ETHICS FOR DECISION MAKERS

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Connie B. Cooper, FAICP
Cooper Consulting Company, Inc.
Ccconniecooper@cs.com  214-228-0211

Original Presentation Created by Ann Cooke Bagley, FAICP and Edmund Haas, AICP

Based on “Ethics and the Planning Commissioner”, A Guide to Urban Planning in Texas Communities published by the Texas Chapter of American Planning Association, Everyday Ethics for Practicing Planners both by Carol Barrett, FAICP, and APA Ethics Toolkit including Ethical Principles in Planning
Quick Intro to Planning Ethics
I promise this will not hurt ...
PLANNING PROCESS

The planning process
- Serves the public interest
- Requires strong awareness of public policies
- Requires actions that affect your community’s future.

Planning issues often involve
- Large interests
- Potential conflicts of values
- Differences in interpretation of plans and ordinances.

This necessitates HIGH standards of FAIRNESS and HONESTY in dealing with ALL participants.

... Thus our planning practice needs to adhere to a special set of ETHICAL principals that guide our decision making.
The planning process implements the comprehensive plan (community’s vision) – BUT this is often not fully understood by general public.

What YOU see (internal process): Pre-application, plan submittal, work session, preparation for public hearings

What PUBLIC sees (external process): Notices, neighborhood meetings, public hearings

Remember – public participation is more than something just to satisfy the public process.

- You have a **moral** and **ethical** obligation to treat issues and the public (including the applicant) fairly.
Morals vs. Ethics

Moral Decision ...
Value Judgment – of what is RIGHT and what is WRONG – but not a set of rules adopted by a group.

Whereas ...

Ethical Decision ...
Principles of Conduct – based on system of rules / standards governing members of a profession or group.
**Ethical Standards**

Standards for Ethical Conduct:

- Your city’s Code of Ethics
- APA Statement of Ethical Planning Principles and AICP Code of Ethics
- Your own moral compass should guide you in the absence of adopted ethical standards.

Ethical behavior is not always easy to achieve, but APA’s Statement of Ethical Principles is a good place to start.

“Ethics are what you do when no one is looking.”
– George Bernard Shaw
APA’S ETHICAL PRINCIPLES IN PLANNING*

Two key parts apply directly to appointed and elected officials

1. Planning process must continuously pursue and faithfully **serve the public interest**.

2. Planning process participants should continuously strive to achieve **high standards of integrity** and **proficiency** to **maintain public’s respect** of the planning process.

*www.planning.org*
1. Serve the Public Interest

As a Planning Participant you should:

1. Recognize the rights of citizens to participate in planning decisions.

2. Give citizens full, clear & accurate information.

3. Expand opportunities for all to participate.

4. Assist in the clarification of community goals, objectives and policies.

5. Ensure information available to you is also available to public.

6. Protect integrity of natural environment and heritage of the built environment.

7. Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions.
2. Strive to Achieve High Standards of Integrity and Proficiency

As a Planning Participant you should:

1. Exercise **fair, independent, & honest judgment**.
2. Publicly **disclose** any **personal interests**.
3. Define personal interest broadly.
4. **Abstain from participation** if have a personal interest in a matter and **leave the room** when being deliberated (better to leave when case is being heard).
5. **Not seek or accept gifts or favors**.
6. Abstain from participating on items that you have previously participated as an advocate.
7. Serve as advocate for a client only if objectives are legal and serve the public interest.
3. Strive to Achieve High Standards of Integrity and Proficiency (continued)

As a Planning Participant you should:

8. **Not participate as an advocate** on a project you have **previously served as an advisor/decision maker**, except after **full disclosure** and in **no circumstance earlier than one year** following termination as advisor/decision maker.

9. Not use confidential information to further a personal interest.


11. **Not misrepresent facts or distort information.**

12. **Not participate in any matter unless prepared.**

13. Respect the rights of all persons.
Things You Should Know and Watch For
LOCAL ETHICS ORDINANCES

Ethical Rules of Conduct Typically Cover Prohibited Conduct:

- Ex parte communications
- Serial meetings
- Conflicts of interest
- Open meetings
- Other advice

Requires Disclosure:

- Forms and/or procedure provided by the City

RULES!
1. You SHALL!
2. You WILL!
3. You MUST!
**Ex Parte Communications**

*Ex Parte* communications is any oral or written communication outside the hearing with either proponents or opponents of a pending proceeding. *Ex Parte* communications are discouraged or prohibited for a variety of reasons. It is not fair to the other parties because:

a. The decision maker may be inaccurately informed;

b. The **perception** that the commission can be susceptible to improper influence;

c. Improper *ex parte* communications can invalidate the actions of the commission.

*Caveat*: Community meetings, neighborhood meetings (pro or con) and with applicants are different situations if within City policy; however it is best to just listen and respond to issues related to process – not offer opinions.
A serial meeting need not be a face-to-face meeting. It can be a series of communications such as email, telephone calls, or social media such as Facebook.

A serial meeting can occur when there are systematic communications on a particular matter involving a quorum of the Planning Commission, engaging in debate, discussion, lobbying, or other aspects of the deliberative process.

Continuing discussion after the meeting is adjourned is another kind of serial meeting.

PS: Realize that all your correspondence could be subject to discovery if there is legal action.
CONFLICT OF INTEREST

You have a potential conflict of interest if you...

- Live in the notification area.
- Have a potential conflict of interest in case if you or close family member has
  - Stock Interest
  - Business Ownership
  - Interest Income
  - Real Property
  - Work for someone that has financial involvement in the case.
- Sit on another Board connected to the case.
**CONFLICT OF INTEREST (cont’d)**

What to do if you think you have a Conflict of Interest:

- Recognize that you might have a conflict.
- Get advice from staff or city attorney, if not sure.
- State at the meeting that you have a conflict.
- Recuse yourself and **LEAVE THE ROOM**.
- Chair should state for the record that you have left and when you return
- Do not engage in **any** discussion or action on the case in or outside the meeting.

PS: This relates to most all cases, zoning, plats etc.
OPEN MEETINGS ACT*

- Every regular, special, or called meeting of a governmental body MUST be open to the public, and the public must be given adequate notice of the topics to be discussed. Think “sunshine law”

- There are NO informal meetings!

- Applies to EVERYBODY!
  - city councils, planning and zoning commissions, boards of adjustment, and economic development corporations.
  - When a quorum is present and discusses public business...but
  - But not to purely social gatherings or attendance of conferences or training – BUT DO NOT DISCUSS CASES.

MUST FOLLOW THE POSTED AGENDA!

*Texas Local Government Code Chapter 551
OTHER ADVICE

- Do not use position title to request special treatment by city employees or private interests.
- Do not accept gifts or trips, etc. – of any type regardless of what the written rules may allow – it’s PERCEPTION
- Have a separate email for your commission correspondence.
- Meetings:
  - Be prepared – READ staff report & visit site
  - Use rules of procedure and operate accordingly
  - Conduct fair public hearings
  - Assess case against the standards in the ordinance
  - Render a decision – needless postponements are painful!
GREAT EXPECTATIONS
What Should Commissioners Expect of Staff

- Provide staff reports that are easy to read, jargon-free (as much as possible).
- Report on facts of the case as related to codes and ordinances.
- Identify the relationship between adopted planning documents and the ordinance related to the case.
- Provide training to inform commissioners of the planning process, their roles and responsibilities, as well as planning and zoning terminology)—don’t assume they do.
WHAT STAFF EXPECTS OF COMMISSIONERS

- Read staff reports and study the materials in advance of meeting – even visiting site is important.
- Ask relevant questions.
- Raise concerns you may BEFORE meeting.
- No blindsiding, limit criticism in public meeting.
- Show respect for staff and applicants —Really!
- Make a decision.
**What Should Commissioners Expect of Each Other**

- Are familiar with the comprehensive plan and zoning and subdivision ordinances.
- Are prepared for meetings – having read staff reports, etc.
- Ask important questions of applicant and staff!
- Assist other commissioners by asking what may seem obvious—educational moment.
- Stay on topic and work together for the good of the City.
WHAT TO EXPECT BY APPLICANTS

By Staff and Commissioners:
- Present an honest representation of the case
- Provide direct answers to questions
- Reach out to neighborhoods and stakeholders
- Be professional
- Show up and bring the necessary team members to meetings

By Applicants:
- To be treated respectfully and in a timely manner.
What City Council Expects of Commissioners and Staff

- **City Staff**: Recommendations based on ordinances and plan.

- **Planning Commission**: Solid recommendations based on input of staff recommendation, public input, and consideration of the implications on the city, including thoughtful vetting of the issues.
TIPS FOR UNDERSTANDING THE JOB

- Become familiar with your responsibilities/expectations
- Initial Orientation – familiarize yourself with:
  - Basic Concepts on Land Use Planning
  - State Enabling Statutes on Planning & Zoning
  - Legal Aspects of Land Use Planning
  - City’s Comprehensive Planning Documents
  - Zoning Ordinance
  - Subdivision Regulations
  - Bylaws
  - Conduct Required of Public Officials (Elected and Appointed) - Open Meetings Act, Conflicts, etc.
SCENARIOS – YOU MAKE THE CALL
**Scenario 1 - How about Lunch?**

Through the course of your duties you form a friendship with a local landowner who periodically calls with questions about planning and zoning. He invites you to eat lunch and he buys. Is this ethical?

PS - No pending application.

You make the call ...

- If no pending case it might be “okay” BUT always best to keep such relationships at arms-length.
- If you do lunch, each should pay for own meal.
- Avoid public or private PERCEPTION of favored action.
- Care must be taken to not discuss matters that are better suited for staff or open meetings.
**SCENARIO 2 - BEHIND THE SCENES ADVOCACY**

A potentially controversial development is being proposed near an exclusive residential development and a local school. You have several friends associated with each.

To encourage more public input, you “tip off” your friends to give them time to prepare. Is this ethical?

**You make the call ...**

- You should **not** work behind the scenes to provide info to one group while withholding from another
- Imply that a position has been taken
- Cause potential to harm your greatest asset – Credibility
- While nothing wrong with encouraging public input, it is best for the Staff to give notice the public!
Scenario 3 - Helpful Commissioner

Someone from church is asking you to provide help or guidance and even a favorable decision on a re-zoning case. Would it be ethical for you to help, and if so how?

You make the call ...

- It is completely appropriate to provide guidance to an applicant regarding the procedural and submittal requirements for an application.
- Inform that you will hear the facts of the case in public arena.
- Explain that you can’t pre-judge or promise favorable action.
- If you believe that your objectivity is compromised, then should recuse yourself from participating – in any format.
SCENARIO 4 - HELLO-GOODBYE

A fellow commissioner calls you to discuss a case and says she has talked to other commissioners and they are agree with her. What is an ethical response to this call?

You make the call …

- Good-bye!
- What’s the problem?
- Ex parte? Serial meeting?
- What about emails? Text? Twitter? Facebook?
A park is being redeveloped via a public/private partnership. Would it be ethical for you to attend a charity fundraising gala as a guest of:

(a) a private individual who is supporting the capital campaign;
(b) a city table purchased;
(c) a “free” city table.

You make the call ...

- (a) is okay if private individual does not have an application before the city.
- (b) and (c) better options; and be sure to mingle/network!
SCENARIO 6 – RECOMMENDATIONS?

A long time family friend and property owner wants to divide and sell off parcels. She is inexperienced, overwhelmed and has no idea what to do or where to look for help. She ask you about the planning process and who you’d recommend as a surveyor to prepare the plat. You want to help her as you know that how smoothly the platting process often depends on the surveyor. What are your ethical options?

You make the call ...

- Tell her to look in Yellow pages?
- Suggest she contact a list of engineers for their recommendation?
- Refer her to staff for a long list?
- Suggest talking with neighbors, family, other related professionals.
- PS: Avoid recommending surveyor – if she is not happy she may suggest you acted in improperly and thus damage your credibility.
SCENARIO 7 - POLITICAL ASPIRATIONS

Is there an ethical answer if you have a fellow planning commissioner wanting to use their position to politicize a position as it relates to a particular case (during a meeting) to perhaps further their ambition to run for political office?

You make the call ...

- Continue professional approach; stick to the issues in the case – avoiding a political discussion.
- Avoid appearance of taking a politically influenced position.
- Remind ALL that decisions of the planning commission should be based on the planning documents, the zoning ordinance and FACTS of the case.
SCENARIO 8 - CODE E (ENFORCEMENT)!

You, the commissioner, own a home in a planned unit development (PUD) and notice that several neighbors have erected fences that extend their backyard into the shared greenway – essentially privatizing public land. Is their an ethical way to handle this situation?

You make the call ...

- Call code enforcement (ps – not the best answer)
- Address the issue with City Staff
- Handle through clear, open communication and disclosure
Remember ... Take the High Road, there is less traffic!

“Allways do right. This will gratify some people and astonish the rest.”

– Mark Twain
OTHER SOURCES OF INFORMATION

APA Texas
www.texasplanning.org

State, Regional and Local Workshops and Conferences
Annual Short Course for Elected and Appointed Officials
The Guide to Urban Planning in Texas Communities
City orientation and training for new Planning Commissioners and Elected Officials

American Planning Association
www.planning.org

Planning Magazine
National Planning Conference
The Commissioner quarterly newsletter - now in Planning
Planning Commissioner’s Journal - online subscription
Ethics Toolkit - on APA website
CD-ROM training packages
www.planningbooks.com
QUESTIONS/COMMENTS?

Connie B. Cooper, FAICP
Cooper Consulting Company, Inc.
3839 McKinney Avenue, Suite 155-235
Dallas, TX 75204
cconniecooper@cs.com
214.228.0211