



The American Planning Association's
Professional Institute
**American Institute
of Certified Planners**

Murphy Mountain Wants a Plan for Its Birthday

The Ethics Case of the Year 2014

Note: Presenters should not feel obligated to cover all the scenarios in any version of the case, and are encouraged to be selective, or add additional scenarios of their own as well.

Advice on Conduct: Please Note

This material has been created to provide general education regarding the AICP Code of Ethics.

Though examples, sample problems, and question and answer sessions are an important part of illustrating application of the code's provisions, all certified planners should be aware that "Only the Ethics Officer [Chief Executive Officer of APA/AICP] is authorized to give formal advice on the propriety of a planner's proposed conduct." (AICP Code of Ethics, Section C3).

If you have a specific question regarding a situation arising in your practice, you are encouraged to seek the opinion of the Ethics Officer.



Murphy Mountain Wants a Plan for its Birthday

The AICP Ethics Case of the Year for 2014

Case Setup: As spring finally arrives in the Town of Murphy Mountain, citizens are excitedly planning all sorts of activities to celebrate their town's 300th birthday during September of the following year. The town of 65,000 has grown recently after a decline during the Great Depression had gotten worse during the 50's through the early 90's. Mills along two rivers near the base of the mountain after which the town was named had closed soon after WWII, a new state highway had bypassed the town in the 1970's and lackluster regional growth persisted until almost the Millennium.

And the driver of recent growth? The Town Council likes to point out its good governance over the years, as many of the seven councilors have been in office for almost two decades. Environmentalists like to point to the state's enlightened laws that protect hilltops, hillsides, streamside lands and farms, and make Murphy Mountain a sportsman's paradise and a place of rather unspoiled beauty. Business interests champion the growth of four-season tourism. B & B's are thriving while mills have been restored with a mixture of commercial, residential and institutional uses through the efforts of preservation – minded developers. The combination of a bucolic setting and recent growth has contributed to recent increases in quantity and quality of students attending the well-respected liberal arts college in the neighborhood between the downtown and one of the rivers. College professors have given Murphy Mountain a rather progressive culture that blends comfortably with earlier cultures of mercantile life and the industrial era of the mills.

As new households of increasing diversity are discovering Murphy Mountain, a fear has developed that it might become yet another bedroom suburb of the nearby, growing metro area of almost one million people. They are now separated by only twenty miles of active farmlands. The citizens and its town council, appreciative of "some" growth but fearful of "unbridled growth," have decided to hire a full-time town planner and part-time assistant planner, and create its first master plan with a slow growth objective in this area known for slow food. For many years, it has retained Mountain Planning, Inc., a modest-sized, private firm from a nearby town that serves many communities similar to Murphy Mountain. Mountain Planning will continue to provide most zoning and subdivision services to Murphy Mountain.

Scenario 1. The Town Manager, a member of ICMA, tells the recently-hired Town Planner that he is proud to have a planner with the AICP credential as its code of ethics that is almost as old as ICMA's. His pride is genuine. The Town Attorney is in private practice with about half of her time on town matters. She still maintains her AICP credential, secured before she entered law school. Occasionally engaged in planning work, she is careful that it does not involve property within the boundaries of the town.



The Town Planner has drafted the RFP for the master plan services and has had it reviewed by the Town Manager and the Town Attorney so that it can be issued by June 1 with a submission deadline of July 1, a Notice to Proceed of August 1 and completion thirteen months later on September 1. The Town Council intends to approve the master plan on the town's 300th birthday on September 30 to cap off the tri-centennial celebration!

The Town Manager signs off on the draft with "Great job" scribbled in the margin. However, the Town Attorney, who has sometimes clashed with Mountain Planning's zoning recommendations and competed with them for contracts in neighboring counties, advises the Manager and Planner that Mountain Planning should not submit a proposal since its existing contract with the town is "sole-source" and, in addition, there could possibly be a conflict of interest as the master plan might include policies in conflict with the existing zoning code, which the consulting firm is obligated to follow. "Would they be able to credibly and professionally advocate two positions at once on some issue?" she asks.

One of the elected Town Councilors had been very impressed with an AICP planner (and full-time faculty member at a distant university), who had led a CPAT team in the previous winter for work in a low-income neighborhood next to the college. The team had recommended a form-based overlay for the neighborhood and the college. The Town Councilor, citing the CPAT leader's creativity, energy and new ideas, is pressing the Manager to hire him and his firm, NextVillage, Ltd., even though it is basically a two-person shop. The Town Attorney advises the Manager that she does not see any problem with a proposal from NextVillage, noting that familiarity with the community from the CPAT might help meet the town's tight deadline for completion. She is also impressed with the experience of the firm's founder, whose resume includes eighteen months as Acting Planning Director for a city of 300,000 immediately prior to his current, full-time faculty position.

The Town Planner certainly knows how much the Mayor and the Town Council want adoption of the master plan to occur during the birthday celebration. The Town has final approval authority as neither the multi-county Council of Governments (and MPO) nor the State has any required approval authority. The Town Planner has already offered both the opportunity to comment on the draft RFP. In May, the Town Planner meets with the Town Manager. "We're ready to go, you've solved all of the problems and we're not expecting any more, right?"

How might the AICP Code provide guidance to the Town Planner on all of these issues as she and the town move forward with its ambitious planning effort?

Scenario 2. Mountain Planning's owner is upset that the Town may hire the new urbanist/faculty member/part-time practitioner/CPAT team leader due to the new Town Planner's affinity for new urbanism and asks for a meeting to address the Town Attorney's concern that his firm should not apply for the master plan contract as well as the "word on the street" that the contract is wired for NextVillage due to the Town Planner and Town Councilor's alliance. In the meeting with the Town Manager, the Town Planner and the Town Attorney, Mountain Planning's owner, who is FAICP, notes that he may be



compelled to file an ethics charge “if things keep going the way they’re going.” He suggests that NextVillage’s founder has never been the Acting Planning Director of any city despite claims on his resume but only the well-respected manager of an urban design section of the city’s Planning Department before leaving for the university position. The meeting ends rather abruptly. Afterwards, the Manager says to his planner and his attorney, “Why, when I’m in a room of planners, do I feel like I’m in the middle of a dog fight?” He was only partially joking.

What are the ethical considerations for each of these three AICP planners and the ICMA Manager at this point in the process?

Scenario 3. The July 4th holiday finds the Town Planner reviewing proposals from a dozen firms, including Mountain Planning, Inc., NextVillage, Ltd., and Valley A + E, LLC, a firm that sometimes employs the Town Attorney for legal elements of its planning contracts in other counties, although the attorney and Valley A + E do not have any current contractual relationships. The Town Manager has decided that any possible conflicts for any of the firms and any alleged discrepancies in descriptions of prior positions can be resolved during the interviews. The Interview/Selection Team is comprised of the Town Planner (chair), the Town Attorney, and the College’s Dean of Students. A non-voting observer will be permitted from both the Town Council and the Planning Board. The final decision will be made by the Town Manager after receipt of the Interview/Selection Team’s recommendation, consistent with the fee set by the Town Council.

The Interview/Selection Team recommends that four finalists be interviewed in person, including Mountain Planning, Valley Planning A + E, NextVillage, and one large, national firm without any prior connections to the Town. The Town Manager accepts the recommendations and the Town Planner schedules the interviews. The Town Manager has invited Town Councilors and Planning Board Members to submit questions to the Town Planner that they would like the interview team to ask during the interviews and a few do so. Impressed with her final list of questions, he tells her, “After we’re done, you and I should write an article for ICMA about consultant interviews, using this list and our process to demonstrate best practices in controversial situations!”

What questions might be on the list given the situation as well as the guidance and rules found in the Code?

Scenario 4. The Town Manager accepts the selection team’s recommendation that NextVillage be hired to prepare the Town of Villages Master Plan. Notice to Proceed is delayed to late August due to the principal’s prior commitment to leading a month long professional study tour of Italian hill towns.

The planning process finally begins in mid-September, assisted by students from the local liberal arts college who are hired (and paid) as meeting facilitators through a subcontract with the college’s Office of the Dean of Students. It is modeled on the principal’s use of students – unpaid, rather than paid-- at his own university for similar activities. Meanwhile, early mapping, analysis and document reviews are



being carried out as a student project in a design studio taught by NextVillage's principal in his faculty role at his university. He will pull these two student efforts together near the end of the fall term with presentations to stakeholders in early December in Murphy Mountain. Until then, everyone will be kept informed through a project web site, blogs, Facebook, Instagram, Next Door, Snap Chat, and other social media. Additional modest tasks are being carried out through a sub-contract with Mountain Planning, thus reducing the rancor around the consultant selection process.

The digital world provides most citizen engagement through the fall through a well-designed program, as it will through scenario development during the winter and early spring. NextVillage's principal, the Town Planner and the Town Councilor have all bonded through their belief in new urbanism, innovative use of social media, and even their shared love of the work of Franz Kafka. It's an exciting time as the days grow shorter.

Are there Code provisions that should be of concern to any of the AICP planners involved in this process as it has been designed through the fall?

Scenario 5. NextVillage's principal spends the second week of December and two weeks of his January break in Murphy Mountain, meeting many stakeholders and stakeholder groups, brainstorming many ideas in preparation for the next phase of the Town of Villages Master Plan process that will be carried out through his graduate design studio. It will focus on a form-based overlay approach that he will recommend for the entire town, given the enthusiastic reception to the idea for the small area studied by the CPAT team.

The Town Planner's principal role continues to be communications with the Town Manager, Town Council and Planning and Zoning Board, educating all on principles of new urbanism, effective citizen engagement using media and, for some, Kafka. She is beginning to encounter some opposition from several community factions.

Those interested in the key objective of slow growth question the applicability of what they see as a narrow approach that ignores land vulnerability—both streamside and steep slopes-- and complex hydrological and geotechnical factors. A local property rights coalition begins to throw around the "takings" term as downzoning of much of the city seems to be emerging as a key recommendation.

Move All, an advocacy group, doesn't see the plan going far enough in bike/ped/complete streets efforts. Its leader, an AICP CTP regional transportation planner who works for the COG in the nearby central city and has lived in Murphy Mountain for over a dozen years, is increasingly critical in blogs and social media. *Land Watch, Water Watch*, a statewide environmental group with an active blog edited by a retired AICP CEP planner, opposes the creation of a new village on "leftover" lands that extend from an old oxbow up the mountain, claiming that the land is unsuited for even carefully planned new urbanist development.

The Town Planner gives all the same assurance—the design studio will figure it out.



The Town Manager confidentially asks Mountain Planning's principal to meet with him to discuss his own growing concerns about the Master Plan's narrow focus and questions increasingly being raised about NextVillage's technical competencies. "I've made this plan the centerpiece of our celebration and now I have these newbies in charge!" The Town Planner was not invited to the meeting.

Are these just the usual planning complexities or might there be ethical concerns as well? If the Town Planner were invited to the meeting, what might be her strategy?

Scenario 6. By May, the Town of Villages Master Plan effort is far behind schedule as the work from the design studio is neither comprehensive as promised nor of the quality expected by the Town Planner and Town Manager. The Manager reaches out to Mountain Planning, again without knowledge of the Town Planner, and they agree on a strategy should the upcoming public meeting not go well. In fact, it goes poorly.

The following day, in a tense meeting in the Manager's office that includes the Town Planner, Town Attorney and the principals of the two firms, he informs them that most of NextVillage's incomplete or unacceptable work will be reassigned to Mountain Planning, the fees for the two firms will be adjusted, and the remaining work for NextVillage will be limited to the new urbanist elements within the plan. "That's clearly your personal interest and your strength," he notes, combining a compliment with his criticism. Slow or managed growth elements, including those that deal with balancing environmental concerns with major, new development – the jobs focus of the chamber of commerce—will be the responsibility of Mountain Planning.

The work of bringing all of the plan elements together and finishing the project by September 1 will be the almost full-time work of the Town Planner with her part-time assistant becoming full time. "Don't anyone even think about vacations this summer" is the manager's final remark.

With the target approval date only 120 days away, a looming train wreck that might damage the credibility of planning in the community, leave the community with a partial Town of Villages Master Plan and put a damper on a birthday celebration, one might ask: Should other steps now be taken, and how could use of the Ethics Code have provided better guidance at earlier points?