



CITY OF DOVER

## ETHICS COMMISSION - MINUTES

**DRAFT**

Meeting Type: Regular Meeting  
Meeting Location: 271 Mast Road, Dover, NH 03820  
Meeting Date: **Tuesday, August 19, 2008**  
Meeting Time: **6:00 pm**

### 1. Hearing of Schulte v. Colbath

MR. REYNOLDS: We're calling this hearing to order. The matter being heard before the Dover Ethics Commission is Schulte versus Colbath, Ethics Commission Case #801. Before opening the hearing I'll first introduce the Commissioners. On my right is Dana Lariviere, Vice Chair; next to him is Christian Sterndale, our Clerk; Kathryn Forbes, down to that end; and up here is Lauren Jacoby, who is sitting in for Herman Stolzenburg, who is in Germany. So those are the Commissioners that will be sitting in on this case. I'm Charles Reynolds, the Chair.

I guess you've heard that we tried to mark and received the documents that are going to be submitted into evidence, but they are voluminous, therefore, we only have that partially done.

We will enter those that aren't on the list as we need to have them done.

As explained in the Pre-Hearing, our conference, each party will have an opportunity to present opening and closing statements. Each party will be allowed to testify under oath and call witnesses, who will also be required to testify under oath. All witnesses will be expected to answer questions posed by the parties and by the Commissioners. Regular rules of evidence do not apply. However, the Chair may limit testimony. The Complainant has the burden of proof to establish by clear and convincing evidence that the allegations are true, and an ethical violation has occurred. The Commission is required to provide to the City Council with a written report of our findings and advice on a remedy, if applicable, within thirty days.

Commission Clerk will read the allegations.

MR. STERNDALE: According to the complaint, it alleges violations to the provisions of the Dover City Charter and Dover City Code as follows: That subsequent to



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1 the issuance of a building permit on February 22, 2008, Mr. William Colbath, acting in his  
2 capacity as a member of the Zoning Board of Adjustment, violated the following specified ethical  
3 provisions of the Dover City Charter: C10-2, Conflict of interest; C10-3, Disqualification from the  
4 decision-making process; C10-7, Misuse of information; and further that he violated specified  
5 ethical provisions of the Dover City Code: Section 22-2, Conflict of interest; 22-3,  
6 Representation of private interests before City agencies; 22-5, Required disclosures by officers  
7 and employees, recusal; 22-7, Disclosure of confidential information; 22-9, Incompatible  
8 employment.

9 MR. REYNOLDS: Are the parties ready to proceed, Mr. Schulte and Mr.  
10 Colbath?

11 MR. SCHULTE: Yes.

12 MR. COLBATH: Yes.

13 MR. REYNOLDS: Mr. Schulte, you go first and you may begin with an  
14 opening statement, if you have one.

15 MR. SCHULTE: I don't think the facts are really in dispute in this matter.  
16 I don't think we need to make an opening statement. I'm prepared to state what I have to say.

17 MR. REYNOLDS: You want to testify yourself?

18 MR. SCHULTE: Yes.

19 MR. REYNOLDS: The clerk will swear you in.

20 (Witness sworn in.)



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1 MR. SCHULTE: My name is James Schulte. I'm an attorney practicing in  
2 Dover. I've been in practice in the City for 35 years. My office address is 660 Central Avenue,  
3 here in Dover. I've been a sole-practitioner for more than a dozen years.  
4 As I said, I think the facts are not in dispute and they are set forth in the documents that we  
5 have provided to you, primarily being minutes of the Zoning Board meetings, but also of  
6 meetings that were filed with the Superior Court, as a result of what the Zoning Board decided in  
7 June of this year.  
8 You all may not be familiar with what the zoning process is, so I'm going to briefly summarize  
9 that. It bears only indirectly on the allegations here, but it is important that you know how the  
10 Zoning Board process is supposed to work, so that you can place the evidence into context.  
11 The Legislature adopted statutes many years ago which allow municipalities to adopt zoning  
12 ordinances. Zoning ordinances define what you can and can't do with your property in the City.  
13 Various zones are established, you can do different things in different zones, and different  
14 zones have different requirements for the size of the lot, frontage of the lot, height and size of  
15 the building – that sort of thing. With a town the age of Dover, when you try to impose a  
16 standard set of rules on neighborhoods, some of which have been in existence for hundreds of  
17 years, you're going to find that the standard provisions don't apply very well to every law. So,  
18 as part of the zoning process, the legislature also authorizes the municipality to establish a  
19 Zoning Board of Adjustment to allow for some adjustment in the strict rules to reflect the  
20 variances that exist between different properties. Sometimes even between one property and  
21 the one next door to it, the differences in those properties may be enough that it is fair to apply  
22 the zoning ordinance to one, but not to the one next door. And so the Zoning Board is given



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1 authority to grant variances for the express terms of the ordinance, as long as you meet five  
2 standards, and those standards are set forth in the statute, and they have been developed over  
3 the years by decisions of the Supreme Court to clarify what the statutes mean. The Zoning  
4 Board can also grant special exceptions, which are provisions of the ordinance saying you are  
5 allowed to do this if you meet certain conditions, and the Board has to find that you meet those  
6 conditions. The Zoning Board also has jurisdiction if somebody in the City feels that an  
7 administrator within the City has made an interpretation of the zoning ordinance which is not  
8 correct, then that determination can be appealed. It is called an appeal of an administrative  
9 decision. The courts and the statutes limit the people that are able to file appeals with the  
10 Zoning Board. The basic rule is that if you own property, you have the authority to file a petition  
11 with respect to your own property. If your neighbor files a petition, and you are next door, or if  
12 you own land that is closely situated enough to that neighbor's property that it would be affected  
13 by what your neighbor is asking, then you also have the authority to participate. That is called  
14 standing. And there have been a number of cases, including one that we both are given to call  
15 Weeks v. Dover, which have somewhat expanded the concept. There was a time where in  
16 order to be able to participate in a zoning process, the zoning appeals process, and then the  
17 appeals through court, you had to be a direct abutter. Weeks v. Dover expanded that to say  
18 that if your land is situated such that if what your neighbor wants to do is going to affect your  
19 land then you have the right to participate – you have standing. The Zoning Board normally  
20 consists of five members. It would never be more than five members, sometimes there are less,  
21 but the statute expressly requires that for the Zoning Board to approve something that it  
22 requires three votes, whether there are three, four, or five members voting. The person who is



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1 trying to get the Zoning Board to approve it has to get all three votes. The Zoning Board does  
2 not act by individual members. It acts only by vote of three members, which are required by the  
3 statute. What that as the general background of how Zoning is supposed to work, it is important  
4 that we keep in mind what you are not being asked to decide tonight. Although you see lots of  
5 paperwork about what the Building Inspector decided when he issued a building permit, and  
6 then he was asked to determine if that building permit was being properly applied, the actions of  
7 Tom Clark, as the Building Inspector, are not before you tonight. You do not have any  
8 jurisdiction over him. You are not being asked to make any decision about whether he was right  
9 or wrong. Similarly, you are not being asked to interpret the zoning ordinance. It is beyond your  
10 jurisdiction. Only the Zoning Board can interpret the zoning ordinance, and so you should not  
11 be asked to do that tonight, nor do you have the authority to do that. You are also not being  
12 asked to decide whether the Zoning Board made the correct decision when it decided not to  
13 accept the two appeals from Mr. Cheney. That is a matter for the Zoning Board and the Courts.  
14 It is not a matter for you. The only thing that you're being asked to do tonight is to review Mr.  
15 Colbath's conduct, which apparently was initiated in response to Mr. Cheney's petitions. Mr.  
16 Cheney being an abutter, or his father being an abutter, and Charles Cheney representing his  
17 father, the Cheney's would have had standing in this matter to file an appeal with the Zoning  
18 Board, because they own land next door. We're not challenging the Cheney's conduct in this  
19 matter. We are raising three questions concerning Mr. Colbath's conduct. The first is whether  
20 he violated the Charter and Chapter 22 of the Code of Ethics when he sat as a member of the  
21 Zoning Board on an application that was filed by Mr. Cheney. The second is when he failed to



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1 disclose his business relationship with Mr. Cheney, which goes back a number of years and is  
2 fairly current. He'll speak to that in a few minutes.

3 The complaint that I filed raises the question as to whether Mr. Colbath violated the Charter and  
4 the ordinance when he then filed his own petition with the Zoning Board, after he had sat on Mr.  
5 Cheney's application. Did Mr. Colbath violate the ethical provisions when he filed his own  
6 petition, raising the same issues that Mr. Cheney had raised, and stating that he was filing that  
7 petition because Mr. Cheney had not been heard by the Zoning Board?

8 Finally, did Mr. Colbath violate the ethical rules when he filed petitions claiming that he had  
9 special status to do that, not because he had standing because he owned property next door,  
10 but because he had special status that other members of the community don't have because he  
11 himself was a member of the Zoning Board and therefore he was entitled to special status,  
12 special treatment, by either the Zoning Board or by the Court? So those are the three questions  
13 that I present to you that you should consider: Should Mr. Colbath have disclosed he had  
14 business relations with Mr. Cheney, before he participated in the hearing that happened in June  
15 of this year? There were two meetings that night, one was non-public and the other was public.  
16 Mr. Colbath was present at both of those meetings. Second, did Mr. Colbath improperly use his  
17 position as a member of the ZBA to advance a private interest? The document that he filed with  
18 the Court says that he filed his petition with the Court because the ZBA did not grant or accept  
19 Mr. Cheney's application to the ZBA, and he was trying to correct that error. The statement that  
20 he made to the Zoning Board at the June hearing, which is in the minutes, said that he filed his  
21 petition to the Zoning Board because he did not feel that the Zoning Board had fairly dealt with  
22 Mr. Cheney's application, and so he felt it was his burden – Mr. Colbath's burden to try to



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1 correct that error by filing his own petition. Regardless of whether there was any kind of  
2 business relationship with Mr. Cheney, regardless of whether Mr. Cheney and Mr. Colbath had  
3 ever even met before, the question is: was it proper for Mr. Colbath, as a member of the Zoning  
4 Board who had sat on the hearing in May, to then take up the flag of the abutter and file a  
5 petition to try to obtain relief for that abutter for the same board that Mr. Colbath is a member of,  
6 and then to take the next step by filing something in Court and ask the Court to grant relief for  
7 this abutter? And finally, did Mr. Colbath act improperly by taking advantage of his position as a  
8 member of the ZBA in order to testify the actions that he had done? He has filed pleadings with  
9 the Court which state that he had special status because he is a ZBA member, and that even  
10 though – and these are his words – he is a simple resident, who is not an abutter, would not  
11 have been allowed to file a petition with either the Zoning Board or the Court, he had status to  
12 do that, he claims, because he was a Zoning Board member who actually sat on the second  
13 Cheney's appeal. The Charter provides in Section C10-2 and 3, that any appointed officer that  
14 has a financial interest in a matter, and that interest is greater than that which an ordinary citizen  
15 of the town has, has a duty to disclose that interest, and then has a duty to refrain from  
16 participating in the meeting. It's an open question as to whether or not the interest between Mr.  
17 Colbath and Mr. Cheney was enough for him to be disqualified as a voting member at the May  
18 meeting, but he certainly had an obligation to disclose the fact that Mr. Cheney was a current  
19 and a former business customer of his. Other board members have done that, and then the  
20 decision is made by the individual board member and by the members of the ZBA as to whether  
21 that relationship is sufficiently close and significant to require that the member not sit, but the  
22 Zoning Board never had a chance to deal with that because there was no disclosure made. I



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1 have provided to you, as Exhibits 5 and 7, electrical permits for the year 2000 and from May 27,  
2 2008, where Mr. Colbath – the work that he did for Mr. Cheney required that he get a permit.  
3 There may have been other work that was done. I don't know. Not all electrical work requires a  
4 permit. But at least we have two instances where there was. The Code of Ethics, Section 22-3,  
5 says that even if there is no financial interest, no appointed official may appear on behalf of a  
6 private interest before any City board. So Mr. Colbath, in a general matter, could not appear  
7 before the Zoning Board, representing the interest of anybody else in the City. He can, of  
8 course, appear before the Zoning Board to represent himself, if he has property that requires  
9 relief of a zoning ordinance. He can do that. He would step down from the Board, present his  
10 case, and the Board would vote on that. But he can't represent anybody else's interest before  
11 the Zoning Board, and the ordinance is very clear about that. So even if there was no business  
12 relationship between Mr. Colbath and Mr. Cheney, it was improper for Mr. Colbath to take over  
13 the arguments being presented by Mr. Cheney, to take over the representation of Mr. Cheney's  
14 interests before the Zoning Board. When he filed his petition on May 27<sup>th</sup>, the same date he  
15 filed his electrical application, Mr. Colbath began his advocacy on behalf of Mr. Cheney, and  
16 that's wrong. The minutes for that meeting show that Mr. Colbath said that he had a right as a  
17 party to the proceeding, because it was an error committed by the Board. He said it was his  
18 duty to correct that. He elaborated on that in the petition that he filed with the Superior Court.  
19 We marked that as an Exhibit here – I don't know what the number is, but we marked it as an  
20 Exhibit here. In Paragraphs 4 and 5 in his petition, he says he is trying to correct the error that  
21 the ZBA committed when it refused to accept Mr. Cheney's applications. In Paragraph 8 he  
22 says the aggrieved abutter was never allowed to state his case, denied his right to be heard; he



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1 is advocating on behalf of Mr. Cheney, not on behalf of himself. The document that I filed  
2 tonight, the Response to Motion to Dismiss, which is Mr. Colbath's pleading that he filed in  
3 court, says that he is acting to correct the error committed by the ZBA when it refused to accept  
4 Mr. Cheney's appeal. And at the end of that response, Paragraph C, he specifically asked the  
5 court to declare that the ZBA should have accepted Mr. Cheney's appeal. So Mr. Colbath went  
6 from being a judge, because a Zoning Board member sits as a judge to matters before him. He  
7 is supposed to be neutral. He is supposed to be disinterested. He is supposed to be impartial.  
8 He is not supposed to favor one side or the other. He is supposed to vote his conscience when  
9 applying an ordinance with particular facts to the property in front of him. It was clearly wrong  
10 for this impartial judge to then turn around and become the civilian lawyer for one of the parties,  
11 who was before him in May, and go argue the case for that party in June. In his own words, Mr.  
12 Colbath has said that he appealed to the ZBA and to the court on behalf of Mr. Cheney. It  
13 doesn't matter if there was a business relationship or not, it was a private interest with someone  
14 else, and the ordinance specifically says that an appointed official cannot represent other  
15 people's interests before a City board, and especially not before the board that you sit on, and  
16 especially not before the board that you sit on when you just sat on the same case a month  
17 earlier.

18 The general principle I would suggest to you is this: if you have enough interest in the property  
19 to qualify as an aggrieved party – as an abutter, then you cannot sit as a judge as a member of  
20 the ZBA. On the other hand, if you don't – if you sit as a judge in that case, you then cannot  
21 become a party yourself in the same case. You are either the judge or you're a party, but you  
22 can't be both, because our system of government does not allow us to judge our own cases.



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1 Section 22-9 of the Ethics Code is related to Sections 2 and 3. It says, “No appointed officer  
2 shall engage in or accept private employment or render or sell services or goods from private  
3 interests when such employment or service is incompatible with the proper discharge of their  
4 official duties.” In this case his duty was to act as an impartial, neutral judge, and to refrain from  
5 favoring one side over the other in the case. Mr. Colbath ignored that obligation and he  
6 accepted employment from one of the parties. He ought not to have done that. In addition, Mr.  
7 Colbath is claiming that he’s got special status because he is a member of the ZBA. He’s  
8 acknowledged in writing, in the documents that I have given to you – in reading from his  
9 Response to Motion to Dismiss, the Plaintiff, Mr. Colbath, admitted in the ZBA meeting that he  
10 was not an abutter. He does not have standing before the ZBA as an abutter or an aggrieved  
11 party. He is claiming, however, he has special status because he sat as a board member. Of  
12 all the stuff that has happened here, the thing that troubles me most about this is that a member  
13 of the ZBA, who sat on a case, voted against the majority in the case, then took it upon himself  
14 to challenge the decision of the majority – the statutorily mandated majority – to say, you people  
15 are wrong. I’m right, and I’ve got the right to change from being a judge to being a litigant and  
16 to come before you and explain to you why you’re wrong and to do that on behalf of the person  
17 who originally filed this petition. You don’t get to change parties. You don’t get to change  
18 positions like that. You are either going to be a judge or you’re going to be a party. Mr. Colbath  
19 claims that the case of Green v. Shaw gives him status. That was a case filed in Superior  
20 Court, not before the Zoning Board of Adjustment. The standing rules in the Superior Court are  
21 substantially boarder than they are for Zoning Board matters, because the Zoning Board says  
22 you have to be an aggrieved party, which means that you have to have property that is affected



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1 by the zoning board petition. The authority of the Superior Court is much broader than the  
2 authority of the Zoning Board. The standing requirements are therefore much broader, and the  
3 Green case was a case brought by taxpayers who claimed that then Mayor Shaw was  
4 inappropriately spending City money and the Superior Court agreed that they could file a  
5 petition in the Superior Court. The Green case, however, has been clarified by our Supreme  
6 Court in a case that I gave you, Goldstein versus Bedford, which was a Zoning Board case  
7 which says specifically that if you're going to participate in a Zoning Board or Planning Board  
8 matter you have to be an aggrieved party, you have to be someone whose property is closely  
9 enough located that it is affected by the other person's property. The Green v. Shaw case  
10 involved – the form of the procedure was called a Petition for Mandamus. Mandamus is an  
11 order issued by the Court instructing the City official to do or not do something. In the Goldstein  
12 case, the Supreme Court specifically said that a non-abutter, a person who is only trying to  
13 generally enforce the zoning ordinances, but did not have property located nearby, not only  
14 could not participate in the Zoning Board matter, could not appeal that to the Superior Court, but  
15 also could not file a Petition for Mandamus. So although Green v. Shaw is relied upon by Mr.  
16 Colbath to support his position that he had status here, the Supreme Court has told him that he  
17 does not have status, and that was explained to him -- as you saw in the minutes, it was  
18 explained to him by the City Attorney, who cited that case to him at the Zoning Board, and that  
19 was part of the basis for his Zoning Board's decision. One of matters that I raised in the original  
20 petition was something that I did not have the answer to at the time, and I frankly do not have  
21 the answer to at this point, and that was a question as to whether or not any confidential  
22 information was presented during the non-public meeting that happened on May 15<sup>th</sup>. We have



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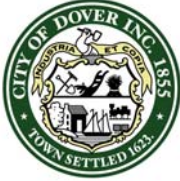
1 submitted by Mr. Colbath a letter from the chairman of the Zoning Board saying that only  
2 procedural matters were presented that night. I don't have any information to the contrary. I do  
3 not have any information that there was confidential information presented at that meeting. I do  
4 not have any information or evidence that confidential information was disclosed. So I don't  
5 think you could make a finding of breach of ethics on that matter, which I guess is Section 9.  
6 My main concern here is that I think it is wrong for a Board member to sit as a decision maker,  
7 and then turn around and take up the cause of one of the parties litigating in front of him – when  
8 was sitting as a judge, and to take up the cause of the person sitting in front of you and to  
9 advocate that. I think it is wrong in general. It is specifically wrong because our ordinance says  
10 it is wrong, and it does so for good reasons. Nobody would have any confidence in the  
11 impartiality of our Boards if Board members were allowed to do this, to sit as members of the  
12 Board and then to turn around and say, "Well, having sat as a judge, I now think he's right, I'm  
13 going to take his side, and I'm going to be his lawyer, private or public, civilian or licensed. It is  
14 clear that Mr. Colbath was advocating on behalf of Mr. Cheney. It is clear that he is not  
15 permitted to do that. That's all I have to say.

16 MR. REYNOLDS: Mr. Colbath, do you have questions for Mr. Schulte?  
17 You may ask him questions.

18 MR. COLBATH: After all that I don't know if I have any left. There was a  
19 lot of information there.

20 MR. REYNOLDS: It's your option.

21 MR. COLBATH: The only question I do have is: if we don't know what  
22 went on in a particular meeting, we have no information whatsoever, why are you trying to put



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1 forth that I have disseminated information or used information incorrectly for my own gain? If  
2 you don't know anything took place, you don't know what was said, you don't know what took  
3 place at the meeting, how can you make a charge like that? It is totally unsubstantiated.

4 MR. SCHULTE: The answer is that I was told that the purpose of the  
5 meeting was to discuss what the procedure should be in handling the Cheney matter, which  
6 was coming up that night.

7 MR. COLBATH: By whom?

8 MR. SCHULTE: I think it was disclosed at the public session, but I don't  
9 recall, but that was the information that I had, that it was called for that purpose. You then  
10 presided – you sat at that meeting, you voted on it, and I then learned that you were working for  
11 Mr. Cheney, and you then filed a petition on his behalf. So my concern was that if confidential  
12 information had been discussed, and I did not know that it was, that you were using whatever  
13 you had learned at that meeting inappropriately to represent somebody, when you should not be  
14 representing somebody before the Zoning Board.

15 MR. REYNOLDS: Any further questions?

16 MR. COLBATH: No, I think that's it for questions.

17 MR. REYNOLDS: Commissioners, any questions for Mr. Schulte?

18 MR. STERNDALE: The meeting that he is referring to, is that the May  
19 15<sup>th</sup> meeting?

20 MR. SCHULTE: Yes, that was the May 15<sup>th</sup> meeting. There was a non-  
21 public session of the Board members, I believe with the City Attorney, and then they convened  
22 in a public session. And that is when the second Cheney application was considered.



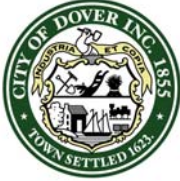
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- 1 MR. STERNDALE: And that was the May 15<sup>th</sup> meeting?
- 2 MR. SCHULTE: That was May 15<sup>th</sup>. There are minutes of that.
- 3 MR. REYNOLDS: Any other questions from the Commissioners?
- 4 MR. STERNDALE: Just some more context -- you originally represented  
5 a party to this whole process.
- 6 MR. SCHULTE: Yes, throughout the whole process.
- 7 MR. STERNDALE: Setting aside these ethical questions, what is at stake  
8 here? Is it the relocation of a house that has already been relocated?
- 9 MR. SCHULTE: The claim is that this house was improperly rebuilt. If  
10 that claim were to be sustained by somebody, the house would have to be torn down and a  
11 brand new one built.
- 12 MR. STERNDALE: Those are the stakes that are theoretically still on the  
13 table.
- 14 MR. SCHULTE: Yes. Right.
- 15 MR. STERNDALE: I know it's not germane to what we're doing tonight,  
16 but it will help us to understand where all this starts.
- 17 MR. SCHULTE: I did not consult with my clients before I filed this. I filed  
18 this because I observed what I observed. I've spent nine years on the professional conduct  
19 committee for the Supreme Court, which is the attorney's disciplinary board. I have some  
20 understanding of ethical requirements, and I felt it was my obligation to bring this forward.
- 21 MR. STERNDALE: And you have been doing business before the ZBA  
22 for a long time?



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**DRAFT**

Meeting Type: Regular Meeting  
Meeting Location: 271 Mast Road, Dover, NH 03820  
Meeting Date: **Tuesday, August 19, 2008**  
Meeting Time: **6:00 pm**

1 MR. SCHULTE: Yes, since probably before Mr. Colbath became a  
2 member on it, and he has been a member for 23 years.

3 MR. STERNDALE: How would you describe your relationship with Mr.  
4 Colbath before all this?

5 MR. SCHULTE: We often have interesting exchanges. He often  
6 disagrees with me. Depending on the application, he has voted in favor of some of the  
7 applications that I have submitted, and he has voted against some of those applications. I had  
8 one occasion where I had to ask him and another member whether they had preformed their  
9 conclusions about the case before it started. He said no, and I did not object to him sitting on  
10 the case.

11 MR. STERNDALE: How would a third party describe the history?

12 MR. SCHULTE: I don't know that I could answer that.

13 MR. REYNOLDS: Okay. Thank you, Mr. Schulte. Are you calling any  
14 witnesses?

15 MR. SCHULTE: I have no witnesses.

16 MR. REYNOLDS: Okay. Mr. Colbath, you may proceed. You can start  
17 with an opening statement or you can just go with your case.

18 MR. COLBATH: I guess I will start with an opening statement.

19 MR. REYNOLDS: Are you going to call witnesses?

20 MR. COLBATH: The primary reason I asked for these folks to be here  
21 was in relation to the meeting that took place, between the Zoning Board, Attorney Krans, Mr.  
22 Clark, and Mr. Parker.



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1 MR. REYNOLDS: Are you intending to call witnesses?

2 MR. COLBATH: I don't.

3 MR. REYNOLDS: You do not.

4 MR. COLBATH: I do not. The questions is -- they are here solely to  
5 testify to what took place in that meeting. If that information is not being questioned, and I'm not  
6 being accused of disseminating something that no one knows what I disseminated. I don't think  
7 I need to bother them anymore about it. They are here solely because they were participants in  
8 the meeting.

9 MR. STERNDALE: I think I heard Attorney Schulte on that particular  
10 point, which was 22-9, Incompatible Employment, stipulate that probably wouldn't be in effect; is  
11 that correct?

12 MR. SCHULTE: That there would be no evidence to support a finding.  
13 Yes.

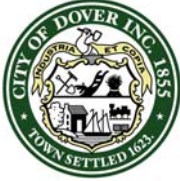
14 MR. STERNDALE: That specifically is what you're addressing, Mr.  
15 Colbath?

16 MR. COLBATH: Yes, that would be 22-7, Disclosure of Confidential  
17 Information. Also, I think it's misuse of information. So, if we're not -- if those two items are off  
18 the list, then I don't see any reasons for these gentlemen to stay.

19 MR. REYNOLDS: You have no objection if they have lost interest in the  
20 activities that they can leave?

21 MR. COLBATH: I have no objection to them leaving if they so choose.

22 MR. REYNOLDS: I don't want to keep them here just for the fun of it.



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1 MR. COLBATH: My sole reason to have them here was to testify what  
2 took place in that meeting if it was in question.

3 MR. REYNOLDS: So whatever you guys want to do is okay. All right,  
4 Mr. Colbath, why don't you proceed.

5 MR. COLBATH: Okay. Since we have had a treasure trove of  
6 information put in front of us on how the Zoning Board works, and how it is done in statutory  
7 basis. You've heard a lot about standing, which that is being currently taken up in Superior  
8 Court. And I think standing will probably be upheld there, but I don't know the answer to that  
9 question at this point. I will point out, though, that in Mr. Schulte's complaint to you, he does  
10 refer to me as an officer of the City of Dover, and under 676:5 I am in the list of persons as an  
11 officer of the City of Dover that can come forth with a complaint for the Zoning Board. That is  
12 part of this ream of information you got. 676:5 allows appeals to the Zoning Board of  
13 Adjustment concerning any matter within the Board's powers as set forth in 674:33 may be  
14 taken by any person aggrieved – I have admitted I am not an aggrieved abutter from Day 1. So  
15 that question went away -- or by any officer, department, board, or bureau of the municipality  
16 affected by any decision of the administrative officer. So I think the question of standing,  
17 whether I had standing to bring that up, is partially taken in that one statement. As I understand  
18 the charges that are in front of you, there was conflict of interest questions, all going around the  
19 issuance of an electrical permit approximately two weeks after the hearing that I was supposed  
20 to be conflicted in. Prior to that I had worked for Mr. Cheney eight years previous. I don't  
21 remember what I had for lunch three days ago. I'm not going to remember if I worked with Mr.  
22 Cheney eight years prior. Even that being taken aside, not being an active business interest,



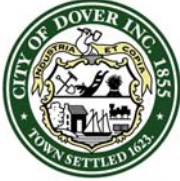
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1 my primary business is industrial and commercial electrical work, not minor home repairs. So  
2 that portion being some kind of driving force for me to advocate for Mr. Cheney I think is at best  
3 a long stretch for advocacy. The point being, though – the Primary point here is the appeal I  
4 brought before the Zoning Board of Adjustment, if you've read through everything I gave you --  
5 and if you did I commend you because there was a bunch of stuff there -- the primary problem  
6 here is in both January and July of 2007 this property was in front of the Zoning Board of  
7 Adjustment. We rendered a decision in January to allow a conversion of a duplex of an existing  
8 structure with a minor addition. We argued about the size of the addition, and that was never  
9 thoroughly and completely defined, but in Mr. Clark's own words, a 2,000 square foot addition  
10 would not be compliant and would not be allowed. In September of last year, Mr. Clark signed a  
11 permit for a 2,052 square foot addition for this piece of property, according to its conversion.  
12 This is all stuff that came out in the May meeting. I was not present for the April meeting. I was  
13 on vacation. I didn't know anything took place. I read the minutes. I came to the May meeting  
14 assuming that this would go on and we would find out what was what. At that point for some  
15 reason the Zoning Board decided, and I was opposed to this, that we would not hear from  
16 someone who even Mr. Schulte defines as an aggrieved abutter, because we didn't have power  
17 of enforcement over the issues. Again, in your packet of information, RSA 674:33, "The zoning  
18 board of adjustment shall have the power to: Hear and decide appeals if it is alleged there is  
19 error in any order, requirement, decision, or determination made by an administrative official in  
20 the enforcement of any zoning ordinance adopted pursuant to RSA 674:16. I'm awestruck by  
21 how the Zoning Board of Adjustment decided as a group that we didn't have power of  
22 enforcement. At any rate, the crux of the situation here is the Zoning Board on two occasions



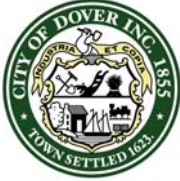
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1 decided that the conversion to this property be allowed, that a modest addition be allowed to the  
2 property to make a duplex conversion, and after that apparently our decisions don't matter. We  
3 have no power to enforce them. We have no power to go back and say, Hey, this is not correct.  
4 The structure that was allowed to be converted was torn to the ground, foundation removed,  
5 relocated by a couple of feet, but still not brought into compliance. It is important to understand  
6 why it wasn't brought into compliance, because if it was, they would lose the power to convert it  
7 into a duplex. All these things have been laid out in the response to the court. Essentially  
8 we've been allowed to do exactly what the Zoning Board said it couldn't do in the Turgeon's  
9 case. They have been allowed to add a huge addition to a piece of property. They have been  
10 allowed to tear it down and totally rebuild it, which they wouldn't be allowed to do on a non-  
11 conforming structure, and they certainly are not allowed to continue a non-conforming use. The  
12 use ended with the structure. You're allowed to convert a structure built prior to 1964 to a  
13 duplex. That is allowed by statute. If the structure is destroyed or removed, so goes your right  
14 to convert. So this being said, the right to convert died when they took the house down. And  
15 this is some kind of wild plan developed to panelize the house and put it back together  
16 afterwards. Well, we can produce photos where there were three pieces of wall material left on  
17 the site. The rest of it was torn down with an excavator. So obviously it wasn't going to get  
18 rebuilt on site. So there are problems here beyond the question of whether or not Mr. Cheney  
19 didn't agree. I'm not advocating for Mr. Cheney. He has a parallel interest to mine, because I  
20 want to see the Zoning Board's decisions held, not rearranged by whoever happens to fall into  
21 them afterwards. We issued an order that they could convert the structure. We allowed them a  
22 modest addition. We argued over the size of the addition. The ordinance says 20%, and I still



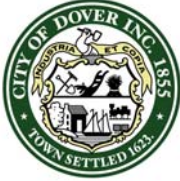
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1 agree that it's a use variance that was in question. Non-conforming uses are allowed to  
2 increase by 20%, by ordinance. The next question, how do we get a 200% increase at that  
3 point? All these things are coming around here, and it's all being said that I'm essentially  
4 advocating for Mr. Cheney. Yes, I have a parallel interest with Mr. Cheney, because he has an  
5 interest in this property. My interest is in the fact that the Zoning Board of Adjustment rules  
6 were thrown out the window with no explanation. Then we get around to enforcement issues,  
7 and for some reason the group thinks enforcement is not allowed, and I disagree with that. I'm  
8 reading the same ordinance everybody else does, and I defy anyone to explain how it happened  
9 that way. That being said, the question of standing comes up – the question of standing is  
10 going to be determined by the Superior Court. That is where it belongs. And it was stated in  
11 the case of Weeks versus Dover, that's one of the major points in that case, is that standing  
12 cannot be determined by the Court on a case by case basis. An aggrieved party can also be a  
13 person that also has a substantial interest in the outcome of the case. Serving on the Zoning  
14 Board for 23 years, I have been in the minority at least half the time in cases that have come up.  
15 I have never brought them into any kind of question, because I think they were legally arrived at  
16 -- even though I disagreed with them, the decisions were legally arrived at. When you don't  
17 hear an appeal from an aggrieved abutter your process is falling apart. For whatever reason –  
18 the reason that was given was that it was advertised incorrectly. Well, it was advertised  
19 whether the permit should be issued, or whether the permit should be revoked. The question  
20 was the permit, the permit was advertised, everyone who was interested in it was present, and  
21 there was no reason for it not to be heard. That meeting I was no present at, but I'm going from  
22 the information from the minutes of the meeting. In my opinion it was wrong to send an abutter



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1 away, because the City advertised his request incorrectly. He doesn't have power over that.  
2 Everyone who needed to be there was there. It should have been heard.

3 MR. REYNOLDS: A little technical issue. You very rapidly proceeded  
4 from opening comments to testimony.

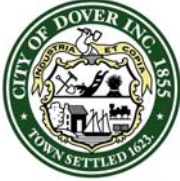
5 MR. COLBATH: I'm sorry.

6 MR. REYNOLDS: You need to get sworn in. We ought to do that before  
7 we go any further.

8 (Witness sworn in.)

9 MR. REYNOLDS: We understand that he has made allegations, so  
10 perhaps you can go ahead with your story, but try to focus in on ----

11 MR. COLBATH: The crux of that situation is, is I'm being accused of  
12 advocating for Charles Cheney. I'm advocating for the Zoning Board and the citizen's of Dover,  
13 because our decision has been rendered useless. On two occasions, and you can read them in  
14 the files I've presented to you, decisions were made and they were questioned again by Mr.  
15 Schulte and his clients. They were reaffirmed in the July meeting that, yes, we would allow  
16 conversion of the structure to a duplex, and yes, we would allow a modest addition. In the  
17 words of the Planning Department, I believe in the minutes of the June meeting, they admitted  
18 that if you tear this building down so with it goes the right to convert to a duplex, and it has to be  
19 made totally compliant with all set back requirements. That being said, the building was torn  
20 down completely, to the point that the foundation was removed. It wasn't just the building that  
21 was torn down, everything – there was not a speck of it left in place. It was rebuilt in a slightly  
22 different location, a little more compliant, but not totally compliant. And we now have an



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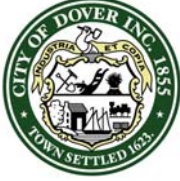
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1 addition that dwarfs the original structure. It's twice the size of the original structure, and that  
2 was not going to be allowed. So I'm confused as to how I am advocating for Mr. Cheney by  
3 questioning the judgment of issuing two building permits in conflict with the Zoning Board  
4 decisions. It's not like they are not known to the Building Department. Mr. Clark is present at all  
5 the meetings, and I believe he was present at both of those. We can check the minutes and if  
6 his attendance is on there. At that juncture, I am not advocating for Chuck Cheney. I'm  
7 advocating for the City of Dover, and I'm also questioning the actions of the Board. The Board  
8 does not have the right to just send an abutter away because he comes up with – they come up  
9 with some excuse on advertisement. Furthermore, when he comes back again after it has been  
10 corrected, say: sorry, we don't agree that we have any power over this. I cannot understand  
11 how the Zoning Board of Adjustment doesn't have power over its own decisions, the  
12 enforcement of its own decisions. So that being said, the conflicts of interests here, in terms of  
13 advocacy, I'm not advocating for Chuck Cheney. I'm advocating against the actions of the  
14 Building Department and trying to uphold a decision that the Zoning Board made not on one  
15 occasion, but two.

16 As far as having a business interest with Mr. Cheney, I've given you a copy of the invoice we're  
17 talking about. This is a minor item, and it was not contemplated by Mr. Cheney or myself prior  
18 to this. Ordinarily this is all done by PSNH. Siding the house, you call Public Service, they  
19 show up, they pull your meter off, when the siding is back on, they come back and put it back  
20 on. It's called a meter float and reattachment. I believe the fee is \$85.00 from Public Service.  
21 Public Service came to this location, they looked, and they said the meter is in terrible condition  
22 and needs to be replaced. They don't replace the meter sockets. They provide them to you



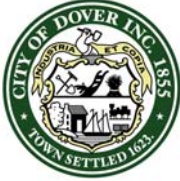
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1 and the electrician has to wire them up. We did that. They also said, we don't see ground rods.  
2 We would like to see ground rods attached. We did that. This was all done through my office  
3 as a common call. It is not like I had anything to do with it. We didn't conspire to replace his  
4 meter socket. As far as there being a business interest over time, yes, I had the glamorous job  
5 of installing his sewer ejector pump in 2000. Since then, I cannot recall any action for Mr.  
6 Cheney. I'm sorry. If there was one, I don't remember. This is a minor item. It is certainly not  
7 going to sway my opinion. I've spent \$350 so far in court fees to file the case here in Dover,  
8 and service fees on a \$237 bill, I don't think I'm that lame in my abilities as a businessman to  
9 think I'm coming out ahead somewhere here. So as far as my having any kind of financial  
10 interest at all in this, certainly when the cases were in front of me, I had no financial interest,  
11 because this hadn't occurred at that time. And then to try to attach my advocacy to this, I'm  
12 sorry I don't get it. I'm not advocating for Mr. Cheney. I'm questioning these particular acts of  
13 the City of Dover. Yes, they are in my opinion illegal acts. They violate RSA 676:13. The City  
14 cannot issue a building permit that violates the zoning ordinance. They can't do it. The  
15 reasoning behind that is not so much that it sounds like this one, but when you get into places  
16 where the Building Inspector wears seventeen hats and his friend Joe shows up and says, I  
17 want to build a new camp, but I want to build right on the water, that's not allowed. Well, Joe, I'll  
18 give you a permit for this, and you can do this. That's why that law is in effect, so that kind of  
19 bologna doesn't take place. I don't know what the connection here, if there is any, with Mr.  
20 Clark. I don't think there is any, but clearly he issued a permit that the Zoning Board said this is  
21 not going to happen. And he has issued a permit that is in violation of, I believe, five zoning  
22 ordinances, to allow this expansion of non-conforming use, and expansion of a non-conforming



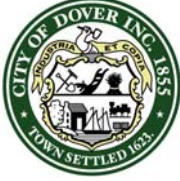
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1 structure – in replacement of a structure that was non-conforming that was apparently destroyed  
2 by fire, because they couldn't fix it. By their own admission, we can't fix it – we need to tear it  
3 down and start again. I'm sorry, but the 12-month window had passed at that point in time.  
4 You're allowed one year to replace property that had been destroyed by fire. This one was  
5 destroyed by fire – it was not even thought of – of getting a permit for it for over a year  
6 afterwards. This actually was issued in February of 2008 to repair the existing structure. The  
7 original fire took place in August of 2005. So there were a whole lot of problems with this.  
8 But to make a long story as short as humanly possible, I can't have a conflict of interest based  
9 on business activity that was eight years in the past, and it was a minor item. It's just hooking  
10 up a sewer pump. This did not net any huge amount of profit. I have no expectations that Mr.  
11 Cheney will be able to give me anything in the future. That is just not my line of work. My last  
12 contract that we did was \$750,000. This is not my line of work, and I'm not gaining anything  
13 from it. I'm a little perplexed too by incompatible employment. I don't know how that effects me.  
14 My employment hasn't changed, and I have been doing this for 23 years as a – serving as a  
15 member of the Board. I have excused myself on multiple cases where I thought where there  
16 could be perceived conflict of interest. As a matter of fact, at this May meeting I excused myself  
17 from a case that involved the Maxfields, which was – Jim Maxfield is our electrical inspector  
18 here in Town. I don't want to be sitting on that case, because maybe there is a conflict there. I  
19 can recognize that. There is not a financial interest. And you could argue that there is not a  
20 conflict there, because I'm so clearly don't have anything to do with him. But there is a  
21 perceived problem there, and I'm smart enough to step down on those things, and I understand  
22 them. I have pulled myself from cases that I had a conflict in. I had no conflict here. When this



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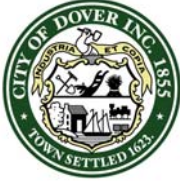
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1 case was in front of us, there was no business connection at all. That happened two weeks  
2 after. It was not contemplated. It wasn't some kind of idea that was taking place. Tonight's  
3 information that I put in front of you is just a chronological recount of how this took place. Okay.  
4 In 2005, we had a fire. In October of 2006, the Turgeons purchased this piece of property that  
5 was fire damaged. It had already been fire damaged for twelve months and long at that point in  
6 time. They bought that piece of property for far less in dollars, as I'm finding out now from  
7 looking at the tax cards – then the property itself, not the building – but the property was  
8 evaluated for by the City of Dover. There was a contemplation at that point that building had to  
9 be taken down. It was a factor in the sale. That's probably not particularly germane to anything  
10 that is going on here -- pardon me.

11 MR. SCHULTE: You're correct about that.

12 MR. COLBATH: In January of 2007 they applied for a variance to  
13 relocate the existing structure and to substantially increase it probably fivefold. We were looking  
14 at two units of approximately 2,000 square feet each. The Zoning Board said no. You can't  
15 relocate the building, and if you do you lose your ability to make it a duplex. End of question.  
16 So now we've gone back to fixing the structure. In February of 2007 they applied for a re-  
17 hearing, because we decided that they could not do what they are now doing by permit. In  
18 February they had their appeal. The case was heard actually in June, because of conflict that  
19 Mr. Schulte was not available. And in the July meeting the Zoning Board again stated that they  
20 could convert their existing structure and they could create a modest addition. And again we  
21 argued about the size of a modest addition. Mr. Clark's permit for a 2,000 square foot addition  
22 would not be compliant. The permit was issued for 2,052 square feet, and you have a copy of it.



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1 In February of 2008, a second building permit was issued to repair the existing structure. I'm  
2 not sure why they were done as two separate permits, but they were done. After work began on  
3 the structure, it was decided that they couldn't fix it. I don't understand why, because everybody  
4 that testified prior to that, including Mr. Clark, that it was secure. The building was dismantled  
5 primarily with an excavator, pieces were saved – enough to build a small shed. He was allowed  
6 to panelize the structure -- which, again, I don't think I've ever heard of that one -- that you could  
7 take it apart in pieces, redo what you want, and put it back together, and that constitutes a  
8 relocation of the structure. At any rate, in March Mr. Cheney, apparently, questioned the permit  
9 that had been issued for the house, and that it had been torn down, and why? Because he was  
10 present at the meetings where it was discussed it could not be torn down, or it lost its ability to  
11 be converted. The ZBA didn't accept that, and again I wasn't present for that meeting, but the  
12 reasons were supposedly that it was advertised incorrectly, as well as I believe the ZBA asked  
13 for copies of a letter between Mr. Clark and Mr. Cheney. I think at that point – I'm not sure why  
14 that had anything to do with the application in front of them, but that's the reasons that were put  
15 forth. After that, Cheney apparently reapplied with the correct, in his opinion, information. I'm  
16 theorizing at this point. He couldn't apply for a rehearing because he never had one, because  
17 his application wasn't accepted. So how could he apply for a rehearing if it wasn't accepted?  
18 So he put it back into that -- a second appeal. The ZBA did not accept that second appeal  
19 again, because they said we did not have power over enforcement. And I'm not sure how that  
20 relates, but clearly we do have power over enforcement. Again, in May I filed my own appeal.  
21 My appeal was not about Mr. Cheney's questions. My appeal was about the illegal acts that  
22 went on here. They were about the permits being issued in conflict with the zoning in place, and



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1 the decisions that had been made. Of course Mr. Cheney had a parallel interest in that -- I  
2 won't deny that -- but I'm not advocating for Mr. Cheney at this point, or at any point. I  
3 discussed the fact that I applied for a building permit on that same day -- an electrical permit to  
4 replace a meter socket. Two hours work, not a tough situation, but again it was all done -- this  
5 was done through my office. Yes, I go get the permits, because I hold the Master's License and  
6 I'm the only man who can sign them. No one else can. As far as my office being able to do  
7 everything without my knowledge, they can't do that. But after the stuff is signed, I got to come  
8 up with the right permits. Again, after I appealed to the ZBA, and got nowhere and was not  
9 heard, it was not accepted, because I supposedly have a lack of standing. I say I do have a  
10 standing according to statute, and according to case law. And that is going to Superior Court for  
11 them to determine, and they will determine it. Again, I have to abide by their decision. But  
12 beyond the fact -- if I had come back into the Zoning Board as Mr. Schulte points out I'm  
13 supposed to do, what would have been the change? What possible recourse? What was going  
14 to be the difference when I showed up there? I've already been told I don't have standing to  
15 appeal. Why beat my head against the wall? I disagree with their opinion. I took it to Superior  
16 Court.  
17 I think, since we brought into question my Response to Motion to Dismiss, and my own points,  
18 I've given you all a copy of that here. I just want to read some of the text of that to you, if you  
19 don't mind. Start out with the second item in here by Attorney Mitchell, is that this case involves  
20 the rebuilding of a fire damaged structure. The property owned by the Turgeons. I disagree  
21 with that. This case involves more than the rebuilding of the fire damaged structure. This case  
22 is brought to reverse the illegal acts of the City of Dover Building and Code Enforcement



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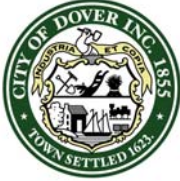
## ETHICS COMMISSION - MINUTES

**DRAFT**

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Meeting Time: **6:00 pm**

1 Official, Mr. Clark. This case is about a City Code Enforcement Official disregarding the  
2 decision of the ZBA, and Dover Zoning Regulations in violation of RSA 676:13. All of the items  
3 complained of were done with the knowledge they were not allowed by statute and by the order  
4 of the ZBA. It goes on to talk about the decisions we made. On two occasions we heard this  
5 case. On two occasions they got the same decision back from the Board. Yes, you can convert  
6 the structure, and yes, you can have a modest addition. You can't tear it down, or you lose the  
7 right to convert. They tore it down, they relocated it, and they put on an addition that was twice  
8 the size – more than twice the size of the original structure in habitable square footage. The  
9 conversion to a duplex was lost, and again it goes back to the Planning Official who sits with us  
10 at our meetings as an advisor, stated in this, you would not be able to tear it down to the  
11 foundation and decide to rebuild it. Not only did they tear it down to the foundation, they took  
12 the foundation too, starting all over again. This is not allowed. And the addition size, by  
13 ordinance I submit that the ordinance says 20% expansion of the non-conforming use. That  
14 arguable between everyone in this room. I'm reading it strictly out of the book.

15 MR. SCHULTE: That's the third time you've said that, the use of that  
16 property is not non-conforming. The use of that property as a single-family residence is  
17 expressly allowed. The structure was non-conforming, because it is too close to the property  
18 line. There is no limitation on the size of expanding a non-conforming structure. There is a  
19 restriction on non-conforming use. That was explained at that meeting that happened back in  
20 2007. I've let it go twice, but I can't let it go a third time. And you have provided copies of the  
21 ordinance that says that. This is not a non-conforming use. It's a single-family residence which  
22 is expressly conforming in that zone.



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1 MR. COLBATH: That being said, since the point has been brought  
2 forward, the permit that was issued in September of 2007 is for an addition to the existing  
3 structure for conversion to a duplex. That's what the permit says. As far as it being a question  
4 of use, a non-conforming use here is not that it was a single-family dwelling, it a duplex. The  
5 variance request was use variance, not the dimensional variance request. It's not a question of  
6 building a bigger house and then sometime in the future converting it to a duplex.  
7 As we go down through here, it basically talks about questions of standing. Again, that is going  
8 to be determined by the Superior Court. That is not a question. The questions before us, I  
9 think, even though I have apparently violated almost the entire Ethics Code by the listing of  
10 numbers, is a question of whether or not I represented a private interest, and whether or not I  
11 had a financial interest. I clearly submit I had no financial interest in this case when it came in  
12 front of us. If it came in front of us the following month I would have had to say no, I can't sit on  
13 this case, because I do have a financial interest. This is a customer of mine that I have recently  
14 done work for.

15 MR. REYNOLDS: We got that. We understand that.

16 MR. COLBATH: As far as representing someone else's interest, that's  
17 not what my appeal was about. It was about the interest of the Zoning Board and the City itself.  
18 There may have been a parallel, but it was not about Mr. Cheney and his problem. Beyond  
19 that, my incompatible employment, I don't know how to try to defend that, because in the 23  
20 years that I have been on the Board, that has never been in question. It has never been a  
21 problem. By virtue of the fact that I have been reappointed eight times, there must not have  
22 been an incompatibility there, or I probably wouldn't have been reappointed. I think I have gone



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1 through all of these charges individually. I have no conflict of interest. I have no private interest  
2 I'm representing. Therefore, I can't disclose something that doesn't exist, as far as required  
3 disclosure. I haven't disclose – we agreed that there is no confidential information that has  
4 come out. I'm confused. Mr. Schulte seems to know more than the general public about what  
5 went on in that meeting. I'm confused as to how he knows.

6 MR. REYNOLDS: He has taken that off the table.

7 MR. COLBATH: That's fine. I have to close with -- I haven't done  
8 anything that I can define in my mind, or I think in anybody else's mind that could be a conflict of  
9 interest here.

10 MR. REYNOLDS: Mr. Schulte, would you care to ask some questions?

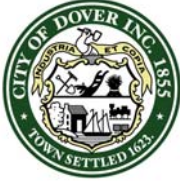
11 MR. SCHULTE: No.

12 MR. REYNOLDS: Commissioners, questions?

13 MR. LARIVIERE: I have a couple of questions, Mr. Colbath. You've  
14 stated multiple times that you are not advocating Mr. Cheney. At any time, in any of this  
15 paperwork that we're going to see, is there going to be a public record you saying you are  
16 representing Mr. Cheney?

17 MR. COLBATH: No, I have never stated that I was representing Mr.  
18 Cheney. I've stated that I thought the Board was incorrect when they didn't accept his  
19 application, because he clearly is an aggrieved abutter.

20 MR. LARIVIERE: The second half of that question: At what point in this  
21 process in your mind did you cease being a ZBA member, per se, and became an aggrieved  
22 party?



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1 MR. COLBATH: I think when I filed my appeal.

2 MR. LARIVIERE: When you filed your appeal. Subsequent to filing your  
3 appeal, have you been involved in any official discussions as a member of the ZBA with respect  
4 to this matter?

5 MR. COLBATH: I'm not sure I understand the question.

6 MR. LARIVIERE: I'm asking if you recused yourself from any further  
7 discussion with regard to this. In other words ----

8 MR. COLBATH: Since I filed my appeal?

9 MR. LARIVIERE: Yes.

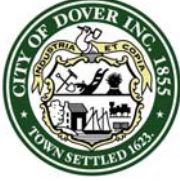
10 MR. COLBATH: I haven't been involved in any discussions with the ZBA  
11 about this. No.

12 MR. STERNDALE: Forgive my scattered approach. Is there any other  
13 way – is there any precedent for changing the ZBA's mind about something? Is there – other  
14 than this application for a hearing, is there any other way to appeal an approval, or motion for  
15 reconsideration? Is there any other mechanism available to you as a member of the ZBA for  
16 reversing something that has already been done?

17 MR. COLBATH: Not to my knowledge. No. Maybe I'm being naïve in  
18 saying that, but, no, I don't think so.

19 MR. STERNDALE: You missed the April meeting?

20 MR. COLBATH: I was on vacation in Las Vegas.



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1 MR. STERNDALE: We now have the recordings of the meeting and none  
2 of us have subjected ourselves to that, but the minutes from the 15<sup>th</sup>, when one of the appeals  
3 was brought forward, I believe it was Mr. Cheney's second attempt ----

4 MR. COLBATH: You're talking about the May meeting?

5 MR. STERNDALE: May 15<sup>th</sup>.

6 MR. COLBATH: Okay.

7 MR. STERNDALE: The minutes only reflected you asking a couple of  
8 questions at that point, and they seem to be mostly background, having missed the last  
9 meeting, and just trying to fill yourself in on what had happened before.

10 MR. COLBATH: The April meeting, I don't know if you read them or not,  
11 they are really vague. "A major discussion ensued", is pretty much what it says.

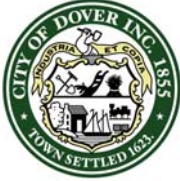
12 MR. STERNDALE: The minutes show you asking a couple of questions  
13 at your first meeting back.

14 MR. COLBATH: Yes.

15 MR. STERNDALE: Is that your recollection of your questioning of the  
16 matter at that point? You went on to be on the losing side of the vote.

17 MR. COLBATH: Yes. The losing side of the vote really had nothing to do  
18 with the case in front of us. It really only had to do with whether or not the Board had the ability  
19 to hear the case, and I still think the Board has the obligation, the way the RSA is written, to  
20 hear matters of enforcement.

21 MR. STERNDALE: Did you make that case at the May meeting? Do you  
22 remember doing that?



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1 MR. COLBATH: I did not have the text in front of me. I had no idea why  
2 they thought they had no recourse, no enforcement powers. That caused me to go look at this  
3 argument, to try to find out under the powers of the Zoning Board what we're allowed.

4 MR. STERNDALE: What comes through your court filings is what sounds  
5 to a layman like a couple of pretty good points, but they didn't show up at the May meeting.

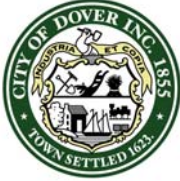
6 MR. COLBATH: Pardon me?

7 MR. STERNDALE: They didn't seem to be raised in the May meeting.  
8 They appear in your filing for Court, but they didn't appear at the May meeting.

9 MR. COLBATH: What points would you be asking about?

10 MR. STERNDALE: The business about – it doesn't really matter. It  
11 sounded like you put a lot more thought into it.

12 MR. COLBATH: I tried to – I think it is important to understand, before  
13 this – in between that meeting taking place – as of that meeting taking place, no one realized – I  
14 don't think anyone on the Zoning Board realized what permits had been issued, because the  
15 only permit that was in our packet was the one to renovate the existing structure. The one to  
16 add the addition and convert to a duplex came out months before that one – almost five months  
17 before that was issued. That wasn't part of the packet and it wasn't part of the information put in  
18 front of us that this had been done too. At that point it was a question of whether it made sense  
19 to "panelize" a building, tear it down, and rebuild. So I think a lot of the information you're  
20 talking about, points that are raised, came after investigating what took place, and what was  
21 going on.



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1 MR. STERNDALE: Okay. What I'm trying to figure out is at some point  
2 your level of interest in this case spiked.

3 MR. COLBATH: My level of interest changed when the case wasn't  
4 heard in the May meeting. But it was pointed out that the building had been completely  
5 removed. That sent up a red flag, because in the original variance request – that was part of  
6 the original variance request, remove the original building and rebuild it elsewhere, but we said  
7 no to that. Obviously if the building is gone, so is the right to convert to a duplex.

8 MR. STERNDALE: So in May you're getting more information about this  
9 that you didn't know?

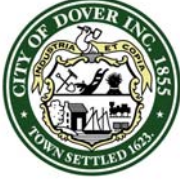
10 MR. COLBATH: Yes. Between the May meeting and the filing of the  
11 appeal, that is when all this starts to come forth.

12 MR. STERNDALE: The June meeting minutes, it says something to the  
13 effect that Mr. Colbath, as a member of the Board, has a problem with it being eroded the way it  
14 has been. I think it means the Zoning Board being eroded.

15 MR. COLBATH: Yes.

16 MR. STERNDALE: How has the Zoning Board been eroding?

17 MR. COLBATH: We make a decision and then after that decision is  
18 made you it can be thrown out the window. Why have I been sitting on the Board for 23 years --  
19 that was my point -- if I am being asked to make these a lot of times tough decisions? We have  
20 in the past enforced the non-conforming structures and non-conforming uses to the letter. If you  
21 go back in time here a little bit, if you remember Lipson Company used to be here, their building  
22 burned. They wanted a different building. They eventually moved out of Dover as a result of



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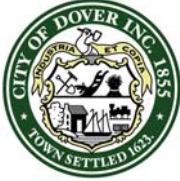
1 that, because we wouldn't give it to them. They could have what they had before and nothing  
2 else. There was another case on Belknap Street here that a 4-unit building burned, the time  
3 elapsed – the over 12-month period time frame to rebuild what they had before had gone away.  
4 It had elapsed and they didn't have the power to have a four-unit building anymore. It's a  
5 duplex now, because it's allowed to be a duplex by code. So we had to enforce this fairly rigidly  
6 in the past.

7 MR. STERNDALE: So you're worried about the power of the ZBA being  
8 eroded?

9 MR. COLBATH: Yes. If this is allowed to stand the way it is, we're not  
10 going to be able to enforce a non-conforming structure, or a non-conforming use? Again, I just  
11 don't think you can, because we've allowed it to go on.

12 MR. STERNDALE: Are there any other recent examples of, in your mind,  
13 the ZBA surrendering its authority or power either to the Building Inspector or the City in  
14 general?

15 MR. COLBATH: I cannot come up with one. If I thought there had been  
16 one in the past – well, actually, no, I wrote one out, there was one time that the Planning  
17 Department had done something that I thought was in violation of an order from the Zoning  
18 Board, and I stepped away from that case, and I said, "Look, I disagree." I don't think – it was a  
19 case where a gas station was installed at the north end of town. From that gas station, we had  
20 approved it with a buffer zone in between essentially open space. After that was done, the  
21 Planning Department and Planning Board completely rebuilt that decision, and decided that they  
22 could subdivide the lots in some of the rear section and develop them. I voiced my position at



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1 that point. The property had been sold years before, and I don't think anyone could have  
2 corrected it, but I voiced my opinion rather strongly in that, and I stepped away from that case  
3 after I made my opinion known, that this is not going to happen again.

4 MR. STERNDALE: When you say stepped away ----

5 MR. COLBATH: I recused myself from the case. I said, "Look, I have an  
6 opinion here that this shouldn't go on, and that this lot doesn't exist. So, I can't sit on this case.  
7 It would be a legal nightmare to correct it. But in my opinion you guys way overstepped your  
8 bounds and I won't tolerate it. I won't be a part of the decision.

9 MR. STERNDALE: Is there some other remedy for you as a citizen or as  
10 a ZBA member to get the Building Department to enforce an ordinance? What other remedy do  
11 you have other than going to court?

12 MR. COLBATH: If it was a question of the Building Code issue, you have  
13 to come before the Building Code Board of Appeals. If it is a zoning issue, you have to come  
14 before the Zoning Board. I don't know that there is any other ----

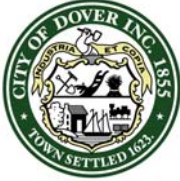
15 MR. STERNDALE: There is no other remedy for you, other than ----

16 MR. COLBATH: Superior Court. That's the only other one I know of. I  
17 tried the first one, and when that one wouldn't be heard I went to the second one.

18 MR. STERNDALE: All right. You speak of the parallel interest you and  
19 Mr. Cheney have.

20 MR. COLBATH: In this property, the parallel interest, yes.

21 MR. STERNDALE: What is the extent of your discussions with him about  
22 your appeal?



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1 MR. COLBATH: Not a heck of a lot. I have sought him out for  
2 information as far as pictures he has and things that he has in his original appeals. Essentially  
3 pictures of the materials that were left after panelization. I think he had some pictures of the  
4 original house, prior to it being burned. Those type of items.

5 MR. STERNDALE: You spoke about that earlier, that you can produce  
6 pictures at some point.

7 MR. COLBATH: I can produce them now because I sought them from  
8 Mr. Cheney. I sought them because I knew they existed. There were referenced in  
9 conversations in front of the Board.

10 MR. STERNDALE: When did you first discuss the case of your appeal  
11 with Mr. Cheney?

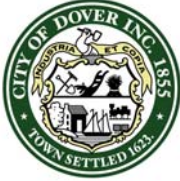
12 MR. COLBATH: I think probably a day or two before I filed the ----

13 MR. STERNDALE: Filed for a rehearing with the ZBA, or filed with  
14 Court?

15 MR. COLBATH: Filed for rehearing with the ZBA, because I wanted to  
16 see these pictures. These are all things that were talked about, but were not given to us. Okay.  
17 As far as pictures of what went on at the location. They were referenced, but because the case  
18 ----

19 MR. STERNDALE: Maybe you can tell me, what is at stake here for the  
20 Cheneys?

21 MR. COLBATH: Don Cheney, Charles' father, is the direct abutter behind  
22 this property, and I think they just have the interest that the property doesn't become an



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1 eyesore. This is primarily a single-family neighborhood. There is an apartment house to one  
2 side -- go down the street there is an apartment house. Go down the street in the other direction  
3 and there is a condo development. But I think the condo development, again, is duplexes, it's  
4 double buildings. But that's a condo, it's maintained. You're not going to have to worry about  
5 the drunken parties, etc., etc.

6 MR. STERNDALE: From your perspective what is the best case scenario  
7 for winning your appeal?

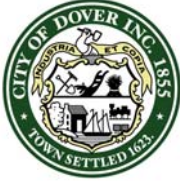
8 MR. COLBATH: The best case scenario of winning my appeal is that the  
9 zoning ordinances remain intact.

10 MR. STERNDALE: And for this particular case, is there any -- zoning  
11 ordinances remaining intact seem to be a bigger question.

12 MR. COLBATH: I guess I don't understand your question.

13 MR. STERNDALE: What good can come from your appeal for the City,  
14 and what good can come to any private interest?

15 MR. COLBATH: I think in terms of the City, the ordinances remain intact,  
16 they remain enforceable. As far as the private interest go, that property is allowed a single-  
17 family home. It's a nice piece of property. That would be an allowable alternative. A  
18 conversion to a duplex is an allowable alternative. I think a modest duplex is not a big problem  
19 there either, but when you start tripling the size of the structure for conversion, there are  
20 underlying issues, and I'm not so sure that it's in the best interest of the neighbors to have that  
21 happen.



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1 MR. STERNDALE: I'm running out, Mr. Chairman, but I may jump back  
2 in.

3 MR. REYNOLDS: I have a couple of questions. You referred in your  
4 testimony that the building was destroyed by fire, and that it was damaged by fire. Which was  
5 accurate? Does it makes a difference?

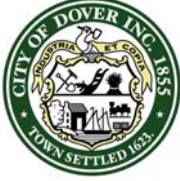
6 MR. COLBATH: Well, it makes a sizable difference, because the clock is  
7 ticking on destroyed. If it was destroyed by fire, and it's not repairable, then the 12-month from  
8 the time of destruction it had to be replaced. If it wasn't replaced in that 12-month period, then it  
9 had to be removed, because it was a non-conforming structure. It was too close to the property  
10 lines.

11 MR. REYNOLDS: But as it started out it was described as damaged and  
12 they were going to repair it; is that correct?

13 MR. COLBATH: Yes and no. The original application, I think prepared by  
14 Mr. Schulte, has "extensive fire damage" listed, and that's when we originally questioned about  
15 – if it has extensive fire damage and we've already clicked off our twelve months here, why are  
16 we considering this. And it was testified at that point that it has extensive fire damage, but it's  
17 repairable. When it came time to do the repairing, it seemed to be non-repairable – at least it  
18 was removed because it was unsafe.

19 MR. REYNOLDS: In your opinion, if the Building Inspector improperly  
20 issues a permit, what is the remedy?

21 MR. COLBATH: I think it has to go in front of the Zoning Board of  
22 Adjustment to start with, because if ----



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1 MR. REYNOLDS: I'm not presuming that in this case he did. I'm just  
2 trying to get information, if he did.

3 MR. COLBATH: If he did issue -----

4 MR. REYNOLDS: Incorrectly.

5 MR. COLBATH: If it was in violation of a zoning ordinance, it should go in  
6 front of them under an appeal from an administrative decision, which is what was filed by Mr.  
7 Cheney.

8 MR. REYNOLDS: In this case it was appealed..

9 MR. COLBATH: It was appealed, but it wasn't accepted.

10 MR. REYNOLDS: The Zoning Board of Adjustment decided presumably  
11 by vote, correct, that they wouldn't accept it?

12 MR. COLBATH: That's correct.

13 MR. REYNOLDS: And are you indicating that you believe, because of  
14 that vote and others that they are, as you say, throwing the zoning ordinances out the window?

15 MR. COLBATH: I don't think in terms of that vote, because I don't think

16 ----

17 MR. REYNOLDS: Subsequently?

18 MR. COLBATH: I think it is important to understand that at the time these  
19 votes were taken, it was not made clear that the building was going to be enlarged in the form  
20 that it was.



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1 MR. REYNOLDS: But at some point the Zoning Board of Adjustment –  
2 each case they took a vote on what they were going to do; correct? When they decline to  
3 accept an appeal, they vote on that; correct?

4 MR. COLBATH: Correct.

5 MR. REYNOLDS: So in each one of these actions by the ZBA, there was  
6 a vote on it?

7 MR. COLBATH: Correct.

8 MR. REYNOLDS: And you disagreed with some of those votes?

9 MR. COLBATH: Yes, I did.

10 MR. REYNOLDS: And that was your basis for pursuing your interest?

11 MR. COLBATH: No. My basis for pursuing those votes was in my  
12 opinion they were illegally arrived at. They were not based on legal premise. One case  
13 involves an aggrieved abutter coming to you with information, and it was denied to be heard on  
14 a technicality of advertisement. But if the advertisement is not in the control of the applicant,  
15 how do we hold the applicant to it? Further, when you have that group in front of you, everyone  
16 that had an interest in it was notified and they were there ----

17 MR. REYNOLDS: What would someone ordinarily do if the disagreed  
18 with a Zoning Board of Adjustment decision?

19 MR. COLBATH: Apply for a rehearing.

20 MR. REYNOLDS: If is turned down, what do they do then?

21 MR. COLBATH: Apply for a rehearing again. If it is turned down a  
22 second time, you go to the Superior Court. In my opinion there were three attempts to be



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1 heard; two by Mr. Cheney and one by myself saying, "what are we doing here?" and they  
2 weren't heard, so where do you go from there? You have to go to Superior Court.

3 MR. REYNOLDS: As a follow-up to Commissioner Sterndale's question,  
4 what do you see at stake in this decision? What's really motivating you to take this  
5 extraordinary effort as a member of the Zoning Board of Adjustment to go through all this  
6 harangue. What is it that actually motivates you? What's at stake here?

7 MR. COLBATH: The integrity of the ordinances is the primary question.  
8 The secondary question is to have one of our decision overturned, not by a vote of our Board,  
9 but by the action of one official.

10 MR. REYNOLDS: That official being?

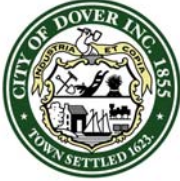
11 MR. COLBATH: Mr. Clark. He issued a permit for something we said no  
12 to.

13 MR. REYNOLDS: What would be the remedy for that?

14 MR. COLBATH: It could become a single-family dwelling. It is still under  
15 construction. It could become a single-family unit, or that portion that is non-conforming could  
16 be remove.

17 MR. REYNOLDS: I think I understand the process. Go ahead.

18 MR. LARIVIERE: Two questions. One was an extension of Chairman  
19 Reynolds' question: if Mr. Clark issued a building permit in violation of what the ruling that the  
20 ZBA had put down, what is the remedy for him conducting that act? Not what happens to the  
21 person who got the permit, but what happens – how would you address that act? In other  
22 words, he is within his power to issue building permits to anyone?



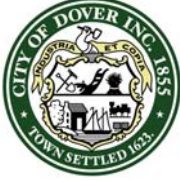
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- 1 MR. COLBATH: Correct.
- 2 MR. LARIVIERE: And if he issues one that is in violation to the Board's  
3 ruling, what happens?
- 4 MR. COLBATH: It would be appealed to our Board.
- 5 MR. LARIVIERE: Okay. If I'm characterizing this incorrectly, please  
6 correct me. It seems to me that during this process there were key bits of information either left  
7 out, not available, or not complete. At what point did this go from we weren't aware what was  
8 really happening on the site, to we're aware but we can't doing anything about it now?
- 9 MR. COLBATH: I think somewhere between the May meeting and my  
10 filing the appeal, when I got all that information. Until after that meeting took place and I started  
11 the big process in my own mind as to what the problem was here. It was primarily the case that  
12 the building had been removed at that point.
- 13 MR. LARIVIERE: Right.
- 14 MR. COLBATH: And they had started a foundation in its place.
- 15 MR. LARIVIERE: Is that with or without ZBA's knowledge at that point?
- 16 MR. COLBATH: I don't think that it was clear to them.
- 17 MR. LARIVIERE: When did it become clear?
- 18 MR. COLBATH: When I gave them my appeal.
- 19 MR. LARIVIERE: But you never got to present your appeal.
- 20 MR. COLBATH: No. I never got to bring my information in front.
- 21 Standing was argued ad naseum.



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1 MR. LARIVIERE: Right. But you were denied the case based on  
2 standing?

3 MR. COLBATH: Right. I was never allowed to present my case.

4 MR. LARIVIERE: The ZBA technically speaking never saw any of this  
5 evidence or information?

6 MR. COLBATH: I don't think so.

7 MR. REYNOLDS: I think Mr. Schulte mentioned this, but there is a  
8 general notion that the Building Inspector has some flexibility when it comes to issuing permits,  
9 given the fact that this is an old city and we have structures with all sorts of problems, people  
10 trying to renovate, upgrade, and so forth.

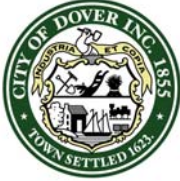
11 MR. COLBATH: Right.

12 MR. REYNOLDS: I'm giving that as a background. Mr. Schulte brought  
13 this up and I've heard that before, because of all these old buildings in New Hampshire and  
14 Dover in particular. There has to be some flexibility trying to get a project to work for the better  
15 good. Do you agree with that premise? How does that factor in?

16 MR. COLBATH: I think that is a loaded question.

17 MR. REYNOLDS: I didn't mean it to be loaded.

18 MR. COLBATH: The flexibility that Mr. Schulte was referring to is the  
19 purview of the Zoning Board to correct items of the zoning ordinance that are rigidly applied.  
20 We're allowed to adjust. That's the flexibility that he's talking about. As far as Mr. Clark being  
21 able to issue a building permit that may not satisfy all the building codes, I think he is within his  
22 power to do that. But he is not within his power to issue building permits that violate the zoning



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1 ordinances. And that's in the statutes that I provided to you; 676:13, that calls that information  
2 out, just because of the small townships. The building inspector may even be a builder at that  
3 point, and he is a part-time building inspector. He can't issue a permit that violates the zoning of  
4 that particular township by state statute.

5 MR. REYNOLDS: Well, in this particular case – let's clarify for a moment.  
6 Would you say from his perspective perhaps, and your perspective there is a disagreement or  
7 misinterpretation of how he interpreted what the procedure he was following, and was he trying  
8 to stay within his parameters. Do you think that was just a misunderstanding?

9 MR. COLBATH: I have no idea of the motivation.

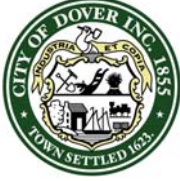
10 MR. REYNOLDS: Is that a possibility? A misunderstanding, rather than  
11 just an over issuance of a permit?

12 MR. COLBATH: Given the fact that the permits issued violate five  
13 difference sections of the ordinance, I don't see how you can say that it is a misinterpretation of  
14 an item. I can't. That's why I'm here with these appeals.

15 MR. REYNOLDS: I understand. Any further questions?

16 MR. STERNDAL: I just found the top half of my page. Do you know  
17 when Mr. Cheney asked your firm to do the electrical work?

18 MR. COLBATH: I think it was on the 26<sup>th</sup> of May. It may have been on  
19 the 25<sup>th</sup> of May. I'm not sure exactly. It's whenever PSNH decided they couldn't perform what  
20 they were asked to do. The house was being resided. They were asked to do a meter float, it's  
21 all done by them. When they decided they couldn't do it, that's when we were called because  
22 the meter socket needed to be replaced.



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1 MR. STERNDALE: Were you aware of any other appeal brewing on this  
2 topic? Did Mr. Cheney stop appealing this at some point?

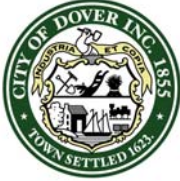
3 MR. COLBATH: I don't think he had any intention of coming back in front  
4 of the board.

5 MR. STERNDALE: I just asked if you were aware of any other appeals  
6 brewing, other than Mr. Colbath's.

7 MR. SCHULTE: The only people who objected to what was going on  
8 were Mr. Charles Cheney, who filed two petitions. He did not file a motion to reconsideration of  
9 either and did not appeal it. And Mr. Colbath's. Everyone else that has been contacted in this  
10 matter apparently does not share Mr. Colbath's view of either the actions of the Building  
11 Inspector or the actions of the Zoning Board, because no one else agrees with Mr. Colbath's  
12 view of what the ordinances say, what the ordinances require, whether illegal acts had been  
13 done.

14 MR. STERNDALE: And just the same contextual question that I had  
15 asked Mr. Schulte, how would you describe your 20-something year interaction with Mr. Schulte  
16 as he appeared before the ZBA?

17 MR. COLBATH: I'd think you would have to characterize that that if you  
18 have an application in front of the ZBA that you consider to be a slam dunk, a no-brainer, we're  
19 going easily allow it to happen, you wouldn't pay an attorney to sit there and present them.  
20 Therefore, probably more often than not, I would be dissenting on the cases that he would bring  
21 in front of us. They're difficult cases at that point if you're going to hire someone to represent



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1 you. They're not a simple item. I would say if you went back over the records of voting on  
2 those I would probably have been opposed more than in favor of the applications.

3 MR. STERNDALE: All set.

4 MR. REYNOLDS: All set? We have no further questions. Do you have  
5 closing ----

6 MR. SCHULTE: Could I respond? Before we do closing, while I'm still  
7 under oath, there have been a number of things that have been said that I think are not true,  
8 and some other things that need a response. Most of what Mr. Colbath told you tonight has  
9 absolutely nothing to do with what you have to decide. I have some concern that you are being  
10 pulled into his view of "There is a conspiracy out there. The ordinance is being misapplied.  
11 Nobody else cares about it but me." You guys don't get to decide whether or not what was  
12 done with the issuance of this building permit was properly done, whether or not the Turgeons  
13 did something correctly, or the Cheneys did something correctly.

14 MR. REYNOLDS: We understand that.

15 MR. SCHULTE: Second, as a factual matter, the Zoning Board did not  
16 decide to grant permission to the Turgeons to enlarge the existing structure on that property.  
17 The only thing that the Zoning Board did was, when the Turgeons asked for a variance to build  
18 a new duplex centered on that property with new construction conforming to all the building  
19 codes, the Zoning Board said they would not approve that. They did not grant permission to  
20 expand it. They did not grant permission to convert it into a duplex. The existing building could  
21 have been converted into a duplex, because the ordinance says so, but the Zoning Board had  
22 nothing to do with that. I've already addressed the error about the ordinance says you could



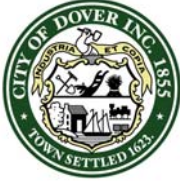
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1 only expand 20%, because in fact there is such an ordinance, but it applies to uses, not to  
2 structures. And in this case the non-conformity had nothing to do with the use, it had to do with  
3 the structure. Mr. Colbath said the Zoning Board was either misinformed or it did not get  
4 information about what was being done, and in fact at the May meeting – April meeting, the first  
5 meeting that Mr. Cheney applied at, he gave a fairly full presentation to what his issues were  
6 about, how big the property was going to be. He specifically challenged the size of the  
7 foundation, and the size of the expansion. There was conversation, Mr. Clark explained all of  
8 that. Of all the people who have had contact with this matter, it appears that only Mr. Colbath  
9 believes that things were done illegally or improperly. In any event, that has nothing to do what  
10 your decision is. He says that he was not and has not been advocating – he said two things,  
11 and then I'll stop. First he said he has not been advocating for Mr. Cheney. That's his  
12 testimony tonight under oath. What he said to the Court is different. If you look at the pleading  
13 he filed with the Court, including the one that he filed tonight, he is specifically advocating for  
14 Mr. Cheney. He said Mr. Cheney was denied an opportunity to be heard and he should be  
15 granted that hearing. He specifically asked for the Court to order the ZBA to hear Mr. Cheney's  
16 appeal. He cannot do that. The ordinance and ethic codes say he cannot advocate for another  
17 individual that way. The fact that he may have his own concerns may or may not, depending on  
18 how credible you accept his testimony given all the variances that have been presented to you,  
19 does not allow him to also represent someone else, whether or not he has a financial interest.  
20 The Second matter is: one of you asked, "When did you stop being a ZBA member?" And he  
21 said, "When I filed my appeal." Well, that's not true, because when you look at the statement  
22 that he made to the Zoning Board at the June hearing, and if you look at all of the pleadings that



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1 he has filed with the Court, he says, "The only reason I am allowed to pursue this is because I'm  
2 a Zoning Board member. I'm Vice-Chairman and I have been here 23 years. I have special  
3 status to pursue this." He has never given up his role on the Zoning Board. Instead he is trying  
4 to take advantage of it to pursue appeals nobody else would have pursued. That's all. That's  
5 my closing as well.

6 MR. REYNOLDS: Do you have a response to that?

7 MR. COLBATH: I just want to clear up one thing that was just said. My  
8 appeal to the Superior Court does not ask that Mr. Cheney's case be heard. It only declares  
9 that it should have been heard. It has merit to be heard. I'm not asking them send this back.  
10 I'm asking them for a petition for declaratory judgment. It's not to bring this case back. It's just  
11 to declare yes. I want it made clear to the Zoning Board that this was an aggrieved abutter and  
12 he had a right to be heard. Whomever, it doesn't matter if it was Mr. Cheney or anybody else.  
13 To turn him away under these circumstances is just not correct.

14 MR. REYNOLDS: I understand. Anything further, Mr. Schulte?

15 MR. SCHULTE: Only that if you choose to listen to the audio portion of  
16 the minutes, you see that the reasons that the Board did not accept the first appeal from Mr.  
17 Cheney were not limited to the publication. The Board also noted that his application was  
18 incomplete. There was information that they needed to decide. The Board members  
19 specifically noted other recent instances, including matters when Mr. Colbath participated,  
20 where the applications that were submitted were incomplete and the Board members said, We  
21 can't accept this case. We can't decide this case, because what you've given to us is not  
22 sufficient. Come back with a complete presentation. That's what they told him the first night.



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1 There was also a problem with publication, but aside from that there were other substantive  
2 reason that it was not heard the first time. The second time, he was told that – Mr. Cheney,  
3 unlike Mr. Colbath, acknowledged that the building permit was properly issued. He agrees that  
4 the original interpretation of the zoning ordinance was probably made by Tom Clark. He says,  
5 “Mr. Clark was correct when he issued a building permit that allowed this building to be  
6 panelized and a new foundation put in.” Mr. Cheney’s only concern was that he thought that the  
7 contractor had gone beyond what Tom said that they could do, that they hadn’t saved enough  
8 materials. It had nothing to do with the interpretation of the ordinance. He conceded that the  
9 interpretation was fine. He simply said that the application of this process – the application for  
10 the building permit exceeded what was allowed. Mr. Clark disagreed with him. He said, “No, I  
11 think they are in compliance with that.” Because there was no issue with the interpretation of  
12 the zoning ordinance at the May hearing, the Zoning Board decided that it was strictly an  
13 enforcement action. The Zoning Board doesn’t have jurisdiction over enforcement matters,  
14 unless that enforcement also involves an interpretation of the ordinance, and there was no such  
15 interpretation that was being alleged, or that was presented. That is why Mr. Cheney was  
16 denied the second time. And then Mr. Colbath tried to come to his rescue, as shown forth in the  
17 stuff that he has filed, in his own words, with his own word processor, to the Court.

18 MR. COLBATH: I’m just going to take exception to one thing. If we’re  
19 trying to try the case for Superior Court here, that’s wrong. But at the time of Mr. Cheney’s  
20 appeal, he only had one building permit. As far as he knew there was only one issued, and that  
21 was the one to renovate the existing structure. That’s the only one he had knowledge of. That’s  
22 the only one that had been posted, I believe, on the property. He didn’t know about the other



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1 permit that allowed the addition, prior to that, in September. And neither did anybody on the  
2 Zoning Board, nor did I. I found that out after I went through the Building Department file.

3 MR. REYNOLDS: Okay. Well, we've heard a lot of information tonight.  
4 A lot that Mr. Schulte points out, and we recognize, isn't necessarily germane to the allegations,  
5 but is background. Rest assured we're not going to get all confused by all of that information,  
6 but it was important to understand at least the motivations behind some of the actions that have  
7 been taken, and you should also recognize that we're not going to question the issuance of any  
8 building permit, or the lack of rescinding, or the actions of the Zoning Board of Adjustment. It is  
9 strictly – our decision is going to be based on the evidence that has been presented that is  
10 germane to the allegations that Mr. Schulte has made. So you can rest assured that that other  
11 information, while it was interesting to hear it and provided all that context, it is not going to  
12 necessarily weigh very heavily on our decision.

### 2. Adjourn

Mr. Reynolds asked the Commissioners what they should do next.

Mr. Lariviere made a moved to meet again on Thursday, August 21, 2008 at 6:00 pm to deliberate and make a decision.

Vote: Unanimous.

Mr. Lariviere made a motion to adjourn at 8:15 pm; seconded by Mr. Sterndale.

Vote: Unanimous.