


PLANNING COMMISSION BASIC TRAINING WHAT YOU DO AND HOW YOU DO IT

**BROOKS CHANDLER
BOYD, CHANDLER, FALCONER &
MUNSON LLP**

BOROUGH CHARTER

Section 8.01 Planning Commission

(A) Purpose. The Haines Borough Planning Commission shall be the sole planning body of the borough, guided by the comprehensive plan.



RESPONSIBILITIES

- The planning commission shall have such powers and duties as provided by this charter **and subsequent borough code** as prescribed by the assembly. The planning commission shall
- (A) present to the assembly a comprehensive plan including recommendations for zoning districts based on existing land uses and information gathered by a public hearing process;
- (B) advise the assembly on all matters related to planning and zoning, including the establishment of political boundaries;
- (C) **formulate and develop planning proposals** for submission to the assembly whenever requested to do so by the assembly or upon its own motion;
- (D) gather information and inform the public at hearings on planning matters, promote public interest and understanding of the comprehensive plan;
- (E) plan for borough capital improvements and land sales.

BOROUGH CODE

- **CONDITIONAL USE PERMIT-** The commission shall hold a public hearing on the conditional use permit application. The commission may adopt the manager's recommendation on each requirement unless it finds, by a preponderance of the evidence, that the manager's recommendation was in error and states its reasoning for such finding with particularity. In addition, for good cause, the commission may alter the conditions on approval or requirements for guarantees recommended by the manager.

BOROUGH CODE

**D. Approval of Preliminary Plat and Final Plat
[Long Plat.- HBC 18.100.050]**

**APPROVAL OR DENIAL OF VARIANCE-
[HBC 18.80.050]**



BOROUGH CODE

18.30.050 Appeals to the Commission.

(A) A decision by the manager

The commission shall decide at its next regularly scheduled meeting whether to rehear the manager's decision. . . If the commission chooses to rehear the decision, it may choose to rehear the entire decision, or any portion thereof.

(B) If the commission decides to rehear a decision, or any portion thereof, it shall then immediately do so at that meeting and make its decision. . . . The evidence shall be limited to a review of the record, although further argument may be allowed.



WHAT MANAGER DECIDES

- Land Use Permit
- Enforcement Order
- Interpret Title 18
- Short Plat

WHAT MANAGER DOES NOT DECIDE

CONDITIONAL USE PERMIT
[Recommendation Only]-
18.50.030(D)(3)

VARIANCE – HBC 18.80.050

LONG PLAT SUBDIVISION PLATS-
HBC 18.100.050



TWO HATS

- DECISION
MAKER

- many legal
constraints

- ADVISOR

- FEWER LEGAL
CONSTRAINTS

DECISION MAKER

CONSTITUTION – Due
Process of Law

CODE – Written
Findings

EX PARTE CONTACT

BIAS

CONFLICT OF
INTEREST



ADVISOR

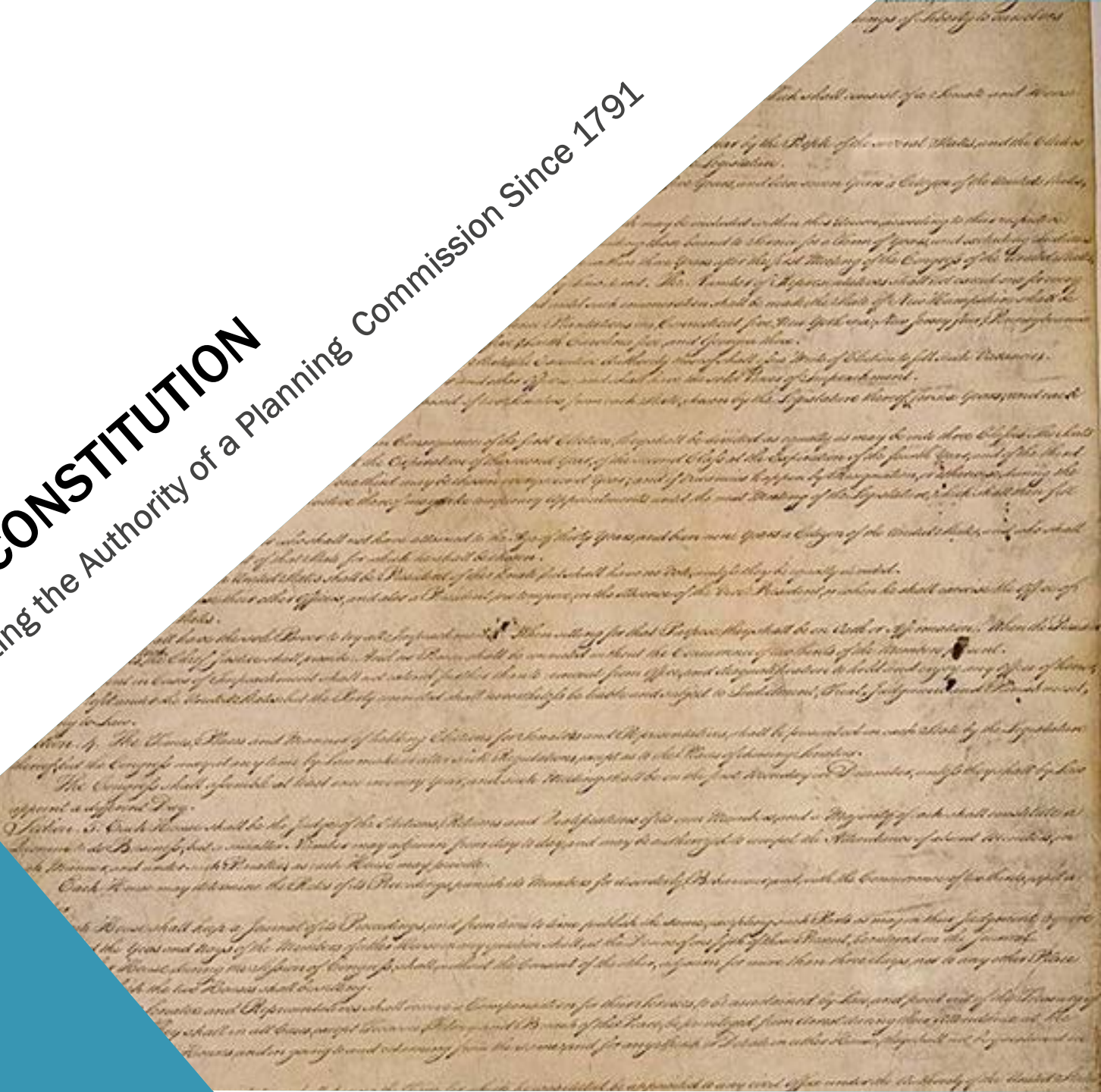
OPEN MEETINGS

CONFLICT OF
INTEREST



U. S. CONSTITUTION

Limiting the Authority of a Planning Commission Since 1791





UNITED STATES CONSTITUTION

Article XIV (Amendment 14)- 1868

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ALASKA HAS A CONSTITUTION TOO




EQUAL PROTECTION

Alaska Constitution

1. Inherent Rights

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that **all persons are equal and entitled to equal rights, opportunities, and protection under the law**; and that all persons have corresponding obligations to the people and to the State.



What you Do

- Be consistent
 - Since we are meeting on Tuesday I'm voting no on everything
- Decisions can't be random
 - The person applying for the permit has black hair
- What you do in one case might compel you to do the same thing in another case.
 - Can I build my shed 3 inches into the setback?

HOW YOU DO IT

Apply Same Procedures to Everyone

Explain Reasoning Behind Decision

Reference Actual Facts in Record

Reference Standards in Code

Do NOT rely on neighborhood opposition alone

Conditions Connected to Impacts



Findings-Why

Required by Law

Code Requires

Legal standard is court must be able to know reason for conclusions

Public Expectation

participants Want to Know Reasons for Decision

Findings- How

Oral Explanation of Reason for Vote

Can Direct Staff or Attorney to Prepare AFTER Vote based on record then adopted at next meeting

Staff can prepare PROPOSED findings in advance of meeting based on Staff/Manager recommendation

Findings- Danger Areas

Add conditions without explanation

Write Up that includes facts and reasons not in record

Should contain facts Commission found to be true

Should reference specific standards in Borough code

FINDINGS- POINTERS

Bring a list of the factors mentioned in the Code

Leave Space Between Each Element to Take Notes

Divide the Space for Each Element into Two Categories

Take notes during testimony in the appropriate space

Refer to Notes during Commission discussion of whether to grant or deny request

Example- Gen. Standards

Materially Endanger Public Health

Substantially decrease the value of property in the neighboring area

Consistent with Comp Plan

Not a Fire Danger

Adequate Access for Emergency Vehicles

Not overload existing streets with traffic

No significant increase in difficulty of snow removal

Adequate parking and snow storage

Adequate utility service

Adequate drainage

Example- Gen. Standards

Peak Use Characteristics not Significantly Different

No Significant Negative Impacts on Surrounding Property

Dust

Noise

Fumes

Odors

Glare

Smoke

Light

Vibration

Litter

Example- Gen. Standards

Interference with Radio/TV signals

Significant Line Voltage Flucuation

Anadromous Fish Stream

No adverse impact to historic resources

Example- CUP

1. Noise
2. No significant impairment to the value of the adjoining property
3. Adequacy of existing public services and facilities
4. In harmony with the comprehensive plan and surrounding land uses;
5. No harm to public safety, health or welfare;
6. No significant erosion, ground or surface water contamination if parcel is adjacent to state-identified anadromous streams;
7. Compliance with required conditions and specifications if located where proposed and developed, and operated according to the plan as submitted and approved;
8. Comments received from property owners impacted by the proposed development have been considered and given their due weight.

CONDITIONS OF APPROVAL-CONSIDERATIONS

Is the condition directly associated with criteria?

Result from issues associated with impacts
ordinance meant to address?

Based on evidence presented?

Enforceable?

Precise?



DUE PROCESS

No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. Constitution 5th Amendment- 1791

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed. Alaska Const. Art. 1, Sec. 7

Private property shall not be taken or damaged for public use without just compensation. Alaska Const. Art. 1, Sec. 18.



WHAT YOU DO

Be Reasonable

Do Not be Arbitrary

Follow the Code

Advance a Public Interest

Regulate vs. Ban



HOW YOU DO IT

No Conflict of Interest

No Bias

No Ex Parte Communication

Explain Why You Are Doing What You Are Doing



CONFLICT OF INTEREST-

HBC 2.06.030(B)

No borough official shall participate in any official action in which:

1. The person or the person's immediate family member is the applicant, a party or **has a substantial financial interest** in the subject of the official action.
2. Within a period of one year after the action the person or the person's immediate family member **will have a substantial financial interest** in the subject of the official action.
3. The person or the person's immediate family member **resides or owns land**, either personally or within a business or organization, within a 500-foot periphery of any property that is the subject of any action.

CONFLICT OF INTEREST- CONTINUED

The person or the person's immediate family member does or will recognize a substantial financial interest as a result of the action.



EXCEPTIONS

- b. This section does not prohibit any gain or loss that would generally be in common with all other citizens or a large class of citizens.
- c. This section does not prohibit any gain or loss that would generally be in common with other property owners on property that is further than 500 feet from the periphery of any property that is the subject of an action.


APPLICATION

- Voting on Certain Questions Prohibited.
- No assembly member or the member of any committee, board or commission may vote, debate, testify, or otherwise take part in the official action on any question on which the member has substantial financial or personal interest,

What is a Substantial Financial Interest?

- “Substantial financial interest” means a financial interest that would result in a gain or loss exceeding \$1,000 in a single transaction or more than \$5,000 in the aggregate in 12 consecutive months.

GRISWOLD CASES

1. **Owning Property in the Same Zoning District Whose Value is “Likely” to be Instantly Impacted by a Particular Decision IS a Substantial Financial Interest.**
 2. **Owning Property in the Same Zoning District Whose Value “Might” in the Future Be Impacted by a Particular Decision is NOT a Substantial Financial Interest.**
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Common Conflict of Interest Issues

Shareholder of a village corporation

BIAS

- Only Applies When You are Deciding a Particular Case Involving an Individual Property Owner
- Being Impartial is the Key to Due Process
- Does NOT require any Financial Interest
- Should be self-examined
- Can be Raised by Party



Bias Red Flags

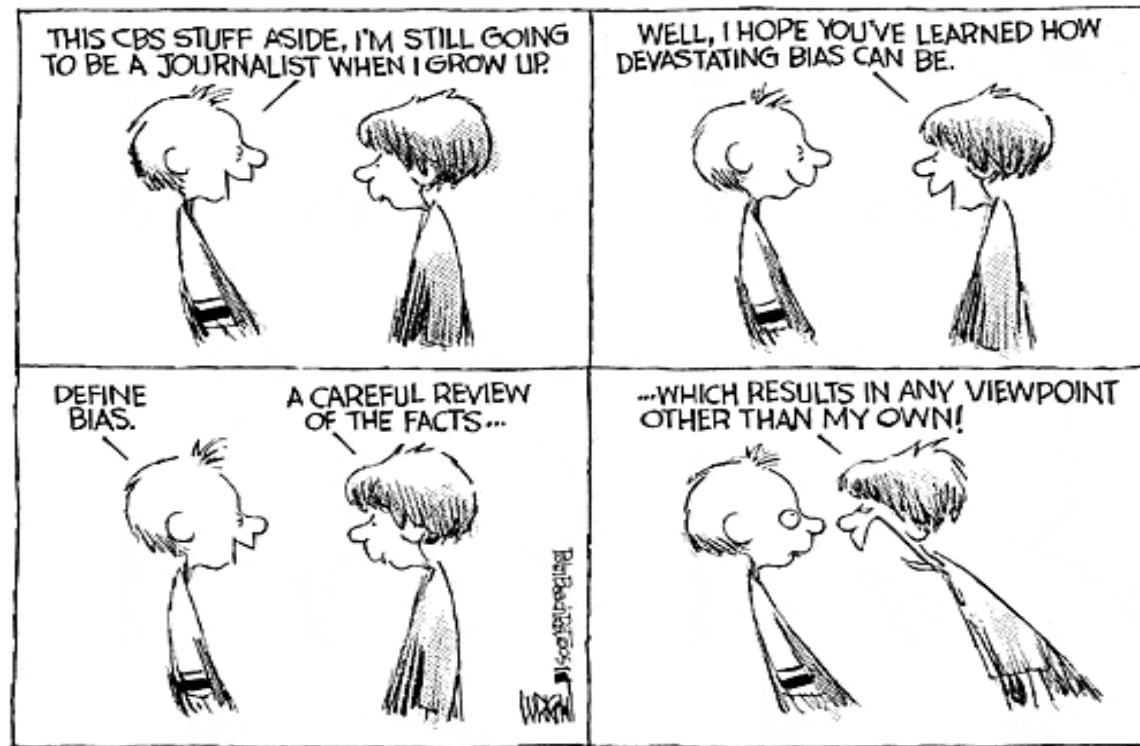
- Existing Friendship
- Service on Board
- Past Business Dealings
- Connection between Families
- Shareholder of Party
- Past Dispute
- Previous Public Comments

DON'T BOTHER ME WITH THE FACTS BIAS

Base decisions on
available data
included in your
“Packet” OR
submitted through
public testimony



DO NOT START WITH THE OUTCOME DECIDED



I've Already Made Up My Mind Bias

Do not Decide
How to Vote Until
All the
Information is In



Other Types of Bias



EX PARTE CONTACT

What is It?

Contact with one “side” on a pending matter outside the presence of the other “side”

When is this Bad?

When you are deciding a matter that involves a specific piece of property

Why is this Bad?

Unequal information amongst Commissioners

Perception of Bias

No opportunity of other side to “rebut”



EXAMPLES

You encounter a neighbor in the supermarket and the neighbor inquires about a matter pending before the Commission.

Should this ex parte communication be disclosed?

You tell your neighbor “I cannot talk about that I am on the Planning Commission.

Can it be addressed?

How?



Examples

- You received your packet and there is a CUP on the next agenda. You then receive an email from a member of the public with some data or other information
- Should this ex parte communication be disclosed?
- Can it be addressed?
- How?

WHAT TO DO AND WHEN

- Limit by politely declining to talk
- Forward any e-mail contact to staff
- Disclose on record at beginning of agenda item

DANGER AREAS

- “What if” Pre-filing Contacts
- Social Media
- News Media Contacts
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SITE VISITS

Why is “independent investigation” bad? Or is it bad? Is it OK as long as the Commissioner shares the information with learned with other commissioners and the public at the next meeting?

Is it OK if I set up a meeting with the owner for a special viewing?

What if I live next to the site and regularly pass by on a nightly walk?

What if I want to do a drive by?

