

Durham Ethics Committee
DRAFT Meeting Minutes, August 30, 2007

Present: Robert Horn, Bob Fulton, Pat Kupcho, Kathleen McTigue, David Montgomery.
Absent: Matthew Reed, Lisa Stafford

I. Statement for the record written and submitted by Bob Fulton (Chairman) as an explanation of the meeting this committee held on August 1, 2007, which had not been posted and therefore was illegal [document attached]. Motion to accept this letter for the record was made by Robert Horn, seconded by Pat Kupcho. **Motion passed.**

II. Minutes: Minutes from the July 27th meeting of this Committee were reviewed and approved. Motion to accept minutes was moved by Pat Kupcho, seconded by Bob Fulton. **Motion passed.**

III. Discussion of provisions of an Ethics Commission Ordinance:

Discussion ensued based on a draft statement of purpose, charge and provisions prepared for the Committee by Bob Fulton. Each segment was considered, amended as needed and voted on by Committee members as follows:

A. Statement of Purpose:

1. The proper operation of the municipal government of the Town of Durham requires that all public officials, municipal employees and others as specified herein shall be impartial and responsive to the public interest and should recognize that the public must have confidence in the integrity of municipal government. Anything that tends to weaken such confidence is against public policy. In execution of their duties, public officials, employees and others should never place their private interests above the interests of the Town of Durham

2. Pursuant to the foregoing principals and in accordance with Section 6.21 of the Charter of the Town Of Durham (as revised 11-8-06) an Ethics Commission is hereby established.

*Motion to accept the Statement of Purpose for the Ethics Commission was moved by Kathleen McTigue, seconded by Robert Horn and unanimously approved. **Motion passed.***

B. General Charge:

1. The Commission shall establish standards of ethical conduct (Code of Ethics) for public officials, employees, contractors, subcontractors, consultants and members of boards, committees and commissions in the performance of their duties. *Motion to accept this part of the general charge moved by Pat Kupcho, seconded by Robert Horn and unanimously approved. **Motion passed.***

2. The Commission shall elect a Chairperson, Vice Chairperson and Secretary, and shall establish rules of procedure for receiving and hearing complaints of violations of the Code of Ethics and the resolution thereof. ***Motion to accept this part of the general charge moved by Robert Horn, seconded by Pat Kupcho and unanimously approved.*** **Motion passed.**

3. Allegations of criminal misconduct or violations of the state penal code shall be referred to the appropriate law enforcement authorities or state attorney's office upon receipt by the Commission. ***Motion to accept this part of the general charge moved by David Montgomery, seconded by Robert Horn and unanimously approved.*** **Motion passed.**

4. The Code of Ethics shall be made available to all affected parties through Durham's Town Hall. It is incumbent upon all affected parties to become familiar with the Code. The Commission shall render advisory opinions as requested, under its rules of procedure. The Commission may offer educational opportunities from time to time. ***Motion to accept this part of the general charge moved by Pat Kupcho, seconded by Robert Horn and unanimously approved.*** **Motion passed.**

Further elements of a General Charge will be considered at subsequent Committee meetings, including questions concerning the scope and limits of the Commission's power to hold hearings and subpoena testimony, and questions of process integrity versus individuals' right to privacy. The Committee awaits further information from Town Counsel.

C. OTHER PROVISIONS

1. Composition and Appointment: The Ethics Commission shall be composed of five regular members, electors of the town, who are known for their personal integrity. The Commission members shall be appointed by unanimous vote of the Board of Selectmen. No more than two members shall be from any one party. Two alternate members shall also be appointed, and may not be members of the same party. ***Motion to accept this part of the provisions section moved by Pat Kupcho, seconded by Robert Horn and unanimously approved.*** **Motion passed.**

2. Exclusions: No member of the Commission may be a current elected official, town employee, current contractor, subcontractor or consultant with the town. No Commission member shall be a current member of any party's Town Committee. ***Motion to accept this part of the provisions section moved by Pat Kupcho, seconded by Robert Horn and unanimously approved.*** **Motion passed.**

3. Term Limits: Members shall serve for three years and shall be eligible for no more than two consecutive terms. To establish rotation, initial appointments shall be: two members for three years, two members for two years and one member for one year.

Initial appointments for the alternates shall be one alternate for three years and one alternate for two years. *Motion to accept this part of the provisions section moved by Robert Horn,, seconded by David Montgomery and unanimously approved. **Motion passed.***

4. Filling Vacancies: Any vacancy which occurs among the regular Commission members shall be filled by one of the alternate members, who shall be appointed by the Board of Selectmen within thirty days and will serve until the end of the regular member's term. The Board of Selectmen shall fill the newly vacant alternate position within sixty days, under the provisions of C#1. *Motion to accept this part of the provisions section moved by Pat Kupcho, seconded by David Montgomery and unanimously approved. **Motion passed.***

5. Compensation: Members of the Commission shall serve without compensation for their services. *Motion to accept this part of the provisions section moved by Dave Montgomery, seconded by Robert Horn and unanimously approved. **Motion passed.***

IV. Next Meeting: The Ethics Committee will meet again on Thursday, September 6, 5:00pm at Town Hall. Agenda:

1. Review minutes from August 30 meeting
2. Continued review and discussion of provisions for possible inclusion in an Ethics Commission Ordinance
3. Review and discussion of information from the Town Attorney concerning draft Ethics Commission Ordinance if received by meeting date
4. Other Business

Minutes written and submitted by Kathleen McTigue, Secretary

Attachment: Statement for the Record submitted by Walter R. Fulton, Chair

ETHICS COMMITTEE
STATEMENT FOR THE RECORD
SUBMITTED BY WALTER R. FULTON, CHAIR
AUGUST 30, 2007

There are two items that I would like to have inserted into the record.

First, in the interest of full disclosure and transparency I would like to state for the record that the Ethics Committee held one of its meetings (August 1, 2007) improperly because the Town Clerk was not properly notified of the meeting (the notice of our second meeting was included in the minutes of the first meeting instead of being provided in a separate meeting notice). Therefore there was no public notice of the meeting as required.

The minutes of the second meeting contained the notice of a third meeting which was scheduled for August 8, 2007.

In checking the Town website calendar of events on the morning of the 8th I noted that the Ethics Committee meeting scheduled for that afternoon was not posted. I realized then that the meeting notice had not been provided to the Town Clerk separately and as a result had not been posted.

I met with the Committee members on August 8th at 5:30PM, second floor Town Hall conference room for the sole purpose of informing the members that we could not hold a meeting that day because of the lack of proper meeting notice and to schedule our next meeting. I also related the substance of a conversation I had with the town attorney on August 8th where I informed him that the Ethics Committee had met on one prior occasion without proper notice to the Town Clerk and the public. The town attorney informed me and what I related to the members was that since the prior meeting was held without proper notice it is as if the meeting never occurred, and any action that may have been taken at that meeting is null and void.

As Chair of the Ethics Committee I take full responsibility for my inadvertent failure to properly notify the Town Clerk of our meeting schedule and I apologize to the committee members for any inconvenience I may have caused.

Secondly, the Board of Selectmen appointed seven members to the Ethics Committee. We were invited to the July 23, 2007 Board Of Selectmen meeting to introduce ourselves to the attendees. Five Ethics Committee members were in attendance. After introductions we briefly caucused for the sole purpose of setting our initial Committee meeting date and agreed to July 27, 2007. I knew that Kathleen McTigue would not be able to attend the Board Of Selectmen meeting and had agreed to inform her of the date of the first Ethics Committee meeting. The other Ethics Committee member who was not present at the Board Of Selectmen meeting was Matthew Reed. I assumed that one of the other members of the Ethics Committee would inform Mr. Reed of the initial meeting date.

This did not happen as we realized at our July 27th meeting, which Mr. Reed did not attend. After that meeting I contacted Selectwoman Boord to inform her that Mr. Reed had not attended the meeting and to request Mr. Reed's contact information. After conversations with Ms. Boord and John Szewczyk, I then called what I believe was Mr. Reed's home telephone number informing him, via voicemail, of the next Ethics Committee meeting date (August 1st). Mr. Reed did not attend that meeting either. I asked the Committee members at the August 1st meeting if they would like me to make further effort to contact Mr. Reed. They did not think any further effort was required.

Respectfully submitted,

Walter R. Fulton, Chair