Taking a Closer Look: Ethics

Short articles focusing on key ethical situations planning commissioners, zoning board members, and others involved with land use development often encounter.

• Setting the Stage. Commissioners play an important role as decision-makers, weighing the often conflicting interests of those who appear before the commission.

• Personal Responsibility. Commissioners must always strive to maintain the highest personal standards of conduct.

• The Community. Planning commissioners have an obligation to consider the implications of their decisions on the broader community.

• Public Perception. Citizens must have every confidence that the commission has acted fairly and without improper influence.

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An Important Distinction

It might seem to some that the concerns I’ve expressed in this article about ex parte contacts would result in planning commissioners being insulated from the community, at the same time that we are asking them to reflect its planning values. Here is an important distinction to make: ex parte concerns relate primarily to matters that are pending before the commission, primarily related to requests for development approvals such as zone changes, planned unit developments, site plan approvals, and other similar requests that involve a specific, legally prescribed process of review.

On the other hand, we do expect planning commissions to concern themselves with long range, community-wide planning policies and issues outside the development review process. This requires planning commissioners to be in tune, and in touch, with citizens who are interested in planning issues. In order to do this, commissioners must be out in the community to keep their fingers on the pulse of the public.

It is entirely appropriate for commissioners to participate in community organizations and to use those opportunities to discuss planning issues. For example, speaking at clubs or civic functions can be a valuable way to encourage broader dialogue on planning issues and can provide commissioners with valuable knowledge. As long as these do not involve specific case matters pending before the commission, I do not consider these to be in the category of inappropriate ex parte contacts.

Things get a little more complicated when the commission is considering new plans or policies, such as an update to the comprehensive plan. Is there a value in reaching out to the community to solicit input? Absolutely. Is there a potential concern that some groups or individuals are getting special access to commissioners when these contacts occur outside the public process? Perhaps.

I have much less concern about ex parte contacts when there is no application before the board, but commissioners should still be sensitive to the creation of perceptions that they are favoring certain interests in the planning process. The question to ask yourself is whether these types of contacts create the perception of “insider access.” Access to decision makers should occur on a level playing field.

As I always encourage, use good common sense on these gray area issues. If certain behavior feels questionable, it probably is. At the same time, you need to be connected to the community, and that can involve tough balancing calls.

C. Gregory Dale, FAICP, is a Principal with the planning and zoning firm of McBride Dale Clarion in Cincinnati, Ohio. Dale manages planning projects and conducts training for planning officials throughout the country. He is also a past president of the Ohio Chapter of the American Planning Association, and a frequent speaker at planning and zoning workshops throughout the country.

Revisiting Ex Parte Contracts…

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would hard copy or oral communications. It is amazing to me how people tend to view emails as somehow being under the radar screen.

The reality is that email communications between you and other commissioners or interested parties about matters before you are likely to be considered public record, and you may be required to produce them. Think about that before you hit the send button. Plus, once emails are gone, they can very easily make their way to hundreds of people you never intended or expected to see them.

Remember that your job is to make decisions or recommendations based on the evidence presented to you during the public review process, and that the public has a right to know what information you use as the basis for your decision. Gaining information outside the public process threatens this principle. Perhaps more importantly, it runs the risk of creating the impression of a “good old boy” system.◆