Ethics and Planners

Focus North Texas 4
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Special Thanks to Carol Barrett, FAICP, author of *Everyday Ethics for Practicing Planners*
APA Ethics Toolkit for Conducting Ethics Sessions
We promise this will not hurt …

Introduction to Ethics
Testing your Ethics Acumen

- If you have an ethical dilemma that may violate the AICP Code of Ethics you should contact the APA Chapter President.
  **FALSE!**
- It’s OK to engage in private communications with proponents and opponents if such communications are not prohibited.
  **TRUE!**
- A former AICP member can be charged with violating the Code of Ethics even though he is not a AICP member.
  **FALSE!**
- AICP Code allows consultants to take jobs that they don’t know how to do as long as they hire someone who does.
  **TRUE!**
- AICP planners are not required to cooperate with an Ethics investigation if they are the object of the ethical misconduct charge.
  **FALSE!**
AICP Code provisions related to opportunities for women in the profession were deleted with the 2005 Code revisions.  
**TRUE!**

It is an AICP Code violation not to volunteer at least 20 hours every 2 years to groups lacking adequate planning resources.  
**FALSE!**

AICP Code does not prohibit public planners from moonlighting as developers if their employer approves.  
**TRUE!**

It is a violation of the AICP not to have read the AICP Code of Ethics.  
**FALSE!**)
Morals vs. Ethics

• Moral Decision …
  • Judgment of the goodness or badness of human action and character — a **value judgment**.

• Ethical Decision …
  • Principles of **conduct based on system of rules** / standards governing members of a profession or group.

• Ethics Code
  • A formal **system of rules** explicitly adopted by a group.
AICP Code of Ethics and Professional Conduct
AICP Code - Ethical/Professional Conduct

• The “What” and the “Why”
  • **Framework** for ethical & professional conduct for AICP members.
    • Hint: Highly valuable to ALL planners and planning officials.
  • Informs the public of **Ethical Principles** to which AICP planners (and others) SHOULD aspire.
  • Establishes **Rules of Conduct** AICP planners MUST follow.
  • Has **process for adjudicating** charges of ethical misconduct.

Planning Ethics
Focus North Texas 4

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AICP Ethics Code Has Four Sections

• Section A – **Aspirational Principles**
  • Ideals to which we are committed.
    • PS: Failure to achieve aspirational principles NOT subject of a misconduct charge.

• Section B – **Rules of Conduct**
  • Violation of rules can be subject to charge of misconduct.
  • Potential imposition of sanctions may include loss of AICP certification.

• Section C – **Procedural Provisions for Adjudication**

• Section D – **Procedures When Planner Convicted of a Crime**
Section A

Aspirational Principles
Three Aspirational Principles

- Responsibility to the Public.
- Responsibility to Clients and Employers.
- Responsibility to Profession and Colleagues.
1. Responsibility to the Public

- Standards of professional integrity & proficiency.
- WHAT …
  - Conscious of the rights of others.
  - Deal fairly with all participants.
  - Long-range consequences of present actions.
  - Interrelatedness of decisions.
  - Timely, clear, and accurate information.
  - Meaningful participation – particularly for those lacking influence.
  - Seek social justice – promote racial and economic.
  - Design excellence; conserve natural and built environment.
2. Responsibility to Client / Employer

- Diligent, creative, and competent performance.
- WHAT ...
  - Independent professional judgment.
  - Accept decisions of an assignment unless
    - Action is illegal or inconsistent with the public interest.
  - In accepting assignments, avoid conflicts of interest or even the appearance of conflicts.
3. Responsibility to the Profession

• Professional development / public understanding.
• WHAT ...
  • Educate the public about planning issues.
  • Share the results of experience and research.
  • No boiler platting.
  • Contribute time / resources to professional development.
  • Increase opportunities underrepresented to become planners.
  • Enhance our professional education and training.
  • Analyze ethical issues in the practice of planning.
  • Contribute time and effort to groups lacking planning resources.
Section B

Rules of conduct

Are there Rules???
Four themes:

- Conduct that is in essence illegal.
- Conduct that is less than truthful.
- Conduct that affects public confidence.
- Conduct that is unprofessional.

AICP Ethics Committee enforces Rules of Conduct.

IF we do not adhere to Rules …

- Can receive sanctions.
- Lose AICP Certification.
Conduct that is in EssenceIllegal

• Accept assignments that are illegal. (#2)
• Accept outside compensation related to your position as a public employee. (#5)
• Talk privately with a proponent or opponent about a matter you have final authority over when such communication is prohibited. (#8)
• Talk privately with decision-makers when it is prohibited. (#9)
• Unlawfully discriminate against individuals. (#20)

• Note: (# Number) refers to specific rule number in Rules of Conduct
Conduct that is Less than Truthful

- Misrepresent qualifications, views or findings of other professionals. (#10)
- Seek employment via misleading claims or harassment. (#11)
- Misstate qualifications or education. (#12)
- Take credit for work done by others. (#17)
- Coerce others to make findings not supported by facts. (#18)
- Fail to disclose client’s interests or employment. (#19)
- Fail to notify Ethics Officer if convicted of serious crime (#26)

• Note: (# Number) refers to specific rule number in Rules of Conduct
Conduct Affecting Public Confidence

- Work on project where there is additional personal or financial gain without consent of employer. (#6)
- Use confidential information from previous employer or client for personal gain, to embarrass or harm. (#7)
- Sell services by implying an ability to influence decisions by improper means. (#13)
- Use position to seek a special advantage if not public knowledge or in public interest. (#14)

• Note: (# Number) refers to specific rule number in Rules of Conduct
Conduct that is **Unprofessional**

- Deliberately fail to provide adequate, timely, clear, and accurate information. (#1)
- Within 3 years, accept an assignment to publicly advocate a position that will harm a previous employer. (#3)
- Moonlight without employer’s approval. (#4)
- Accept work beyond your competence unless it is disclosed work will be performed by others. (#15)
- Accept work you can’t finish by required deadline. (#16)

  - Note: (# Number) refers to specific rule number in Rules of Conduct
Conduct that is **Unprofessional** (2)

- Fail to cooperate when an ethics charge is filed. (#21)
- Retaliate or threaten those who file ethics charge. (#22)
- Use threat of filing an ethics charge to gain advantage over another person. (#23)
- File a frivolous charge of ethical misconduct. (#24)
- Commit a wrongful act, even if not specified in Rules, that reflects adversely on your professional fitness. (#25)

  - Note: (# Number) refers to specific rule number in Rules of Conduct
Within Your Organization

Nurturing Ethical Behavior
Creating an **Ethical Planning Dept.**

- **Employees**
  - Sense of responsibility for their actions.
  - Not using position to the disadvantage of proponents or opponents.
  - Employees – freely raising concerns without fear of reprisal.

- **Managers**
  - Practicing behavior you expect of others.
  - Communicating importance of integrity when making difficult decisions.
  - Identifying / remedying pressure points that drive unethical behavior.
Creating an Ethical Planning Board

• Honestly and openly acknowledging the ethical dimension of Board’s decision-making.
  • Adopting APA’s “Ethical Principles in Planning.”
  • Training on ethics as part of professional development.
  • Appointing qualified members.
  • Maintaining a transparent decision-making process (avoiding ex parte communication)
  • Incorporating ethical standards in Bylaws.
  • Discouraging “group think” / “group speak” — tends to deter individual ethical awareness.
AICP Ethics
Case of the Year
2013
Case of the Year (COY) – The Set Up

• Community has a strong economy and environmental stewardship.
• Planning Director is an AICP planner. She previously worked with a local planning firm in town.
• Planning Director has a good relationship with City Manager who hired her, and they typically discuss pending zoning recommendations before public hearings.
• Fall election brings 5 new pro-development Council Members on a 9-member Council that had been previously environmentally friendly. Recently adopted environmental zoning overlays are cited by the newly-elected Council Members as an example of “unnecessary governmental overreaching.”
• Now the “fun” begins …
City Manager speaks to Planning Director about need to play “Smart Politics” to avoid being pulled into “Big Politics” of City Council.

City Manager and City Attorney take position that pending development applications, even if incomplete, are vested from new environmental zoning overlays.

City Manager instructs Planning Director to issue interim regulations consistent with his interpretation until decision is challenged in court.

Planning Director disagrees. She believes that only complete applications are vested and believes her credibility would be seriously undermined if she now changed her opinion.

State case law is not totally clear, but “deemed approved” laws have failed recently.

What options does the Planning Director have for acting ethically?
COY: “Changing Direction”

• Developer begins work in an area potentially affected by wetlands in a neighboring community.

• Planning Director, in her earlier private practice role, had successfully argued that the area didn’t fall within an environmentally sensitive area.

• City Manager contacts Planning Director and tells her that some of the “green” Council Members are putting pressure on him to suggest that the area has strong environmental issues.

• City Manager now insists Planning Director write report with findings justifying project redesign to avoid wetlands entirely.

• What ethical options does the Planning Director have?
Given recent difficulties with Planning Director City Manager hires a “hot shot” AICP staff planner to work as a Plans Expeditor.

Plans Expeditor suggests adopting some policy practices that will fast-track some development approvals but these actions are not fully supported by state enabling legislation.

Planning Director disagrees, thinks this violates state law.

They begin to belittle each other publicly and on occasion make unsupported derisive comments about their respective professional credentials.

Are the two planners acting ethically with regard to the “fast track” issue and their approach to personal attacks against one another?
COY: “Job Hunting”

• In an increasingly fractious political environment, Planning Director begins quiet job search, among long-term confidants.

• Because of her strong reputation, a head hunter representing large firm seeks her out, but cannot reveal identity of potential employer.

• What can she share with the head hunter about her work with the city, pending development proposals, and advice that she’s given publicly and privately to the City Council and City Manager?
Planning Director departs and Assistant Planning Director is appointed as Interim Director; Plans Expeditor also wants the job.

In a private discussion with Plans Expeditor, Mayor alludes to influence Plan Expeditor has over City Manager’s decision about who will be selected as the new Planning Director.

Mayor hints that one of his supporters, a local developer who has an application before the Planning Commission, agrees with him.

The following week Plans Expeditor tells Interim Planning Director that City Manager wants the staff recommendation changed in favor of the local developer.

Interim Planning Director doesn’t want to risk his appointment as new Planning Director by City Manager and makes the change.

What ethical issues are raised in this scenario? How should the players respond?
COY: “Back in the Private Sector”

• Former Planning Director is now in charge of a local office of a national planning and design firm.

• Her new firm believes that her previous work in the city may help secure contracts for new projects from her former employer.

• A developer in a nearby suburban community remembers former Planning Director’s recommendations on wetland issues and in their first meeting, mentions he’s looking forward to the same “outcomes”.

• An environmental planner at the meeting asks, “What does the developer mean by this?”

• What ethical issues are raised in this scenario? How should the former Planning Director respond?
You Make the Call!!

Ethical Scenarios
Scenario 1: Just Following Orders

- You are a planner in the Department of Planning & Economic Development with responsibilities for reviewing a site plan for a large mixed use development that will substantially increase the city’s sales tax and ad valorem revenues.
- During your review you notice the development far exceeds the impervious area limits. Your department head tells you not to mention this in your staff report. She says the increase in coverage is needed to make the deal work. Besides, the city is overdue in revising standards to allow higher densities.
- You make the call …
  - Since you were “directed” to omit this item, is it ethically okay?
  - What is the ethical thing to do?
Scenario 2: New Job, Old Friend

- Two planners work together at a private developer for several years before both joining the planning department in a large city. After two years at the department, one of the planners returns to private sector development. How does this change the personal and professional relationship of the two planners?

- **You make the call …**
  - What steps should they take to remain friends?
  - What parts of the AICP Code would provide guidance?
Scenario 3: The Perfect Team

- A developer asks you, as a public sector planner, to help him select the team of urban designers, architects, and attorneys that you would recommend, since you are familiar with who is good in your community.

- You make the call …
  - How do you respond?
  - If you decide that giving advice on a team is not ethical, are there other ways you can assist?
Scenario 4: Don’t Fence Me In

• You’re a planner in a department that also handles zoning code enforcement. On the way home, you notice that two of your neighbors have erected fences that exceed the Zoning Ordinance’s 8-foot height limit by 2 feet. You can’t decide how you should handle this but secretly hope code enforcement will notice.

• You make the call …
  • Ethically what should you do?
  • What conflicts arise between the differing roles as property owner and public servant?
Scenario 5: Follow-up Work

• You are working for a consulting firm that completes a master plan for a new community airport. After the master plan is completed, the community releases an RFP for engineering services based on recommendations from the plan.

• You make the call …
  • Do you foresee any conflicts?
  • Ethically, what do you do??
For over a decade YOU have been working with zoning and building codes that are out-of-date.

- There are numerous complaints concerning the antiquated codes, outdated procedural issues such as requiring 20 hard copies of all submittals.
- You take no action to remedy the problem, citing lack of staff and money to address the issues.

You make the call …

- Are you acting ethically?
- What do you think are your ethical responsibilities?
Scenario 7: Matter of Interpretation

• A notoriously lowball developer who’s a royal pain, submits plans to construct 200 new homes.
  • You tell the developer that the detached garages are considered accessory buildings and as such exceed the allowable square footage for accessory structures.
  • The developer vehemently disagrees with this interpretation and asks to appeal your interpretation to the review board.
  • You say “fine,” but it will cost you $50 --- PER GARAGE --- which means $10,000 vs. the normal $50 fee for the interpretation.

• You make the call …
  • Have you acted ethically?
Scenario 8: Consultant/Commissioner

- You’re a planning consultant meeting with planning staff in a nearby city to negotiate approvals for your project.
- During the meeting, you hand the planning staff your business card WITH your card showing you serve as chair of the planning commission in the neighboring city.
- You make the call …
  - Is it ethical for you to hand out your planning commission business card?
  - Are there conflicts with being a consultant and planning commissioner?
Final Scenario

• You are attending an ethics training for the required 1.5 hours of CM credit.
• 30 minutes into the session your boss calls asking you to take care of a problem.
• You spend the next 30 minutes out in the lobby trying to solve the problem then rush back in for the last 30 minutes of the Ethics program.
• **You make the call ...**
  • Can you record the session on your CM log?
Final Words...
Basic Ethics Tests …

• Does it pass the smell test?
• Are you being asked to do something that doesn’t feel right?
• What would your Mother think if she read about it in the paper?
Finally …

• If you have a good moral compass …
  You’ll have a good ethical compass!
Ethics Resources

- Everyday Ethics for Practicing Planners, Carol Barrett, FAICP, Amazon.com
- www.planning.org/ethics
  - AICP Code of Ethics and Professional Conduct
  - Ethics Principles in Planning
  - Ethics Case of the Year
- Chapter 31 - State and Local Government Conflict of Interests Act, Virginia
- Local code of ethics – if missing, CREATE ONE!!
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