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
American Institute of Certified Planners
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?**