

Planning Ethics and Professional Practice

APA-Alabama Annual Conference

Florence, Alabama

May 2013

Ethics Scenario #1—The Case of the New Religious Center

Your community is home to a large military base. For the past two years, community leaders have been working hard to raise funds through a non-profit to erect a monument to those in service who died fighting in Iraq and Afghanistan. A local bank donated a vacant parcel on the edge of downtown for the monument site. After many raffles, t-shirt sales, and fund drive meals, funding is now complete and the non-profit is ready to begin construction. Before any work is actually started, however, your office receives a permit request to build a mosque on the site of a vacant and dilapidated car wash just across the street from the monument site. “Churches” are a permitted use with conditions in that zoning district. The newspaper, which routinely receives a list of permit applications, publishes a front-page article about the proposed mosque and a community uprising ensues. The mayor contacts you and demands that you not issue a permit to the mosque until the board has had time to consider its options. What do you do?

Relevant Issues:

1. You have not completed or even substantially completed your review of the site plan and application for the mosque; however, it does appear complete.
2. It normally takes about three weeks to process a zoning permit through all of the departments.
3. One of the conditions in your ordinance is that the proposed use be compatible with surrounding land uses as determined by the zoning administrator.
4. RLUIPA (Religious Land Use and Institutionalized Persons Act of 2000) prohibits discrimination based on religion.

Ethical Principles:

Principle #1. (a) We shall always be conscious of the rights of others.



Principle #1: (h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

Principle #3: (a) We shall protect and enhance the integrity of our profession

Principle #3. (i) We shall systematically and critically analyze ethical issues in the practice of planning.

Ethical Rules of Conduct:

Item #2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.

Choices:

1. Use your authority as the zoning administrator to deny the permit on the grounds that it is not compatible with surrounding land uses. The controversy in the community is evidence that you can use and proof that you'll have widespread support.

Risk: You are exposing the town to legal challenge and yourself to ethics charges.

Risk: The condition in your ordinance is too broadly worded and gives the zoning administrator too much discretion. It compels findings of fact under state law.

Risk: You are empowering the mayor and the community in a way the ordinance and other laws do not allow.

2. Listen patiently and tell the mayor you'll do what you can, but you cannot deny it without grounds or delay it indefinitely. After all, the board will meet again in two weeks, which is less time than it will take to complete a normal review.

Risk: If you actually delay the issuance of the permit, you are treating this application differently than other applications and exposing the town to legal challenge and yourself to ethics charges.

Risk: You are empowering the mayor in a way the ordinance and other laws do not allow.

Risk: The mayor and board may be publicly embarrassed by comments they make at the meeting when you could have attempted to prevent it.



Risk: If called upon at the meeting to join the discussion and you say then that no action can be legally taken to delay or deny the permit on grounds not directly related to the application, the mayor may get angry that you did not alert him to this when he called.

3. Tell the mayor that he must go through the manager to make such a request, secretly hoping that the manager will stop him.

Risk: The manager may not understand the legal issues involved and may not know your ordinance very well. You may be disappointed in her reaction.

Risk: By not addressing the issue forthright with the mayor, you are sending the signal that this may be a permissible request.

4. Tell the mayor that he should speak with the town attorney about his request.

Risk: By not addressing the issue forthright with the mayor, you are sending the signal that this may be a permissible request.

5. Tell the mayor that you cannot comply with his request. Explain your answers. Refer him to the town attorney for more information and confirmation of what you have said. Call the town attorney and attempt to alert him that this request is forthcoming. Call the manager and let him know about the mayor's request and your response.

Risk: You may anger the mayor and set yourself up for future conflicts.

How Can You Avoid This Problem?

You may not be able to, but you should try the suggestions below.

1. Educate your leadership about RLUIPA and its implications in your community before issues like this arise.
2. Create an information bulletin suitable for distribution within the community and to the media explaining RLUIPA and what it means for your town.

Ethics Scenario #2—The Case of the Revised Opinion

Prior to accepting a position as planning director for a medium-sized city, you worked as a consultant and served as the project manager and environmental planner on a detailed master plan for a satellite community. The town center, which was subsequently built, lies in an oxbow peninsula of an old river channel. As the environmental planner on the project team,



you analyzed the quality of three acres of seasonal wetlands along the oxbow and successfully argued that they were of such low quality that they did not fall within federal, state or local regulations. You received concurrence from the responsible officials at all levels. This area is represented by one of the council members and the voters in his district are strong environmental advocates. The developer of the satellite community is now ready to begin construction on Phase II, directly adjacent to the low quality wetlands. The City Manager has instructed you to tell the developer that he must avoid wetland impacts entirely and has further instructed you to write a report with findings that justify requiring a project redesign. You told the City Manager that you cannot do so given your prior, well-known professional position on the issue. In your latest meeting with the City Manager, he ends with this comment: "Just figure it out." What should you do?

Relevant Issues:

1. Your previous opinion is well documented.
2. Your previous opinion was corroborated by other professionals and officials.
3. The environmental conditions under which your previous opinion was rendered have not changed.
4. Action taken on this case will establish a level of precedent for how the city views and deals with wetlands in the future.

Ethical Principles:

Principle #1: (a) We shall always be conscious of the rights of others.

Principle #1: (b) We shall have special concern for the long-range consequences of present actions

Principle #1: (h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

Principle #2: (a) We shall exercise independent professional judgment on behalf of our clients and employers.

Principle #3: (a) We shall protect and enhance the integrity of our profession.

Principle #3: (i) We shall systematically and critically analyze ethical issues in the practice of planning.



Ethical Rules of Conduct:

- Item #2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.
- Item #3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.

Choices:

1. Write the opinion as requested by the City Manager.
 - Risk: You are exposing the town to legal challenge and yourself to ethics charges.
 - Risk: Your reputation and standing as a profession will be compromised.
2. Suggest that the City Manager hire an outside consultant to restudy the wetland and render an independent opinion.
 - Risk: The City Manager may take the money for such a hire out of your department's already too-lean budget leaving you scrambling to complete other work included in your annual work plan.
3. Tell the City Manager that after careful consideration you think it is NOT in the best interest of the City or you for you to render a different opinion and move forward to process the permit request.
 - Risk: You may anger the City Manager and the councilmember and set yourself up for future conflicts or dismissal.

How Can You Avoid This Problem?

You may not be able to, but you could try the suggestions below.

1. Have a frank discussion with your supervisor, in this case the City Manager, prior to accepting a new position and inform them of previous work that may be viewed as a conflict of interest or present issues regarding future decisions.



Ethics Scenario #3—The Case of the Buried Treasure

You are the planner in a rapidly urbanizing county who is an historic preservation advocate. Recent archaeological surveys in your county indicate that there are many ancient Indian sites, but these surveys are not public. You are aware of them because you have been working as a volunteer with the university's archaeology team, although you have no expertise in Indian artifacts or archaeology. A developer brings you a proposed site plan showing a new shopping complex in an area that would destroy at least three of the sites that have as yet not been studied. This plan would require approval as a special use permit. What should you do?

Relevant Issues:

1. Nothing in your ordinance requires an archaeological survey or impact statement concerning historic sites nor does it explicitly require protection even if you know one exists.
2. You did not include a map of known or suspected sites in your recent comprehensive plan because the archaeologists were concerned about vandalism and plundering.

Ethical Principles:

Principle #1. (g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.

Principle #1. (h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

Principle #3. (i) We shall systematically and critically analyze ethical issues in the practice of planning.

Ethical Rules of Conduct:

Item #1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.

Choices:

1. Do not raise the issue since your ordinance and plan do not address it.

Risk: You may be withholding information that the developer and the community would want to consider.



2. Raise the issue as a “fact” in your staff report and during the public hearing.
 - Risk: You may not be qualified to testify on this issue or present facts for consideration. You are, after all, just an amateur volunteer with no expertise in the field.
 - Risk: You may alienate the archaeological team and lose future opportunities to advocate for a plan to protect these valuable resources.
3. Contact the archaeological team and alert them to the proposal. Strongly encourage them to attend the meeting and present the facts to the board. Work with the team to develop possible protection strategies prior to the meeting.
 - Risk: The developer may view your actions as a declaration of war and be very vocal about it.

How Can You Avoid This Problem?

1. Advocate for an amendment to the comprehensive plan to disclose archaeological sites to the public. While this does make them much more prone to vandalism and looting, it can be used in conjunction with local ordinances as a means of protection. Many local governments have adopted antiquities regulations that prohibit the destruction, looting, and vandalism of sites that can aid in their protection.
2. Work with the planning board to recommend amendments to your land use regulations that would help protect historic sites and resources.
3. Work closely with your manager and make sure that all of your actions are in the public interest.

Ethics Scenario #4—The Case of the Environmental Dilemma

You are the new planning director for a town in a high growth corridor. Development over the past ten years has more than doubled the town’s population and created several new commercial and industrial centers. Your elected officials are strong property rights advocates and don’t believe in interfering too much with the free use of land. Knowing that the recent economic downturn will end before too long, they have decided that this is the perfect time for you undertake a comprehensive review and update of your land development regulations with an eye towards making your regulations and processes easier on the development community. There is a significant amount of undeveloped land remaining in your jurisdiction.



You discover that a natural heritage survey conducted last year indicates that much of it is home to the eastern slime turtle and endangered oak snake. Without protection their habitat is sure to disappear. What is your obligation as a professional planner? Does the environment have rights for which you are required to advocate?

Relevant Issues:

1. Neither the slime turtle nor the oak snake provide any known substantial benefit to humans beyond any they might have in their natural habitat.
2. Neither animal is protected to the extent that federal or state laws prohibit or regulate habitat destruction.
3. Neither animal is a cherished symbol, like the Bald Eagle, beloved like Bambi, nor charismatic like the Panda. (How would it matter if they were?)
4. The UN Convention on Biological Diversity lists land use patterns as the greatest threat to the environment.
5. Just because someone doesn't know or can't accept the importance of an issue doesn't make it less important.

Ethical Principles:

- Principle #1. (b) We shall have special concern for the long-range consequences of present actions.
- Principle #2. (g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.
- Principle #3. (b) We shall educate the public about planning issues and their relevance to our everyday lives
- Principle #3. (i) We shall systematically and critically analyze ethical issues in the practice of planning.

Ethical Rules of Conduct:

- Item #1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.



Choices:

1. Do not raise the issue since you know it won't matter to your board and it might make them angry.

Risk: This action has ethical implications in that it is not consistent with our obligations under the AICP Rules of Conduct.

2. Raise the issue as a fact, but do not advocate.
3. Advocate for protection by explaining the importance and value of natural landscapes and native species.

Risk: Your words may fall on deaf ears or make someone angry.

How Can You Avoid This Problem?

1. In most cases you can't.
2. Never stop educating your leaders, coworkers and citizens about issues important to them, but be smart and use effective strategies.

Ethics Scenario #5—The Case of the Qualified Consultant

Your consulting firm has had to scale back dramatically in the past 18 months due to the economy. You are struggling to keep your remaining staff when you receive an RFP for a multi-faceted planning and design project. Your firm has expertise in nearly all areas except economic forecasting, which is a required component. One of your staff, however, did go to a seminar on forecasting last year. If you outsource that component, you may not make payroll in three months. What should you do?

Ethics Scenario #5, Revised—The Case of the Qualified Staff

You are a planning director in a growing county. Your county has been hit hard by the recent recession and has made dramatic cuts in its budget. You have been required to scale back from a staff of four professional planners to two including yourself and from three inspectors to one. You receive a call from the manager who informs you that your staff must now assist with stormwater reviews and inspections. After all, you are the floodplain and watershed administrator and knowledgeable about stormwater issues. Neither you nor anyone in your department has ever reviewed a stormwater permit application or attended a stormwater inspection. What should you do?



Relevant Issues:

1. Economic forecasting requires working with computer models and economic data that requires knowledge and experience to use and interpret effectively and wisely.
2. Stormwater reviews and inspections normally require a level of expertise that most planners do not have.
3. It is not uncommon for any professional to be asked to expand their knowledge and range of experience to grow into new jobs and responsibilities. Planners in particular need to be knowledgeable about a wide range of subjects.

Ethical Principles:

Principle #3. (a) We shall protect and enhance the integrity of our profession.

Principle #3. (h) We shall continue to enhance our professional education and training.

Principle #4. (i) We shall systematically and critically analyze ethical issues in the practice of planning.

Ethical Rules of Conduct:

Item #12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.

Item #15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.

Choices:

1. Consultant: Protect your firm and prepare a proposal that promotes your expertise as sufficient to conduct all analyses and prepare all products requested.
 - Risk: You are exposing yourself to ethics charges.
 - Risk: If you are awarded the project and cannot perform as stated, you will lose credibility.
2. Consultant: Bring in a sub-consultant who can conduct all analyses and prepare all products requested.



- Risk: You may have to lay off another person.
3. Staff: Accept the assignment. After all, it is additional job security for you and your staff.
- Risk: You expose yourself to ethics charges.
- Risk: Your lack of knowledge and incompetence may create problems with the development community, other departments, and end up causing long term stormwater problems for the community.
4. Staff: Accept the assignment, but let the manager know that only the inspector will be involved with the work. He isn't a professional planner bound to our code of ethics and he is smart.
- Risk: You expose yourself to ethics charges.
- Risk: Your inspector's lack of knowledge and incompetence may create problems with the development community, other departments, and end up causing long term stormwater problems for the community.
5. Staff: Explain to the manager why you cannot accept the assignment.
- Risk: You may anger the manager and cause her to look to your department the next time cuts are needed.
- Risk: The manager may say you have no choice.
6. Staff: Explain to the manager why you cannot accept the assignment now. Request that your staff be permitted to receive the training and knowledge necessary to perform adequately.
- Risk: You may anger the manager and cause her to look to your department the next time cuts are needed.
- Risk: The manager may say "No" to your request for training or may say "Yes" but still require you to begin your new duties immediately.

How Can You Avoid This Problem?

You may not be able to, but you can try the following:

1. Educate your manager about your ethical responsibilities as a professional planner.



2. Help to ensure your manager understands the requirements needed to perform critical tasks within the development review and approval process and which departments or divisions have the necessary expertise.

