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2013 AICP Ethics Case of the Year

The Director of Planning and Development is a registered architect and also an AICP planner. She worked for several local private practice consulting firms before taking on her current position about five years ago. The community has an excellent quality of life, an engaged citizenry, a strong economy and good public services. It is known for balancing its sense of history, environmental stewardship, support for new development and vigilance regarding public spending. Contentious issues such as completion of a long-delayed "missing link" of the downtown bypass, approval of a satellite new community that required extension of the city's urban growth boundary and enactment of a series of environmental zoning overlays have all been touted as proof that the community is one where citizens both care and can get things done. All, however, revealed deep divisions in the community and hard feelings linger.

The Director has a good relationship with the City Manager who hired her. The relationship between the Mayor and City Council, on the other hand, has often been fractious. From the beginning of her appointment, she and the City Manager have typically discussed pending recommendations from her Department or the Planning Commission before public hearings or before recommendations are made public. The City Manager has cited the Mayor and Council's "Operating Goals" as his justification for weighing in, noting that the goals are adopted after a very public process every two years after newly elected counselors take office. He also notes that he has similar conversations with all of his directors, from the Fire Chief to the City Engineer. He regards the city's Comprehensive Plan as a "guide" even though state law mandates that it has the force of law.

The fall election brought a new Mayor and five new Council Members to the nine-person Council. The new Council Members ran on a platform that emphasized the need for jobs and growth, criticizing several incumbents as "hiding behind good intentions and using delay to stop development." The recently adopted environmental zoning overlays were cited as an example of "unnecessary governmental overreaching." Some of the incumbents lost their re-election bids while others retained their seats. The new Operating Goals, adopted with more than the usual debate and many 5-3 votes (and several 4-4 votes broken by the Mayor), are unabashedly pro-development. They include a commitment to evaluate all regulations with regard to their effects on growth, tax base, and the city's future. The Director was not a target by any candidates in the campaign, having worked on several of the city's major development projects, including early work on the satellite community, while in private practice. She also served on the boards of preservation, waterfront and civic associations.

1.0 The City Manager often spoke to his team of directors about the need to play smart politics so that they can avoid being pulled into the Big Politics of the Mayor and Council. During the several months since the election, the Director has noticed several changes in the City Manager and his management techniques. His requests for information now seem more urgent and his positions on cases and policy recommendations are privately argued with

increased stridency. In individual and group meetings, Operating Goals and smart politics increasingly are mentioned to justify his instructions to his directors.

She disagrees with him on two major issues:

The City Manager, with the City Attorney's support, has taken the position that any development application that was filed prior to the effective date of the new environmental zoning overlays – regardless of whether it had yet been found complete—constitutes a vested right and is not subject to compliance with the new regulations. Several parties have made clear their intentions to file suit regarding this interpretation. The City Manager instructed the Director to issue interim regulations consistent with his interpretation until a decision has been rendered by a court of competent jurisdiction. She believes, and she has stated at several public meetings when the revisions were under consideration, that the city's consistent practice has been to grandfather only complete applications. She believes her credibility would be seriously undermined if she now changed her opinion. The state's case law is admittedly unclear on this matter and several efforts to create a "deemed approval" law by the state legislature have failed.

Discussion Topic: What options does the Director have for acting ethically?

The second issue also relates to the new overlays and, specifically, the satellite community on which the Director had worked while in private practice. The town center was built on an oxbow of the old river channel. As the planner on the project team, she analyzed the quality of three acres of seasonal wetlands along the oxbow and successfully argued that they were of such low quality that they did not fall within federal, state or local regulations. She received concurrence from the responsible officials at all levels. The area is represented by one of the incumbents who successfully retained his seat, as the voters in his district are strong environmental advocates. The developer of the satellite community is now ready to begin construction on Phase II, directly adjacent to the low quality wetlands. The City Manager instructed the Director to tell the developer that he must avoid wetland impacts entirely and further instructed her to write a report with findings that justify requiring a project redesign. She told the City Manager that she cannot do so given her prior, well-known professional position on the issue. Her latest meeting with the City Manager ends with his comment: "Just figure it out."

Discussion Topic: What options does the Director have for acting ethically?

In July, several months after the wetlands incident, the City Manager promoted an AICP Planner from the Planning Director's staff to serve as his "Deputy Manager/Policy Advisor," with responsibility for all policies other than those having to do with budget, fire, police and EMS. In his three years in the Planning and Development Department, the new Deputy Manager/Policy Advisor developed an excellent reputation as an "expeditor," with an ability

to cut through red tape. In creating the position, the City Manager cited the increasing needs of city council, as the ongoing regulatory reform identified regulations that need to be eliminated, significantly modified, or even added.

The new Deputy Manager/Policy Advisor convinced the City Manager that one way to get these regulations to the City Council on a fast track is by following the same approach used for the transportation plan. The transportation plan has long been adopted separately from the comprehensive plan, but made legally a part of the comp plan through a city council resolution at the end of the process. The Deputy Manager/Policy Advisor believes a similar approach could be used for climate change, public safety, and sustainability plans, freeing the three plans from the “straitjacket” of the state’s enabling legislation for the comp plan. The Director, when asked by the Mayor at a Council Meeting about this approach, indicated that she does not believe that it meets state law, distinguishing the transportation plan as mandated by federal law while these three new plans have no such mandate.

In private discussions, the dispute became a bit personal. The Director noted that the Deputy Manager/Policy Advisor has limited experience, primarily only permit work, while the Deputy Manager/Policy Advisor criticized the Director as being trained only as an architect without any real claim to planning expertise.

Discussion Topic: Are the two planners acting ethically with regard to the issue and to each other?

The City Manager does not want the community “tied up” on these issues of climate change, sustainability and public safety, and wants them moved to a decision by the elected officials as quickly as possible. He told the two, “Just get it done!”

Discussion Topic: Can the positions of these two AICP planners on the issue be ethically reconciled?

- 2.0 Near the end of the year, with the increasingly fractious City Council and increasingly unsupportive City Manager, the Director decides to quietly begin the process of seeking another job. She wants to stay in the same community although she is willing to travel in any new job and is also willing to consider telecommuting for a firm without a local office. She is widely respected among public, private and community groups, has a good reputation among her peers in both the architecture and planning professions, and sees her biggest short term challenge keeping her job search confidential. She begins to map out a strategy and limits her conversations to several long-term confidants.

An opportunity presents itself very quickly, as a head-hunter contacts her based on her reputation, not knowing that she has quietly begun searching for another position. He, too, is committed to confidentiality by his client, and is only able to tell her that he is representing a large North America-based planning, architecture and engineering firm

seeking a Principal in charge of their planning business line for North America. She wants to do the right thing.

Discussion Topic: What can she say about her work with the city, pending matters (including development proposals) and advice that she has given the Mayor, City Council and the City Manager, both publicly and behind closed doors?

3.0 With the Director’s sudden departure at the end of the year, the City Manager appoints her assistant as the Interim Director. He is interested in getting the job permanently. He has applied to take the AICP exam, has been approved as eligible and intends to take the exam in the next cycle. He understands the city bureaucracy, and has been instrumental in the success of the new regulatory reform initiative, receiving compliments from those across the political spectrum of the community. The Deputy Manager/Policy Advisor is also known to be very interested in the job and the City Manager and the council majority have come to respect him as rapid progress, indeed, has been made on the climate change and sustainability plans and both will be presented to the council soon after they reconvene in the new year. A third potential applicant, a well-respected Planning Director from a small, high-income suburb adjacent to the region’s airport, is a close friend of the City Manager’s family and has privately and confidentially made known her interest to his family members. She is AICP. An effective voice in the region, she was a leader in the effort to build a new Denver-style airport on the grounds that it would be a job-creator. (It would also relieve her suburban community of the problem of noise caused by being in the flight path of one of the major runways.) The city’s position – to keep the airport in place and connect it to downtown via BRT or LRT – is well-established. The selection of a new Planning Director will be made by the City Manager without any requirement of confirmation by any elected body.

Discussion Topics: How might the three aspirants’ best conduct themselves and what might they say about each other should they be asked by the City Manager?

4.0 The Deputy Manager/Policy Advisor is approached by the Mayor who, in a private discussion, suggests that he has great influence with the City Manager over his selection of a new Planning Director. He praises the planner’s work on both permits and regulatory reform. He notes that one of his biggest financial supporters, a local developer, agrees with him. The Deputy Manger/Policy Advisor knows that the developer is awaiting council action (after staff recommendation) on a regulatory change that would significantly increase the size and profitability of a pending development. The Deputy Manger/Policy Advisor makes no commitment, expresses his thanks to the Mayor for his kind words, and, as requested by the Mayor, does not mention the “confidential” discussion with anyone, including the City Manager. Acting on behalf of the City Manager and using the “Operating Goals” rationale, he directs the Interim Planning Director to change his recommendation to permit greater lot coverage and FAR in the regulations that will apply to the developer’s property. Not wanting to risk angering the City Manager at this time, the Interim Director makes the changes.

Discussion Topic: What ethical issues are raised in this scenario? How should the players respond?

5.0 Early in the New Year, the former Planning Director has been hired by the global firm and assigned responsibility for design and planning for a multi-state area, including her community. They are particularly pleased because her hiring was considered to be important to securing a contract for a series of large, new suburban community projects in several metropolitan areas based on the success of the satellite community that was part of her earlier work. The same developer has partial interests in the new projects and respected her work as both an architect and, later, as Director of Planning and Development for the city. He still remembers her key role and persuasion in securing the original agreement on the contested wetlands and knows that a couple of the new projects have similar wetland issues that have only become more contentious over time. In his first meeting with the team of consultants, he turns to her and quips: "We're looking forward to more of your great work, with exactly the same outcomes." Her AICP-CEP environmental planner asks, "What did he mean by that?"

Discussion Topic: What ethical issues are presented and how should they be addressed?