

DOVER HOUSING AUTHORITY

62 Whittier Street
Dover, New Hampshire 03820-2994

January 29th, 2025

Dover City Council
Dover, NH 03820

To the Honorable Mayor and Members of the City Council:

On behalf of the Board of Commissioners of the Dover Housing Authority, and in my capacity as the Executive Director, I write today to address item 14.A. on tonight's agenda, to wit: 14.A. *City of Dover Ethics Commission Recommendations Regarding Ethics Complaint of Caitlin Wilkie Against Councilor Fergus Cullen*. **I urge you to support the findings of the Dover Ethics Commission, and select a different City Councilor to serve on the Dover Planning Board.**

As the Executive Director of your Housing Authority, it is my duty to promote, advocate, and educate the public about affordable and attainable housing. As an appointed public official—and a retired Army officer, bound by my lifelong oath of office—it is also my duty to speak out when public officials act in a manner likely to erode the public trust. On July 10th of last year, I spoke before the City Council, and on October 22nd, I wrote to the Planning Board. In both instances, I expressed concerns about Councilor Cullen's actions in pursuit of his housing development at 566th Sixth Street. I felt then (and still do) that his actions contained a perceived conflict of interest, and the development plans he initially presented possessed strong potential to create negative public perceptions of affordable housing development. Considering my position, I am only opposed to housing development when it brings intense negative public scrutiny to affordable housing, or when one housing development's approval is likely to significantly disadvantage other developments in the future. In this instance, I believe both of those elements are present.

I would not publicly criticize the conduct of an elected official without the express consent of my Board of Commissioners. Even so, after I submitted a letter to the Planning Board (which stated in the opening sentence that it was on behalf of DHA's Board), Councilor Cullen mailed my Commissioners at their home addresses over the Thanksgiving holiday. In his letter (a copy of which I have attached), Councilor Cullen alleges defamation from the public criticism of his perceived conflicts of interest; and he states the comments on these matters have involved the Dover Housing Authority "in a judicial-like proceeding" with the State Housing Appeals Board. To be clear, the criticism put forth was directed toward an applicant before a land use board, whose plans are broadly subject to criticism, especially by those with

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an interest in affordable housing development; or an elected official, whose conduct is broadly subject to criticism, a tradition enshrined in our public laws. In this case, the object of criticism embodies both identities, and my criticism is of those entities, not of the man. I have no animus whatsoever toward Councilor Cullen as a person, and my criticism is limited exclusively to the impact of his actions on public trust and on affordable housing development in Dover.

As you deliberate on the appropriate action to take on the Ethics Commission's recommendations, please consider the letter Councilor Cullen sent to the DHA Board, and his rebuttal of the findings by the Ethics Commission (also attached). In both documents, Councilor Cullen suggests his conduct should not be subject to public criticism. He believes those who criticize his behavior do not understand the concept of "social capital," the exchange of good will and good relations between members of the community. Our laws around public ethics do not support his position and explicitly state the opposite: that no one holding elected or appointed office should be involved in any business dealings where, in fact or in perception, that person appears to use their office for profit, pleasure or personal gain. The acquisition of "social capital" is indeed a form of personal gain and is identified as specific and distinct from profit for that reason. It is reasonable to expect a multi-term City Councilor to understand and embrace these basic ethical principles of public service. He has indicated through his statements that he does not understand nor embrace these principles, and in fact holds contempt for those who raise these issues. Consideration of these facts are why I urge you to select a different City Councilor to serve on the Planning Board.

We (elected and appointed public officials) must preserve the public trust, and in doing so uphold the incredibly important work the City has done to advance affordable and attainable housing. Dover was recently honored as a Housing Champion by the NH Department of Business and Economic Affairs. Our Planning Department and the Planning Board conduct the business of city development through well-refined processes in which development plans are carefully scrutinized and analyzed by teams of experts from many different City departments, whose specializations and credentials span many different professional disciplines. Our Planning Board is equally talented and diverse in their skills sets. This body of experts, focused on best practices and adherence to the law, are vital to keeping Dover a place where people want to live, work, and play; and where Dover residents know their real estate investments will continue to appreciate under the thoughtful and careful stewardship of City leaders.

Our City relies on a transparent, publicly accountable planning process to ensure the continued

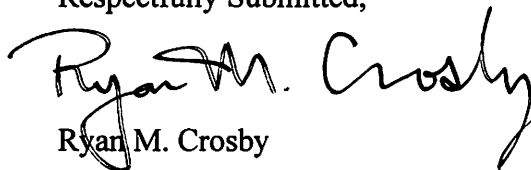
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development of affordable and attainable housing. In a time when the integrity of our public processes and the faith of the public in government are tenuous, the public must have confidence public officials will act in the best interest of all citizens—that they will not use their elected office for pleasure, profit, or personal gain. It is our collective responsibility to address these matters in every quarter of public life, to ensure the survival and strength of our democracy. In conclusion, I strongly urge you to uphold and embrace the findings of the Dover Ethics Commission and select a different City Councilor to serve on the Planning Board.

It is my honor to serve this City with you.

Respectfully Submitted,

A handwritten signature in black ink that reads "Ryan M. Crosby". The signature is fluid and cursive, with the first name "Ryan" being the most prominent.

Ryan M. Crosby
Executive Director
Dover Housing Authority

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ATTACHMENTS

A – FC Letter to DHA Commissioners, 27 NOV 2024

B – FC Rebuttal of Dover Ethics Commission Findings, 15 JAN 2025

C- DHA Executive Director Statement to City Council, 10 JUL 2024

D- DHA Executive Director Letter to Planning Board, 22 OCT 2024

FERGUS CULLEN

November 27, 2024

Tim Granfield
75 Hidden Valley Dr
Dover NH 03820

Dear Tim:

Are you aware Dover Housing Authority director Ryan Crosby has gone out of his way twice in recent months to oppose a small residential housing project I am working on?

Are you aware he has done so claiming to speak “on behalf of the Board of Commissioners” of the DHA?

Ryan has gone well beyond simply expressing opposition to a housing proposal. He has publicly accused me of ethics violations and conflicts of interests without any evidence to support these charges. Accusations of this nature should not be thrown around casually. Doing so without evidence is defamatory. And he has done this claiming to speak for you.

Assuming the DHA Board of Commissioners did not, in fact, authorize Ryan to oppose this project and make these accusations, I write to ask you to right a wrong and take action to set the record straight.

I have proposed to build four attainably-priced housing units on a property I own at 566 Sixth Street. I would think more attainable housing is aligned with DHA’s goals. But for some reason, Ryan decided he needed to intervene and oppose the project. The application is now pending before the New Hampshire Housing Appeals Board, which means Ryan has gotten the DHA involved in a judicial-like proceeding.

In July, Ryan showed up at a City Council meeting specifically to accuse me of ethics violations in relation to the application. Then in October, he submitted a letter to the Planning Board opposing my application and again accusing me of conflicts of interest and ethics violations. He wrote that he was speaking for you.

Why would the DHA oppose a proposal for attainable housing?

Why is my project any of the DHA’s business?

Why would the DHA take an action that can only antagonize a community leader and minor elected official? Isn’t it in the DHA’s interest to seek strong, collaborative working relationships with such people?

FERGUS CULLEN

I've been wronged by Ryan and, by extension, by the DHA. To make it right, I request the DHA Board of Commissioners take the following actions.

- 1) Send a note, this week, to the Dover Planning Board at planningboard-all@dover.nh.gov stating something like the following:

Dover Planning Board -

It has come to our attention that you recently received a letter from Dover Housing Authority Director Ryan Crosby concerning an application for 566 Sixth Street.

For the record: Mr. Crosby was not authorized to speak for the DHA Board of Commissioners on this matter. The views he expressed do not represent the views of the DHA Board of Commissioners. The DHA, through its Board of Commissioners, has no opinion with respect to applications involving the property in question.

Thank you for this opportunity to clarify the record.

DHA Board of Commissioners

- 2) Consider instructing Ryan to stay out of this project moving forward, as it is none of the DHA's business and his involvement has become inconsistent with the DHA's interest in having collaborative working relationships with all community leaders.
- 3) Consider recommending Ryan make a public statement retracting his previous comments and apologize for defaming me. I think it's called for.

Sincerely,

Fergus Cullen

FERGUS CULLEN

January 15, 2025

Members of the Ethics Commission:

I write to ask you to reconsider the preliminary conclusions reached in my case at your meeting on January 2. I am being held to an unprecedented and unreasonable standard. The real impact of a conviction in this case will be hugely disproportionate to the alleged offense and an injustice.

Our ethics code is not intended to apply to a case like this. Its intent is to head off cases of direct pecuniary benefit, like a councilor voting on a contract going to a company in which he has a hidden financial stake, or acting on non-public information. This case does not meet that threshold. Our ethics code is not intended to prevent an elected official from participation in a small real estate development that is consistent with our ordinances, provided he follows disclosure and recusal rules, which I did.

The complainant failed to meet the burden of proof and the “clear and convincing” threshold of evidence. A focus of the hearing and your deliberation was that the same civil engineering firm was used for the applications at 512 Sixth Street and 566 Sixth Street. Yet the complaint *did not even mention* the use of the civil engineering firm. It was not part of the complaint. This was introduced by the Commission’s chairman – not by the complainant – who argued that employing Dover’s leading civil engineering firm created an unethical financial relationship.

This is an unreasonable standard. By this logic, I would not be able to review an upcoming application to build a new McDonalds restaurant off Durham Road because I have purchased meals at McDonalds and thus established a financial relationship with them. By this logic, it is insufficient that I recuse myself tonight from voting on a lease agreement with Reach for the Top, a non-profit agency that rents space at the McConnell Center, because I pay for my two medically-needy children to receive services there; that constitutes a financial relationship that violates our ethics code. By this logic, it is insufficient that I recuse myself tonight from voting on a grant for Community Action Partnership because I pay for services that organization provides to my medically-needy children; that constitutes a financial relationship that violates our ethics code.

In a community our size, it is inevitable that on occasion, leaders in the community are going to have public and private roles that sometimes intersect. One of the principals of Civil Works, Kevin McEneany, has a business and also chaired the Dover 400 Committee, to which my wife and I donated before I became a client of his firm. This is called social capital and healthy communities are better off when they have more of it. Is the standard really going to be that people who wear multiple hats in a community can never interact or do business with one another for fear of creating an unethical conflict? Was I meant to handicap my own application by hiring an inferior firm less familiar with Dover’s land use ordinances?

Employing a well-known local civil engineering firm – or being a client of a non-profit that rents space from the city or receives grant funding from the city – does not give me a direct, indirect, private, or financial interest in any of those organizations constituting a conflict of the kind intended to be prevented by our ethics code.

It is also unreasonable, and contrary to common sense, to conclude that when I spoke at the City Council meeting on July 10 to address charges made during public forum that I had not just violated the ethics code but also acted criminally, that defending myself was in itself a violation of the ethics code. I was speaking on my own behalf, not appearing on behalf of a private interest before the Council constituting a violation of 21-3.

I respectfully suggest **the preparation of the deliberation checklist in advance of the Commission hearing testimony and reading exhibits on January 2 was improper.** That checklist included multiple references to the civil engineering firm and the owner of 512 Sixth Street that *were not even mentioned* in the complaint. It focused on allegations different from those raised in the complaint, without providing due process notice to the defendant. The checklist framed your deliberation in a way that all but ensured the answer to every question would lead to a conviction. Preparing that document in advance is a little like building a scaffold and testing the trap door, and then opening the trial. I wonder whether the Commission would have arrived at the same conclusions, had you taken a few days to consider what you'd heard and read, and then deliberated in an open-ended conversation without being steered by that document to preordained conclusions.

Finally, I make a more personal plea for justice. I ask you to consider the real impact letting your preliminary decision stand is having, and is going to have, on me and my family; whether that is proportionate to the alleged offense; and whether that verdict serves the cause of justice.

I am self-employed with a family of six to support, including two children with high medical needs. (As it happens, both of them spent time in different hospitals today.) I am concerned about the impact being accused of an ethics violation has already had on my reputation and may have on my ability to support my family. The charge will be prominent in a Google search forever; the nuance of the case will be lost.

My spouse is distraught. She is pleading with me to resign from the athletics committee, the planning board, and the council and to abandon public life altogether, if facing a complaint like this is what comes with serving our community. She questions whether we should remain living in Dover, if this is what happens to a local volunteer working to make our community better.

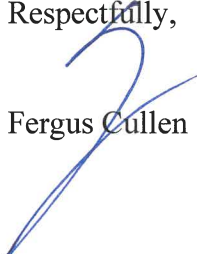
You may also consider the chilling effect a ritual flogging, attendant media coverage, and getting eviscerated on social media will have on the willingness of other people to risk offering their time, experience, expertise, and talents to the community.

The real punishment in this case goes far beyond any recommended sanction and is vastly disproportionate to any alleged transgression.

A man's reputation is on the line here. Are you certain you are making the right decision and that justice is being served by convicting me on this matter?

Respectfully,

Fergus Cullen



Statement to City Council, July 10th 2024

Good evening. My name is Ryan Crosby, I'm the Executive Director of the Dover Housing Officer. I would also mention that I am a retired Army officer, and between my time in the Army and my time at the Housing Authority, this is my 28th year of public service as an officer or appointed official.

I am here tonight to discuss the importance of public trust. We are – me, you, all of us, City Council and City staff—acting in the public trust. We are elected or appointed officials who represent a public body, and we are responsible for maintaining the public's trust. Putting it simply, we must all act in a way that is transparent, accountable to the public, and in a manner that earns the considerable trust they've placed in all of us. **No one holding elected or appointed office should be involved in any business dealings where, in fact or in perception, that person appears to use their office for profit, pleasure or personal gain.**

To that end, a City Councilor or a Housing Authority Executive Director or even a member of any City-level land-use Board - should never act in a manner that is illegal, immoral, or unethical -- and furthermore, they should completely avoid any perceived or actual conflict of interest created by their personal investments or business dealings. Every elected official must scrupulously and transparently avoid taking advantage of their position of public trust, by ensuring they never use their office **for pleasure, profit, or personal gain. We MUST expect this from every elected or appointed official. WE CANNOT FAIL THE PUBLIC TRUST. We must have the trust of our citizens for our government to function.**

If I wanted to develop multifamily affordable housing in the City of Dover in my personal capacity as a citizen, in a manner that benefitted me or my family, then I would resign from the Housing Authority and any land-use board where my membership creates a conflict.

But what if someone is willing to recuse themselves? Isn't that allowed? Even if a Councilor is willing to recuse that does not excuse them from responsibility for any perception of conflict of interest. For example: if a City Councilor and/or a designee to any Board or Commission acts in a way that could give even the **perception** that they somehow possess insider information, or their familiarity with those bodies as a member could be perceived as giving them an unfair advantage over anyone else, **then they should either cease those actions, or remove themselves from those public bodies.**

If you are a public servant, an elected or appointed official, then you are held to a higher standard; you are representing our ideals and our values. You SHOULD NOT be involved in any business dealings where your membership as a City Councilor or representative to any Board or Commission places you in an unethical situation.

If your business interests are so important, then you should resign from the Council, and then pursue your business interests. If you are acting in a way that reduces the public trust in this Council, or this City, then you are acting in a manner that compromises the public trust. Just because something is legal doesn't mean the behavior is ethical.

I would not presume to lecture this august body on the City Code, but I would draw your attention to Section 21-3 - Representation of private interests before City agencies. "No elected or appointed officer or employee shall appear on behalf of private interests before the City board, commission, committee, subcommittee or authority on which he/she serves." Section 21-4 covers recusal by Council members. To wit: "A Councilor...who has a direct or indirect financial or other private interest in any proposed legislation or matter of official business before the City Council shall **publicly disclose on the official records of the Council the nature and extent of such interest.** Such disclosures shall be made orally prior to the legislation or matter being discussed as part of a Council meeting agenda, or a Councilor may elect to file a written specific conflict-of-interest disclosure statement with the City Clerk.

It goes on to say, very clearly: "...a Councilor with a conflict of interest shall recuse himself or herself from further participation in the matter. "Recusal" means to immediately remove from discussion and voting. "Recusal" shall also mean the Councilor is required to physically vacate his or her seat." ***Meaning: they shouldn't be involved in the public business at hand, if they have a private hand in that same business.***

I will close by restating the importance of public trust. We are – all of us, City Council and City staff—acting as a body public. We represent and we are accountable to a public body, and we must maintain the public trust. You and me—all of us--- we must all act in a way that is transparent, accountable to the public, in a way that earns the enormous trust they've placed in all of us. **No one holding elected or appointed office should be involved in any business dealings where, in fact or in perception, that person appears to use their office for profit, pleasure or personal gain.**

It is my privilege to speak before the Council tonight. Thank you for this opportunity.

END OF STATEMENT

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October 22nd, 2024

Mrs. Donna Benton, AICP
Secretary, City of Dover Planning Board
Dover, NH 03820

Dear Madam Secretary-

On behalf of the Board of Commissioners of the Dover Housing Authority, and in my capacity as the Executive Director, I write today to express concerns about items 4.E. and 4.F. on tonight's agenda for the Dover Planning Board, to wit:

*"E. Consideration and acceptance of a Transfer of Development Rights for Fergus & Jennifer Cullen, Assessor's Map B, Lot 4-F, zoned R-40, located at 566 Sixth Street. (Proposal is to purchase three (3) units through TDR for a total of five (5) units.) *(TRAN-2024-0014)*

*F. Consideration and acceptance of a Minor Subdivision for Fergus & Jennifer Cullen, Assessor's Map B, Lot 4-F, zoned R-40, located at 566 Sixth Street. (Proposal is to subdivide one (1) lot into three (3) lots through TDR.) *(SUBM-2024-0005)".*

The erosion of the public trust in local government is a growing concern. This is especially true when the conduct of a member of government creates the perception or appearance of impropriety or conflict of interest. In this instance, the applicant for Agenda Items 4.E. and 4.F is a current City Councilor, and the City Council liaison to the Planning Board. In their capacity as City Councilor, the applicant has voted on other relevant land-use and policy decisions that set precedent and enabled the planning outcomes the applicants desire from tonight's meeting. This raises the question of objectivity and conflict of interest; while not illegal, the applicant's votes as a City Councilor played a role in determination of future land-use outcomes (thereby impacting the applicant's land development plans); this creates a perceived conflict of interest. At the City Council meeting on July 10th of this year, the applicant used their platform (in their official capacity as a City Councilor) to publicly defend their private property development plans when opposition to those plans was voiced during the Public Forum portion of the Council meeting; this use of a public platform to defend the applicant's private development interests represents an inappropriate use of elected office to further a development for personal profit – **this conflict of interest is clearly and expressly prohibited by policy, law, and practice**. All elected officials must avoid any appearance of impropriety, and must ensure they do not use their office for pleasure, profit, or personal gain. The NH

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Supreme Court has ruled that a conflict of interest exists when an elected official has a personal or financial interest in the outcome of a matter, one that is “immediate, definite and capable of demonstration; not remote, uncertain, contingent or speculative,¹”; the Court also ruled that, “Anyone owning land abutting a piece of property that is the subject of some type of application is disqualified from acting on that application.”² Finally, NH RSA 14-1B states a “conflict of interest” is the condition in which a legislator has a special interest in any matter which could directly or indirectly affect or influence the performance of the legislator’s official activities; “special interest” means any financial or non-financial personal interest in the outcome of a matter that is the subject of official activity, distinct from and greater than the interests of the public at large. It is clearly the intent of the State of New Hampshire—in its judicial rulings and its laws-- that those in elected office must exercise extreme caution and discretion when they act in land-use matters, especially in those matters where they clearly are a beneficiary of the policies on which they vote.

Also concerning is how this particular use of the Transfer of Development Rights (TDR) process creates a negative perception of affordable housing development in the City. As you know, the R-40 district’s rural character emphasizes larger lots sizes, with new developments allowed if they have open space preservation. While density of the type proposed is technically allowed, this is a highly contentious proposal, as evidenced by the abutter turnout at previous City Council meetings, Planning Board meetings, and Technical Review Committee meetings where concerned abutters voiced loud opposition to this proposal, as well as on social media. The public outcry over this development suggests that, at a minimum, the Planning Board should further consider this application prior to approval. Future development of affordable and attainable housing relies on protecting the integrity and robust planning approvals needed to ensure the TDR process remains a transparent and responsive way to drive development in Dover. We simply cannot have the TDR viewed as a “pay to play”

Lastly, the applicant’s shifting narrative about their motivation for this project is as concerning as it is telling. In a July 2024 interview with Foster’s Daily Democrat, the applicant publicly shared, “We have proposed to create housing there that is at or below the median cost of new housing in Dover. This is the number one issue facing our state. It is the number one goal of this council, the creation of more

¹ *Preston v. Gillam*, 104 N.H. 261; and *Atherton v. Concord*, 109 N.H. 164 (1968). “...the reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest.”

² *Totty v. Grantham Planning Board*, 120 N.H. 390 (1980)

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housing, diverse housing, attainable housing.³” On October 18th of this year, the applicant stated in the same newspaper: “Our goal for the project is to have attainable housing.⁴” From these statements, it seems that the applicant is motivated by desire to develop attainable housing in Dover. However, the applicant has also publicly shared their detailed plans, including the financial position leading to their decision to come before the Planning Board in an online forum⁵, where they stated “...I think the duplex units can sell for \$425-450K each or rent for about \$2,500 / month. I could also sell the approved lots... should I just sell the renovated home and the lots and take the win, or manage the building of the duplexes and go for a bigger win over the mid-range[?]....”. This is a significant narrative shift from the stated intent behind this proposed development – this lends credence to the valid concerns of the abutters, and further highlights the potentially negative perception of the TDR and/or affordable housing created approval of this proposal.

On the basis of the facts surrounding this issue, we must urge the Planning Board to do the following as curative actions:

1. The central issue at play is a public official with a conflict of interest. In accordance with NH RSA 673:14, the Planning Board should move to take a non-binding vote to see whether they believe there really is a conflict. If a conflict exists, the public official with a conflict should recuse or remove themselves from the situation entirely (by resigning from public office, if necessary).
2. In lieu of rejection, the Planning Board should delay or defer a decision on this matter until further review of these plans, including public commentary, are completed.

Our City relies on a transparent, publicly accountable planning process to ensure continued development of affordable and attainable housing. On a related note, the integrity of our public processes

³ Foster’s Daily Democrat. July 15 2024. Accessed Oct 22 2024. “Sixth Street neighbors fight Dover city councilor’s ‘attainable’ housing plan.” <https://www.fosters.com/story/news/local/2024/07/15/sixth-street-neighbors-fight-housing-dover-city-councilor-fergus-cullen/74376589007/>

⁴ Foster’s Daily Democrat. Oct 18.2024. Accessed Oct 22 2024. Dover city councilor’s Sixth Street housing development downsized.” <https://www.fosters.com/story/news/local/2024/10/18/dover-councilor-sixth-street-housing-development-downsized/75699961007/>

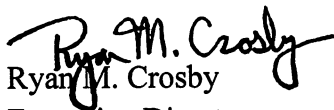
⁵ BiggerPockets.com. Accessed October 22, 2024. “What would you do: Re-financing reno & new construction: Fergus Cullen.” <https://www.biggerpockets.com/forums/49/topics/1214421-what-would-you-do-re-financing-reno-and-new-construction>

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and the faith of the public in government rely on the belief that public officials will act in the best interest of all citizens—that they will not use their elected office for pleasure, profit, or personal gain. It is our collective responsibility to address these matters in every quarter of public life, to ensure the survival and strength of our democracy.

Thank you very much for your consideration.

Respectfully Submitted,

A handwritten signature in black ink, reading "Ryan M. Crosby". The signature is fluid and cursive, with the first name "Ryan" and last name "Crosby" clearly legible, and "M." as a middle initial.

Ryan M. Crosby
Executive Director
Dover Housing Authority