☐ REQUIRED DISCLOSURE BY COUNCIL MEMBERS; RECUSAL (21-4)
- ☒ REQUIRED DISCLOSURE BY OFFICERS AND EMPLOYEES; RECUSAL (21-5)
- ☐ GIFTS (21-6)
- ☐ DISCLOSURE OF CONFIDENTIAL INFORMATION (21-7)
- ☒ INVESTMENTS IN CONFLICT WITH OFFICIAL DUTIES (21-8)
- ☐ INCOMPATIBLE EMPLOYMENT (21-9)
- ☐ FUTURE EMPLOYMENT (21-10)

If your complaint alleges some form of misconduct that does not fall within the jurisdiction of the Ethics Commission, then your complaint will be forwarded to the City Manager, the Police Department or the City Council for processing.

Description of Facts.

Provide a specific description of the facts constituting the alleged violation(s), including dates or approximate dates.

see attached

Witness Information.

Provide the name(s), business address(es) and telephone number(s) of person(s) you believe may have information that would assist the Commission in its evaluation of this complaint. Also, describe the information that you believe each of the persons listed can provide to support the allegations stated in this complaint.

see attached

Documentation.

Attach copies of any documents in your possession that relate to the allegations stated in this complaint. In addition, indicate below whether there are other records, not in your possession, that you believe may assist the Commission in its evaluation of this complaint.

see attached

Additional Information.

Provide any additional information that you believe may assist the Ethics Commission in its evaluation of this complaint.

see attached

CERTIFICATIONS: (Please initial each certification)

- I CERTIFY THAT I AM A RESIDENT OF THE CITY OF DOVER, A PROPERTY OWNER IN DOVER OR I AM A VENDOR WHO HAS RESPONDED TO A BID SOLITICATION CW (initials)
- THIS ETHICS COMPLAINT IS A PUBLIC DOCUMENT. I UNDERSTAND THAT I SHOULD HAVE NO EXPECTATION OF PRIVACY REGARDING THIS DOCUMENT OR THE PROCEEDINGS OF THE ETHICS COMMISSION. CW (initials)
- I UNDERSTAND THAT KNOWINGLY MAKING WRITTEN FALSE STATEMENTS WHICH I DO NOT BELIEVE TO BE TRUE MAY SUBJECT ME TO CRIMINAL SANCTIONS PURSUANT TO RSA 641:3. CW (initials)

DATE: _____

11/20/24 [Signature]
Signature

NOW COMES Caitlin Wilkie who after being duly sworn states that the above statements are true and accurate.

[Signature]

Notary Public

ANNIE D. BAKER
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
October 4, 2028

Revised 3.11.22

-----OFFICIAL USE ONLY-----

Received by the City Clerk's office 11/26/21

Received by the Ethics Commission _____

Completed form should be returned to:

City of Dover Ethics Commission
c/o City Clerk
288 Central Avenue
Dover, NH 03820

ANNE D. BAKER
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
October 4, 2028

Two Whom it May Concern:

My name is Caitlin Wilkie and I live at 568 6th Street, Dover. Below I outline several instances in which my husband Rory Wilkie and I have concern over the appearance of a conflict as well as direct conflicts of interest with regard to the actions taken by City Council member, and designee to the Planning Board, Fergus Cullen.

The violations we feel are related to the City of Dover's Code of Ethics - Chapter 21 of the City Charter, Sections 2, 5 and 8.

21-2 Conflicts of interest.

"No elected or appointive officer or employee of the City shall take part in a decision concerning the business of this City or engage in any business or transaction in which he/she or a member of his/her family, directly or indirectly, has a financial interest, aside from his/her salary as such officer or employee, greater than any other citizen or taxpayer, nor shall he/she have any financial or other private interest, directly or indirectly, which is in conflict with the proper discharge of his/her official duties."

21-5 Required disclosure by officers and employees; recusal.

A. An appointed officer or employee who, whether paid or unpaid, has a direct or indirect financial interest or other private interest in any legislation or matter of official business in the City of Dover and who participates in discussion before or gives official opinion to the Council, or otherwise participates in the official business of the City of Dover, shall publicly disclose on the official record the nature and extent of such interest. Such disclosures shall be made orally prior to the legislation being discussed as part of a Council meeting agenda, or the officer or employee may elect to file a written specific conflict-of-interest disclosure statement with the City Clerk. The statement shall be read aloud into the record at a public meeting. In the case of a nonpublic session, the statement shall be read aloud at the next public meeting.

B. Appointed officers and employees with a conflict of interest shall recuse themselves from further participation in the matter. "Recusal" means to immediately remove themselves from discussion and voting. "Recusal" shall also mean the officer or employee is required to physically vacate his or her seat. During a nonpublic session, the appointed officer or employee shall remove himself or herself from the meeting room.

21-8 Investments in conflict with official duties

No elected or appointed officer or employee shall invest or hold any investment, directly or indirectly, in any financial, business, commercial, or other private transaction which creates a conflict with his/her official duties.

The City Code comes from the state of New Hampshire's statutory standard RSA 673:14. Paragraph I first covers the "direct conflict" standard. The second portion of that starting at "or if that member" is the "juror standard" and also covers potential appearances of a conflict. When uncertainty arises, paragraph II allows any board member to make a motion for the board to vote on, which is advisory.

673:14 Disqualification of Member

I No member of a zoning board of adjustment, building code board of appeals, planning board, heritage commission, historic district commission, agricultural commission, or housing commission shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties.

II. When uncertainty arises as to the application of paragraph I to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. Such a vote shall be advisory and non-binding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.

III. If a member is disqualified or unable to act in any particular case pending before the board, the chairperson shall designate an alternate to act in the member's place, as provided in RSA 673:11.

Source. 1983, 447:1. 1988, 26:1. 1992, 64:9. 1996, 42:11. 2007, 266:6. 2008, 391:6, eff. Sept. 15, 2008.

Item 1 of 3

Description of Facts

On June 6th, 2024 I, Caitlin Wilkie, emailed Donna Benton (*Reference 1*), with the Planning Board All email address cc'd, asking if Councilor Cullen would be attending the regularly scheduled Planning Board meeting June 11th. My husband Rory Wilkie and I had concerns over the appearance of a conflict he had with an agenda item.

Days prior to that email (Treeno date stamp June 4th, 2024), Councilor Cullen had submitted plans to the planning department for a multifamily transfer of development rights (TDR) development for his property at 566 6th St. On June 11th, the planning board would review 2 TDR applications, one at 512 6th St, just a few houses down from Councilor Cullen's property with nearly identical density to what he was proposing (*Reference 2*). The level of density being proposed through the use of the TDR in both plans had never been done before in the neighborhood and we felt would set a precedent.

In relation to a jury test, given Councilor Cullen's interest in his own TDR application, we did not feel Councilor Cullen could vote on the 512 6th Street agenda item without there being bias or appearance of bias. We were concerned that him advocating for any TDR proposal would give the appearance of impropriety and would be used to shed favorable light on his own TDR development. He did not recuse himself from voting on any of the TDR applications during that meeting, and voted in

favor of the development down the street from his own which he then used it to shed favorable light on his own development's narrative (*Reference 5*).

In the days following my email to the board, and ahead of the Tuesday meeting, Councilor Cullen came onto the back of our property and confronted us about raising the concern to the planning board. His frustration was palpable, my husband Rory asked Councilor Cullen to leave our property. During the meeting on June 11th, my husband and I spoke during the public portion of New Business part D regarding the TDR application at 512 6th St over our concerns for Councilor Cullen's appearance of a conflict. Councilor Cullen did not make any disclosure orally prior to the item being discussed as part of a Council meeting agenda. After the public forum closed, at minute 53 (*Reference 3 and Reference 4*), Councilor Cullen failed to recuse himself from using his position as an elected official to advocate for his private business interests.

Councilor Cullen's decision to use his official office as a planning board member to defend his private business interests is a clear violation of the City of Dover's Code of Ethics. Councilor Cullen's ability to use his elected office to vote in favor of the 512 6th Street TDR project (as well as other TDR developments) and then use it within his own application to shed favorable light on his private business interests (*Reference 5*) is also a clear violation of the City of Dover's Code of Ethics - Chapter 21 of the City Charter, Sections 2, 5 and 8. His failure to immediately and totally recuse himself from the planning board votes on other TDR applications and speaking about his personal application means he has exerted unauthorized influence on the planning board and the public. He can not claim to have recused himself when he used his official position to attempt to influence public opinion regarding his private business interests. Although not explicitly called out in the City's Code of Ethics, Councilor Cullen's failed attempt to intimidate my husband and I about our concerns on our own property is unethical behavior and should not be tolerated. Due process and open public forums are a critical part of city government and resident involvement. No resident should face that type of behavior in an attempt to silence their opinions or concerns.

Witness Information

- Email:
 - Donna Benton - Director of Planning and Community Development
 - Michael Joyal - City Manager
 - Joshua Wyatt - City Attorney
 - Planning Board All
- Planning Board June 11th Meeting
 - Mark Speidel (Vice-Chair)
 - Tom Clark
 - George DeBoer
 - Erinn Kaspari
 - Jeff Sanborn (Alternate)
 - Rory Wilkie - 568 6th St, 603-731-3406

Documentation

- Reference 1 - Email attached "Re: Site Plans for 512 Sixth Street, Dated Thursday June 6, 2024 at 7:30pm"
- Reference 2 - Plans of both TDR applications for comparison at 512 6th St, and 566 6th St
- Reference 3 - Dover Planning Board - Minutes, Tuesday June 11, 2024, Page 5 of 13
- Reference 4 - Dover Planning Board Meeting Audio, Minute 53:57
- Reference 5 - 566 6th St Treeno Files submitted 10/1/2024, 4 TDR & Subdivision Project Narrative v1 V1 (1) PDF, Page 5

Item 2 of 3

Description of Facts

On July 10th, 2024, at a regularly scheduled City Council meeting, my husband Rory and I spoke during the citizen's forum and voiced our concerns about Councilor Cullen's plans to redevelop his property at 566 6th Street. We used the citizen's forum to alert the council of our concerns about this development, and how we felt it was inappropriate for Councilor Cullen to use his position as a City Councilor and liaison to the Planning Board to gain an unfair advantage in developing his property.

During the meeting at one hour and 23 minutes (Reference 6 and Reference 7), Councilor Cullen spoke from his seat on the City Council and in his official capacity as City Councilor, using his official position as a seated City Councilor to rebut our statements about his private business plans, and promote city goals to shed positive light on the development. He used his official capacity as a City Councilor, to broadly share that he had sought and received guidance from city attorney Joshua Wyatt. A private citizen wouldn't have been afforded that same right, and would need private legal counsel.

Councilor Cullen's decision to use his official office as a City Councilor member to defend his private business interests is a clear violation of the City of Dover's Code of Ethics - Chapter 21 of the City Charter, Sections 2, 5 and 8. His failure to immediately and totally recuse himself from discussing his private business matters means he has exerted unauthorized influence on the city council, the planning board and the public at large. He can not claim to have recused himself when he used his official position to attempt to influence public opinion regarding his private business interests.

Witness Information

- | | |
|---|---------------------------------------|
| ● Councilor Richer | ● Deputy Mayor Shanahan |
| ● Councilor Nemeth | ● Mayor Carrier |
| ● Councilor Retrosi | ● City Manager Joyal |
| ● Councilor Williams | ● City Attorney Wyatt |
| ● Councilor Hackett (remote via telephone conference) | ● City Clerk Vansylyvong-Bizier |
| ● Councilor Warach | ● Rory Wilkie, 568 6th St, [REDACTED] |
| | ● Ruth Brown, 570 6th St, [REDACTED] |

Documentation

- Reference 6 - City Council Meeting Audio, minute 1hr, 23min
- Reference 7 - City Council Minutes, Wednesday July 20, 2024

Item 3 of 3

Description of Facts

The Transfer of Development Rights (TDR) is an overlay zoning ordinance. A resident pays a fee to the City of Dover to overwrite what traditional zoning is intended to protect. Those fees are collected by the Planning Board, and then go into the Conservation Fund which is overseen by the Conservation Commission. Those funds are then intended to be used to conserve land within the City of Dover. This Conservation Commission is appointed by the City Council (*Reference 8*).

As of September, the city via the Right to Know Request shared that in the last 3 years the planning board has approved 93 TDR units and collected ~\$600,000 which went into the conservation fund. There were also more than 240 TDR units and ~\$500,000 in pending fees with open applications. One of those applications included Councilor Cullen's TDR application.

To gain a better understanding of how these funds are collected and distributed, I scheduled a meeting with Dover's Finance Director, Daniel Lynch. I met Mr. Lynch to discuss such on October 21st, 2024. Mr. Lynch informed me that the Conservation Commission votes on how funds will or will not be spent within the Conservation Fund. He stated that there are circumstances in which the Conservation Commission needs to have the City Council vote on how funds are spent, the same council in which Councilor Cullen is an elected member of.

Councilor Cullen's lack of providing any formal conflict of interest statement with this private investment which conflicts with his official duties as a City Councilor, and as a Planning Board member is a clear violation of the City of Dover's Code of Ethics Chapter 21 of the City Charter, Sections 2, and 5. Councilor Cullen's intention to pay into the Conservation Fund via TDR fees, which he has the ability to vote on how those funds are spent as a sitting City Councilor, is a clear violation of the City of Dover's Code of Ethics - Chapter 21 of the City Charter, Section 8.

Witness Information

- Daniel R. Lynch, Finance Director

Documentation

- Reference 8, Conservation Commission Operation Rules

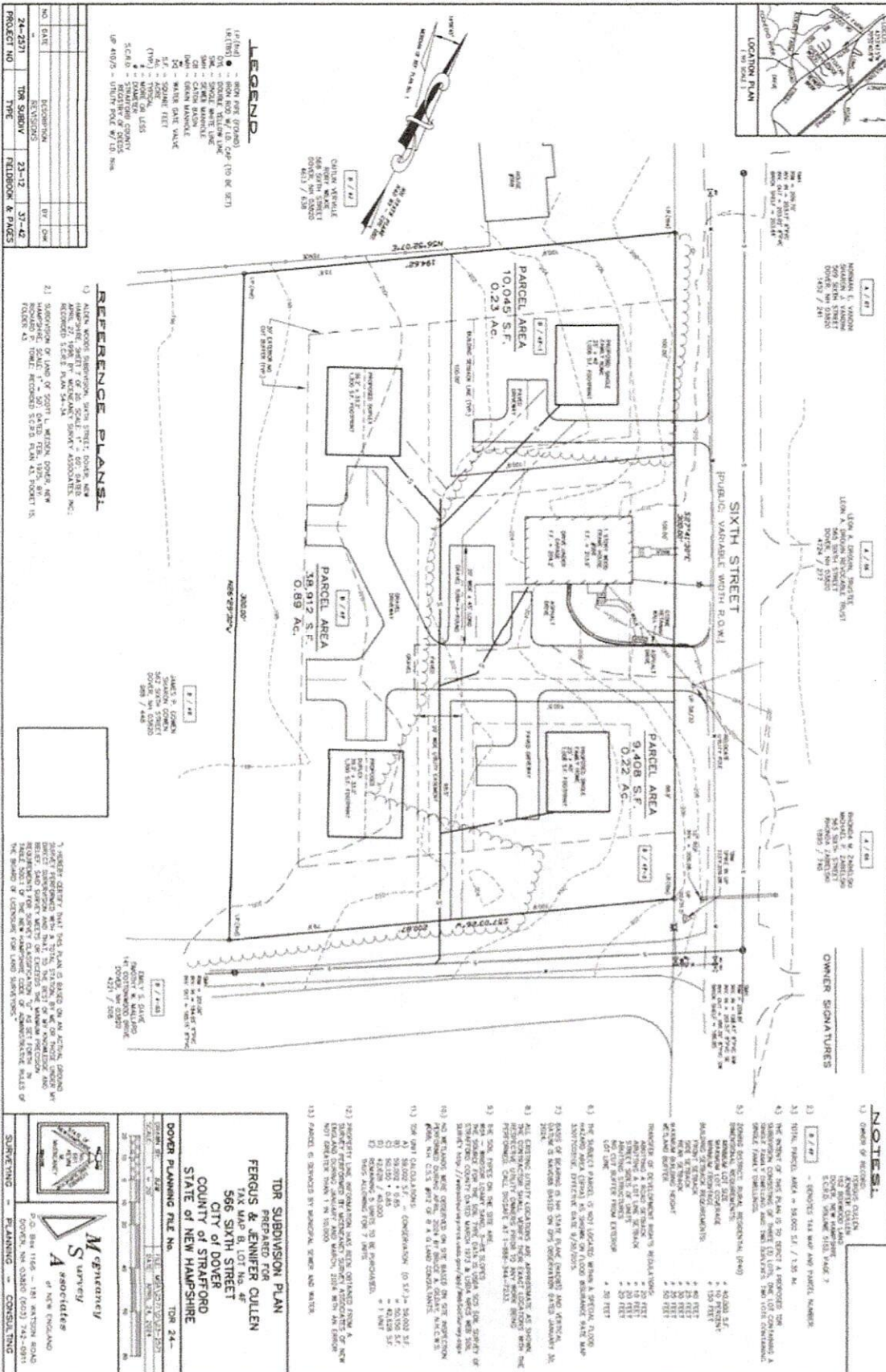
We believe Councilor Cullen's failure to fully recuse himself from any matter regarding the Transfer of Development Right applications, or any matter over how those funds are used and repeatedly using his official position to influence public opinion regarding his private business interests is an ethical violation. With Councilor Cullen suing the City of Dover as of November 20, 2024, he should also recuse himself from the City Council in matters that pertain to his own lawsuit as the City Council has rights over how that is managed. Given the statements and events provided above, we would like to file a complaint with the City of Dover's Ethics Committee.

Respectfully,



Caitlin Wilkie
568 6th Street, Dover, NH 03820

566 6th St TDR Plans submitted by The Cullens



Reference 3: Dover Planning Board - Minutes, Tuesday June 11, 2024, Page 5 of 13

Reference 4: Dover Planning Board Meeting Audio, minute 53:57

Reference 5: 566 6th St Treeno Files submitted 10/1/2024, 4 TDR & Subdivision Project Narrative v1 V1 (1) PDF, Page 5

Reference 6: City Council Meeting Audio, 1hr, 23min

Reference 7: City Council Minutes, Wednesday July 20, 2024

Reference 8: Conservation Commission Operation Rules

Re: Site Plans for 512 Sixth Street

1 message

Cullen, Fergus <F.Cullen@dover.nh.gov>

Thu, Jun 6, 2024 at 7:30 PM

To: Caitlin Wilkie <[REDACTED]>, "Benton, Donna" <d.benton@dover.nh.gov>

Cc: Planning Board - All <PlanningBoard-All@dover.nh.gov>, "Joyal, Michael" <M.Joyal@dover.nh.gov>, "Wyatt, Joshua" <J.Wyatt@dover.nh.gov>

Hi Caitlin -

I am responding to all since your note went to all members of the Planning Board.

My colleagues on the board may not have been previously aware that my wife and I own a property at 566 Sixth Street that will be coming before the Planning Board soon (but is not on next week's agenda). It's a TDR project. Caitlin is an abutter to that property.

Of course I will recuse myself from the board's review, discussion, and vote regarding that item when the time comes. I am sensitive to such matters both in the letter of the law and its spirit.

However, I have no connection to the 512 Sixth Street property or its owners. There exists no conflict of interest with regards to that application.

As it happens, I may not be able to make Tuesday's meeting anyway due to an actual conflict: I chair the Joint Building Committee working on the Dover High athletics project, and we have a Community Listening Session that night starting at 5:30. If it looks like I have to miss the Planning Board meeting I will ask Deputy Mayor Shanahan to substitute - not because I have a conflict of interest but because I have a scheduling conflict in another volunteer role on behalf of the city.

No one involved in the public life of our community gives up our rights as private citizens just because we also have public roles. Moreover, I would argue communities get better decisions on matters of public policy when those making them are informed by practical experience and not just theory.

Copying the city manager and legal counsel due to the nature of the accusation.

Respectfully,

Fergus Cullen
City Councilor – Ward 6
152 Boxwood Ln, Dover NH 03820
e: f.cullen@doher.nh.gov mobile: 603.520-5450
<http://www.dover.nh.gov>

From: Caitlin Wilkie <[REDACTED]>
Sent: Thursday, June 6, 2024 3:31:19 PM
To: Benton, Donna
Cc: Planning Board - All
Subject: Re: Site Plans for 512 Sixth Street

Security Notice: External sender. Use caution with hyperlinks or attachments.

Donna,
Thanks for confirming, I'll keep an eye out for it and reach out if I can't find it.

Additionally, I had a question regarding which members of the board will be sitting on that meeting. Did Fergus Cullen step down due to conflict of interest? Even if the plans have changed a bit, it is nearly identical to the type of proposal he shared with abutters for his own property at 566 6th Street. If he has not then I will raise the concern at the meeting Tuesday.

Thanks,
Caitlin

On Thu, Jun 6, 2024 at 3:27 PM Benton, Donna <d.benton@doher.nh.gov> wrote:

Hi Caitlin,

The plan needs to be updated. They are looking to purchase 3 TDR units. Please let me know if you have any further questions as you review the materials. Staff memos should be posted by tomorrow.

Thanks,

Donna

Donna Benton, AICP

Director of Planning and Community Development

City of Dover, NH

288 Central Avenue

Dover, NH 03820-4169

e: d.benton@doher.nh.gov

p: 603.516.6008 f: 603.516.6049

Dover: First in New Hampshire, First with you!

From: Caitlin Wilkie <[REDACTED]>
Sent: Thursday, June 6, 2024 3:26 PM
To: Planning Board - All <PlanningBoard-All@doover.nh.gov>
Subject: Re: Site Plans for 512 Sixth Street

Security Notice: External sender. Use caution with hyperlinks or attachments.

Good Afternoon,

Following up on this as I was able to find the docs linked on the site under public files however the Agenda says they want to purchase 3 Units but the Site Plan says purchase of 1 unit. Just looking for clarity!

Thanks,
Caitlin

On Thu, Jun 6, 2024 at 2:36 PM Caitlin Wilkie <[REDACTED]> wrote:

Good Afternoon,

Is it possible for someone in the planning office to email me a copy of the site plans that were submitted for 512 Sixth St that is on the agenda for next Tuesday's meeting? It looks like they are proposing 2 additional structures to the existing 3 that were there previously.

It would be greatly appreciated.

Thanks,
Caitlin

Please consider conserving our natural resources before printing this e-mail and/or any attachments.

This electronic message and any attachments may contain information that is confidential and/or legally privileged in accordance with NH RSA 91-A and other applicable laws or regulations. It is intended only for the use of the person and/or entity identified as recipient(s) in the message. If you are not an intended recipient of this message, please notify the sender immediately and delete the material. Do not print, deliver, distribute or copy this message, and do not disclose its contents or take any action in reliance on the information it contains unless authorized to do so. Thank you.

Please consider conserving our natural resources before printing this e-mail and/or any attachments.

This electronic message and any attachments may contain information that is confidential and/or legally privileged in accordance with NH RSA 91-A and other applicable laws or regulations. It is intended only for the use of the person and/or entity identified as recipient(s) in the message. If you are not an intended recipient of this message, please notify the sender immediately and delete the material. Do not print, deliver, distribute or copy this message, and do not disclose its contents or take any action in reliance on the information it contains unless authorized to do so. Thank you.