



The
**Ethical
Planning
Practitioner**

Jerry Weitz, FAICP

The Ethical Planning Practitioner

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Jerry Weitz, PhD, FAICP

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- Principal, Jerry Weitz & Associates, Inc., Planning & Development Consultants, since May 2001
- Ph.D. Urban Studies, Portland State University; MCP, Georgia Institute of Technology; BA, Emory Univ.
- Author of book, *The Ethical Planning Practitioner* (Planners Press, 2015)
- Co-author (with Ed Jepson: *Fundamentals of Plan Making: Methods and Techniques* (Routledge 2016)
- Editor, AICP's *Practicing Planner* (2001-2014)
- Associate Professor & Director, planning program, East Carolina University, 2010 - 2015

Graham Billingsley, FAICP

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- Partner, Orion Planning + Design, Boulder, CO
- Master of Landscape Architecture, North Carolina State University; Bachelor of Urban Planning, University of Cincinnati
- Formerly, Director of the Boulder County (CO) Land Use Department
- Served as President, American Institute of Certified Planners and on AICP Ethics Committee
- Co-author, *RLUIPA Reader: Religious Land Uses, Zoning, and the Courts*

Dwight Merriam, Esq., FAICP

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- UMass BA (cum laude), UNC MRP, and Yale JD
- Founder of land use group in 1978 at the law firm of Robinson & Cole LLP
- Fellow of the Connecticut Bar Foundation
- Named to the Connecticut “Super Lawyer” list in land use law (since 2006)
- Has taught land use law at UConn Law School, Vermont Law School, and Quinnipiac Law School
- Past President of AICP; former director of APA

Dwight Merriam (cont'd)

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- Past Chair of the American Bar Association Section of State and Local Government Law
- Publications: over 200 articles and eleven books
- Lead author of the leading casebook in his field, *Planning and Control of Land Development*, and co-editor of the leading treatise in the field, *Rathkopf's The Law of Planning and Zoning* 4th.
- Navy Captain: Seven years on active duty in the Navy as a Surface Warfare Officer, including three tours in Vietnam, and 24 more years in the reserves

Evolution of Session and Book

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- 2012 APA, Los Angeles: “Ethical Challenges for Planning Consultants” (Weitz with Polly Carolin, FAICP and K.K. Gerhart-Fritz, AICP, organized by Deborah Myerson, AICP)
- 2013 APA, Chicago, “The Ethical Planning Practitioner” (Weitz and Billingsley)
- Review/revision period for book (Billingsley)
- Book published 2015 and made available Feb. 2016
- 2016 Conversation About Ethics (Weitz and Merriam): bonus video and 1.5 CM ethics credit when you buy the book through APA
- Book signing event immediately following this session (APA Bookstore)

Highlights: Weitz-Merriam Conversation

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- Credit: Carolyn Torma & Ben Leitschuh (APA)
- Discusses three situations contributed by Dwight
- Procedural due process and ethical entanglements
- One of the scenarios from the book is examined
- Is there a “common law” of ethics? Golden rule, light of day test
- Treatment of group homes, code definitions of family, federal-state law conflicts re: marijuana use
- “Extra code” and limited guidance of AICP Code
- Need to get out in front of ethical situations

Book Contents Overview

- AICP Code of Ethics and Professional Conduct (Revised October 5, 2009) included in full as Appendix A
- Quick reference guide to Section A (statement of aspirational principles) and Section B (rules of conduct) of the AICP Code of Ethics
- 76 scenarios (several contributed by prior session participants in 2012 and 2013); nearly all are based on real-life situations; some are contrived; others drawn from the literature on planning ethics

Book Overview (cont'd)

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- Format of Scenarios: Scenario, commentary and box citing relevant AICP Code Provisions
- Organization of scenarios: None (they defy organization) but see index of scenarios by Section A and by Section B
- Interpretation and Conclusions traits of the ethical planner (raise the bar)
- Appendix B: State Ethics Laws Applicable to Local Government Employees
- Target audience: individual and also for ethics session organizers (how to train)
- Well indexed (in addition to scenario indexes) (handbook)

Objectives of Session

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- Introduce the book, *The Ethical Planning Practitioner*, and share selected lessons
- Understand the standards of ethical behavior according to the AICPA Code of Ethics and Professional Conduct (aspirations vs. rules)
- Consider specific contexts and situations of planning practice that raise ethical issues and concerns and learn how planners might respond
- Develop reasoning and reflection skills that can be applied in everyday situations

Session Format

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- Caveats before we begin
- Situations evoking ethical principles
- Introduce scenarios, identify applicable code sections, comments and discussion by Billingsley, Merriam, and Weitz
- Responses to questions and/or scenarios submitted by audience (card provided; write legibly!)
- Conclusions regarding ethical planning practice

Caveats Before We Begin...

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- Ethical situations are rarely “cut and dry” and often contain a high level of nuance
- The AICPA Code of Ethics helps certified planners negotiate the ethical and moral dilemmas they sometimes face
- “Principles to Which We Aspire” (Section A of the code) are not technically enforceable but must be considered (“strive to act in accordance” with them)
- “Rules of Conduct” (Section B) are enforceable

Caveats Before We Begin...

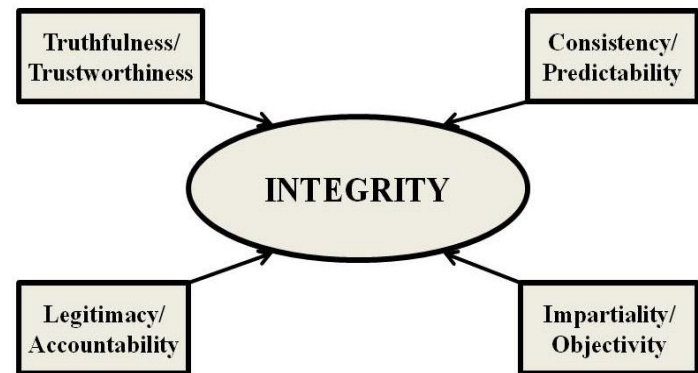
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- Conclusions, suggestions, and recommendations presented cannot be considered definitive on the subject of planning ethics
- Informal and formal advice is available from the ethics officer

Selected Situations Involving Ethics

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- Conflicts of interest and perceptions thereof
- Personal or financial gain
- Social justice / needs of the disadvantaged
- Interrelatedness and long-range consequences of decisions
- Defining “public interest”
- Professional integrity



Four Cornerstones of Integrity

AICP Code Principles For Quick Reference

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Principle (paraphrased)	Principle (paraphrased)
<u>1. Responsibility to the Public</u>	2.c. Avoid appearance of conflict of interest
1.a. Consider rights of others	<u>3. Responsibility to Profession/Colleagues</u>
1.b. Concern for long range consequences	3.a. Enhance professional integrity
1.c. Attend to interrelatedness of decisions	3.b. Educate public on planning issues
1.d. Provide information to all affected	3.c. Treat other professionals fairly
1.e. Participation – meaningful impact	3.d. Share experience and research
1.f. Social justice – plan for disadvantaged	3.e. Apply customary solutions w/ caution
1.g. Excellent design; preserve heritage	3.f. Contribute to professional development
1.h. Deal fairly and evenhandedly	3.g. Underrepresented groups opportunity
<u>2. Responsibility to Clients/Employers</u>	3.h. Enhance education and training
2.a. Exercise independent judgment	3.i. Examine/analyze ethical issues
2.b. Accept client decision unless illegal...	3j. Contribute to those lacking resources

AICP Code Rules Quick Reference Page

Rule of Conduct	Rule of Conduct
1. Inaccurate info. — untruthfulness	14. Official power used for advantage
2. Illegal or unethical conduct	15. Work beyond prof. competence
3. Change of public position on an issue	16. Promptness of work required
4. Outside employment (moonlighting)	17. Misuse of others' work
5. Acceptance of gifts or advantage	18. Pressure: unsubstantiated findings
6. Personal or financial gain	19. Conceal interest / fail to disclose
7. Breach of confidentiality	20. Unlawful discrimination: people
8. Private communication (public)	21. Cooperation in AICP investigation
9. Private communication (other)	22. Retaliation for misconduct charge
10. Misrepresent others' qualifications	23. Threat to file charge (advantage)
11. Solicitation via false claims, duress	24. No frivolous ethics charge
12. Misstatement of one's qualifications	25. Deliberate, wrongful act
13. Influence via improper means	26. Notification of "serious crime"

County Jail in City Center

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You are a county planning director, and the county you work for is pushing to build a new jail in a mostly industrial area of a central city within your county. You are friends with the planners in the city, who have copied you on their detailed report opposing the jail project. On a weekly basis, you read the local newspaper, which has reported that the city is opposed to the county placing a new jail there. You get called into a meeting with the county sheriff, chair of the board of county commissioners, and the county administrator.

County Jail in City Center

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Although they don't need any authority from the city to site the jail in the proposed location, in an effort to counter the city's report they ask that your office prepare a site selection study demonstrating community need and also showing the appropriateness of the jail at the proposed location. You politely indicate that you don't support the jail project, as it is counter to numerous planning goals in the city's comprehensive plan and redevelopment plan.

County Jail in City Center

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The meeting ends, and the next day you learn from the assistant county administrator that the county has hired a private consultant to write the report desired by the county officials. In just a few more days, the newspaper reports that the county-financed private consultant has released a report supporting the jail location. You obtain and read the consultant's report, authored by an AICP certified planner. You think the report is terribly sloppy and inept.

County Jail in City Center

Further, you consider it unethical for an AICP planner to have written the report in such a short period of time. You strongly believe the consultant put the report together based exclusively on the county's desire to support the jail project, to the clear neglect of technical information that other planners would surely consider in drafting report recommendations. How do you handle this situation?

County Jail in City Center

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- Discussion
- Was there inaccurate information that constitutes a violation of Rule B.1?
- Was fast-track production a violation of Rule B.16?
- What weight is given to the principles, to the extent they are involved?

Relevant AICP Code Provisions

Principles to Which We Aspire

- 1.d. Provide information to all affected
- 2.a. Exercise independent judgment
- 2.b. Accept client decision unless illegal...
- 3.c. Treat other professionals fairly

Rules of Conduct

- 1. Inaccurate information—untruthfulness
- 16. Promptness of work required

Public Planner Connects With Development Community on LinkedIn

You are a planner employed by a county government, and you are assigned primarily to writing staff reports for rezoning proposals and reviewing site plans for land development permits. In the course of your work you have interacted with numerous other professionals. You are a member of LinkedIn (a professional network), which identifies you as a county planner, and you are interested in expanding your connections. Your connections are available for viewing by the public.

Public Planner Connects With Development Community on LinkedIn

You receive invitations to connect on LinkedIn from the managing partner of a real estate development firm, a land-use attorney who frequently represents rezoning applicants in the county, and a civil engineer for a firm that commonly prepares land development plans for property owners and developers in the county. You have worked with all of these professionals as county planner, so you accept them as connections. Are there any ethical implications or issues associated with accepting these invitations to connect? (Credit: P. Salkin)

Public Planner Connects With Development Community on LinkedIn

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- Discussion
- Consider potential for an appearance of a conflict of interest outside the narrow context of the literal wording of a given principle.
- Could a connection with someone on LinkedIn present opportunities for ethical mishaps (enables private communication)?

Relevant AICP Code Provisions

Principles to Which We Aspire

2.c. Avoid appearance of conflict of interest

Rules of Conduct

8. Private communication (public)
20. Unlawful discrimination

Politically Influenced Population Projections 2

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You are the planner in charge of producing a county's comprehensive plan, including population projections. You supplied a draft set of population projections showing that the county will begin losing population at the end of the decade and will continue to lose significant population during the 20-year planning horizon. After the meeting of the comprehensive plan steering committee, the executive director of the chamber of commerce pulls you aside and

Politically Influenced Population Projections 2

privately scolds you for not recognizing the adverse repercussions on future economic development that come from publishing negative population projections, even in draft form. The executive director intimates that he will bring pressure down on you through elected officials and the county manager if the projections are not changed to show relatively stable population growth or only a modest decrease in population. How do you respond?

Politically Influenced Population Projections 2

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- Discussion
- Does timing matter?
- “Hold fast” or “back down”?

Relevant AICP Code Provisions

Principles to Which We Aspire

- 1.d. Provide information to all affected
- 2.a. Exercise independent judgment

Relevant AICP Code Provisions

Principles to Which We Aspire

- 2.a. Exercise independent judgment
- 2.b. Accept client decision unless illegal . . .

Rules of Conduct

1. Inaccurate information—untruthfulness
9. Private communication (other)
19. Concealment of interest/failure to disclose

Planner Posts Statement on Social Media

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You are a planner employed by a metropolitan planning organization (MPO). A new four-lane, divided highway on the fringe of the region has just been formally added by the MPO to its transportation improvement program, to be designed and constructed in future years. The local newspaper recently published a story about the MPO's decision to pursue the highway project. The people interviewed in the story debated the merits and liabilities of the project.

Planner Posts Statement on Social Media

The public became more interested in the project, and the debate and decision on the highway project prompted you to post a comment about the highway on your Facebook (or other social media) page. Your posted comment was: “If constructed, the highway project will eventually lead to suburban sprawl, contrary to the regional growth management plan.” Are there ethical issues associated with posting this comment on social media?

Planner Posts Statement on Social Media

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- Comments
- Is this a “planning issue” for purposes of the code?
- Must you accept the MPO’s decision, or is non-acceptance appropriate?
- Does it depend on your own perception of the “public interest”?
- Should interest of MPO be disclosed? (B.19)?

Relevant AICP Code Provisions

Principles to Which We Aspire

- 1.b. Concern for long-range consequences
- 1.c. Attend to interrelatedness of decisions
- 1.d. Provide information to all affected
- 1.g. Excellent design; preserve heritage
- 2.b. Accept client decision unless illegal . . .
- 3.b. Educate public on planning issues
- 3.d. Share experience and research

Relevant Rules of Conduct

- 19. Concealment of interest/
failure to disclose

Information Leaked Regarding Plans for Parking Lot Downtown

31

You are an AICP member and the director of a downtown development authority in a medium-sized town. Members of the authority's board have for some time wanted to increase parking availability in the downtown, and the downtown plan calls for addressing future parking needs but is not specific as to how that goal will be accomplished. You are aware that the downtown abuts a low-income minority neighborhood that is opposed to expansion of the downtown. The authority's board met in closed session to consider purchasing real estate at the edge

Information Leaked Regarding Plans for Parking Lot Downtown

of downtown and the minority neighborhood. The information is confidential because it involves real estate matters, and the board, by law, is specifically authorized to meet in closed sessions to discuss real estate. You were at the meeting, at which you learned that the board wants to purchase an available site and construct a four-story parking deck. You shared knowledge of the board's intent with a close friend, who is a minority. In turn, your friend leaked to the press the authority's intent to purchase the property and construct the parking deck.

Information Leaked Regarding Plans for Parking Lot Downtown

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What are the ethical implications, and what do you now do as downtown development authority director?

Information Leaked Regarding Plans for Parking Lot Downtown

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- Discussion
- Examine lengthy rule of conduct #7 carefully
- Are you required by rule #1 to provide info. on planning issues?
- Is there a concealment of interests in violation of rule #19?

Relevant AICP Code Provisions

Principles to Which We Aspire

- 1.d. Provide information to all affected
- 1.e. Participation – meaningful impact
- 1.f. Social justice – plan for disadvantaged
- 1.g. Excellent design; preserve heritage
- 1.h. Deal fairly and evenhandedly
- 2.a. Exercise independent judgment

Rules of Conduct

- 1. Inaccurate information – untruthfulness
- 7. Breach of confidentiality
- 19. Concealment of interest/failure to disclose

Consultant Without Prior Experience Pursues Work on Fiscal Impact Study

A three-person consulting firm is struggling due to the economy and, as a result, is pursuing potential consulting projects on the margins of, or outside, its stated and documented specialties. The firm does not have any experience completing fiscal impact studies, but in preparing a proposal for work, the firm describes its work on other studies in a way that claims it has experience in fiscal impact analysis. Is this an ethical problem?

Consultant Without Prior Experience Pursues Work on Fiscal Impact Study

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- Discussion
- Does this constitute misleading claims and/or misstatement of qualifications in violation of Rules #11 and #12?
- If work is won and completed by the consultant, is it a violation of Rule #15?

Relevant AICP Code Provisions

Rules of Conduct

11. Solicitation via false claims; duress
12. Misstatement of one's qualifications
15. Work beyond professional competence

Scenarios/Questions from Audience

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- Participants have been asked to submit questions or ethical situations on index card
- We select and discuss a few of these within time constraints
- Those not answered will be retained and considered for future sessions

AICP Code Principles (Again)

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Conclusions: Ethical Practice

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- All planners must care about ethics!
- Key lesson: go systematically through the rules and aspirational principles of the code, determining how (if) they apply
- Ethics requires detailed and time-consuming consideration
- Interpret rules of conduct broadly, beyond the strict situational constraints the code articulates (the book provides some suggestions for interpretation)

Conclusions: Ethical Practice

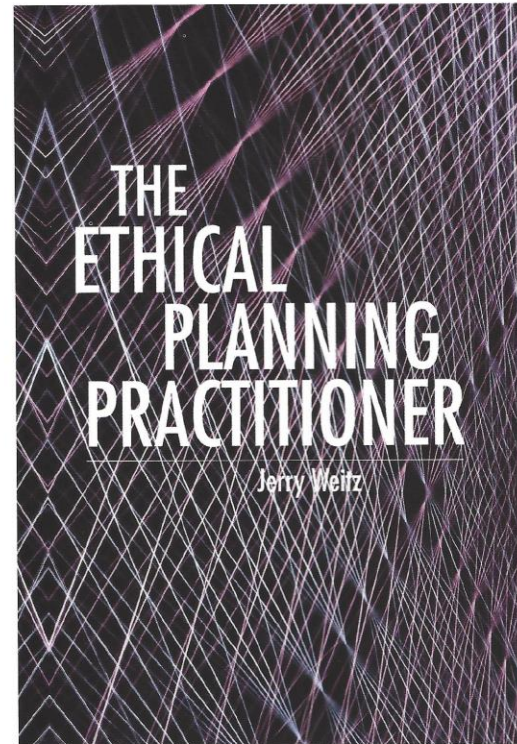
41

- The AICP Code of Ethics provides relatively little guidance on what to do when ethical principles of the code conflict with one another. Planners must compensate for that by superimposing a hierarchy of values (e.g., law, justice, accountability to the public interest). A regulatory approach often suffices but avoid an “impoverished view” of ethics (credit: Howe 1994)
- Avoid “rationalizing” based on code’s strict dictates
- There may be no right or wrong answer, only shades of better or worse behavior

Adjourn

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- Reminder: Book signing immediately after this session at APA Bookstore
- Paperback and e-book
- Free 1.5 hour conversation about ethics (Weitz-Merriam) with book purchase through APA (CM Credits: Ethics)



The Ethical Planning Practitioner
Paperback and e-book
Jerry Weitz, FAICP
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Real-life answers to 76 ethical dilemmas

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