

CITY OF DOVER

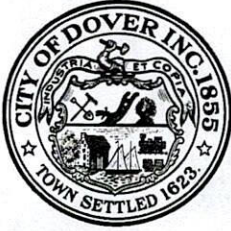
CITY COUNCIL - AGENDA

Meeting Type: Special Meeting
Meeting Location: City Hall, Council Chambers
Meeting Date: **Wednesday, February 19, 2025**
Meeting Time: **7:00 pm**

- 1. CALL TO ORDER**
- 2. MOMENT OF SILENCE**
- 3. PLEDGE OF ALLEGIANCE**
- 4. ROLL CALL ATTENDANCE**
- 5. PUBLIC FORUM**

Taxpayers, Business owners, and Residents are invited to speak on the subject matter of the Special Meeting. Statements shall be limited to five minutes.

- 6. UNFINISHED BUSINESS**
 - A. CONSIDERATION OF CITY OF DOVER ETHICS COMMISSION FINDINGS AND RECOMMENDATIONS REGARDING ETHICS COMPLAINT OF CAITLIN WILKIE AGAINST COUNCILOR FERGUS CULLEN**
- 7. ADJOURNMENT**



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 Treneo 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

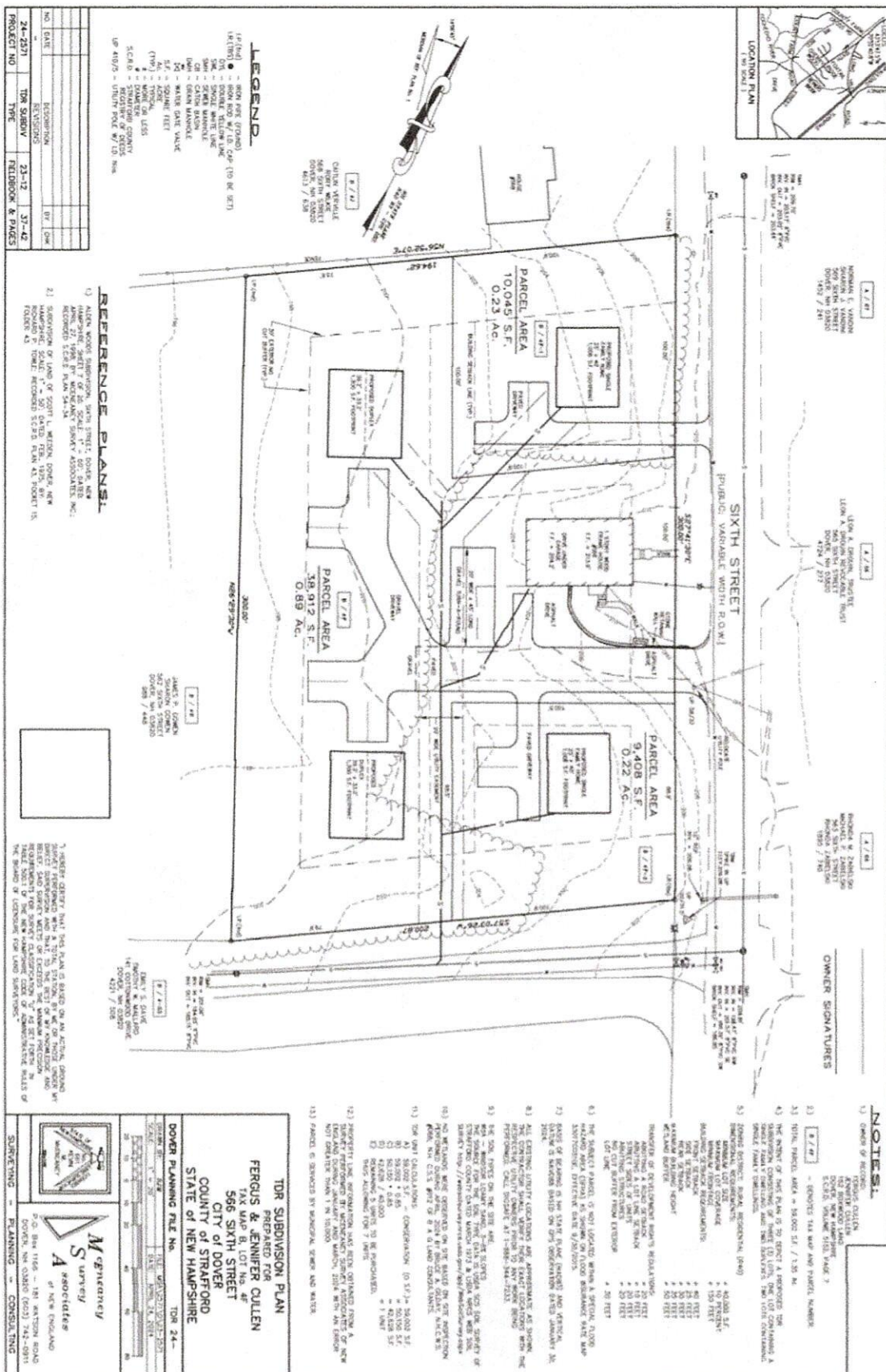
We believe Councilor Cullen's failure to fully recuse himself from any matter regarding the Transfer of Development Right applications, or any matter over how those funds are used and repeatedly using his official position to influence public opinion regarding his private business interests is an ethical 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 Treneo 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@doover.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@doover.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@doover.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.

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**CITY OF DOVER ETHICS COMMISSION
RECOMMENDATIONS REGARDING ETHICS COMPLAINT OF
CAITLIN WILKIE AGAINST COUNCILOR FERGUS CULLEN**

On January 2, 2025, the Ethics Commission held a hearing in this matter pursuant to Section 21-12(E) of the Dover Ethics Code. The Ethics Commission provided all parties fourteen calendar days' notice pursuant to Section 21-12(F) of the Dover Ethics Code. Present at the hearing were the complainant, Caitlin Wilkie, and the respondent, City Councilor Fergus Cullen. The parties were afforded an opportunity to present evidence and argument in support of their respective positions pursuant to Section 21-12(H) of the Dover Ethics Code. The hearing was not subject to the rules of evidence. No evidence was excluded. The Commission deliberated the matter in public following the hearing. Commission members Allan Krans Sr. (Chair), Matthew Keane, Dr. James Fiesher, and Charles Carey were present. Member Marion Cheney was absent. Also present was Attorney Christopher D. Hawkins representing the Ethics Commission.

The Chair of the Commission inquired whether Ms. Wilkie or Councilor Cullen had any reason to believe any member of the Commission should not participate in the hearing. Neither Ms. Wilkie nor Councilor Cullen asked that any member of the Commission be recused. Chair Krans explained the hearing process and asked the parties if they had any preliminary questions. Neither party raised any questions about the process. The hearing was audio recorded pursuant to Section 21-13(I) of the Dover Ethics Code. At the conclusion of the hearing, Chair Allan Krans asked whether either party felt the proceeding had been unfair. Neither party raised any specific concern about the fairness of the process.

COMPLAINT

On November 26, 2024, Caitlin Wilkie of 568 6th St. filed an Ethics Complaint against Councilor Fergus Cullen.

Ms. Wilkie raised three issues, which are briefly summarized below:

- 1 Whether Councilor Cullen, sitting as a member of the Planning Board, should have recused himself from participating in the discussion and vote of the Transfer of Development Rights ("TDR") and site plan application of DBS Holdings, LLC during a meeting on June 11, 2024. Ms. Wilkie alleges that by participating in that discussion, Councilor Cullen shed favorable light on a similar TDR and site plan application he had filed or intended to file for his own property adjacent to Ms. Wilkie's property on 6th St.
- 2 Whether Council Cullen should have used his position as a Councilor to defend his private business interests and rebut statements Ms. Wilkie made at the July 10, 2024, City Council meeting regarding the DBS Holdings matter. Ms. Wilkie also questioned whether Councilor Cullen acted improperly in seeking advice from the City Attorney regarding his obligations when "[a] private citizen wouldn't have been afforded that same right, and would need private legal counsel."

- 3 Whether Councilor Cullen should recuse himself from any vote as a Councilor allocating Conservation Funds to which he contributed TDR fees.

On December 4, 2024, the Commission determined the Complaint raised sufficient issues to merit a hearing. Fourteen calendar days' notice of the hearing was provided to all parties pursuant to Section 21-13(F) of the Dover Ethics Code.

JURISDICTION

The Ethics Commission has jurisdiction over the complaint pursuant to section 21-12(A) of the Dover Ethics Code, which states in relevant part that the activities of all elected officers and members of all board, commissions, committees and subcommittees whose members are appointed by the City Council shall be within the scope of authority of the Ethics Commission. See Article II(i) of the Ethics Commission Operating Rules.

SUMMARY OF RULINGS

Based upon the findings of fact outlined below, the Commission reached the following conclusions as to the issues raised by Ms. Wilkie pursuant to Section 21-13(J) of the Dover Ethics Code:

- 1. Councilor Cullen's participation in the June 11, 2024, Planning Board hearing on the DBS Holdings TDR and Site Plan Matter.**

Finding and Recommendation: The Ethics Commission unanimously finds based on Clear and Convincing evidence that Councilor Fergus Cullen violated the ethical provisions of Dover Ethics Code 21-2 as an appointed officer when **"he took part in a decision concerning the business of this City...(when) he had a financial or other private interest, directly or indirectly, which is in conflict with his official duties"** as a Planning Board member subject to the juror standard by State law (RSA 673:14 and RSA 500-A:12(g)), Dover Ethics Code **21-5** by participating in official business of the City of Dover without disclosing the nature and extent of a private interest in a matter of official business in the City of Dover, and Dover Ethics Code **21-8** in holding an investment in a private transaction that created a conflict with his official duties.

The rationale for actionable Findings of violations of Dover Code 21-2, 21-5 and 21-8 is the failure of Councilor Cullen to recuse in light of his business relationship with Kevin McEneaney and/or Civilworks NE at the Planning Board meeting of June 11, 2024. Mr. McEneaney presented for DBS Holdings regarding development of 512 Sixth Street. The official duty of Councilor Cullen is defined by RSA 673:14 and RSA 500-A:12.

Councilor Cullen's defense that the Ethics Commission cannot alter his private property rights is unpersuasive since none of the Findings and Recommendations address his rights to development. This report addresses Councilor Cullen's ethical obligations as a Planning Board member, not property rights.

Councilor Cullen also asserts that Dover is a small region of a small state and that knowing people is “inevitable.” This assertion is also unpersuasive as a defense to his actions. Knowing people is inevitable; establishing business relationships with people is a **choice**. Attempting to perform a quasi-judicial function as a member of the Planning Board after establishing a business relationship with the representative of an applicant is a **choice** in violation of an official duty.

2. Councilors Cullen’s comments at the July 10, 2024, City Council meeting in response to Ms. Cullen’s comments.

Finding and Recommendation: The Ethics Commission unanimously finds based on Clear and Convincing evidence that Councilor violated the ethical provisions of Dover Ethics Code 21-3 by appearing on behalf of his private interests before the City Council during City Council Matters of Interest.

The Rationale for actionable Findings of violation of Dover Code 21-5 at the City Council meeting on July 10, 2024 results from Councilor Cullen discussing his private development at 566 Sixth Street. Nothing about the 566 Sixth Street project was before the Dover City Council. Private matters may only be discussed privately. The public option for Councilor Cullen was to file a statement with the City Clerk.

3. Councilor Cullen’s participation as a member of the City Council in the allocation of conservation funds derived from TDR applications.

Finding and Recommendation: The Commission finds this issue is premature because there is no evidence Councilor Cullen has paid any TDR funds into the Conservation Fund nor voted on the allocation of conservation funds derived from such funds. Pursuant to Section 21-12(G) of the Dover Ethics Code, the Commission does not issue advisory opinions based upon hypothetical situations and offers no opinion at this time on whether such a vote would violate the Dover Ethics Code. Ms. Wilkie, or any other Dover resident, may file an ethics complaint in the future if they believe Councilor Cullen has violated the Dover Ethics Code with respect to such a vote, or with respect to any other issue they believe may violate the Dover Ethics Code.

The Rationale for dismissing the Complaint regarding the Conservation funds is no evidence was presented that Councilor Cullen had paid in, or voted on, the use of Conservation funds.

BURDEN OF PROOF

The Commission explained to the parties that the complainant bore the burden of proving a violation of the Dover Ethics Code or other applicable law by clear and convincing evidence. Dover Ethics Code 21-12(K).

Pursuant to Dover Ethics Code 21-12(L), clear and convincing evidence is an intermediate standard of proof that calls for more proof than that based on more probable than not but less proof than that based on beyond a reasonable doubt. It is defined as that evidence which establishes a factual conclusion to be highly probable, rather merely than more probable than not. It requires that the party having the burden of proof placed in the trier of fact an abiding conviction that the true or his or her factual contentions are highly probable; otherwise, he or she has failed to prove it.

SCOPE OF INQUIRY

Pursuant to Article V(I), the scope of the hearing included review of all pertinent sections of the City Charter and ordinances involving facts alleged in the Complaint, in addition to the provisions cited in the Complaint.

CODE PROVISIONS AND STATUTES CONSIDERED (Emphasis added in yellow)

Dover Planning Board Code § 9-8(G)

Disqualification. All members shall comply with relevant sections of the City Code of Ethics (Chapter 21) concerning conflicts and disqualification rules pursuant to RSA 673:14.

Dover Ethics Code § 21-1

APPOINTED OFFICER – Includes all positions appointed by the Mayor and Council or the City Manager, including appointment to the Housing Authority, but not employees.

Dover Ethics Code § 21-2

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.

Dover Ethics Code § 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. Councilors, however, may appear without compensation on behalf of constituents or in the performance of public or civic obligations.

Dover Ethics Code § 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.

Dover Ethics Code § 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.

Dover Ethics Code 21-11 Ethics Commission established; purposes.

A. There is hereby established an Ethics Commission consisting of five Commissioners who shall be Dover residents and appointed by the City Council. At least one Commissioner shall be a former City Councilor or former School Board member as provided in § C11-4 of the Dover City Charter. The purposes of the Ethics Commission are:

- (1) To provide a forum to hear and accept complaints of violations of ethical standards of behavior for elected and appointed officers under the jurisdiction of the Ethics Commission.
- (2) To encourage Dover elected and appointive officers and all members of boards, commissions, committees and subcommittees to act in the best interests of the City and perform their duties and responsibilities according to the ethical provisions of the City Charter and City ordinances.
- (3) To require the disclosure of financial interests or other interests in matters affecting City business where the interests constitute a conflict of interest.
- (4) To prohibit those holding public office and volunteer positions in our City from using their positions for personal gain and to foster the use of such positions only to advance public interests.
- (5) To promote the integrity of City government.

Dover Ethics Code § 21-12(A)

The Ethics Commission shall operate in an advisory role to the City Council. The activities of all elected officers and members of all boards, commissions, committees and

subcommittees whose members are appointed by the City Council shall be within the scope of authority of the Ethics Commission. The Ethics Commission members shall also be subject to the jurisdiction of the Ethics Commission. If a member of the Ethics Commission is the subject of an ethics complaint, the member shall be replaced in all proceedings by an alternate member. The Ethics Commission shall not have jurisdiction over the City Manager or other employees of the City of Dover.

Dover City Charter Provision 11-5

In addition to the provisions of § C11-3 City Councilors and members of standing city commissions and boards may be removed from office by a vote of the City Council upon such a recommendation having been forwarded to the Council by the Ethics Commission.

RSA 674:13 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.

RSA 500-A:12 Examination

- I. Any juror may be required by the court, on motion of a party in the case to be tried, to answer upon oath if he:
 - (a) Expects to gain or lose upon the disposition of the case;
 - (b) Is related to either party;

- (c) Has advised or assisted either party;
- (d) Has directly or indirectly given his opinion or has formed an opinion;
- (e) Is employed by or employs any party in the case;
- (f) Is prejudiced to any degree regarding the case; or
- (g) Employs any of the counsel appearing in the case in any action then pending in the court.

II. If it appears that any juror is not indifferent, he shall be set aside on that trial.

EVIDENCE CONSIDERED

The Ethics Commission considered only publicly available information with respect to this matter, as follows:

- The Complaint filed by Ms. Wilkie with attached exhibits.
- The Commission pre-marked Ms. Wilkie's Complaint as Exhibit 1, the June 11, 2024 Planning Board Meeting Minutes as Exhibit 2, the July 10, 2024 City Council Meeting Minutes as Exhibit 3, a letter from Councilor Cullen to his neighbors dated December 1, 2023 as Exhibit 4, and a letter from Councilor Cullen to his neighbors dated May 20, 2024 as Exhibit 5.
- The testimony and documentary evidence presented by the parties at the hearing. This includes 29 exhibits submitted by Councilor Cullen marked FC1-FC29. The Commission also viewed excerpts of the June 11, 2024 Planning Board meeting and July 10, 2024 City Council meeting presented by Councilor Cullen.
- Transcript of Ms. Wilkie's comments to the Planning Board on June 11, 2024. Exhibits FC19 and FC21.
- Transcript of Mr. Cullen's comments to the Planning Board on June 11, 2024. Exhibit FC20.
- Transcript of Ms. Wilkie's comments to the City Council on July 10, 2024. Exhibit FC23.
- Transcript of Mr. Cullen's comments to the City Council on July 10, 2024. Exhibit FC24.
- Transcript of Attorney Scott Hogan's comments to the Planning Board on October 22, 2024. Exhibit FC25.
- Letter dated January 15, 2025 from Councilor Cullen to the Ethics Commission.

FINDINGS OF FACT

1. Fergus Cullen ("Mr. Cullen") is a member of the City Council of the City of Dover.
2. Mr. Cullen was appointed by the City Council to serve as a member of the Planning Board.
3. On November 28, 2023, Fergus and Jennifer Cullen acquired the property known as 566 Sixth St. Book 5152, Page 7, Strafford County Registry of Deeds.
4. On or about December 1, 2023, Councilor Cullen delivered a letter to neighbors of his property at 566 Sixth St. stating that he expected to seek approval to add at least two or maybe more housing units to the 566 Sixth St. property. Testimony of Fergus Cullen. Exhibits 4 and FC5.
5. No later than April 24, 2024, Councilor Cullen retained Civilworks and McEneaney Survey Associates to draft a TDR plan and Drainage and Landscape Plan with respect to his property at 566 Sixth St. Plans bearing those dates appear in the Planning Board file.
6. No later than April 26, 2024, Civilworks and McEneaney Survey Associates drafted a TDR Open Space plan on behalf of DBS Holdings, LLC for the property at 512 Sixth St. A plan bearing that date appears in the Planning Board file for DBS Holdings, LLC.
7. The TDR plans for the DBS Holdings Project and the Cullen project at 566 Sixth St. are very similar.
8. On May 20, 2024, Councilor Cullen delivered a letter to neighbors of his property at 566 Sixth St. that included the TDR and site plan he intended to submit for the property. See Exhibits 5 and FC10.
9. Rory and Caitlin Wilkie own and reside at the property at 568 Sixth St., which borders 566 Sixth St. to the north. The Wilkies received copies of Councilor Cullen's letters of December 1, 2024 and May 20, 2024. Testimony of Caitlin Wilkie.
10. On May 24, 2024, DBS Holdings submitted a TDR plan and application for site plan review to the City of Dover Planning and Development Office for technical review. The application documents appear in the DBS Holdings File in the Planning Board file.
11. At 3:31 p.m. on June 6, 2024, Ms. Wilkie sent an email to the Dover Planning Board claiming Councilor Cullen had a conflict of interest with respect to the DBS Holdings application. Exhibit FC15.

12. At 7:30 p.m. on June 6, 2024, Councilor Cullen responded to Ms. Wilkie's email and copied the members of the Planning Board, City Manager Joyal, and City Attorney Josh Wyatt. Exhibit FC16.
13. By June 6, 2024, Councilor Cullen was aware that Ms. Wilkie was raising concerns about conflict of interest. Councilor Cullen testified that those concerns "raised alarm bells" with him and that he sought advice from Planning Board Chair Gail Cruikshank and City Attorney Josh Wyatt. Councilor Cullen testified he did not raise the issue with the Planning Board as a whole because he could not disclose the basis of the issue without risking compromising the impartiality of the Board.
14. On June 10, 2024, Mr. Cullen submitted a TDR plan and application for site plan review to the City of Dover Planning and Development Office for technical review. The application documents appear in the Cullen File in the Planning Board file.
15. Councilor Cullen testified that he could not recall whether he spoke with Mr. McEneaney about the DBS Holdings application prior to the Planning Board meeting on June 11, 2024.
16. Sometime between June 6 and June 11, 2024, Councilor Cullen contacted Planning Board Chair Gail Cruikshank for advice on the conflict of interest issue and that she told him she did not believe there was a conflict. Councilor Cullen testified he did not disclose to Ms. Cruikshank that he was working with McEneaney Survey Associates on his application. Ms. Cruikshank testified that that disclosure would not have altered her opinion on the matter but she could not say whether the Board as a whole might have been concerned.
17. On June 11, 2024, Councilor Cullen called City Attorney Josh Wyatt to discuss potential conflict of interest issues. Councilor Cullen testified that Attorney Wyatt informed him that he had no conflict issue. Attorney Wyatt testified that he told Councilor Cullen he could offer him no legal advice but that he was aware of no caselaw that a City Councilor could not file a land use application and that Councilor Cullen should consult his own attorney. Attorney Wyatt testified he did not seek detailed information from Councilor Cullen as he did not intend to offer him legal advice. Councilor Cullen testified that he did not disclose to Attorney Wyatt that both he and DBS Holdings were working with McEneaney Survey Associates.
18. On June 11, 2024, the DBS Holdings application was heard by the Planning Board.
19. The minutes of the June 11, 2024, Planning Board hearing reflect that Kevin McEneaney appeared on behalf of DBS Holdings and presented the TDR Plan on behalf of DBS Holdings.

20. Mr. Cullen attended the June 11, 2024, Planning Board meeting in his capacity as a member of the Board.
21. Caitlin Wilkie attended the June 11, 2024, hearing,
22. Ms. Wilkie objected to Mr. Cullen voting on the application on the basis of bias or appearance of bias and conflict or appearance of conflict. Ms. Wilkie stated there was an “incredible likeness” to what Mr. Cullen had submitted to the City last week as to his property at 566 Sixth St. Ms. Wilkie expressed concern that Mr. Cullen’s vote in favor of the DBS Holding application would set an unfair precedent. Ms. Wilkie referenced a statutory procedure for the Board to vote with reference to Mr. Cullen’s participation.
23. Mr. Cullen responded that he owned the property at 566 Sixth St. and would have an application coming before the Board in the coming weeks. Mr. Cullen stated that the Wilkies have concerns about that property and that it is their right to express concerns and that he would recuse himself when his application came before the Board. Mr. Cullen stated that the Wilkies’ concerns were misdirected as to the DBS Holdings application. Mr. Cullen stated that he had no connection to DBS Holdings or its owners and had no conflict of interest with respect to the DBS Holdings application. Mr. Cullen referenced discussions he had with the City attorney.
24. The Commission finds that Mr. Cullen had no direct or indirect financial interest in DBS Holdings.
25. Mr. Cullen did not disclose during the June 11 hearing that he had a business relationship with McEneaney Survey Associates.
26. No other member of the Planning Board commented directly on Ms. Wilkie’s concerns.
27. No member of the Planning Board proposed a motion to recuse Mr. Cullen.
28. The DBS Holdings application was accepted and approved by the Planning Board on a vote of 4-2. Mr. Cullen voted in favor of the application.
29. On July 10, 2024, Ms. Wilkie appeared before the City Council and made a lengthy statement regarding Mr. Cullen’s alleged conduct. The Commission listened to that statement in full. In sum, Ms. Wilkie expressed concerns regarding the merits of Mr. Cullen’s TDR application and his alleged conflict of interest and the perception of conflict of interest. Ms. Wilkie stated that Mr. Cullen used the same engineering company as DBS Holdings and alleged that the DBS Holdings application was very

similar to Mr. Cullen's application. The Commission notes that Ms. Wilkie's written complaint largely echoes the issues raised in her verbal presentation.

30. Mr. Cullen responded to Ms. Wilkie's comments. The Commission listened to Mr. Cullen's statement in full. In sum, Mr. Cullen noted that chief among the City Council's goals was creating affordable housing. Mr. Cullen noted that he withheld information because he wanted to avoid discussing the matter with the other Planning Board members and his application had not been made, thus it would have been inappropriate to discuss his application with the Planning Board on June 11. Mr. Cullen noted that volunteer public officials do not give up all their rights as private citizens. Mr. Cullen acknowledged the need to follow all disclosure and recusal rules, that he had discussed the matter with the City attorney, and that he had followed the City attorney's guidance.
31. Mr. Cullen testified that he cited the Planning Board's approval of the DBS Holdings application as precedent in the revised site plan application for his property at 566 Sixth Street.
32. The Commission finds no evidence that Councilor Cullen has paid any TDR funds at this time nor any evidence that Councilor Cullen has voted on the allocation of any Conservation Funds paid by him.

RECOMMENDATION

Pursuant to Section 21-14(A) and (B)(2) of the Dover Ethics Code, the recommendation of the Ethics Committee for a remedy is removal of Councilor Cullen from the office of City Council representative to the Dover Planning Board. The rationale is removal will address the issue whether ethical violations will occur in the future.

This recommendation sanction was approved by the Commission 3-1, with member Keane dissenting. In all other respects, the Commission unanimously approved the findings and rulings herein.

Dated:

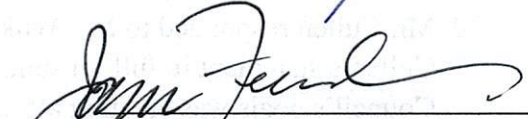
1/21/25


Allan Krans Sr., Chair

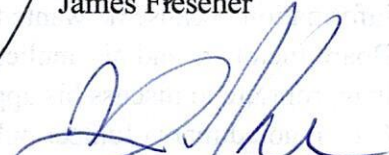
Dated: 1/24/2025


Charles Carey

Dated: 21 January 2025


James Friesher

Dated: Jan 23 2025


Matthew Keane

ARTICLE X
CONDUCT OF OFFICIALS¹

C10-1. Eligibility for Elective Office. [Amended 9-25-1985, approved 11-5-1985 by election]

Except as provided by state law, no employee of this city shall hold an elective or appointive office in this city government while they are in the employ of this city or any of its agencies.

C10-2. Conflicts of Interest. [Amended 9-5-1990, approved 11-6-1990 by election; 2-12-2003, approved 11-4-2003 by election]

No elective or appointive officer or employee of this city shall take part in a decision concerning the business of this city in which he/she or a member of their family directly has a financial interest, aside from his/her salary as such officer or employee, greater than any other citizen or taxpayer. Any elective or appointive officer or employee of the city who has such financial interest in any such decision shall make full, public disclosure of such interest prior to the city's deliberating on such decision.

C10-3. Disqualification from Decision-Making Process.

No elective or appointive officer or employee of this city shall take part in a decision concerning the business of this city in which they or a member of their 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.

C10-4. Private Use of City Property and Personnel.

No elective or appointive officer or employee shall devote any city property or labor to private use except as may be provided by law or ordinance.

C10-5. Acceptance of Gifts and Gratuities.

No elective or appointive officer or employee of the city shall solicit or accept any gift or gratuity which could, in any manner, be construed to affect or influence the performance of his/her official duties.

1. Editor's Note: See also Ch. 21, Ethics, Code of.

C10-6. Disposition of Fees.

No elective or appointive officer or employee of the city shall collect any fees, salaries or other payments in connection with his/her official duties with the exception of court fees, for his/her own use, but all such fees, salaries or other payments shall be paid into the city treasury.

C10-7. Misuse of Information.

No elective or appointive officer or employee of the city shall utilize or dispense information gained through said office or employment for the personal profit of themselves or others, as opposed to the public good of the community.

C10-8. Applicability. [Amended 9-5-1990, approved 11-6-1990 by election]

This Article shall apply to all officers and employees of the city, including officers and employees of the school system.

C10-9. Civil Penalty.

Any elective or appointive officer or employee of the city found to have violated any of the provisions of this section shall be personally liable to the city to the extent that the city suffers loss thereby.²

C10-10. Future Employment. [Amended 8-26-1992, approved 11-3-1992 by election]

No elective or appointive officer or employee of the City shall solicit, negotiate for or promise to accept employment with any person, firm or corporation with which he or his department, body or agency is engaged on behalf of the City in the transaction of business which is or may be affected by his official action. No elective officer may become employed by the City within one (1) year after their term of office ends.

2. Editor's Note: For further penalties see § C11-13.

Chapter 21
ETHICS, CODE OF

ARTICLE I
Ethical Standards

§ 21-1. Definitions.

As used in this chapter, the following terms shall have the following meanings:

APPOINTED OFFICER — Includes all positions appointed by the Mayor and Council or the City Manager, including appointment to the Housing Authority, but not employees.

COUNCILOR — A member of the Dover City Council.

ELECTED OFFICER — The Mayor, Deputy Mayor and all Councilors and the positions of ward election officials and Charter Commission members.

EMPLOYEE — Includes all City employees whose salary is paid in whole or in part from the City treasury and all positions over which the City Manager, department heads or the City Council has power of appointment.

FAMILY — Any person who is related to an elected or appointed officer or employee in one of the following ways: spouse, parent, grandparent, child, grandchild or sibling. The definition also includes all persons who are members of the same household as the elected or appointed officer or employee, regardless of whether they are related by blood or marriage.

§ 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.

**§ 21-3. Representation of private interests before City agencies.
[Amended 2-27-2019 by Ord. No. 2019.02.13-003]**

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. Councilors, however, may appear without compensation on behalf of constituents or in the performance of public or civic obligations.

§ 21-4. Required disclosure by Council members; recusal.

- A. A Councilor or a Councilor with a family member 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. The statement shall be read aloud into the record at all public meetings during which the legislation or matter is discussed. In the case of a nonpublic session, the statement shall be read aloud at the next public meeting.

- B. 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. During a nonpublic session, the Councilor shall remove himself or herself from the meeting room.

§ 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.

§ 21-6. Gifts.

No Councilor or appointed officer or employee shall accept any gift of \$25 or more at one time, or \$100 in a calendar year from a single source, whether in the form of service, loan, thing or promise or any other form, from any person, firm or corporation interested, directly or indirectly, in any manner whatsoever in business dealings with the City. Campaign contributions received during the official election period shall not be considered gifts.

§ 21-7. Disclosure of confidential information.

No Councilor or appointed officer or employee shall intentionally disclose confidential or privileged information, or other information learned by virtue of official position as defined in RSA 42:1-a, or information obtained

in sessions pursuant to RSA 91-A:2, I(b) or (c), concerning the property, government or affairs of the City.

§ 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.

§ 21-9. Incompatible employment.

No elected or appointed officer or employee shall engage in or accept private employment or render or sell services or goods from private interests, which such employment or service is incompatible with the proper discharge of his/her official duties.

§ 21-10. Future employment.

No elected or appointed officer or employee shall solicit, negotiate for or promise to accept employment by any person, firm or corporation with which he or she is or his or her agency is engaged on behalf of the City in the transaction of business or which is or may be affected by his or her official action. In connection with this prohibition, no elected officer shall assume employment with the City for 365 days after leaving office.

ARTICLE II

Ethics Commission; Complaint Procedure; Remedies**§ 21-11. Ethics Commission established; purposes.**

- A. There is hereby established an Ethics Commission consisting of five Commissioners who shall be Dover residents and appointed by the City Council. At least one Commissioner shall be a former City Councilor or former School Board member as provided in § C11-4 of the Dover City Charter. The purposes of the Ethics Commission are:
- (1) To provide a forum to hear and accept complaints of violations of ethical standards of behavior for elected and appointed officers under the jurisdiction of the Ethics Commission.
 - (2) To encourage Dover elected and appointive officers and all members of boards, commissions, committees and subcommittees to act in the best interests of the City and perform their duties and responsibilities according to the ethical provisions of the City Charter and City ordinances.
 - (3) To require the disclosure of financial interests or other interests in matters affecting City business where the interests constitute a conflict of interest.
 - (4) To prohibit those holding public office and volunteer positions in our City from using their positions for personal gain and to foster the use of such positions only to advance public interests.
 - (5) To promote the integrity of City government.
- B. The Commissioners shall serve for three-year staggered terms. The initial Ethics Commission shall consist of five Commissioners with one Commissioner appointed for a one-year term, two Commissioners appointed for two-year terms, and two Commissioners appointed for three-year terms. Subsequent appointments shall be for three years unless the Commissioner is appointed to serve out a term to fill a vacancy. The Appointments Committee shall solicit and screen the applicants. The Appointments Committee shall present a list of all the applicants who have applied for a position on the Ethics Commission to the City Council with the recommendations of the Appointments Committee. The City Council acting as a committee of the whole shall interview and select the applicants for appointment to the Ethics Commission either from the entire list of applicants or based on the recommendations of the Appointments Committee. The City Council may appoint three alternate Commissioners for one-year terms. Alternates shall be involved in the activities and decisions of the Ethics Commission only in the absence of a regular member or members.
- C. No Commissioner shall be a current City Councilor or School Board member or other elected official, or a member of any board, commission, committee or subcommittee of the City of Dover.

- D. The Commissioners of the Ethics Commission shall select a Chair and Vice Chair on an annual basis. No Commissioner shall serve more than two consecutive terms as the Chair.
- E. There shall be no compensation for the members of the Ethics Commission.

§ 21-12. Scope of duties and authority; training.

- A. The Ethics Commission shall operate in an advisory role to the City Council. The activities of all elected officers and members of all boards, commissions, committees and subcommittees whose members are appointed by the City Council shall be within the scope of authority of the Ethics Commission. The Ethics Commission members shall also be subject to the jurisdiction of the Ethics Commission. If a member of the Ethics Commission is the subject of an ethics complaint, the member shall be replaced in all proceedings by an alternate member. The Ethics Commission shall not have jurisdiction over the City Manager or other employees of the City of Dover.
- B. The Ethics Commission shall only receive written complaints signed under oath before a notary public.
- C. The Ethics Commission shall conduct activities in public, including the investigation of complaints, presiding over hearings, the taking of testimony, and deliberations, with the exception of the initial screening of complaints. The provisions of RSA 91-A shall apply to the activities of the Ethics Commission.
- D. The Ethics Commission shall apply the provisions of Article X of the City Charter and this chapter of the Code of the City of Dover.
- E. The Ethics Commission shall provide and require professional training for the Commissioners. It shall also provide information to the public, the City Council and members of all boards, commissions and committees of the City of Dover on the role and functioning of the Ethics Commission by providing taped reruns of the training sessions as well as other resources.
- F. The Ethics Commission shall have the power to promulgate its own rules of order subject to the approval of the City Council. All elected and appointed officers shall have an ethical duty to fully cooperate with the activities of the Ethics Commission, including but not limited to participation in discovery, appearances before the Ethics Commission, the answering of questions, specific responses to the allegations and the production of documents in a timely manner at the request of the Ethics Commission where the request for documents is reasonably required to investigate and resolve the allegations.
- G. The Ethics Commission shall not issue advisory opinions based on hypothetical situations. All opinions shall be rendered as decisions pursuant to the complaint procedure stated in § 21-13.

§ 21-13. Procedures; initial screening; referrals; hearings.

- A. All ethics complaints shall be in writing on a form approved by the City Attorney, supplied by, and available at, the office of the City Clerk. All complaints shall be signed under oath before a notary public provided free of charge by the City Clerk's office and shall be filed with the City Clerk. Complaints shall only be received from residents of Dover, property owners in Dover and vendors who engage in business with the City of Dover. Each complaint shall be confined to a single subject matter and shall state facts constituting an alleged violation of the ethics provisions of the City Charter or City Code. The complaint shall name a specific person or persons who are alleged to have violated an ethical provision. The complaint shall also state the specific applicable provision of the City Charter or Code on which the complainant relies in making the complaint.
- B. All complaints shall only allege facts involving alleged ethical violations occurring during the 180 calendar days prior to the filing of the ethics complaint, or the term of the present City Council, whichever is longer. In addition, all complaints shall require the complainant to certify under oath the following:
 - (1) The complainant has read the provisions of Article X of the Dover City Charter.
 - (2) The complainant has read the provisions of Chapter 21 of the Code of the City of Dover.
- C. The City Clerk shall seal each ethics complaint and forward the ethics complaint to the Chair of the Ethics Commission within two business days of the filing. The Ethics Commission shall meet in nonpublic session pursuant to RSA 91-A:3, II(c). The Ethics Commission shall examine the contents of the ethics complaint and conduct an initial screening of the ethics complaint within 20 business days after the filing of the ethics complaint with the City Clerk's office. The Ethics Commission shall take one of the following actions:
 - (1) Refer the matter and/or any suspected criminal activity directly to the Police Department for investigation and possible prosecution as a criminal matter without further involvement by the Ethics Commission. There shall be no public disclosure of the complaint by the Ethics Commission.
 - (2) Refer the matter to the City Council for investigation and action by the City Council as a matter involving the City Manager's actions or inactions without further involvement by the Ethics Commission.
 - (3) Refer the matter to the City Manager for investigation and action by the City Manager as a matter involving the actions or inactions of a City employee without further involvement by the Ethics Commission.

- (4) Dismiss the complaint for stating facts that, if true, would not constitute a violation of the ethical provisions of the City Charter, City Code or state law.
 - (5) Dismiss the complaint for failure to state sufficient facts for establishing a reasonable basis to believe that an ethical violation may have occurred.
 - (6) Dismiss the complaint by stating the reason for the dismissal, in writing.
 - (7) Dismiss the complaint for failure to comply with the procedural requirements of § 21-13B.
 - (8) Accept the matter for hearing and decision by the Ethics Commission. Acceptance of the ethics complaint shall occur upon the determination by the Ethics Commission that there is a reasonable basis to believe the facts in the complaint may constitute an ethical violation. The acceptance of the complaint shall not be construed as a final determination that an ethical violation has occurred.
- D. The Ethics Commission shall notify the complainant and the person against whom the allegations were made of the determination of the initial Screening Committee unless the matter is referred to the Police Department. The notification shall be made by sending a letter by certified mail, return receipt requested, or personal service of process. If accepted by the Ethics Commission, the initial notice shall also include a hearing date. A copy of the ethics complaint shall be included with the notice. All complaints, except those referred to the Police Department, shall be released to the public after the person against whom the complaint is made has been notified. A copy of all complaints released to the public shall be available in the Clerk's office.
- E. The Ethics Commission shall conduct a hearing for cases accepted by the Ethics Commission within 30 calendar days of the date of acceptance of the ethics complaint by the Ethics Commission. One continuance of not more than 30 calendar days may be granted, but no further continuances shall be granted.
- F. Fourteen calendar days' notice shall be provided to the parties for all hearings. The Ethics Commission may hold prehearing and other informal conferences prior to the evidentiary hearing to aid in the disposition of the proceeding. All hearings and informal conferences shall comply with the provisions of RSA 91-A.
- G. The hearing shall not be subject to the rules of evidence. All evidence that will reasonably assist the Ethics Commission shall be admissible, but evidence that is irrelevant or immaterial, unduly repetitious, insulting, or harassing shall be excluded. The Ethics Commission may require, with reasonable written notice, the appearance of any official, board member or employee to appear before it to provide testimony.

- H. The hearing shall provide an opportunity for all parties to be heard and to present evidence. Witnesses shall testify under oath. Parties may engage in a brief opening and closing statement. Written memoranda may be required by the Ethics Commission.
- I. An audio recording shall be made of the proceedings. All recordings and documents shall be stored with the City Clerk and maintained pursuant to state law.
- J. The Ethics Commission shall issue a written report within 30 calendar days of the hearing. The report shall include a determination whether the allegations contained in the complaint are actionable or not actionable. In addition, if the complaint is found to be actionable, the report shall include a recommendation on a remedy as provided in § 21-14 for the City Council to consider. The Ethics Commission shall forward a copy of the decision and recommendation with specific findings to the parties and to the City Council. A copy of all reports and recommendations shall be available to the public in the City Clerk's office.
- K. The complainant shall have the burden of proof. The standard of proof for the Ethics Commission to use for deciding matters before the Ethics Commission shall be clear and convincing evidence.
- L. Clear and convincing evidence is an intermediate standard of proof that calls for more proof than that based on more probable than not, but less proof than that based on beyond a reasonable doubt. "Clear and convincing evidence" is defined in New Hampshire law as that evidence that establishes a factual conclusion to be highly probable, rather than merely more probable than not. It requires that the party having the burden of proof place in the trier of fact an abiding conviction that the truths of his/her factual contentions are highly probable. Otherwise, he/she has failed to prove it and is not entitled to relief.
- M. Upon the establishment of the Ethics Commission, the Ethics Commission may receive and act on ethical complaints involving allegations occurring prior to the adoption of this article if the complaint alleges a violation of an ethical standard in effect on the date of the alleged violation. Current elected officials affected by ethical standards adopted pursuant to RSA 31:39-a shall be exempt for a period of 90 days after the adoption of this article. After the adoption of this article and the selection of the members of the initial Ethics Commission, no ethics complaint shall be accepted for filing by the City Clerk's office for 30 days after the swearing in of the last Commissioner.

§ 21-14. Remedies.

- A. All decisions of the Ethics Commission shall be advisory to the City Council. The City Council is not obligated to accept the decisions and recommendations of the Ethics Commission.

B. The City Council shall have the following remedies available as per RSA 49C-13:

- (1) Place on file without further action.
- (2) Verbal warning.
- (3) Written censure.
- (4) The civil penalty provided in § C10-9 or C11-13 of the City Charter.
- (5) Removal from office by a vote of the Council.

§ 21-15. Severability.

If any provision of this article is declared invalid or unenforceable by a court of law, the remaining portions shall remain in full force and effect.