

# **Roles, Ethics and More**

## **Responsibilities of Elected and Appointed Officials**

**2012 APA Texas Annual Conference  
and  
Short Course**

**Ann C. Bagley, FAICP  
Karen K. Mitchell**

**Fort Worth, Texas  
October 4, 2012**

# Planning Process

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

# Who are the Participants in the Planning Process

City Council	Planning Consultants
City Manager	Utilities
Planning and Zoning Commission	(water, gas, electricity, telephone, cable)
Zoning Board of Adjustment	Representatives and Facilitators
Other Boards and Commissions	Developers and Builders
Planning Staff-Current and Long Range	Citizens/Property Owners
Engineering	Neighborhood Organizations
Transportation	State DOT
Building Inspections and Permitting	School District
Code Compliance/Enforcement	Transit
City Attorney	Post Office
City Secretary	Arborist
Public Works	Neighboring Cities
Parks and Recreation	County
Public Safety (Police and Fire)	<b>The City as a Whole</b>

# The Planning Commission

In Texas, a *Planning Commission* is:

- A group of citizens appointed by the legislative body that performs both required and discretionary functions in land use matters.\*
- May also include zoning matters and be called ***Planning and Zoning Commission***.
- There may even be separate commissions for zoning and planning
- Generally a recommending body, except may have final approval of plats

(\*Texas Local Government Code 211.007)



# What is a Zoning Board of Adjustment?

In Texas, a *Zoning Board of Adjustment* is:

appointed by governing body, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance ordinance.\*

*May also be called the BOA, ZBOA*

Please note that the Zoning Board of Adjustment is a quasi judicial board. This means that any appeal of its decision is to a district level court.

(\*Texas Local Government Code 211.008)

## Participants in the Process

**Mayor and City Council** - elected to make the rules; formulate policy, adopt of codes and ordinances; approve or deny zoning cases; point of contact for frustrated citizens.

**City Manager** - in charge of the day to day operations of the City. **Expectation:** that everyone will do their job

**Planning Staff** - from department head to receptionist they are professionals with education or on the job experienced in stating the rules, interpreting ambiguities and providing guidance to applicants and boards and commissions.

## Participants continued

The staff of a **Building Inspection** department works to ensure compliance with established adopted construction standards and enforcing City codes. Reviews plans, perform inspections

**Code Compliance or Enforcement** check on and determine compliance with the rules and ordinances generally responsible for enforcing city ordinances related to Housing, Zoning, Signs, Litter, Illegal Dumping, Weeds, Parking and Animal Control violations, responds to citizen requests, conducts reactive and proactive inspections and special projects, and provides education on code enforcement. New name tries to suggest a kinder, gentler approach.

**Engineering** is responsible for reviewing subdivision plats and private and public development engineering plans, and overseeing the construction to ensure that the City's infrastructure is built to City codes and design standards and adheres to approved plans and contract documents. May be part of Planning or vice-versa. May include flood management

**Public Works** –responsible for engineering and implementation of projects

**Transportation** –oversees the street network

## More....

**City Attorney** - states, interprets and provides guidance as to the federal, state and local statutes and local codes.  
Generally there to keep you out of trouble.

**City Secretary** - official records keeper, posts agendas  
commission paper work

**Parks and Recreation** - oversees parks etc.— may look at  
parkland dedication requirement with plats

**Public Safety** - Police, Fire particularly for emergency access

Utilities (water, gas, electricity cable and telephone) for  
service provision and easements and Post Office

**Other government types players:** Sanitation, TXDOT, Animal  
Control,, School District, Transit System

## And more....

**Facilitators or “the Suits”** - consultants that know the ropes as to how to get through the system. Lots of former city staff, attorneys, engineers and even surveyors.

**Developers and Builders** - often **they** initiate the processes for a particular project

**Citizens/Property Owners** want what they want, but do not always know how to go about it. Process should be logical, defined and transparent

**Neighborhood and interested community groups** involved directly or as affected bystanders

**The good of the City as a whole.**

## Roles of the Planning Commission

- Develop and update the comprehensive plan
- Implement land use patterns
- Monitor current zoning ordinance
- Make recommendations on zoning changes
- Recommend approval of (or approve) subdivisions
- Make recommendations for annexation
- Interface with public on community values through public meetings, focus groups, and neighborhood organizations

# The Commission

## Creation of the Commission

- Usually by city charter or ordinance

## Responsibilities and Purpose Established

## Rules and Policies

- If not in the ordinance, these should establish a schedule for meeting dates, time, and place

## Officers

## Voting Procedures

## Committees

## Relationship to City Council

## Code of Ethics/Ethical Principles

# Understanding the Job

(applies to both elected and appointed officials)

Be familiar with your job responsibilities/expectations. Start with a

Review local sources

- City Charter
- Municipal Code of Ordinances
- Established policies and procedures
- Planning Commission by-laws or rules

Review enabling statutes in State law (*Texas Local Government Code*)  
for planning and zoning for

- General Law cities
- Home Rule cities

## Roles of the Planning Commission continued

- Recommend a Capital Improvements Program
- Coordinate with economic development activities
- Encourage and monitor the “visual image” through urban design
- Adopt an annual work program and prepare an annual report
- Use base data on population, land use, utilities, and topography in decision making

## Duties of the Zoning Board of Adjustment

- 1)hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;
- 2)authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and
- 3) hear and decide other matters authorized by an ordinance adopted under this subchapter. \*
- 4)hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

(\*Texas Local Government Code 211.009)

# Working Effectively as a Commission or Board

- Use rules of procedure and operate accordingly
- Comply with Open Meeting requirements
- Conduct fair public hearings
- Hear the facts and assess their accuracy
- Balance obligations
- Consider concerns of all who testify
- Assess the request against the standards in the ordinance
- Render a decision



# Traits for Successful Elected Officials, Planning Commissioners and Board Members

- Visionary
- Has a feel for the assets, problems and potentials of the city
- Can see the big picture without missing the details
- No conflicts of interest
- Impartial and objective
- Works toward the common good
- Places community interest first
- Comes to meetings prepared
- Appreciates dialogue and enjoys collaboration
- Practical, yet creative
- Consistent

# Understanding the Job

Become familiar with your responsibilities/expectations both on and off the Commission

Orientation -- begin to grasp:

- Legal issues – open meetings act
- Basic elements of planning
- Comprehensive Planning
- Zoning Ordinance
- Subdivision Regulations
- Enabling statutes in state law for planning/zoning

Be familiar with your own responsibilities and expectations both on and off the commission

Review local sources

- Charter
- Code of Ordinances
- By-laws or rules of procedure

# Understanding the Ethical Dimension

Ethics: the principles of conduct governing an individual or a group –  
*Merriam Webster*

Ethical behavior is not always easy to achieve.

There are common standards for ethical conduct:

- Your city's Code of Ethics
- APA Statement of Ethical Principles and AICP Code of Ethics
  - Serve the public interest
  - Strive to achieve high standards of integrity and proficiency
- Your own moral compass

# What Are the Standards for Ethical Conduct?

American Planning Association Statement of Ethical Principles  
(for Participants in the Planning Process)

## A. Serve the Public Interest:

- Recognize the rights of citizens to participate in planning decisions.
- Give citizens full, clear, and accurate information.
- Expand choice and opportunity for all persons.
- Assist in the clarification of community goals.
- Ensure that information available to decision makers is also available to the public.
- Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions.

## APA Statement of Ethical Principles (Continued)

- B. Strive to achieve high standards of integrity and proficiency:
- Exercise fair, independent, and honest judgment.
  - Publicly disclose any personal interests.
  - Define personal interest broadly.
  - Abstain from participation in a matter in which you have a personal interest and leave the chamber when the matter is being deliberated.
  - Seek (nor accept) gifts or favors.
  - Abstain from participating as an advisor or decision maker on any plan or project in which you have previously participated as an advocate.
  - Serve as advocate only when the objectives are legal and serve the public interest.

## APA Statement of Ethical Principles (Continued)

- Not participate as an advocate on any plan or program in which you have previously served as an advisory or decision maker, except after full disclosure and in no circumstance earlier than one year following termination of the role as advisory or decision maker.
- Not use confidential information to further a personal interest.
- Not disclose confidential information.
- Not misrepresent facts or distort information.
- Not participate in any matter unless prepared.
- Respect the rights of all persons.

# Local Ethics Ordinances

## Prohibited conduct:

- Solicitation/acceptance of gifts
- Misuse of position
- Conflict of interest (generally financial)
- Ex parte communications (*any oral or written communication outside the record of the hearing with either proponents or opponents of a pending proceeding*)
- Serial meetings (attended by less than a quorum of members to discuss a public issue in private.

## Disclosure:

- Forms and/or procedure provided by the City
- Does not have to be very detailed

# What Constitutes a Conflict of Interest?

If you....

- Live in the notification area
- Have a close family member has interest (determined by your city)
- Have financial interest in real estate involved in case
- Have financial investments that exceed the local cap
- Work for someone that has financial involvement in the case
- Have oversight of client's accounts
- Sit on Board connected to the case

What to do? State that you have a COI, file necessary statement and LEAVE THE ROOM!

# Conflict of Interest Sample Form



## DISCLOSURE OF CONFLICT STATEMENT

This statement is filed in accordance with Chapter 12A of the Dallas City Code. Copies of the applicable code sections and additional copies of this form may be obtained from the City Secretary's office.  
Please print or type all information. Attach additional pages if more space is needed.

Check One	Fill in Appropriate Information	
<input type="checkbox"/> Elected Official	Office Held	
<input type="checkbox"/> Appointed Official	Board or Commission/ Title	
<input type="checkbox"/> City Employee	Title/Department	

1. Name of Employee/Official: \_\_\_\_\_

\_\_\_\_\_ have a conflict as defined in Chapter 12A, Article II, of the Dallas City Code in the following matter:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Nature of Conflict:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As a result of this conflict, I will not take any official action in regard to the matter stated above.

\_\_\_\_\_  
Signature of Employee/Official

\_\_\_\_\_  
Date

BEFORE ME, the undersigned authority, on this day personally appeared

\_\_\_\_\_, who on oath stated that the above facts are within \_\_\_\_\_ personal knowledge and are true and correct.

SWORN TO AND SUBSCRIBED BEFORE ME on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, to certify which, witness my hand and seal.

<NOTARY SEAL>

\_\_\_\_\_  
Signature of officer administering oath

\_\_\_\_\_  
Printed name of officer administering oath

\_\_\_\_\_  
Title of officer administering oath

## Other Considerations

- When there is a social event where a quorum may be present, it is generally OK as long as cases or issues are not discussed.
- Texas is a community property state, therefore spouses are considered as one in matters that may be a conflict of interest.
- Do not use position title to request special treatment by city employees or private interests.
- When rescuing—leave the room.

## Beware of the Serial Meeting

Commissioner A meets with Commissioner B and discusses an item that is currently or is expected to be in front of the Commission. Commissioner B delivers the A+B consensus to Councilmember C who agrees and delivers it to Commissioner D. Commissioners A+B+C+D constituted a quorum, but they did not physically "meet" as a quorum in the same space or time. Still, they conducted an illegal serial meeting. They effectively met, deliberated, and arrived at a decision (euphemistically called a "consensus" by public officials who try to rationalize their violation of law) when public attendance was impossible.

**NOTE:** A serial meeting need not be a face-to-face meeting or even occur in real time. It can be a series of communications (direct communication, personal intermediaries such as staff members, or technological methods such as email or telephone calls), with each unique communication involving less than a quorum, but which taken as a whole involves a majority of the body's members. A serial meeting occurs when there are systematic communications on a particular matter involving a quorum of the body acquiring information, engaging in debate, discussion, lobbying, or any other aspect of the deliberative process.

## What is Ex Parte?

A discussion where only one side is presented...

Example 1: A developer has a rezoning coming up before the planning commission or city council. She contacts the chair and ask if she could have a few minutes of their time to show the decision maker why she needs the site rezoned. The chair says, “sure come right over!”

Example 2: Staff person agrees to meet with neighborhood group concerning a rezoning and does not invite the developer to attend. (but planning staff does have the professional responsibility to meet with proponents and opponents IN their OFFICE; it is NOT the same as a recommending body or decision maker (Planning Commissioner or City Councilmember) meeting privately with proponents and opponents)

## Scenario 1

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 okay?

You have not suggested that an actual application over which you have some control is pending.

If that were the case, the answer would be “no.” It is always best to keep such relationships at arms-length.

Take great care to not permit public or private perception of favored action.

If you meet, each should pay for the meal ordered.

Equally, care must be taken to not discuss matters that are better suited for staff or open meetings.

## Scenario 2

Someone from church is asking you to provide help or guidance and even a favorable decision on a re-zoning case.

How can you help without violating pure objectivity?

It is completely appropriate to provide guidance to an applicant regarding the procedural and submittal requirements for an application. It is also appropriate to explain that you can't pre-judge or promise any favorable action. If the planner believes that his or her objectivity is compromised, then the decision on the application should be delegated to another, if possible.

## Scenario 3

A fellow commissioner calls you to discuss a case and says he has talked to other commissioners. What do you say to him?

What is the problem with talking to him?

Ex parte?

Serial meeting?

What about emails? Text? Twitter? Facebook?

## Scenario 4

You are an appointed official. Your business has been slow but is now taking off. You have to travel sometimes for your business and are missing meetings.

What should you do?

## Scenario 5

A developer wants to develop a new single-family subdivision in an area currently zoned for industrial uses.

What would you need to know?

What steps would need to be taken to allow it?

## Scenario 6

An older gentleman wants to build a carport in front of his house. Over the front building line. He is advised to go to the Board of Adjustment for either a special exception or a variance.

Which one is appropriate?

What is his justification?

## Scenario 6

You are a surveyor and your company works in the community and surrounding cities. You prepared a plat that will be considered by the Commission?

What is your role?

What should be your actions?

**Thank You**  
and now  
**Questions and Discussion**

# Other Sources of Information

## Training and Resources for Planning Commissioners:

- City orientation and training for new Commissioners
- APA Texas Chapter
  - Regional and Local Workshops for Planning Commissioners
  - Annual Short Course for Elected and Appointed Officials
  - State Planning Conference
  - [www.texasplanning.org](http://www.texasplanning.org)
- American Planning Association – publications and conferences
  - *Planning Magazine*
  - National Planning Conference
  - *The Commissioner* quarterly newsletter
  - Ethics Toolkit – on website
  - [www.planning.org](http://www.planning.org)
  - CD-ROM training packages
  - [www.planningbooks.com](http://www.planningbooks.com)
- Planning Commissioner's Journal - online subscription
- Texas Municipal League

## Contact Information

**Ann C. Bagley, FAICP**

Bagley Associates

Planning Official Development Officer, APA Texas

[abagley@swbell.net](mailto:abagley@swbell.net)

**Karen Mitchell**

Mitchell Planning Group, LLC

[kmitchell@mitchellplanninggroup.com](mailto:kmitchell@mitchellplanninggroup.com)