



CITY OF DOVER

ETHICS COMMISSION MINUTES

Meeting Type: **Regular Meeting**
Meeting Location: **McConnell Center Room 323**
Meeting Date: **Wednesday, January 15, 2025**
Meeting Time: **6:00 p.m.**

1. CALL TO ORDER

The meeting was called to order at **6:16 PM**

2. ATTENDANCE

Present: Allan Krans (AK), Marion Cheney (MC), Charles Carey (CC), James Fieseher (JF), and Matt Keane (MK).

Also Present: Jennifer Perez, Deputy City Attorney (JP), Chris Hawkins, Outside Counsel to the Committee, Fergus Cullen (FC), Caitlen Wilkie, and members of the public.

3. APPROVAL OF MINUTES – December 4, 2024

Motion to Approve: JF

Second: CC

Discussion: None

Vote: Unanimous to approve

4. ETHICS COMPLAINT FILED BY CAITLIN WILKIE

MC did not participate in the further deliberations as she was not present for the original hearing.

a. Further deliberation and review of evidence for issuance of a written report on Findings and Recommendations to the City Council

AK provided a “deliberation checklist” that he created to structure the deliberations on the ordinance and a draft of the proposed decision prepared by Attorney Hawkins.

FC submitted a two-page letter to members of the Committee – AK recognized this letter and the Committee read/reviewed the letter.

AK and JF questioned if the letter could be used in deliberations for the recommendation/remedy – Attorney Hawkins explained that the Committee has the discretion to consider it as a statement for recommended sanctioning.

AK led a discussion through his deliberation checklist regarding Code provision 21-5 to continue a deliberation started, but discontinued from the meeting on January 2, 2025. Members concluded by clear and convincing evidence that Councilor Cullen should have, but did not, recuse himself from the presentation of the 512 matter at the June 11, 2024



CITY OF DOVER

ETHICS COMMISSION MINUTES

Meeting Type: **Regular Meeting**
Meeting Location: **McConnell Center Room 323**
Meeting Date: **Wednesday, January 15, 2025**
Meeting Time: **6:00 p.m.**

Planning Board meeting in violation of Code provision 21-5. AK explained that this finding increased the number of ethics violations by Councilor Cullen to four violations.

AK distributed a document, which he created, containing his recommended changes to the draft decision. These recommended changes included assigning rationales for the violations, adding more quotations from the Charter, local ordinances, and state statutes, as well as adding a remedy choice to the City Council.

AK confirmed that all deliberating members received and read the draft findings and led a discussion addressing each page including the recommended changes suggested by AK.

Beginning on page two of the draft findings, the Committee discussed AK's recommendations to add rationale for the Summary of Findings.

AK – findings based on the business relationship not that precedent was being set

JF – two choices were made (1) the choice to enter the business relationship and (2) the choice to participate in the June 11, 2024 Planning Board meeting

AK – opened a discussion on the “counselors’ matter of interest” portion of a City Council meeting with the opinion that FC’s response to the public criticism was a violation of 21-3 and a statement should have been filed with the City Clerk instead – general agreement from the other deliberating members.

On page four, Attorney Hawkins recommended removal of Dover Code 21-4 as there were no findings and it was unnecessary - general agreement from the other deliberating members.

AK pointed out the highlighting in the “Code Provisions and Statutes Considered” section from page three through page six – the highlighting was intended to identify the portions of most significance.

AK discusses RSA 500-A:12 and refers back to the hearing recording, particularly the discussion about any discussions that FC had with the developer prior to the June 11 Planning Board meeting.

The Committee discussed the “Findings of Fact” portion beginning on page seven and continuing through page eleven. There were no objections or recommended changes to these findings. Attorney Hawkins asked the Committee if any findings needed to be added, there were none.

AK led a discussion on the letter submitted by FC addressing the bolded points raised.

(1) Application of Code – JF disagrees with FC

(2) Burden of proof – AK discussed how the rules allow for consideration of the entire code with any complaint filed



CITY OF DOVER

ETHICS COMMISSION MINUTES

Meeting Type: **Regular Meeting**
Meeting Location: **McConnell Center Room 323**
Meeting Date: **Wednesday, January 15, 2025**
Meeting Time: **6:00 p.m.**

- (3) Unreasonable standard – JF believes that the committee already discussed this point. AK stated the concept of “more than the average citizen” in consideration of the ethics code.
- (4) AK determined that the committee already discussed the point raised
- (5) Deliberation checklists – AK explained that he created the checklists to structure the deliberations around the ordinance
- AK – the remaining portions of the letter are personal comment

AK opened a discussion on the recommendation of remedy to the City Council

AK recommended a change to increase the committee recommendation to removal from the Planning Board – he is not in favor of an oral warning

AK expressed his concern for a reoccurrence of similar facts and results.

JF questioned the historical findings/recommendations of the Committee

Attorney Hawkins listed the available remedies from 21-14B

JF highlighted Oral Warning, Written Warning, and Removal as the three remedies the Committee was considering. He explained his thought process of “side effects” in assessing the appropriate remedy. He pointed to amount of violations degree of damage and contrition as factors to consider in determining the appropriate remedy. Agrees with AK’s recommendation.

Attorney Hawkins noted that the framework that JF described is similar to how other professions consider potential ethics violations. He also noted state of mind, length of service/knowledge base, and past service/good works as factors to consider.

MK agrees with the recommendation to increase the remedy to removal pointing to the challenge of sitting on the planning board and having a relationship with a developer that is frequently in front of the planning board. He also raised concern with the effects of removal, particularly, the City has had challenges finding people willing to volunteer their time to be public servants (with a particular challenge in finding volunteers for the Planning Board), it will likely continue to be a challenge after this, and it would be hard to find someone who will do as much good as FC has in his tenure.

JF believes the Committee needs to do more to educate other committees on these types of issues.

CC agrees with increasing the remedy to removal



CITY OF DOVER

ETHICS COMMISSION MINUTES

Meeting Type: **Regular Meeting**
Meeting Location: **McConnell Center Room 323**
Meeting Date: **Wednesday, January 15, 2025**
Meeting Time: **6:00 p.m.**

AK noted provision 11-5 granting the City Council the right to remove

JF suggested removing the secondary recommendation of written warning opting to only recommend removal – CC agrees

MK disagrees with this noting the reality of the effects of removal he previously discussed.

Members discussed providing a choice on remedy to the City Council. AK, JF, and CC expressed reluctance to provide a choice.

Vote on the recommended remedy of ONLY removal – called by AK

Motion: JF

Second: CC

3-1 in favor – MK voted against stating his preference to include the secondary recommendation contained in the language presented by AK earlier. MK stated he preferred providing a choice to the City Council allowing Councilor Cullen to continue on the Planning Board if Councilor Cullen would agree to recuse himself on future matters presented by Kevin McEneaney and/or Civilworks NW. MK Stated he agreed with the Findings of the report but dissented from the remedy portion of the report. He favors a Written Censure with a condition of future recusals. He wants a choice of remedies presented to City Council.

AK called for a motion to approve the draft findings with his recommended changes

Motion to approve the DRAFT findings and recommendations of the Ethics Commission as amended (Note: MK opposition of excluding the secondary remedy recommendation): JF

Second: CC

Vote: 4-0 in favor

***NOTE* A copy of the findings and Recommendations is attached to these minutes for reference.**

5. BUILD AGENDA FOR NEXT MEETING

6. ADJOURN

Motion: MK

Second: CC

Vote: Unanimous

The meeting was adjourned at 7:42PM

**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:

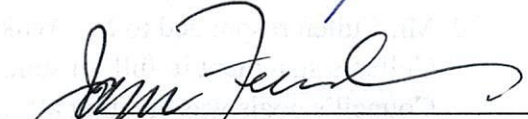
1/21/25


Allan Krans Sr., Chair

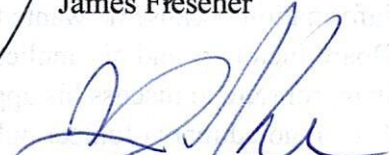
Dated: 1/24/2025


Charles Carey

Dated: 21 January 2025


James Friesher

Dated: Jan 23 2025


Matthew Keane