

Here Comes the Big Box

**Ethics Case of the Year
2015-16**

By: Ethics Committee
American Institute of Certified Planners

Note: Presenters should not feel obligated to cover all of the scenarios in this case study and are encouraged to be selective—or to add additional scenarios of their own.

Advice on Conduct

- This “Case of the Year” has been created by AICP’s Ethics Committee in order to provide general education materials regarding the *AICP Code of Ethics*. Although scenarios, sample problems, and question-and-answer sessions are an important part of identifying various code provisions, please note that, according to the Ethics Code (Section C3), “only the APA/AICP Ethics Officer is authorized to give formal advice on the propriety of a planner’s proposed conduct.”
- Please direct any queries or suggestions to Bob Barber, FAICP, Chair, AICP Ethics Committee at BobBarber@orionplanninggroup.com or to Jim Peters, FAICP, APA/AICP Ethics Officer at ethics@planning.org.

Waverton

Waverton is a culturally and demographically diverse medium-sized city of about 100,000 people. It is characterized by a large number of immigrants, many of whom do not speak English and who are mostly employed in the service and agricultural sectors and concentrated in ethnic neighborhoods.



In addition, Waverton is home to:

- an active development community which feels the City is too restrictive on development
- a large constituency of relatively well-educated and affluent citizens, mostly employed in government, high-tech, and health-related jobs
- Strong citizen demand for a robust planning program and a general concern about the city's image

Planning in Waverton

The City has a well-staffed planning department for a city its size. The department is respected by most in the community and its recommendations are generally heeded by the City Council. However, the planning staff has been increasingly criticized by the development community and by some City Council members as being out of touch with reality, and not supportive of economic development.



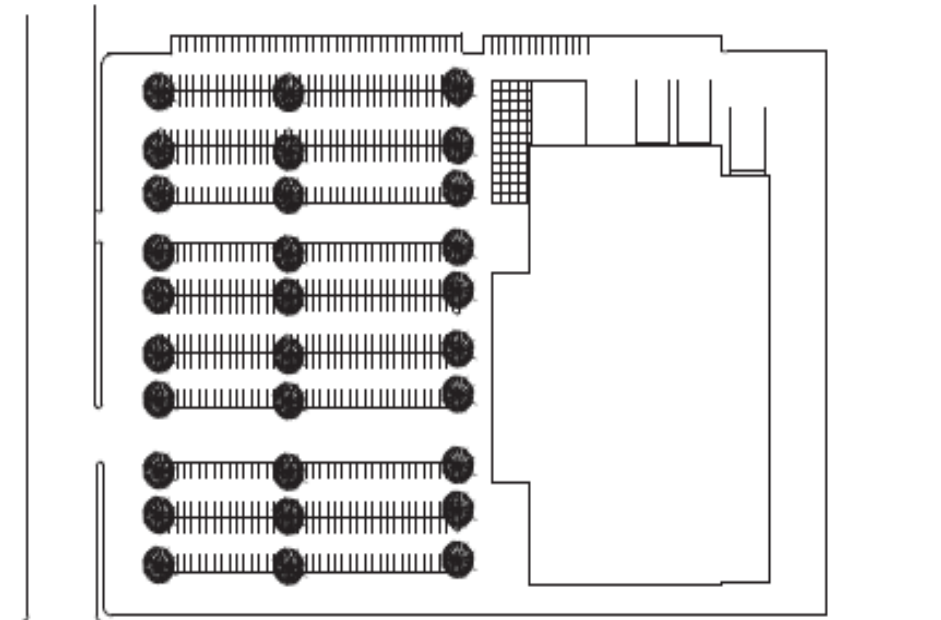
- **A major national retailer has applied** to construct a big box discount store. The planning staff has been working very hard to bring a stronger design perspective into the review process and has had some success. However, the Land Development Code (LDC) does not include much in the way of specific design of requirements.



- **The City has limited sites** that can readily accommodate large-scale development or redevelopment. One of these sites is in an area that is suburban in character and has recently been contracted by a national chain for construction of a big box discount store with a full array of retail goods, including groceries, pharmacy, clothing, and household goods.



- Submitted design plans** illustrate a typical mega-store with a vast parking lot in front. The proposed big box store requires special approval by the City Council due to its size, requiring staff to make a recommendation based on a wide variety of planning criteria that cover impacts to infrastructure, neighborhood compatibility, and community need for the use.



Politics in the Planning Context

Project Support:

- The City Council member for the District in which the store is proposed to be located was elected with support of an ethnic minority that lives in the area.
- The Council member asserts that her constituents want and need the store as it would provide jobs and a wide array of goods at reasonable prices within walking distance.
- The Council member has been working to get such a store for a long period of time.

Project Opposition:

- The Council member for the nearby District opposes the store, citing possible environmental issues, excessive traffic, and the need to create better-designed, walkable spaces of higher character.
- His constituents drive past the proposed site daily, but have other retail options in their area and really don't like the idea of a discount big box retailer in the proposed location.

Staff Background:

- “Aaron” is assigned to the case because it is located in his geographic area of responsibility. Aaron is a recent planning graduate, out of school for a little more than two years and has recently passed the AICP exam.
- Aaron has a design-oriented background and is disappointed by the building and site design.

Scenario 1: Differences of Opinion and Supervision

- “Susan” is Aaron's supervisor. She is an AICP planner with 10 years' experience.
- The Planning Director, “Bill,” drops by Susan’s office and mentions the sensitive political situation with respect to the store. She then passes that information along to Aaron.
- When Aaron provides Susan with his analysis of the application, however, she is concerned. Aaron recommends conditions of approval that Susan knows will be unacceptable to the national chain. Susan also does not believe Aaron’s recommended conditions are supported by the Land Development Code (LDC).

Scenario 1: Questions

- What are Aaron's obligations in developing his opinion? What professional practices should be observed?
- How should Susan approach this situation with Aaron? What should she do as she works with Aaron on his recommendation?

Scenario 1: Discussion

- *How did Susan approach Aaron initially? She needs to make sure she is not coming across as intimidating or asking him to make a certain recommendation based on politics.*
- *She needs to make sure he has the tools and support he needs to work through a difficult issue, including adequate public input.*
- *Once Susan has seen Aaron's recommendation, she needs to walk him through the LDC and listen to his perspective.*
- *Susan also needs to consider the same balancing of interests Aaron did, including overall and long-term community character, immediate needs of the surrounding neighborhood, actual impacts, etc.*

If Susan remains convinced that Aaron's recommendation is flawed, how can she proceed ethically to change it?

- *A supervisor is not required to let the work of a staff member move forward if she disagrees based on appropriate grounds (legal, ethical, professional judgment). However, she should not insist the planner put his name on something with which he isn't comfortable.*
- *Ideally, Susan will be able to work with Aaron to explain her concerns through consideration of the LDC, public input, data and analysis, etc., so that neither compromises their ethical principles.*

Additional Issues:

- *Planning is more an art than a science. Ultimately, decisions have to be based on public input, data and analysis, good planning principles, etc. Political considerations can enter in, but only to the extent that they produce recommendations consistent with good planning practices.*
- *And, finally, what does the community plan call for?*



Scenario 2: Under the Influence

- Aaron has a meeting set with the applicant to review his concerns. The meeting is scheduled for just after lunch, and Aaron is nervous because he hasn't dealt with a controversial project like this before.
- He decides he needs to relax so he takes a short walk making it back just in time for the meeting.

- Susan, Aaron's supervisor, also participates in the meeting. She knows how upset Aaron is about this application and is concerned. She feels Aaron is stretching the code requirements too far.
- She is surprised at the meeting that Aaron seems much more relaxed than normal. Aaron had been very articulate in his concerns when briefing Susan, but now he seems unable to form a coherent thought.

- As a result, the applicant is unable to understand Aaron's concerns, so Susan takes over even though she is not as familiar with the application.
- After the meeting, Susan approaches Aaron and notices a smell that takes her back to her recent vacation in Colorado.
- The applicant asks to speak with her without Aaron and informs her that he intends to file a complaint with AICP about Aaron working while "under the influence."



Scenario 2: Discussion

What are key ethical issues Susan needs to consider in approaching this situation?

- *Use of the City's Human Resources policies regarding substance abuse*
- *Disciplinary action could include asking the AICP Ethics Officer for informal advice*
- *Possible support of the applicant in his complaint to AICP*

Scenario 3: Political Pressure

- Susan forwards a recommendation to the Planning Director, Bill, that includes design review conditions based on the LDC, planning principles, and neighborhood input.
- The developer reluctantly agrees to concessions that make the site more walkable, while addressing neighborhood concerns.
- The City Manager is aware of the differing opinions by two of the Council members regarding the big box store. Furthermore, the Council member opposing the store is a strong supporter of the City Manager.

- After reviewing the staff's recommendation, the City Manager asks the Planning Director to significantly revise the approval conditions in line with the views of the opposing Council member.



- The Planning Director argues that the staff need to have an independent voice as professional planners. The City Manager says he would be glad to give them independence – from city employment – if they don't revise the approval conditions.

Scenario 3: Discussion

How should the Planning Director, Bill, respond to the City Manager's request?

- *Bill needs to familiarize himself with the staff recommendation and all data and analysis and determine whether he thinks it is well founded. If he agrees with the recommendation, he needs to explain to the City Manager why the recommendation is appropriate. If he doesn't agree, he needs to work with staff to make appropriate changes based on legitimate planning considerations.*

- *Bill also could try to work with the developer to get additional concessions for an improved project. But he should not jeopardize the project for political considerations. Ultimately, this is a planning recommendation that has to be founded on appropriate planning considerations, including the LDC. The City Council can make a political decision, if it chooses. That's the Council's job, not the planners'.*
- *If push comes to shove, what should Bill and Susan do? How far can/should a planner to go save his/her job?*

Scenario 4: Taking Credit

- After getting the applicant to provide a more sensitive design, the Planning Director and the City Manager make the case that if Council wants better design in the future, they need to really beef up the design standards in the Land Development Code. Council approves a budget to hire a consultant to perform that work. Bill sends out an RFP and receives a number of submittals.
- A leading planning and design firm known as P&D Associates, in practice for about 20 years, received the RFP. Tom was an important partner in P&D Associates and specialized in form-based and strong design-oriented codes. Tom did all the code design standards work along with Ann, a planner and landscape architect, for P&D. The principals of P&D, as well as Tom and Ann, are all AICP members.

- Prior to the RFP being sent out, Tom and Ann leave to form their own firm, FBC Associates. FBC responds to the RFP, along with P&D Associates. Both firms submitted the same three project examples in their proposals.
- Both firms were interviewed and, during the interview, each firm was asked who in their firm had worked on the three project examples included in their proposals. The answers made it clear to the City that the current staff at P&D Associates did not work on the three example projects.
- Tom and Ann were very upset that their work was used as an example in their former firm's proposal.



Scenario 4: Discussion

What should the City do?

- *Ask P&D why the examples were used*
- *Ask FBC why they used the examples since they had been created by P&D*
- *Confirm that there are people on staff of P&D who are able to do the same type of work*

What should Tom and Ann do?

- *Give the City details of the work samples showing they were singularly responsible*
- *Contact the Ethics Officer for advice*
- *File an ethics charge with AICP*



Bonus Scenario: On the Other Side of the Table

- Tom is a local AICP planning consultant working for the developer of the big box store. Based on earlier work, he is aware of some site contamination caused by a previous owner.
- He knows that the previous owner (a client) would not want the contamination disclosed and feels bound to confidentiality. But he also knows there are public health implications depending on how the site is developed.
- What are his responsibilities under the AICP Code of Ethics?