

When the Big Box Retailer Arrives and Everything Goes Wrong

Ethics Case of the Year
2015-16



By: Ethics Committee

American Institute of Certified Planners

With Modifications by Carol D. Barrett, FAICP
which have neither be reviewed nor endorsed
by the AICP.

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 speak limited English and who are mostly employed in the service sectors and concentrated in ethnic neighborhoods. The City is facing a growing budget deficit.



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. Waverton is home to a regional hospital and affiliated medical school. Many are members of Preserve Waverton.
- Strong citizen demand for a robust planning program and a general concern about the city's image as a desirable place to live.

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 not being supportive of economic development and potential sales tax.

Equally strong criticism is coming from Preserve Waverton which is concerned about Projects that could impact single Family neighborhoods.



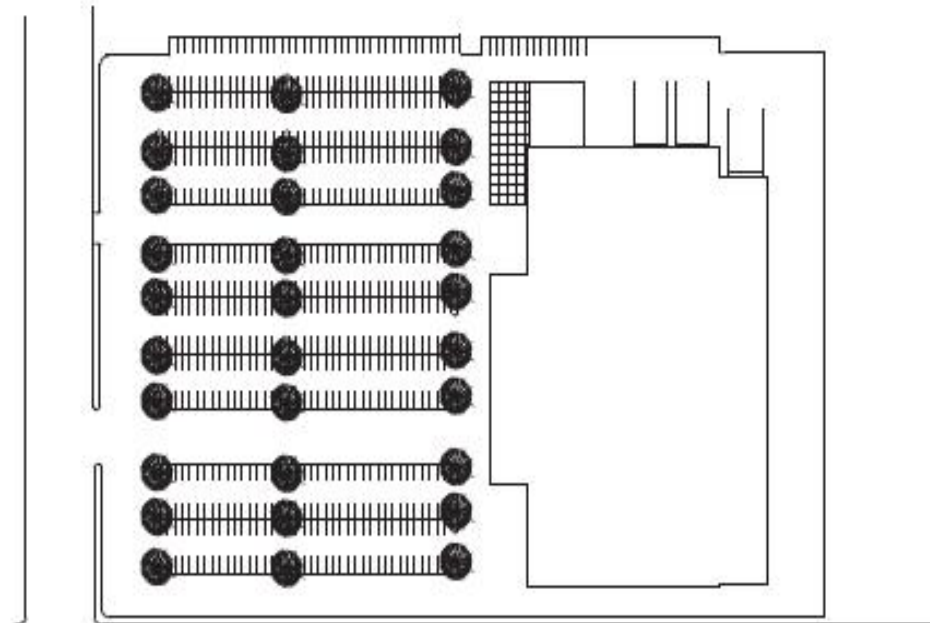
- **A major national retailer has applied** to construct a big box discount store. The planning staff has been working very hard to bring a stronger design perspective into the review process and has had some success. However, the Development Code (DC) does not include much in the way of specific design 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, although near a highway interchange, and has recently been contracted by the national chain for construction of a big box discount store with a full array of retail goods, including groceries and a pharmacy.



- **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 Backgrounds:

- **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.
- **Susan is Aaron's supervisor.** She is an AICP planner with 10 years of experience.
- **Bill is the Planning Director.** He is not a member of AICP and has been with the Department for 20 years.

Scenario 1: **Differences of Opinion and Supervision**

- 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 Development Code (DC) or the relevant adopted plans.

Watch and Form an Opinion

Susan meets with Aaron.

Scenario 1: The Code as It Frames the Work

- What are Aaron's obligations in developing his opinion? What professional practices should be observed?
- B.1. Timely, clear and accurate information.
- How should Susan approach this situation with Aaron? What should she do as she works with Aaron on his recommendation?
- B.18 Not coerce others to make findings not supported by the evidence.

Scenario 1: Discussion

- *How did Susan approach Aaron initially?*
- *Tools*
- *Listen*
- *Balancing of interests*

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

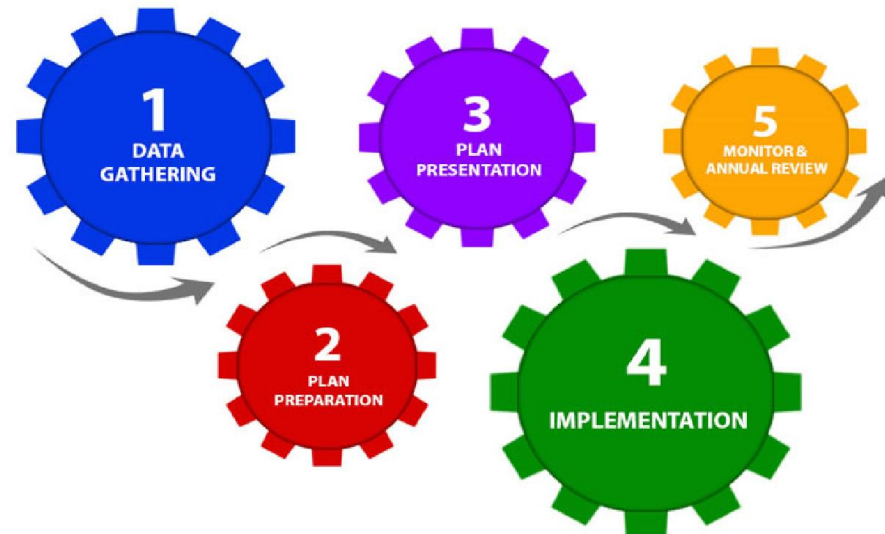
Signature.

Assumptions.

Data.

Additional Issues:

- *Politics always enters the discussion, but in the best possible cases through the policy adoption process.*
- *Somewhere in the case study we should be asking what does the community plan call for?*



Scenario 2: Under the Influence

- Aaron has a meeting set with the applicant to review his questions and concerns about the project. 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 still feels Aaron may be stretching the code requirements too far.

- She is surprised at the meeting that Aaron, who was previously very coherent in explaining things to her, now seems unable to form a coherent thought.
- Susan is forced to take over the meeting.
- After the meeting, Susan approaches Aaron and notices the distinct odor of alcohol.
- 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?

B. 25. Not commit a wrongful act that reflects adversely on our professional fitness.

- *Use of the City's Human Resources policies regarding policies about alcohol consumption during the work day.*
- *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 DC, sound planning principles, adopted plans, 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; including the fact that the Council member opposing the store is a strong supporter of the City Manager.

Bill supports Susan's recommendation. 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?

B. 10 Not misrepresent the findings of other professionals.

B. 18 Not coerce others to make findings not supported by the facts.

- 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 DC. 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 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 Apple Associates, in practice for about 20 years, received the RFP. Tom was an important partner in Apple 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 Apple. The principals of Apple, 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, Orange Associates. Orange Associates responds to the RFP, along with Apple 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 Apple 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?

- B. 12. We shall not misstate our experience or any other facts which are relevant to our professional qualifications.
- B. 15. We shall not accept work beyond our professional competence.
- B. 17. We shall not use the product of others' work to seek professional recognition.

What should Tom and Ann do?



Scenario 5: 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?

Scenario 5: Discussion

B. 7 Not use to our advantage or that of a subsequent client information that the client has requested be held inviolate.

Except when required to prevent a substantial injury to the public.