The Ethical Planning Practitioner
Jerry Weitz, PhD, FAICP

- Publications: *Sprawl Busting* (1999); co-author of *Smart Growth Audits* (2002) and author of *Jobs Housing Balance* (2003)); user guide to the Growing Smart Legislative Guidebook (2002); articles on growth management
- Editor, AICP’s *Practicing Planner*
- Associate Professor & Director, planning program, East Carolina University, since August 2010
Graham Billingsley, FAICP

- Master of Landscape Architecture, North Carolina State University; Bachelor of Urban Planning, University of Cincinnati
- Co-author, *RLUIPA Reader: Religious Land Uses, Zoning, and the Courts*
- Partner, Orion Planning Group, Boulder, CO
- Formerly, Director of the Boulder County (CO) Land Use Department
- Served as President, American Institute of Certified Planners and on AICP Ethics Committee
Objectives of Session

- Understand the standards of ethical behavior according to the AICP Code of Ethics and Professional Conduct
- Consider specific contexts and situations of planning practice that raise ethical issues and concerns and learn how planners should respond
- Develop reasoning and reflection skills that can be applied in every day situations
- Introduce the forthcoming book, *The Ethical Planning Practitioner*, and share selected lessons
Session Format

- Caveats before we begin
- Situations evoking ethical principles
- Introduce scenarios, identify applicable code sections, comments and discussion from Weitz and Billingsley
- Responses will be provided for selected questions submitted by audience (card provided; write legibly!)
- Conclusions regarding ethical planning practice
Caveats Before We Begin...

- Ethical situations are rarely “cut and dry” and often contain a high level of nuance.
- The AICP Code of Ethics helps certified planners negotiate the ethical and moral dilemmas they sometimes face.
- “Principles to Which We Aspire” (Section A of the code) are not technically enforceable but must be considered.
- “Rules of Conduct” (Section B) are enforceable.
Caveats Before We Begin...

- Conclusions, suggestions, and recommendations presented by Weitz and Billingsley cannot be considered definitive on the subject of planning ethics.
- Informal and formal advice is available from the ethics officer.
- All communications regarding specific situations should occur with the APA Executive Director and CEO (Paul Farmer, FAICP) in his capacity as the ethics officer.
Range of Scenarios and Situations

- The ethics scenario: a popular method of continuing education sessions
- This session will examine selected planning ethics scenarios from *The Ethical Planning Practitioner*
- Time devoted to answering write-in questions from session participants
- The book organizes scenarios (75) by type of situations evoking ethical principles:
Situations Evoking Ethical Principles (1)

- Independent judgment versus accepting client or employer decisions
- Conflicts of interest and perceptions thereof
- Professional integrity
- Social justice and the needs of the disadvantaged
- Regard for interrelatedness and long-range consequences of decisions
Situations Evoking Ethical Principles (2)

- Timely and adequate information
- Misrepresentation of qualifications of others
- Misuse of others’ work
- Pressuring others to make unsubstantiated findings
- Illegal or unethical conduct
- Outside employment (moonlighting)
Situations Evoking Ethical Principles (3)

- Personal or financial gain
- Breach of confidentiality
- Work beyond professional competence
- Promptness of work required
- Concealment of interest / failure to disclose
- Misuse of public planners’ positions
- AICP misconduct charges
Selected Scenarios from the Book

- **S44.** City Manager Urges Change of Planning Staff Recommendation
- **S63.** Developer and Public Sector Planner Have Lunch Together; **S18.** Planning Consultant Buys Lunch for Public Sector Clients; **S69.** Consultant Invites Potential Clients to Dinner
- **S35.** Information Shared with Neighborhood Group
- **S40.** Planner Asked to Recommend Professionals
An application for a conditional use permit has been filed in the city planning department where you work. You have prepared a staff report recommending denial on the basis of objective standards in the zoning ordinance. Prior to publishing the report, the city manager urges you to change the recommendation to approval, because the applicant is a friend of the mayor’s. How do you respond to the city manager?
S44 Applicable AICP Code Provisions

- Professional integrity (A.1 preamble, A.3.a.)
- Independent professional judgment (A.2.a.)
- A.2.b. We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest
Public officials or employees shall also deal evenhandedly with all planning process participants (A.1.h.)

Rule B.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.
Rule B.14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.

Rule B.18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.
Rule B.25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.
Violates rule B.2 (illegal or in violation of rules)

Explain to the city manager your ethical obligations under the AICP Code, which do not permit you to base your recommendation on his suggested criterion of favoritism.

Then you should firmly reject the urgings of the city manager.
Rule of conduct B.14 does not allow for the use of power, including administrative discretion, to obtain a special advantage, whether that advantage accrues to one’s self (as implied in the rule of conduct) or to any other person, such as the mayor’s friend.

Changing the zoning recommendation could be considered a deliberately wrongful act, violating rule of conduct B.25.
You will violate rule B.18 if you respond to the pressure of the city manager by directing or coercing another planner on staff to reach findings favorable to the mayor’s friend but not supported by the evidence.
What if, after you have rejected the request, the city manager indicates that he requires a planning staff recommendation and it must be a favorable one, regardless of your professional ethics? And what if the city manager adds, “If you don’t write it, you will be fired”? 
Four Cornerstones of Integrity

INTEGRITY

Truthfulness/Trustworthiness
Consistency/Predictability
Legitimacy/Accountability
Impartiality/Objectivity
A developer who has a planned unit development (PUD) proposal pending in the city where you are a planner invites you to join her for lunch. It is lunchtime, you are hungry, and you think nothing of it; the developer did not say she would pay for lunch. You make a split-second decision to go along with her. You sit down at a local café, and the developer begins to cite reasons... (Cont’d)
S63. Developer and Public Sector Planner Have Lunch Together

why the PUD will be good for the city and why the local planning staff, of which you are a part, should wholeheartedly support the development when it comes up for recommendation by the planning commission and decision by the city council. The café is crowded, and people you recognize are within hearing distance of your table. The developer grabs the check and says she is in a hurry to make an appointment. What do you do?
S63 Applicable AICP Code Provisions

- A.2.c. We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.
- Rule B.5. We shall not, as public officials or employees; accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
• Rule B.8. We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.

• Rule B.14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.
Decline the developer’s offer to pay for lunch, even if you have to run to catch up with her.

Instantaneous decision to go to lunch with the developer should be second-guessed; be more wary of these invitations in the future.

Violates rules of conduct B.5. and B.14.

Violates the spirit of rule of conduct B.8.
You are a planning consultant who has contracts with a county for comprehensive planning and with a state transportation agency for policy work. When you work on the county job, you frequently invite selected county staff members out to lunch, and you pay. When you offer to buy lunch for the state transportation planner, he declines. Is the state planner right to pay for his own lunch, and are the county planners wrong for accepting the free lunches? And should you quit offering to pay for lunches with clients?
A private consultant, who is an AICP member, invites potential clients, including public sector AICP members, to various dinners over time to discuss potential contracts and future work. Is this ethical or unethical?
Although **S18** focuses on the perspective of the consulting planner, one can ask questions about the ethical conduct of the county **planners** and the state agency planner, **who hold public positions**.

Similarly, in **S69** we should evaluate the ethics of the AICP **public planners** who are the consultant’s potential clients and attend the dinners.
A city planner assigned to work with a particular low income neighborhood, without authorization, gives information to the head of the neighborhood organization on a study being prepared by another planning agency unit which recommends substantial land clearance in this neighborhood. Is this activity ethical? (Howe and Kaufman 1979)
A.1.d. We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.

A.1.e. We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.
A.1.f. We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.
Rule B.1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.

Rule B.9. We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.
Rule B.1 would seem to require that the information be provided, because it involved a planning issue, but to whom was the planner obliged to give the information?

Rule of conduct B.9 doesn’t apply directly. However, the planner engaged in private discussions with a low-income group, perhaps in a manner prohibited by the client in the sense that authorization was not gained in advance.
Principle A.2.b presents a sticky ethical situation: because the client did not specifically authorize the release of the information. The planner should not have released it, unless he was driven by an overriding public interest, defined in such a way to include the various applicable principles of the AICP Code.

Absent a clear rule of conduct to the contrary, the planner’s action in this scenario is plausibly justifiable.
You are a mid-level planner in a city, and you are charged with advising development applicants on what is needed to comply with the zoning ordinance and city development regulations. Applicants often need a land survey, variance application, floodplain permit, plot plan, or other document. In such cases, development applicants who are not local frequently ask if you can recommend good private companies they can use to complete the necessary surveys, plans, permit applications, or other work. (cont’d)
Having been confronted with this question before, the agency prepared a list of land surveying, landscape architecture, engineering, and land planning companies that have completed work with the city in the past. You provide that list to the inquiring development applicants. Are there ethical issues with your action?
A.1.a. We shall always be conscious of the rights of others.

A.3.c. We shall describe and comment on the work and views of other professionals in a fair and professional manner.

Rule B.10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.
Providing the list of professional firms to the development applicant seems appropriate and is probably done by a number of planning agencies, though there is some risk associated with doing so. Commenting on specific firms, or answering questions about the success and effectiveness of the professional firms on the list, is not advised.
What if, in addition to providing the list, you also suggest that one of the companies on the list is particularly effective and successful in doing business with the city?

Or, to the contrary, what if you tell development applicants that there are a couple of firms on the list that you view as not very competent?
Responses to Audience Written Questions

- Participants have been asked to submit questions on index card
- We select and discuss a few of these within time constraints
- Those not answered will be retained and considered for future sessions
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The Ethical Planning Practitioner
Conclusions: Ethical Practice

- All planners must care about ethics!
- Key lesson: go systematically through the rules and aspirational principles of the code, determining how (if) they apply
- Ethics requires detailed and time-consuming considerations
- Interpret rules of conduct broadly, beyond the strict situational constraints the code articulates (the book provides some suggestions for interpretation)
Conclusions: Ethical Practice

- The AICP Code of Ethics provides relatively little guidance on what to do when ethical principles of the code conflict with one another; Planners must compensate for that by superimposing a hierarchy of values (e.g., law, justice, accountability to the public interest).
- There may be no right or wrong answer, only shades of better or worse behavior.
- An ethical decision making framework follows...
An Ethical Decision Making Framework