

# **Roles, Ethics and More**

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

**APA Texas Conference and Short Course**

**Ann C. Bagley, FAICP**

**Peter Boecher, AICP, CRE**

**October 3, 2013**

# 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.

# 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 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

## Who are the Participants in the Planning Process?

City Council  
 City Manager  
 Planning and Zoning Commission  
 Zoning Board of Adjustment  
 Other Boards and Commissions  
 Planning Staff-Current and Long Range  
 Engineering  
 Transportation  
 Building Inspections and Permitting  
 Code Compliance/Enforcement  
 City Attorney  
 City Secretary  
 Public Works  
 Parks and Recreation  
 Public Safety (Police and Fire)

Planning Consultants  
 Utilities  
 (water, gas, electricity, telephone, cable)  
 Representatives and Facilitators  
 Developers and Builders  
 Citizens/Property Owners  
 Neighborhood Organizations  
 State DOT  
 School District  
 Transit  
 Post Office  
 Arborist  
 Neighboring Cities  
 County  
**The City as a Whole**



# 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)



# 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

# How The Commission Works

## 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

# 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)

# 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

- 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 of 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

# Open Meetings Act

What Is It?

*Texas Local Government Code Ann. Ch. 551.*

General Rule: Every regular, special, or called meeting of a governmental body **MUST** be open to the public, and the public must be given adequate notice of the topics to be discussed.

There are **NO** informal meetings!

Applies to:

- city councils, planning and zoning commissions, boards of adjustment, and Section 4A or 4B corporations.
- A quorum is present and discusses public business.
- Not purely social gatherings or attendance of public official at conferences or training

**FOLLOW THE POSTED AGENDA!**

# 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)

# Beware the Serial Meeting

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, telephone calls, or social media, 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.

Realize that all your correspondence could be subject to discovery if there is legal action.

Also called a “walking quorum”.

# What Constitutes a Conflict of Interest?

You are considered to have a substantial interest for purposes of Chapter 171 of the Local Government Code 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!

## Who is Considered “Kin”?

You are considered to have a substantial interest for purposes if a person is related to you in the first degree by consanguinity (blood) or affinity (marriage).

Affinity relationships continue after divorce or death if there is a living child of the marriage.

Fathers  
Mothers  
Sons  
Daughters  
Brothers  
Sisters  
Spouse  
Father-in-law  
Mother-in-law.  
Son-in-law  
Daughter-in-law  
Brother-in-law  
Sister-in-law

# Financial Conflict of Interest

**Business Entity Conflicts:** conflicts due to an official's substantial interest in a "business entity" that has an issue before the City.

- **Stock Interest:** official owns **10 percent or more** of the total voting stock
- **Other Ownership Interest:** official owns **10 percent or more** or \$15,000 or more of the fair market value of the business entity
- **Income Interest:** official received **10 percent or more** of her gross income for the previous year
- **Close Family Member with any of the Above Interests:** If a close relative of the official has any of the above types of interest in a business entity. Close relatives are those persons within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).

**OR whatever your city determines!**



## Financial Conflicts (continued)

**Real Property Conflicts:** conflicts due to an official's substantial interest in "real property" that would be affected by a City action.

A person has a substantial interest in real property if he has:

- a **\$2,500 Ownership Interest in the Real Property; or**
- a **Close Family Member with a \$2,500 Ownership Interest in the Real Property** - Close relatives are those persons within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).

## What To Do?\*

Recognize that you might have a conflict.

Get advice from staff or city attorney if not sure.

State at the meeting that you have a conflict.

Recuse yourself and **LEAVE THE ROOM.**

Fill out the appropriate form with

Do not engage in **any** discussion or action on the case in or outside the meeting.

\*This relates to any cases – zoning, plats etc.

# 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: \_\_\_\_\_

I, \_\_\_\_\_, 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/Advice

- 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.
- Have a designated separate email for your commission correspondence.

## What Should You Do?

A church wants to locate in the middle of a single family neighborhood. Do you need to approve it? What are the requirements?

A video shop wants to locate on a small lot at the intersection in a single family neighborhood. What would you consider?

You go to dinner with a developer—who should pay for your dinner?

Your company or family owns property next to a tract whose owners are requesting a zoning change. What should happen?

Your family is submitting a plat to be approved. What is your role?

## What Should You Do? (continued)

A developer wants to develop an industrial park in an area shown as single family on the land use map. What steps would need to be taken to approve it?

Your business is really taking off and your time is limited. What should you do?

A building is annexed into the city and the use is not permitted in the new zoning district. What is the situation for that building and use?

# 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

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



# Contact Information

**Ann C. Bagley, FAICP**

**Bagley Associates**

**Planning Official Development Officer, APA Texas**

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

**Peter Boecher, AICP, CRE**

**TBG-Inc.**

**[Peter.Boecher@tbg-inc.com](mailto:Peter.Boecher@tbg-inc.com)**