

Conflicts of Interest for Planning Commissioners

A conflict of interest is a contradiction between an individual's personal interest and his or her public duty. Such conflicts can exist whether or not money is involved, and whether the conflict is actual or only perceived. Questions about conflicts of interest are part of larger due process considerations concerning the impartiality of the planning board or commission. Such conflicts threaten the right of applicants to receive a fair hearing and decision. To avoid conflicts, a planning commissioner must maintain independence, neutrality, and objectivity in an environment of often competing interests.

Scenarios. Circumstances that may involve a conflict of interest include:

- a personal bias or prejudice concerning any interested party or representative of a party in a matter before the commission;
- a personal or financial relationship with any party or party representative; or
- an action on a matter that may substantially affect the personal or financial interests (either directly or indirectly) of the commissioner or the commissioner's family, such as owning nearby property.

Most communities have guidelines governing these types of financial conflicts of interest through state legislation or local ethics ordinances. Even if the ordinances are written to cover only elected officials, they are an excellent benchmark regarding community expectations. A planning commissioner is in a position of high public trust and must scrupulously avoid even the appearance of using zoning decisions to assist the financial prospects of family members.

Key players and special interests. Each member of a planning commission brings to the commission an individual history, including education, training, and experience. Several studies have examined the occupations of members. Those studies show that some jurisdictions, when appointing commission members, seek people with professional or business familiarity, while other communities have "unwritten guidelines" precluding developers and realtors from sitting on the commission in order to help minimize

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potential conflicts of interest. While an individual's involvement in special interest groups, such as home builders associations, real estate boards, environmental advocates, or neighborhood groups does not automatically create conflicts of interest, the perception of bias may arise.

HOW TO AVOID CONFLICTS OF INTEREST

Protocol when conflicts occur. When a commission member is being asked to participate in a decision in which he or she feels a conflict of interest may exist, that member's duty is to publicly disclose the nature of the potential conflict. Failure to disclose a conflict of interest is grounds for removal from a planning commission or zoning board. On finding an actual or apparent conflict of interest, the commission chair shall excuse the member from participation in the matter. It is also acceptable for individual commissioners to recuse themselves in the face of a possible conflict. For example, if a friend's or relative's business or property is under consideration, a commission member should disqualify himself or herself from influencing the decision. Determining when disclosure alone is enough or when recusal or withdrawal is the more appropriate course of action can be a challenge. Leaving the decision up to the board can remove the burden from the individual and allow for a more trustworthy decision-making process but could require extended conversation and questioning to determine the real or apparent conflict. A good alternative is to use the "disinterested person" test. If someone with no background or experience in the matter would think there is a conflict, act as if there is one.



Some commissions adopt their own ethical guidelines for dealing with not only conflicts of interest but the overall conduct of appointees.

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Familial Contacts. What is reasonable in terms of familial contacts may vary from community to community; for example, in some small jurisdictions, extended families have been around for generations and interrelationships between applicants and commission members are common. Such contacts may be so pervasive that a commission member could not regularly be excused from participation; if that were the case, the commission might not ever achieve a quorum. However, a commission member can publicly declare the relationship and make an affirmative statement that the relationship, although it exists, will not impair his or her judgment. Again, if the conflict of interest is financial, even if it might be common practice to vote on matters of direct financial gain, the ethical planning commissioner should not do so.

Outside Communications. Ex parte communications (i.e., communications between a commissioner and an interested party outside the commission meeting) can give the appearance of unfairness or impropriety and result in a conflict of interest. If a commissioner receives communications about a proposal outside of a commission meeting, the member has the duty to reveal the communications during the consideration of the proposal. Also, members should avoid committing themselves to a position on particular issues during any outside communications.

Be Proactive. Advance planning can stop potential conflicts before they happen. Scheduling informal discussions about situations that might result in conflicts of interest and consideration of how these situations might be avoided would be helpful. An annual “ethics check” gauging commissioners’ familiarity with local and state ethics laws is a good idea. Such an assessment also gives individuals an opportunity to consider how business and personal affiliations relate to their roles as a planning board member. Also, commissioners should consider drafting and adopting their own ethical guidelines for dealing with not only conflicts of interest but the overall conduct of appointees.

Planning Commissioner Training. All newly appointed members should participate in training programs. Excellent programs designed by the local planning agency, the state APA chapter, or the statewide government organizations, such as municipal leagues, exist. Commission members should fulfill continuing education requirements annually. Effective training programs educate members about the ethical standards for commissioners, including instruction on avoiding potential or perceived conflicts of interest. Developing a shared set of values through training and discussions can help elevate the ethical standards of a planning commission.

ETHICAL RULES AND GUIDELINES

State and Local Ethics Regulations. Several states, including Connecticut, Idaho, and Michigan, have provisions specifying appropriate conduct for members of planning commissions. Most states have some legislation addressing conflicts of interest for appointed officials, which include planning commissions. Because state statutes may change, commissioners need to rely on their planning staff or legal staff to regularly review laws affecting open meeting and ethical requirements for elected and appointed officials. Some local planning commissions have also adopted administrative rules that speak to good ethics, especially in terms of conducting fair meetings.

APA’s Statement of Ethical Principles in Planning. Planning commissions or zoning boards without their own statement of ethical conduct should consider adopting language from APA’s statement of Ethical Principals in Planning.

Planning professionals and planning commissioners should:

- make public disclosure of all “personal interests” they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker;
- define “personal interest” broadly to include any actual or potential benefits or advantages that they, a spouse, family member, or person living in their household might directly or indirectly obtain from a planning decision; and
- abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record.

For the full text of the APA’s Ethical Principles in Planning, see www.planning.org/ethics/ethics.html.

The AICP Code of Ethics. In setting forth principles to which planning professionals should aspire, the AICP Code states:

We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

For the full text of the AICP Code of Ethics and Professional Conduct, see www.planning.org/ethics/conduct.html.

Personal Ethics. Even under the ethical guidelines set forth by governments and professional organizations, gray areas exist where indiscretions could go unnoticed. In these cases, each planning commissioner must work to ensure an unbiased process, uphold the commission’s credibility, and, most importantly, maintain the public trust. *Patrick C. Smith*



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