

Here Comes the Big Box

Ethics Case of the Year

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Rocky Mountain Land Use Institute

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By: Ethics Committee

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Your Guides

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Advice on Conduct

- This “Case of the Year” has been created by AICP’s Ethics Committee in order to provide general education materials regarding the *AICP Code of Ethics*. Although scenarios, sample problems, and question-and-answer sessions are an important part of identifying various code provisions, please note that, according to the Ethics Code (Section C3), “only the APA/AICP Ethics Officer is authorized to give formal advice on the propriety of a planner’s proposed conduct.”
- Please direct any queries or suggestions to Bob Barber, FAICP, Chair, AICP Ethics Committee at BobBarber@orionplanninggroup.com or to Jim Peters, FAICP, APA/AICP Ethics Officer at ethics@planning.org.

Waverton

Culturally and demographically diverse
Population 100,000



Waverton Politics

- Large number of immigrants
Non-English speaking
Mostly employed in service & agricultural sectors
Concentrated in ethnic neighborhoods
- Strong constituency of relatively well-educated and affluent citizens, mostly employed in government, high-tech, and health-related jobs



And More Politics

An active development community which feels the City is too restrictive on development

Strong citizen demand for a robust planning program and a general concern about the city's image



Planning in Waverton

Well-staffed planning department

Community respect

Council generally accepts recommendations



But there are some bumps

Development community criticism:
Planning staff out of touch with reality

Some Council members: Planning staff not supportive of
economic development



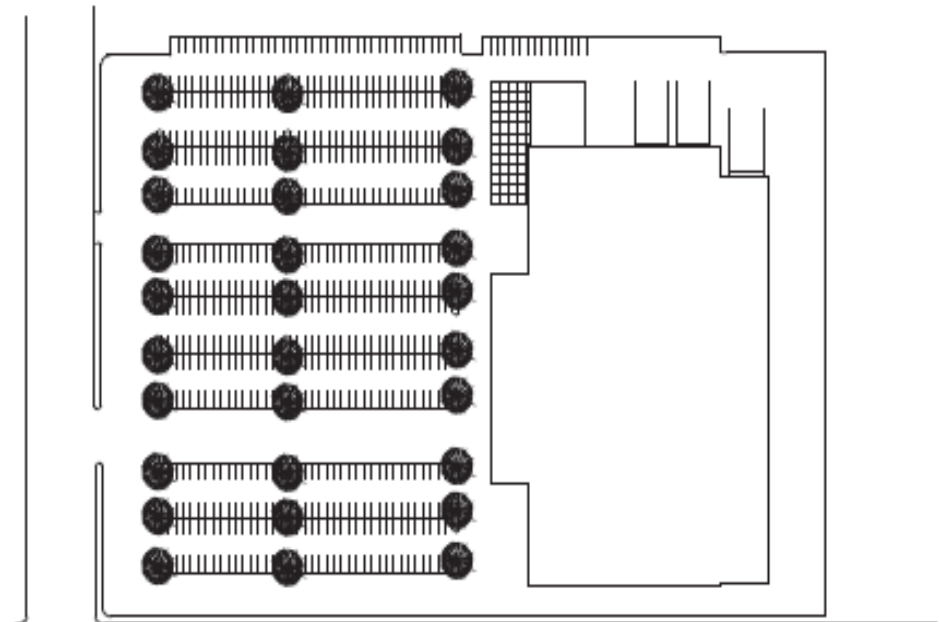
- **Big box national retailer submits application**
- Planning staff has been successful at better design with other projects
- Land Development Code (LDC) doesn't include much in the way of specific design of requirements



- **Few sites available for large-scale development**
- Site in suburban area under contract for big box
- Groceries, pharmacy, clothing and household goods



- **Application shows** mega-store with vast front parking lot
- Store size means special approval by the City Council
- Criteria for staff recommendation includes impacts to infrastructure, neighborhood compatibility, and community need for the use.



Politics in the Planning Context

Project Support:

- Sharon, City Council member for the District where the store would be located, was elected with support of area ethnic minority residents
- Sharon contends that her constituents want and need the store. The big box means jobs and reasonable prices within walking distance
- Sharon has been working to get a big box store for a long time

Project Opposition:

- Fred, Council member for the nearby District, opposes the big box.
 - Environmental issues
 - Traffic
 - Design
 - Walkability
- Fred's constituents
 - Drive past the proposed site daily
 - Have retail choice
 - Don't like the idea of a discount big box retailer in the proposed location.

Staff Background:

- Aaron is the staff planner
 - In his geographic area of responsibility
 - Two years experience
 - New AICP member
 - Disappointed in proposed design



Scenario 1: **Differences of Opinion and Supervision**

- Susan
 - Aaron's supervisor
 - AICP planner with 10 years' experience
- Planning Director, Bill, discusses project political sensitivity with Susan
- Susan passes information to Aaron

The Talk

- Aaron gives Susan his analysis
- Susan concerned
 - Applicant will find conditions of approval unacceptable
 - Conditions not supported by Land Development Code



Scenario 1: Questions

- What are Aaron's obligations in developing his opinion?
What professional practices should be observed?
- How should Susan approach this situation with Aaron? What should she do as she works with Aaron on his recommendation?
- How does the AICP Code of Ethics apply?

Follow up: If Susan remains convinced that Aaron's recommendation is flawed, how can she proceed ethically to change it?

Scenario 2: Under the Influence?

- Aaron sets post-lunch meeting with applicant
- Aaron is nervous—his first controversial case
- Takes a walk to relax



- Susan Supervisor attends the meeting
 - Knows Aaron is nervous
 - Concerned Aaron is stretching code requirements
 - Surprised at how relaxed Aaron appears
 - Aaron is characteristically not very articulate

- Aaron can't make his concerns clear
- Susan takes over the meeting
- After the meeting, Susan approaches Aaron and notices a smell that takes her back to her recent vacation in Colorado
- Applicant speak to Susan privately and tells her he intends to file a complaint with AICP about Aaron working while "under the influence."



Scenario 2: Discussion

What are the key ethical issues Susan needs to consider in approaching this situation?

How does the AICP Code of Ethics apply?

Scenario 3: Political Pressure

- Susan prepares staff report for Planning Director Bill.
 - Design review conditions based on the LDC, planning principles and neighborhood input
- Developer reluctantly agrees to conditions
- City Manager Phil knows of Council members' differing opinions
- Council member opposing the store is a strong supporter of Phil

- Phil City Manager reviews staff report
- Asks Planning Director Bill to align report with Council member views



- Bill defends staff
- Phil threatens firing if conditions aren't revised

Scenario 3: Discussion

How should the Planning Director, Bill, respond to the City Manager's request?

How does the AICP Code of Ethics apply?

Scenario 4: Taking Credit

- All's well that ends well
 - Applicant provides more sensitive design
 - Phil and Bill convince Council to beef up design standards
 - Council approves consulting budget
 - Bill sends out RFP

The Plot Thickens

- P&D Associates receives RFP
- Tom WAS a key partner in P&D
- Form-based and design oriented codes
- Tom and Ann did all code design standard work at P&D
- Everyone is AICP

- Before RFP arrives, Tom and Ann leave to form FBC Associates.
- FBC and P&D both respond to the RFP and both use same project examples
- Both firms interview and are asked who in their firm worked on the project examples in their proposals.
 - Clearly P&D staff did not
- Tom and Ann are VERY upset



Scenario 4: Discussion

What should the City do?

How does the AICP Code apply?

What should Tom and Ann do?

How does the AICP Code of Ethics apply?



Bonus Scenario: **On the Other Side of the Table**

- AICP planning consultant Tom is working for the big box developer
- Tom knows about site contamination
- Tom knows previous owner (a client) wouldn't want contamination disclosed and feels bound to confidentiality. Tom knows there are public health implications
- **What are his responsibilities under the AICP Code of Ethics?**