



Ethical Dilemmas and Decision Making
Orientation Training for Local Government Planning and Zoning Officials and Staff

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Background

The Municipal Association of SC, the SC Chapter of the American Planning Association and SC Association of Regional Councils recognize the importance of training local government planning commissions, boards of zoning appeals and architectural review, as well as staff who directly or indirectly work with planning officials. As partners, all three associations are pleased to provide training for these officials and staff members as set forth by the SC Planning Education Advisory Committee in Article 9 of the SC Code of Laws. The partners developed a six-hour curriculum provided in one-hour segments on DVD. MASC is currently developing curriculum to satisfy the three hours of continuing education requirements, with three hours of training available in October 2006 and an additional three hours available in November 2006. MASC plans to build a video library on planning and zoning-related topics so each municipality may choose a training video that fits the need of their town.

Description

This session introduces public officials to common types of ethical dilemmas and decision making. It's designed to help officials recognize how ethical dilemmas can arise whenever discretion is involved in administrative decision making, identify specific types of common dilemmas, and learn how common ethical principles can be used to resolve these dilemmas.

Outline

Introduction to Ethics

- Codified ethics
- Value-based ethics

Ethical Dilemmas

- Common ethical dilemmas
- Planning and zoning examples

Ethical Decision Making

- Common principles for resolving ethical dilemmas
- Applying resolution principles to planning and zoning

Examples of Administrative Discretion in Planning and Zoning

- Administrative Review
- Variances
- Special Exceptions
- Appeals to the Board

Common Ethical Dilemmas

1. **Truth vs. Loyalty:** *personal honesty and integrity vs. promise-keeping and obligations to others*
2. **Individual vs. Community:** *interests of the one or few weighed against those of the more or many*
3. **Short-Term vs. Long-Term:** *real concerns of the present weighed against investment for the future*
4. **Justice vs. Mercy:** *fair and equal application of the rules vs. compassion for the individual*

Common Ethical Dilemmas Applied to Planning and Zoning

Truth vs. Loyalty	Long-Term vs. Short-Term	Individual vs. Community	Justice vs. Mercy
<ul style="list-style-type: none"> • Zoning Board Appeals • Freedom of Information Act 	<ul style="list-style-type: none"> • Comprehensive Planning • Historical Preservation • Cluster Development • Overlay Zone 	<ul style="list-style-type: none"> • Takings/Eminent Domain • Religious Uses of Land • Homes for Handicapped Use • Sexually Oriented Businesses • Modular, Manufactured, and Mobile Homes • Variances • Landscaping and Aesthetics 	<ul style="list-style-type: none"> • Nonconforming Uses • Pending Ordinance Doctrine/Moratorium • Spot Zoning • Variances • Special Exceptions

Common Principles for Resolving Ethical Dilemmas

1. Ends or Consequences:
 - Concerned with ends, results, consequences
 - Staple of legislation and public policy analysis, e.g., cost-benefit analysis
 - Asks what is greatest good for the greatest number, the greatest balance of benefits over harms?
2. Rules or Means:
 - Ends can't always be known, therefore focus on means, e.g., duty, obligations, rules

- Good rules or means lead to good outcomes
 - Asks how would you want everyone else to act if they were faced with this very same situation?
3. Care or Compassion
- Focus on the good of the actor, e.g., virtue, character
 - Variation on the Golden Rule
 - Asks how would you wish to be treated if you were the person or persons most affected by this decision?

Common Resolution Principles Applied to Planning and Zoning		
Ends or Consequences	Rules or Means	Care or Compassion
<ul style="list-style-type: none"> • Performance Zoning • Land Development Regulations, e.g., harmonious development, dedication or reservation of land, flood plain protection • Street Naming 	<ul style="list-style-type: none"> • Fair Housing Act • Conditional use • Planned Development District • Landscaping and Aesthetics • Appeals to the Board 	<ul style="list-style-type: none"> • Cluster Development • Overlay Zone

Session Outline	
1. What is this part of our program about?	It's about two things. First, what is ethics and how do we approach ethics for public officials? And second, what are ethical dilemmas and what tools do we have for resolving them?
2. What is ethics? What do we mean by this term?	The term "ethics" can mean different things, depending upon the context within which we use it. Most commonly, ethics refers to: <ul style="list-style-type: none"> • A discipline dealing with moral duty and obligation • A theory, system, or guiding philosophy of moral principles or values • The study of moral choices • A set of rules, standards, or principles governing behavior • The conscious reflection on our values and moral beliefs to guide our choices and behavior
3. How do we apply ethics to public officials?	We apply ethics to public officials in two general ways. The first, and most common, is codified or legal ethics. The second way is often referred to as value-based ethics.
4. What is codified ethics?	Codified ethics are objective ethics. They are external to us. We can put them down on paper, see them, and pass them around. They generally take the form of laws, codes, rules, and standards of conduct or behavior. Most public officials are familiar with this form of ethics. Codified ethics commonly addresses issues such as:

- Revolving doors
- Nepotism
- Moonlighting
- Gifts
- Honoraria
- Conflicts of interest
- Food and beverages
- Hospitality at outside meetings
- Lobbyist disclosure
- Economic interests
- Bribery
- Kickbacks
- Prohibited practices
- Disclosure of confidential information
- Campaign finance
- Financial disclosure
- Vested trust

Training for codified ethics usually involves informing officials about prohibitions - what they can and cannot do – and about sanctions – what will happen to them if they do what they were told not to do.

Codified ethics also addresses the consequences of violating any of these prohibitions, and how such violations will be handled.

This commonly includes:

- Procedures
- Dispositions
- Complaints
- Hearings
- Subpoenas
- Enforcement
- Whistle-blower protections
- Recovery of financial gains
- Administrative remedies
- Penalties
- Sanctions
- Training

A good example is the South Carolina Ethics Reform Act. It's 54 pages long, and addresses issues such as using public office for financial gain, disclosure of conflicts of interest, accepting things of value, reporting gifts, being involved in public decisions affecting personal economic interests, prohibitions on accepting compensation for public speaking engagements, reimbursing expenses, receiving money for official advice or assistance,

	<p>employment of family members, lobbying activities, use of government personnel or facilities, and campaign expenditures.</p>
<p>5. How might public officials use codified ethics in making decisions?</p>	<p>Codified ethics tend to be either very general, so that it's difficult to apply them to specific situations. Or they tend to be so precise that they apply only to specific cases and not to related situations. So unless a behavior is explicitly prohibited, it can be difficult to apply codified ethics to a specific decision. Here's a scenario that illustrates this very clearly:</p> <p>The Town of Sandy Isle is having a \$17 million bond referendum for beach nourishment. Two of the town's five planning board members actively support the referendum, and three planning board members say they want to give the citizens the facts and let the people decide.</p> <p>A citizens' group for beach nourishment is having an informational session at town hall, not sponsored by the town, to try to convince citizens to vote for beach nourishment. The citizens' group has asked the planning board chair to moderate this session, but since the session is being held to advocate for beach nourishment, and a majority of the board wants to take a neutral stance, the planning board chair has declined to participate.</p> <p>The citizens' group for beach nourishment has also asked the zoning administrator to attend this session to answer questions and provide factual information. The zoning administrator feels an obligation to present the facts, whether to the "for group" or the "opposed group," and is willing to appear at a rally sponsored by either group. The three neutral planning board members have not told the zoning administrator not to go, but it is quite clear from their comments that they would prefer that the zoning administrator not attend.</p> <p>The planning board chair has scheduled a meeting with the board this evening to discuss this situation. To help prepare for tonight's meeting, the planning board chair and zoning administrator have distributed copies of the International City and County Management Association's Code of Ethics. How might this code of ethics apply to this situation, and what does this case suggest about how codified ethics apply to situations like this one?</p> <p>When the planning board members sit down to review the code of ethics, they make an interesting discovery. The code supports those board members who do not want the administrator to attend, for example: ICMA #7 - Refrain from all political activities which undermine public confidence in professional administrators. But the code also supports those board members who do want the</p>

	<p>administrator to attend, for example: ICMA #9 - Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers.</p> <p>What do they do now? This ethics code doesn't tell the officials what to do, because it's impossible to write a code that covers every possible public decision. It's in situations like this one, where the officials involved can exercise discretion in their decision making, that value-based ethics can be helpful.</p>
<p>6. What is value-based ethics?</p>	<p>Value-based ethics is subjective. It's based on things that reside within us as individuals, professionals, public officials, and as human beings. For example, values, morality and moral authority, virtue, character, duty, obligation, ethical dilemmas, resolution principles, decision making, and reflection.</p>
<p>7. What are the advantages of each approach to ethics? Is one better than the other, or do we need both?</p>	<p>Codified ethics are important because they say to both public officials and citizens that we have standards, and that these standards matter. However, they often represent minimal standards for public behavior. So on one hand, most public officials would agree that ethics laws and codes should be enforced, and that unethical conduct should be punished. On the other hand, I think that many officials would also say that while codified ethics are necessary, they are not sufficient. Here are a couple of quotes from public officials that illustrate this:</p> <ul style="list-style-type: none"> • <i>“Strict enforcement and tougher laws are red herrings that presuppose unethical behavior.”</i> • <i>“Tough laws will not make people more ethical. Leadership must come from the bodies themselves, opening up the process, changing old habits, and making ethics a priority for the members who have not already made it one.”</i> <p>Codified ethics imply that we have these laws or rules because people have been behaving in ways we consider improper, and that we expect that some people will continue to do so. Codified ethics laws also tend to be reactive rather than proactive, which is why we so often see states passing or reforming ethics laws in response to something that has already happened.</p> <p>Generally speaking, codified ethics tend to be more effective at making behavior consistent across individuals, groups or organizations, but less effective at encouraging judgment within individuals, groups, or organizations.</p> <p>Value-based ethics offers us an opportunity to talk about how we should behave when faced with situations that are not covered by ethics laws or codes, or situations in which there may be more than one course of action that we might consider to be right.</p>

	<p>Generally speaking, value-based ethics are more effective at encouraging responsible judgment by individuals, groups, and organizations, but behavior may vary from individual to individual, from group to group, and from organization to organization.</p> <p>Codified ethics are more black-and-white, while value-based ethics deal with more gray. But it's not either-or, as individuals using value-based ethics can see some issues as very black-and-white, while professionals familiar with codified ethics will acknowledge that laws and codes include much gray.</p>
<p>8. What do planning and zoning officials need to know in order to use value-based ethics?</p>	<p>There are two key pieces that are particularly helpful in understanding and using value-based ethics. The first is ethical dilemmas, and the second is how we resolve those dilemmas.</p> <p>Ethical dilemmas arise when public officials are free to exercise discretion in their decision making, as we discussed earlier. Discretion implies having a choice, and ethical dilemmas involve choices about “right vs. right” decisions. If officials have no discretion in a particular situation, or if the choice they face is between right and wrong, then there's no dilemma.</p>
<p>9. What kinds of ethical dilemmas are planning and zoning officials likely to face?</p>	<p>Dilemmas can take many forms, but there are some that are so common we can name them because they arise so often and in so many different situations and settings. Four types of dilemmas in particular are so common that most people have probably experienced at some time in their personal or professional lives. The Comprehensive Planning Guide for Local Governments, produced by the municipal association, provides a great starting point. Let me use a few examples.</p> <p>The first common dilemma is truth vs. loyalty, which pits personal honesty and integrity against promise-keeping and obligations to others.</p> <ul style="list-style-type: none"> • For example, in a zoning board appeal, staff must provide all necessary information for the appeal. It's right to be loyal to one's supervisor, organization, and to the municipality itself. It's also right to be truthful by making all necessary information available. The term “necessary” implies discretion, so clearly judgment comes into play as the staff member must examine each piece of information and decide whether it is necessary or not. <p>A second common dilemma is individual vs. community, which pits the interests of the one or few weighed against the interests of the more or many. This is probably the most common dilemma in zoning and planning and involves a wide range of issues, including takings and eminent domain, religious uses of land, zoning homes for handicapped use, sexually oriented businesses,</p>

and modular, manufactured, and mobile homes.

Because these tend to be issues that arouse a great deal of passion and conflict, it's important that planning and zoning officials understand the dilemma these issues represent. The ethical question for planning and zoning officials in instances like these is how should the interests of the few be weighed against the interests of the many? We recognize that being a majority is not the same as being right, which is why we don't use majority opinion to make all our decisions. In terms of planning and zoning, we use the tool of a variance, so that we can protect individual or minority interests when that seems right.

The third common dilemma is short-term vs. long-term, which pits the real concerns of the present weighed against investment for the future.

- The Comprehensive Planning Guide recognizes this dilemma when it suggests that a community's comprehensive plan should include a vision statement about where the community wants to go, and long and short-range goals for achieving the vision (p. 10). As we saw earlier, long and short-term goals are not always compatible (e.g., economic recovery vs. sustainability).
- For example, preserving a wetlands area might be a long-term interest, while there may be immediate interest in developing some of the land. Some members of the community may oppose any development, while other members may support some degree of development. What weight should be given to these long and short-term interests? How might they be reconciled? In terms of zoning techniques, cluster development (permits development while preserving substantial open space) or overlay zones (imposes or relaxes requirements when there is a special public interest that does not coincide with current zone boundaries) might be used when long-term and short-term interests are in tension with each other.
- Historical preservation uses might also play out as long vs. short term dilemmas, as planning and zoning officials struggle with whether the land and property is more valuable because of what it once was and means to the community, or because of what it could become today or in the near future.

The fourth common dilemma is one of justice vs. mercy, which pits the fair and equal application of rules for everyone against

	<p>compassion for the individual and the merits of a particular situation or case. Several planning and zoning issues suggest this type of dilemma. For example, “nonconforming uses” allow uses that would not be permitted if they did not already exist. In approving nonconforming uses, we’re recognizing the merits of the individual situation (fairness, use prior to the ordinance, grandfathering, etc.) and choosing not to apply zoning rules across the board.</p> <p>Or consider the “pending ordinance doctrine,” which allows officials to refuse a particular land use that is currently allowable but would not be if the pending ordinance is enacted. Here we’re choosing justice over mercy, or the fair and equal application of the rules over the individual merits of a particular use.</p> <p>Another example might be “spot zoning,” which allows totally different uses for land parcels that may be adjacent or contiguous. In this case, we’re saying that just because most of a land area is zoned residential or commercial doesn’t mean that all of the land must be either residential or commercial. We’re acknowledging that there may be some merit in zoning some of the land differently. This situation could also be seen as an individual vs. community dilemma.</p> <p>Perhaps the clearest recognition of the justice vs. mercy dilemma can be found in “special exceptions.” Here the board of appeals has the exclusive power to permit special uses that constitute exceptions to existing zoning ordinances. Such an exception cannot be applied arbitrarily, but must be made in light of the merits of the particular case.</p>
<p>10. How can planning and zoning officials resolve dilemmas like these?</p>	<p>First, it’s important to understand that there is no one right answer. If there was, it would be specified in the comprehensive planning guide, and officials wouldn’t struggle with a decision. But when there’s more than one “right or good thing” involved, as there is in ethical dilemmas, officials can learn how to apply resolution principles to help them make good decisions.</p> <p>Like the common dilemmas we just discussed, there are also some common resolution principles. We can use these principles to help identify the right issues, consider the implications of our choices, and help us reach greater agreement when we must make collective decisions, like on an appeals board. There are three of these core principles, based on ends, rules, and care.</p> <p><i>Ends-based reasoning is concerned with the ends, results, and consequences of our decision.</i> We must ask what is the greatest good for the greatest number – the greatest balance of</p>

benefits over harms? Our decision is good if the end is good. For example, we might argue that approving a particular variance is a good decision because it increases the municipal tax base. Ends-based reasoning is very common in legislation and public policy, e.g., cost-benefit analysis. Using our variance example, proponents will point out the benefits, while opponents will emphasize the costs. We sometimes use the phrase “the ends justifies the means” to explain this form of reasoning.

Some examples of zoning provisions that address ends or consequences include:

- Performance Zoning – specifies minimum requirements or maximum effects of a land use, usually measurable, but not the use itself
- Land Development regulations that require harmonious development, dedication or reservation of land, or flood plain protection
- Street Naming – here our goals are to avoid duplication and confusion, and promote efficient delivery and location

Rules-based reasoning is concerned with how we make the decision, not its consequences. Rules-based reasoning argues that the ends can never really be known until long after we’ve made our decision, so therefore we can only guess as to the likely ends or consequences, and that this is very unreliable. So instead we should rely upon the means we use to make decisions, such as rules. Following good rules leads to good outcomes. The question we must ask is how would we want everyone else to act if they were faced with the same situation? Applied to zoning, we would argue that we can’t know the consequences of approving a particular variance, so therefore we’re better off relying on the existing rule. If the rule is good in the first place, then the variance is not, and relying on possible benefits to justify ignoring the rule is wrong. We sometimes use the expression, “Two wrongs don’t make a right,” to explain this type of reasoning.

Some examples of zoning provisions that address rules or means include:

- Fair Housing Act – the principles involved include equality, fairness, and nondiscrimination. The Act prohibits land use regulations and restrictive covenants that would violate these principles.
- Conditional Use – allows some flexibility, but maintains rules or restrictions to prevent adverse impact.
- Planned Development District – allows flexibility to improve mixed use or protect natural or open space, but requires specific uses, ordinance amendments, and proscribed

	<p>procedures.</p> <ul style="list-style-type: none"> Landscaping and Aesthetics – designed to protect the community as a whole against consequences of individual or specific land uses by requiring specific aesthetic and appearance provisions. <p>Care-based reasoning is the third resolution principle. “Treat others as you would have them treat you” is the guiding principle here. It is a variation on the Golden Rule that all of us have learned in some form. This principle is so common that a version of it can be found in each of the world’s great religions. Using our variance example again, we would ask ourselves how we would want the appeals board to treat us if we were the ones appearing before it. We would want the board to respond to the merits of our case, and not just to applying the existing rules to everyone. We might summarize this type of reasoning by saying, “One size doesn’t fit all.”</p> <p>An example of a zoning provision that addresses care or mercy is:</p> <ul style="list-style-type: none"> Cluster Development – gives flexibility to design a variety of neighborhoods with consideration of aesthetics, economy in street construction and utilities, parks and recreational uses, and a pattern which does not comply with traditional zoning regulations
<p>11. Which of these is best? How can planning and zoning officials decide which principle to use when faced with an ethical dilemma?</p>	<p>Each resolution principle has advantages and disadvantages. No one principle is best, and none of them apply equally well to all situations.</p> <p>End-based reasoning is fairly obvious to people and easy to explain, but it’s based on whatever works, and so therefore ignores potential moral questions, such as whether or not we should do something just because we can. It’s also easy to justify making a decision either way, which makes some people uncomfortable because there seems to be no principle involved.</p> <p>Rule-based reasoning is also very easy to explain. We just point to the rule, which usually is in written form. It’s black-and-white, and doesn’t have to be justified every time. It takes less time, applies to everyone and every situation, and is likely to arouse less disagreement and controversy. However, it can be seen as being arbitrary, cold, and uncaring. In addition, it doesn’t take into account the merits of a particular case, and the more that people consider those merits deserving, the more the rules will seem rigid, arbitrary, and inflexible.</p> <p>Care-based reasoning, on the other hand, is very flexible, but it can be too flexible for people who prefer to rely on rules and</p>

	<p>procedures, because the rule here seems to be to have no rule. It clearly is more caring, responds to people’s issues and concerns, and takes into account the merits of the individual case. However, it takes more time, can be seen as arbitrary or wishy-washy, and can be hard to explain because decisions may vary with the circumstances.</p> <p>What we have learned in studying how people resolve ethical dilemmas is that most people use all of these to some degree, but that this varies with the individual and with the situation.</p> <p>We’ve also learned that most of us seem to have a default decision making style, a preference, if you will, for one of these principles. Some of us focus on the consequences, and we’re the ones most likely to argue that rules are made to be broken. Some of us are rules-based, and we’re uncomfortable with any decision that doesn’t adhere to the prescribed procedure. In other words, what’s good for the goose is good for the gander. And some of us are care-based, meaning that we are more likely to think about how this situation might affect the person or persons involved, and how we would feel if we were in their shoes.</p> <p>Planning and zoning officials who are able to use these different principles rather than relying on just one will make better decisions when faced with tough choices. It might be helpful to keep in mind that if we were to find ourselves in traffic court, most of us would want a judge with lots of discretion, but that we probably want that same judge to apply the rules uniformly to everyone else.</p>
<p>12. What steps or process can planning and zoning officials use when they’re faced with dilemmas in land use decisions?</p>	<p>These principles cannot tell us what to do. But they can help us identify what’s important – what really matters - when we’re faced with a tough choice. We recognize that it’s good to uphold the interests of the community, which is why we have zoning rules. We also recognize that it’s good to uphold the interests of individuals, which is why we have zoning variances. The ethical question here is not which is right, but when should we uphold the rules and when should we not? This decision is difficult to make by ourselves. It becomes even more difficult when we must make it collectively with others, e.g., board members.</p> <p>Planning and zoning officials can use the following steps to help sort out ethical issues:</p> <ol style="list-style-type: none"> 1. Identify the “moral” issue – this is not an issue about right or wrong, but the issue that is central to our decision, the reason why our decision is important, why it matters. It could be an issue of fairness, or whose land use was established first, a past practice, or a commitment made by a municipality in the past.

	<ol style="list-style-type: none"> 2. Gather relevant facts – agree on what we know, and identify information we don't know that would be helpful to our decision – be careful about assuming we know things that we don't – sometimes we're convinced that we know the right answer even before we asked all the pertinent questions. When that happens we're likely to find it more difficult to accept new information and incorporate it into our discussions and decision making. 3. Determine our accountability – to whom or what are we obligated, and for what? We aren't likely to face very many ethical decisions that don't involve multiple and competing obligations. Clarifying these can help boards focus on what's most important. Who is most affected by this decision? Who should we hear from? How should those most affected participate in the decision making process? Hearing citizens and engaging them in the public process can go a long way to helping them accept a decision that might not be the one they wanted. 4. Apply resolution principles – apply each principle to help us see the issues and reflect on the choices we face – doing this won't tell us the "right" decision to make, or make our decision any easier, but it will help us be confident that we have considered every thing we should consider. 5. Reframe as "trilemma" – a "di-lemma" suggests two choices, an either-or decision – applying the resolution principles can help us come up with a third solution, one that honors each of the issues reflected in our dilemma, and can result in a better decision and one that garners greater support. For example, rather than approving or disapproving a controversial variance, is there a way we can address the reasons why the variance was requested and still satisfy the larger community concerns?
<p>13. What can officials do to help themselves and their boards strengthen their capacity to resolve dilemmas and make</p>	<p>They can do several things. I would recommend at least these two. First, create and adopt a code of ethics, and use it not just to sanction unethical behavior after it occurs, but also to help foster conversations about how to live up to it.</p> <p>Second, create an ongoing and active ethics forum for all officials and staff. This is not a review board that examines ethical issues</p>

<p>good decisions?</p>	<p>after they arise. It's a true forum in which officials and staff can discuss the code of ethics, the ethical pressures and tensions they see and feel that make living up to the code challenging, and a forum in which officials and staff can discuss scenarios and how they would like to handle them before real dilemmas arise, and before they find themselves embroiled in an ethical scandal.</p> <p>We have found that talking about the kinds of dilemmas and ethical pressures officials and staff are likely to face can be very helpful when those dilemmas and pressures actually occur.</p>
<p>14. Any final advice for our audience?</p>	<p>Just this – when in doubt about your decision, you can test it in several simple but effective ways:</p> <ol style="list-style-type: none"> 1. Ask mom test 2. Smell test 3. Front page test - <i>If this action is held up to public scrutiny, will I still feel that it is what I should have done, and how I should have done it?</i> <p>And for those officials who would like to read further on this topic, I would suggest the following sources:</p> <ul style="list-style-type: none"> • “Ethical Dilemmas: Right vs. Right,” Patricia Broussard, <i>Spectrum: The Journal of State Government</i>, 1995, 68, 1, 16-20. • <i>Ethics and Character: The Pursuit of Democratic Virtues</i>, Richardson et al., Carolina Academic Press, 1998. • <i>Habits of the Heart</i>, Robert Bellah et al., University of California, 1985. • <i>How Good People Make Tough Choices</i>, Rushworth Kidder, New York: William Morrow, 1995. • <i>Readings for Cornerstones for Ethical Foundations: Tools for Dealing with Ethical Dilemmas</i>, Institute for Global Ethics, 1999. • <i>The Ethics Edge</i>, International City and County Management Association, 2006.