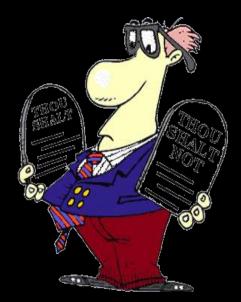# Ethics Case of the Year

Rocky Mountain Land Use Institute

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Special Thanks to Connie Cooper, FAICP

AICP Code - Ethical/Professional Conduct

- The "What" and the "Why"
  - Guides ethical & professional conduct for AICP members.
  - 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.

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.

Responsibility to the Public, Cont'd

– 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 plating.
  - 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.

26 Rules of Conduct

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

Conduct that is in Essence Illegal

- Accept assignments that are illegal or violate Code. (#2)
- Accept outside compensation or advantage related to your position of public employment. (#5)
- As public employee/official talk privately with planning participant on matter we 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)
- Gain by taking credit for work done by others. (#17)
- Coerce others to make findings not supported by evidence. (#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 disclosure or consent from 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 power 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 and is done without full disclosure. (#3)
- Moonlight, with/out pay, 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

Rules of Conduct Cont'd

- AICP Ethics Committee enforces Rules of Conduct.
  - If we do not adhere to Rules …
    - Can receive sanctions.
    - Lose AICP Certification.

Advice on Conduct: Please Note

- This session provides general education regarding the AICP Code of Ethics.

- These sample ethical scenarios and responses illustrate the application of the AICP Code of Ethics, but … "Only the Ethics Officer [Currently the Chief Executive Officer of APA/AICP] is authorized to give formal advice on the propriety of a planner's proposed conduct." (AICP Code of Ethics, Section C3).

- If you have a specific question regarding a situation arising in your practice, you are encouraged to seek the opinion of the Ethics Officer.
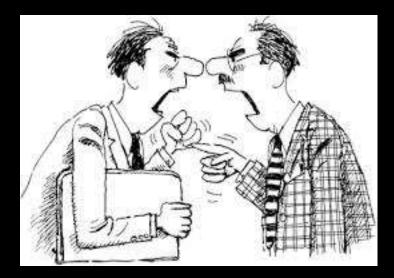
AICP ETHICS
CASE OF THE YEAR
2013-2014

Background

- Planning Director for five years in a modest-sized city, architect and AICP planner.

- Strong civic life and character, but tough issues –downtown bypass and extension of urban growth boundary.

- Director and City Manager have had a good relationship.

Background, Cont'd

- 5 new pro-development City Council members on a 9-member Council have changed the balance of the Council.

- Acrimonious adoption of Operating Goals.

1.0A "Smart Politics" vs. Big Politics

- City Manager has changed, argues positions more stridently.

- City Manager and City Attorney position that pending applications, even if incomplete, are vested; Planning Director has taken opposite position publicly.

- City Manager has directed Planning Director to issue interim regulations consistent with his interpretation until courts rule.

- Planning Director concerned her creditability could be hurt by change of position on the issue.

- State case law unclear.

1.0A "Smart Politics" vs. Big Politics

- **What options does the Planning Director have for acting ethically?**

1.0B "Smart Politics"

- Developer ready to begin work adjacent to wetlands in new satellite community.

- In earlier private practice role, Director had successfully argued that the area didn't fall within preservation regulations.

- City Manager instructs Planning Director to justify project redesign that avoids wetlands entirely.

1.0B "Smart Politics"

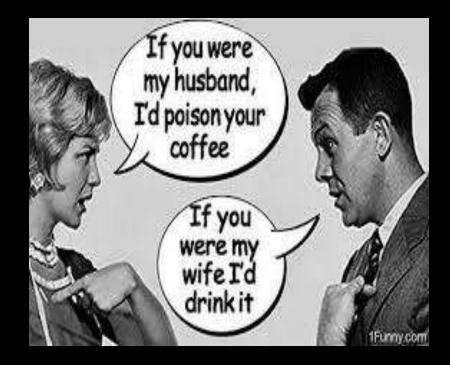- **What options does the Planning Director have for acting ethically?**

1.0C "Streamlining"

- AICP staff planner has been promoted to Deputy Manager/Policy Advisor.

- Policy Advisor suggests adopting several components of plan separately, to fast-track them and avoid state enabling legislation "straitjacket".

- Director disagrees, thinks this violates state law.

- In private conversations, they start belittling each other's planning credentials: he has mostly issued permits; she is trained only as architect.

1.0C "Streamlining"

- **Are the two planners acting ethically with regard to the issue and to each other?**

1.0D "Streamlining"

- The City Manager does not want the community "tied up" on the issues proposed for the separate components: climate change, sustainability and public safety; and wants them moved to a decision by the elected officials as quickly as possible. He told the two, "Just get it done! "

1.0D "Streamlining"

- **Discussion Topic: Can the positions of these two AICP planners on the issue be ethically reconciled?**
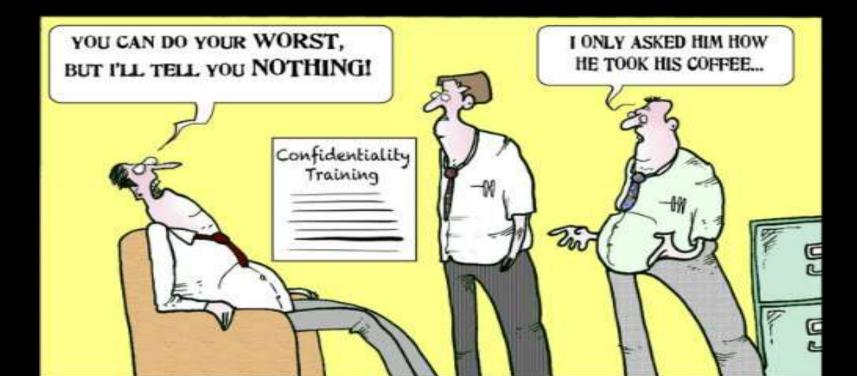
2.0 Job Hunting

- 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.

2.0 Job Hunting

- **What can she say about her work with the city, pending matters (including development proposals) and advice that she has given the Mayor, City Council and the City Manager, both publicly and behind closed doors?**

3.0 Competition

- Planning Director departs; Assistant Planning Director appointed as Interim, is interested in job permanently.
- Two other prominent candidates emerge:
  - Policy Advisor
  - AICP Planning Director from high-income suburb – and friend of City Manager – with position on airport relocation that could benefit her community, but is counter to City's position.

3.0 Competition

- **Discussion Topics: How might the three aspirants' best conduct themselves and what might they say about each other should they be asked by the City Manager?**

4.0 "Confidential" Discussion

- In a private discussion, Mayor praises Policy Advisor, alludes to his influence over City Manager in selecting new Planning Director. Mayor's hints a supporter, local developer, "agrees" with him.

- Acting on behalf of City Manager, Policy Advisor directs Interim Director to change recommendation in favor of developer and, as requested by Mayor, doesn't mention conversation to City Manager.

- Interim Director doesn't want to displease City Manager and makes the change.

4.0 "Confidential" Discussion

- **What ethical issues are raised in this scenario? How should the players respond?**

5.0 Back in the Private Sector

- Former Planning Director is now in charge of design and planning at a global firm; territory includes former community.

- Firm believes her previous work on the satellite community may help secure contract for new suburban projects in several metro areas.

- Developer of satellite community is tied to these projects, remembers her work on the wetland issues and in the first team meeting, mentions he is looking forward to the same "outcomes".

- AICP-CEP environmental planner asks, "What did he mean by that?"

5.0 Back in the Private Sector

- **What ethical issues are raised in this scenario? How should the players respond?**

Ethical Resources

- www.planning.org/ethics
  - AICP Code of Ethics and Professional Conduct
  - Ethics in Planning: A Toolkit for Conducting Ethics Sessions
- Your local code of ethics