

## Stepping Down – Using the APA Ethical Principles

**From:** Jon Lockman  
**Sent:** Tuesday, June 10, 2003 10:41 AM  
**To:** 'Harry Kavouksorian'  
**Cc:** '[kavouk@adelphia.net](mailto:kavouk@adelphia.net)'  
**Subject:** RE: zone change

*Hi Harry,  
See my replies below...  
-jtl*

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-----Original Message-----

From: Harry Kavouksorian [<mailto:harry@vpfilms.com>]  
Sent: Tuesday, June 10, 2003 8:31 AM  
To: Jon Lockman  
Subject: zone change

Good Morning JT,

My name is Harry Kavouksorian I am a resident of Buxton and a member of the planning Board. I have 2 questions.

1. As a planning board member am I permitted to speak as a citizen at a public hearing as long as I do so from the guest podium and not from my seat on the board?

*This is always a tough question to answer. The first issue to think about is why you wish to speak as a citizen at the hearing, and why you can not speak in your role as a member. Typically this happens because as a board member, you have a conflict of interest. Either you have a direct or indirect "pecuniary" (financial) interest in the outcome, or you are such a well-known, outspoken opponent or supporter that you can not act without "bias." Or perhaps the applicant has a close relationship to you (i.e. he is a member of your family, or your wife's boss, etc.). If you are unsure as to whether or not you should step down because of a conflict of interest, the prudent step would be to*

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*disclose your potential conflict to the board. Then the Board can vote on whether or not you should be allowed to serve as a member on the case at hand, now that they know about your conflict. The definition of pecuniary interest is found in 30Asec2605 (attached). An excellent discussion of bias is found in the MMA Manual.*

*The one I see most frequently at meetings is when a Board member says, "I have a potential conflict of interest, because my property abuts the applicant's property in this case. However, I believe I can judge this case without bias." Then the Chairman asks for a motion and a vote, and usually the Board supports the members and agrees to allow the member to stay on the Board. This way the matter is disclosed and the Board is protected against someone accusing them later by saying, "Hey, that member's land was right next to the applicant's...something sneaky was going on...."*

*If you feel very strongly about a case, but you have no conflict of interest, you have a responsibility to review the case as a board member and shouldn't just step down because you would "feel more free" to be critical as a member of the public. Once you are on the Board, stepping down should only be done when you are required to by the conflict of interest statute, and not just because you are uncomfortable or wish to step down.*

*Once a Board member steps down, because of an obvious conflict that cannot be worked around and everyone agrees it is a conflict, (such as, the member is a real estate agent who will be selling the lots in the proposed subdivision application) the recommendation of the American Planning Association in its code of ethics for planning board members is for the recused member NOT to speak to the Board as a citizen.*

*The APA recommends that a recused Board member should leave the room entirely during discussions of the case for which he has recused himself, and definitely should not give testimony at a hearing on the case. Because the recused member has a collegial relationship with the other members, and the other members still sitting on the Board are aware of the recused member's feelings, the recused member can have an undue influence on the proceedings just by sitting there in the room.*

*It would be considered appropriate, however, for the recused member to have an agent present their testimony at a hearing (such as an attorney, real estate agent, family member, or friend).*

*After many years of attending meetings, I can say that I truly believe in the APA code of ethics for board members, and that meetings would be better if it was followed. However, this code is not in force unless it is adopted by your Board in its by-laws. The only rules about conflict of interest that would apply to your Board in Buxton, would be the State Statute on conflicts of interest (see attachment) and your Board's bylaws or any Buxton ordinances that control conflicts of interest. I am not familiar with what your town has adopted locally to control conflicts of interest, so you may wish to consult with your Town Clerk or a Selectman to see what your town requires or recommends. I have*

*copied the full APA ethics code for your information at the bottom of this email...the website is:*

<http://www.planning.org/ethics/index.htm>

2. I've heard you say on a couple of occasions that if a citizen petition zoning change is approved by voters there is state law that allows that election result to be overturned by the court. Can you tell me where I can find more information regarding that law?  
*I am not familiar with the situation you are asking about here...Could you please clarify by perhaps telling me what the story is behind what you are concerned about?*  
*Thanks, JT.*

You can send a reply to me here at work or my home [kavouk@adelphia.net](mailto:kavouk@adelphia.net)

Thank you for your time.

Harry Kavouksorian

American Planning Association

Ethical Principles in Planning

**(As Adopted May 1992)**

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

**The planning process must continuously pursue and faithfully serve the public interest.**

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

**Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.**

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker (see also Advisory Ruling "Conflicts of Interest When a Public Planner Has a Stake in Private Development")
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.

8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome (see also Advisory Ruling "Honesty in the Use of Information");
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations (see also Advisory "Sexual Harassment").

**APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.**

APA Members who are practicing planners:

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;
2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
4. Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities;
5. Accurately represent their qualifications to practice planning as well as their education and affiliations;
6. Accurately represent the qualifications, views, and findings of colleagues;
7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
8. Share the results of experience and research which contribute to the body of planning knowledge;

9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;
11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
12. Systematically and critically analyze ethical issues in the practice of planning. (See also Advisory Ruling "Outside Employment or Moonlighting").

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