

APA TX

ROLES, RESPONSIBILITIES, AND ETHICS FOR PLANNING COMMISSIONERS

Presented by
Ann Cooke Bagley, FAICP
Dallas, Texas
APA Texas Planning Officials Development Officer
Dallas City Plan Commissioner, District 7
APA Board Member Elected at Large

Central Texas Council of Governments/Central Texas Section APA Texas
Belton, Texas
March 6, 2015

Based on "Ethics and the Planning Commissioner", A Guide to Urban Planning in Texas Communities published by the Texas Chapter of American Planning Association, Everyday Ethics for Practicing Planners both by Carol Barrett, FAICP, and APA Ethics Toolkit including Ethical Principles in Planning

APA TX

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.

Whether a professional or a volunteer, we are all planners.

APA TX

ETHICS?

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

There are standards for ethical conduct:

- Your city's Code of Ethics
- State Guidelines
- APA Statement of Ethical Planning Principles and AICP Code of Ethics
- Your own moral compass

Ethical behavior is not always easy to achieve, but the Statement of Ethical Principles is a good place to start

APA TX

ETHICAL PRINCIPLES IN PLANNING

The American Planning Association has guidelines for ethics: *Ethical Principles in Planning**

Two parts of these principles apply directly to appointed and elected officials

1. The planning process must continuously pursue and faithfully serve the public interest.
2. Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

*www.planning.org

APA TX

Serve the Public Interest

As a Planning Process Participant you should:

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

APA TX

Strive to Achieve High Standards of Integrity and Proficiency

As a Planning Process Participant you should:

1. Exercise fair, independent, and honest judgment.
2. Publicly disclose any personal interests.
3. Define personal interest broadly.
4. Abstain from participation in a matter in which you have a personal interest and leave the chamber when the matter is being deliberated.
5. Not seek (nor accept) gifts or favors.
6. Abstain from participating as an advisor or decision maker on any plan or project in which you have previously participated as an advocate.

APA TX

Strive to Achieve High Standards of Integrity and Proficiency
(continued)

7. Serve as advocate only when the objectives are legal and serve the public interest.
8. 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.
9. Not use confidential information to further a personal interest.
10. Not disclose confidential information.
11. Not misrepresent facts or distort information.
12. Not participate in any matter unless prepared.
13. Respect the rights of all persons.

APA TX

LOCAL ETHICS ORDINANCES

Prohibited conduct:

- Solicitation/acceptance of gifts
- Misuse of position
- Conflict of interest (generally financial)
- Ex parte communications
- Serial meetings (attended by less than a quorum of members to discuss a public issue in private.
- Open Meetings

Disclosure:


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

APA TX

PLANNING COMMISSIONS IN TEXAS

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

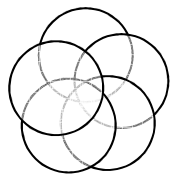
APA TX

ROLES OF THE PLANNING AND ZONING 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 vision through public meetings, focus groups, and neighborhood organizations

APA TX

ROLES OF THE PLANNING COMMISSION (continued)



- Use base data on population, land use, utilities, and topography in decision making
- 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

APA TX

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

APA TX

HOW THE COUNCIL PLANS

Generally,

- As part of the legislative process and fiduciary responsibilities, the City Council is the final approving body for zoning/land use changes and sometimes for the final approval of subdivision plats.
- The City Council is also the final approval for the adoption of the Comprehensive Plan.
- The City Council has final approval of annexations.
- Approval of any additional plans for the development and infrastructure in the City is the purview of the City Council.

APA TX

UNDERSTANDING THE JOB

- Become familiar with your responsibilities/expectations both on and off the Commission/Council
- Orientation - begin to grasp:
 - Legal issues - Open Meetings Act, Conflicts
 - Basic elements of Planning
 - Comprehensive Planning
 - Zoning Ordinance
 - Subdivision Regulations
 - Enabling statutes in state law for planning/zoning
- Review local resources
 - Charter
 - Code of Ordinances
 - By-laws or rules of procedure

APA TX

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
- Consider concerns of all who testify
- Assess the request against the standards in the ordinance
- Render a decision

APA TX

YOU ARE NOT IN THIS ALONE!

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

APA
TX

EXPECTATIONS

APA
TX

WHAT COMMISSIONERS SHOULD EXPECT OF STAFF

- Review and report on facts of the case as related to codes and ordinances
- Reports should be reasonably easy to read, jargon-free (as much as possible)
- Identify the relationship between adopted planning documents
- Advocate for good planning
- Protect your commissioners
- Provide training (commissioners need to understand the process, their roles and responsibilities, as well as the terminology)—don't assume they always do.

APA
TX

WHAT COMMISSIONERS SHOULD EXPECT OF EACH OTHER

- Be prepared for meeting
- Don't read your case for the first time at the meeting
- Ask questions!
- Assist other commissioner by asking what may seem obvious—educational moment.
- Stay on topic.
- Work together for the good of the City.

APA
TX

WHAT STAFF EXPECTS OF COMMISSIONERS

- Read and study the materials in advance of meeting
- Ask questions
- Give forewarning of concerns
- No blindsiding, limit criticism in public meeting
- Show respect for staff—they are your friends. Really!

APA TX

EXPECTATION OF APPLICANTS

By Staff and Commissioners

- Present an honest representation in request
- Answer questions (the one asked)
- Reach out to neighborhoods and stakeholders
- Meet together (if allowed and appropriate) to resolve questions and differences.
- Keep it professional
- Show up and bring the necessary team to meetings

By Applicants:

- To be treated respectfully and in a timely manner.

APA TX

WHAT CITY COUNCIL EXPECTS OF COMMISSIONERS AND STAFF

- Staff: Recommendations based on ordinances and procedures
- Planning and Zoning Commission: Solid recommendations based on staff recommendation, public input, and consideration of the impact on the city, including thoughtful vetting of the issues.

APA TX

DECISIONS, DECISIONS, DECISIONS

What should be considered in making decisions?

For Zoning:

- What is the applicant actually asking for?
- What effect will it have on the site?
- What effect will it have on the surrounding land uses?
- Is it in accordance with the Comprehensive Plan?

For Subdivisions:

- Does it meet the requirements of the Regulations?

What should not play a part in the decision.

- The identity of the applicant
- The financial capability of the applicant (unless they are asking for incentives at the City Council)
- What the structures will look like?
- (If you like pictures, they should be looked at only as a guide.)

APA TX

THINGS YOU SHOULD KNOW AND WATCH OUT FOR

APA
TX

WHAT IS EX PARTE?

A discussion where only one side is presented

Ex Parte is any oral or written communication outside the record of the hearing with either proponents or opponents of a pending proceeding:

This covers all discussions, however...
there is a difference between discussion on matters whether they are about legislative or quasi-judicial.

Unless otherwise within city policy it is best to refrain from outside discussion. Why?

APA
TX

More Ex Parte

Ex Parte communications are discouraged or prohibited for a variety of reasons. It is not fair to the other parties because:

- because the decision maker may be inaccurately informed;
- The **perception** that the commission can be susceptible to improper influence;
- Improper *ex parte* communications can invalidate the actions of the commission.

Caveat: Community meetings, neighborhood (pro or con) meetings and with applicants are different situations if within City policy, however it is best to just listen or inform as to process.

APA
TX

SERIAL MEETING

- A **serial meeting** need not be a face-to-face meeting. It can be a series of communications (direct communication, technological methods such as email, telephone calls, or social media.
- A **serial meeting** can occur 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.
- **Continuing discussion** after the meeting is adjourned is another kind of serial meeting.
- Forward all applicable correspondence to designated staff for distribution and file.

Also called a “walking quorum”

APA
TX

CONFLICT OF INTEREST

You have a potential a conflict of interest if you...

- Live in the notification area.
- Or you or close family member has a financial 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 accounts.
- Sit on Board connected to the case.

APA TX

COI: 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.**
- The Chair/Mayor should state for the record that you have left and when you return
- Fill out the appropriate form
- Do not engage in **any** discussion or action on the case in or outside the meeting.

This relates to most all cases, zoning, plats etc.

APA TX

FINANCIAL CONFLICT OF INTEREST

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

- Stock Interest
- Business Ownership
- Interest Income
- Real Property
- Close Family Member with any of the Above Interests

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!

APA TX

CONFLICT OF INTEREST

You are considered to have a substantial interest 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.

Who is kin?

- 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

SAMPLE FORM

32

APA TX

QUASI-JUDICIAL

Definition of *QUASI-JUDICIAL*:
 "having a partly judicial character by possession of the right to hold hearings on and conduct investigations into disputed claims and alleged infractions of rules and regulations and to make decisions in the general manner of courts." -*Merriman Webster*

Boards of Adjustments are quasi-judicial

Like a court, there is no ex parte communications between the applicant or members of the panel or any other member of the Commission or the public.

APA TX

BOARD OF ADJUSTMENT*

A quasi-judicial board can be a separate board or a portion of the Planning and Zoning Commission.

It can:

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/waiver 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;
3. hear and decide other matters authorized by an ordinance.
4. hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official.

Any appeal of the Board of Adjustment goes to District Court.

*Texas Local Government Code 211.008

APA TX

Open Meetings Act*

- 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. Think "sunshine."
- There are **NO** informal meetings!
- Applies to:
 city councils, planning and zoning commissions, boards of adjustment, and economic development corporations.
 when a quorum is present and discusses public business...but not to purely social gatherings or attendance of public official at conferences or training.

FOLLOW THE POSTED AGENDA!

*Texas Local Government Code Chapter 551

APA TX

TRAITS FOR SUCCESSFUL COUNCIL MEMBERS, PLANNING COMMISSIONERS AND BOARD MEMBERS

- Has a feel for the assets, problems and potential of the city
- Can see the big picture without missing the details
- Recognize conflicts of interest
- Understands obligations
 - Come to meetings prepared
 - Balance commitments

APA TX

OTHER CONSIDERATIONS AND 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.
- Do not use position title to request special treatment by city employees or private interests.
- Have a designated separate email for your commission correspondence.
- Follow the relationship to the Comprehensive Plan!

APA TX

SCENARIO 1 - HOW ABOUT LUNCH?

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

APA TX

SCENARIO 2 - BEHIND THE SCENES ADVOCACY

A potentially controversial development is being proposed near several exclusive residential developments and a local school. You have several friends associated with each.

To encourage more public input, should you “tip off” your friends to give them time to prepare?

You

- Should **not** work behind the scenes to provide info to one group while withholding from another
- Imply that a position has been taken
- Cause potential to harm your greatest asset – Credibility
- While nothing wrong with encouraging public input, it may be best for the Planning Director or Staff to give notice the public!

APA TX

SCENARIO 3 - THE HELPFUL COMMISSIONER

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.
- Inform that you will hear the facts of the case in the public arena (and not before).
- It is also appropriate to explain that you can't pre-judge or promise any favorable action.
- If you believe that your objectivity is compromised, then the decision on the application should be delegated to another, if possible.



SCENARIO 4 - LET'S HIT THE LINKS!

You are invited to plan golf by an applicant. No business whatsoever was discussed? Is it appropriate?

- Getting the outing as a gift is the issue, not just playing golf.
- Must guard against perception of unfair access.
- Pay your way.



SCENARIO 5 - THE ESTATE SALE

A developer has purchased a tract of land from a second owner of a prominent previous owner and wants to develop a new single-family subdivision within an area of large lot (.5-1.0 ac.) homes.

Access to this property is through the large lot homes. A deed restriction called for large lot homes if/when the property sold. That deed restriction expired and a developer is bringing in plans for a PD with generally 12,000sf to half-acre lots. The developer is also asking for variance to lot size, alleys and sidewalks.

The area residents are in an uproar and have a strong public campaign going and have packed the chambers for the public hearing.

What would you need to know?



SCENARIO 6 - GO STATE!

You are an engineer, surveyor, or planner and also serve your community on the planning commission. Your firm has done work in the community and surrounding cities. Unbeknownst to you, a recent acquisition by your firm (from another state) prepared development plans for a quasi-public entity that will be considered by your Commission.

Even though you may not have been involved whatsoever, your firm stands to receive a financial benefit.

Make it a point of separating work and the your community's best interest.

What should be your action?



SCENARIO 7 - HELLO-GOODBYE

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

- Good-bye!
- What's the problem?
Ex parte? Serial meeting?
- What about emails? Text? Twitter? Facebook?

APA TX

SCENARIO 8 - CHARITABLE CONTRIBUTION

A park is being redeveloped via a public/private partnership. Could you attend a charity fundraising gala as a guest of

- (a) a private individual who is supporting the capital campaign; or
- (b) the city's table purchased by an employee; or
- (c) a "free" city table?

Think about it...

- (a) is okay if private individual does not have an application before the city.
- (b) and (c) better options; and be sure to mingle/network!

APA TX

SCENARIO 9 - CAN YOU RECOMMEND SOMEBODY?

A long time family friend and large property owner wants to divide and sell off parcels. She is inexperienced, overwhelmed and has no idea what to do or where to look for help. You inform her of the planning process and also that a licensed professional surveyor is needed to prepare the plat. She asks who you might recommend. You want to help her as you know that how smooth the platting process will go depends on who she hires. Should you recommend a particular surveyor? Or what are your options?

- Yellow pages?
- Surveyors Association?
- Refer to staff who should have a long list
- Suggest talking with neighbors, family, other related professionals.

Rumors, innuendos could come back thus damaging your credibility.

APA TX

SCENARIO 10 – WHAT'S IN THE AIR?

A developer wants to build a BBQ restaurant in an area shown as single family on the land use map. What steps would need to be taken to approve it?

- Zoning change request.
- Public noticing.
- Applicant should support the submittal with documentation/analysis that the health, safety and welfare of the adjacent area will not be harmed.
 - Traffic studies
 - Nuisance issues (light, sound, vibration, odor, hours of operation)
 - Direct and cumulative effects
- Public Hearing
- Decision based on staff report, public input and your own judgment of all of those considerations.

APA TX

SCENARIO 11 - POLITICAL ASPIRATIONS

What do you do, as a planning commissioner, if another planning commissioner wants to politicize their position on the planning commission?

- Continue professional approach; stick to the issues in the case-nothing else.
- Avoid appearance of favoritism/disfavor.
- Discuss limitations; avoid involvement.
- Inform the planning director.
- Involve others in the discussion

APA TX

SCENARIO 12 - RED ALERT....CODE E (ENFORCEMENT)!

You, the commissioner, owns a home in a planned unit development (PUD) and notices that several neighbors have erected fences that extend their backyard into the shared greenway – essentially privatizing public land. How should you handle this situation?

- Address the issue with City Staff
- There is a responsibility for code enforcement
- Handle through clear, open communication and disclosure

APA TX

What More Can 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?
- 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?
- A property is annexed into the city and the land use is not permitted in the new zoning district. What is the situation for that property and use?

APA TX

THE PROCESS OF PROCESS

The planning process is aimed at implementing the comprehensive plan and/or achieving the desired vision of the community. What may appear straight forward to you, may not to the general public.

Plan Process: Pre-application, plan submittal, work session, public hearing

What the Public Sees: Notice of Application, Neighborhood Meeting Public Hearing

Perception: Applicant has met with the city several times, modified/convincing staff of proposal, without meaningful comment

While sometimes impossible to involve all parties, **you must remember that public participation is more than something to satisfy public process.**

You have an ethical obligation of fairness to the public


APA TX

OTHER SOURCES OF INFORMATION

<p>APA Texas www.texasplanning.org</p> <ul style="list-style-type: none"> ▪ Regional and Local Workshops for Planning Commissioners ▪ Annual Short Course for Elected and Appointed Officials ▪ <i>The Guide to Urban Planning in Texas Communities</i> ▪ State Planning Conference ▪ City orientation and training for new Commissioners 	<p>American Planning Association www.planning.org</p> <ul style="list-style-type: none"> ▪ <i>Planning Magazine</i> ▪ National Planning Conference ▪ <i>The Commissioner</i> quarterly newsletter - now in <i>Planning</i> ▪ Ethics Toolkit - on website ▪ CD-ROM training packages www.planningbooks.com ▪ <i>Planning Commissioner's Journal</i> - online subscription
---	---

APA
TX

Thank you!



Take the High Road, there is less traffic!
Any Questions?

APA
TX

CONTACT INFORMATION

Ann Cooke Bagley, FAICP
Bagley Associates
8139 Barbaree Blvd, Dallas, Texas 75228
abagley@swbell.net
214.660.8577