

# Caution: Conflicts of Interest

C. Gregory Dale, AICP

Imagine the lead story in your local newspaper reading “the recent upheaval in the town planning department can be linked to one former planning commissioner whom critics say guided town zoning laws in a way that benefited at least one of his development proposals.”

Just such an article appeared recently in a New England newspaper. In spite of repeated denials by the commissioner in question, the issue set off a chain reaction that involved the resignation of the planning director, the “firing” of the entire planning commission, and an editorial criticizing the performance of the planning commission. The incident had to do with a commissioner participating in discussions over zoning text amendments that would have removed a setback requirement. This was perceived as clearing the way for him to develop his property with a hotel.

Interestingly, all involved agreed that the planning commissioner did not act illegally.

Conflicts of interest, and particularly the more common issue of *perceived* conflicts of interest, continue to be one of the thorniest problems facing local planning commissions. Unlike jurors who are selected on the basis of *lack* of knowledge about the subject, planning commission members are often selected based upon *having* knowledge of the community. This often means that commissioners are involved in local planning and development issues in one form or another.

This issue is particularly acute when a planning board member has an interest in developable real estate. While none of us like to think that we have given up some right by agreeing to serve on the planning board, the most sensitive ethical area involves a perception that a planning board member is acting in a way to advance his own interests in private property development.

As a planning commissioner you are a public official. As such your actions are sure to be under scrutiny by members of the public and by your local media. The slightest stumble in how you deal with ethical issues has the potential to flare up into controversy.

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## When in Doubt, Disclose

If you believe that you have a conflict of interest or a situation that could create the impression of a conflict of interest, the safest route is to disclose the nature of your concern to the planning commission. Be sure to make this disclosure before beginning discussion of the item.

## Let the Commission Decide

Rather than an individual planning commissioner making a unilateral determination on conflict questions, consider establishing a procedure whereby a commissioner may request permission to be excused, or request permission to participate, and let the commission make the determination. This has several effects. First, it removes the burden from the individual. Second, it allows for the possibility that the commission may disagree with the individual commissioner's determination.

## Err on the Side of Caution

When faced with a potential conflict, readily agree that you are willing to step aside if the commission so desires. Any insistence on your part to stay involved

will only create the impression that you have a reason “to stay involved.”

## Keep it Simple: Leave the Room

Once a determination has been made that there is a conflict or potential conflict the simplest course of action is for that commissioner to simply leave the room.<sup>1</sup> Out of sight, out of mind. Continuing to sit silently with the commission or even moving to the audience is not good enough. Leave the room. (You can return later if there are other items on your meeting agenda). If the matter that creates a conflict has to do with development of your own property, try to have a representative appear on your behalf.

## An Ounce of Prevention ...

As with many things in life, it makes sense to *plan* for contingencies. Take the time to become familiar with whatever legal restrictions involving conflicts of interest apply in your state. It may benefit your full commission to schedule an informal meeting or workshop with your city or county attorney to discuss hypothetical conflict of interest (and other ethical) concerns and how to deal with them. ♦

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<sup>1</sup> One occasionally used exception to disqualification for conflict of interest occurs when a planning board would otherwise lack the required number of members to take action on the matter before it. In such a situation, it may be acceptable for those members to participate (after they disclose the nature of their actual or perceived conflict) allowing the commission to take action. It makes sense to discuss how your commission will handle this kind of situation before it occurs