

ETHICAL CONSIDERATIONS OF THE PRACTITIONER IN PRIVATE PRACTICE

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CONCEPTS IN CONTEXT

Private practice can be defined as “one’s own, or a personal pursuit or exercise in a particular discipline” whilst ethics is defined in the Oxford Dictionary as “relating to morals or the treating of moral questions”. Town planning on the other hand can be defined in a number of ways; *inter alia* the following:

- (a) “Planning is a process for determining appropriate future action through a sequence of choices” (Davidoff and Reiner, Faludi, 1978);
- (b) “Self direction is the objective of planning which is an activity by which man in society endeavours to gain mastery over himself and to shape his collective future consciously by power of his reason (Friedman J; Bruton, 1974);
- (c) “Planning is the process of preparing a set of decisions for action in the future, directed at achieving goals by preferable means” (Dror, Faludi, 1978);
- (d) “I look upon planning as a living process whereby the vast number of diverse, often inarticulate, often conflicting interests which the various elements of a community have in the use of land become transmitted into the physical environment” (Levin E. A., 1966).

All of these definitions regard planning as a process, and that in the final analysis this process is aimed at improving the quality of life. There is an important implication in all of this, namely, the very nature of planning is such that it involves making choices and all these choices contain, to a greater or lesser extent, costs and benefits. (The use of the term “cost and benefit” does not only refer to the question of finance, but also to social and physical aspects as well). In short, there will always be an individual or group who will benefit while at the same time that same individual or group, or others in the community, will have to accept the cost in social,

economic and/or physical terms. This state of affairs is loaded with moral issues, and for the planner there is no getting away from this basic truth.

If the pursuit of improving the quality of life of all members of our community is the aim of planning, then planning as a profession should be concerned with minimising the costs and maximising the benefits – this is a responsibility that all planners must accept.

IMPLICATIONS FOR PROFESSIONAL PRACTICE

A professional practice is concerned with the provision of a service and in this instance the principal actors are the consultant and the client. The client may be an individual, a group such as a business organisation, a community or even a local authority.

Benion, in his book “Professional Ethics – The Consultant Professions and their Code”, believes that a profession must have “a foundation in private practice, so that the essential expertise and standards of the profession” are derived from “meeting the needs of the individual client on a person to person basis”. This suggests that the client’s needs are the most important aspect. Unlike other professions where options are more limited, and perhaps more exacting, planning practice cannot accept this in its entirety, because more often than not, the client is motivated by self interest. In private practice the principal areas of the planning service are concerned with Town Planning Schemes, Amendment Schemes and township establishment procedures. With this in mind, the following judgement provides the support to the argument that planning practice cannot accept the client’s needs as final without due consideration to their wider implications.

In the case *Ronnies Motors (Pty) Limited versus vander Walt and others*, Appellate Division 1962, S.A.L. R(iv), it was ruled that any amendment of the Town Planning Scheme must benefit the scheme, i.e. be an improvement.

“It cannot be doubted that in relation to matters of Town Planning, the Administrator acts in a fiduciary capacity and that in deciding whether the provisions of a scheme should be amended, *it is his duty* to consider whether such amendment *would be of advantage* to the scheme”.

The above refers to the Administrator, but he in turn relies on the advice given by his team of professionals as to whether or not an amendment to the Scheme is an improvement. If this is the criterion, then the private practitioner is bound to advise his client in the light of the above, otherwise there is considerable danger that an application with its costs is likely to fail. This obviously is not in the client’s interest. If the application succeeds in spite of its not being in the general interest, the social costs are borne by others while the benefits accrue to the client.

For the Administrator to decide whether or not an amendment to the Scheme is an improvement he is bound to look at Clause 17 of the Transvaal Town Planning and Townships Ordinance, which reads as follows:

“For the purposes of this Chapter (Chapter II of the Town Planning Ordinance) a town planning scheme shall have for its general purpose a co-ordinated and harmonious development of the area to which it relates in such a way as will most effectively tend to promote health, safety, good order, amenity, convenience and general welfare as well as efficiency and economy in the process of such development and such a scheme may include any replanning or redevelopment of such area”.

It is clear from this that the Administrator and those who advise him are bound to look beyond the confines of personal interest. It should naturally follow that the private practitioner is bound to do the same if he/she is acting in a professional capacity.

In the final analysis the planner will always have at least two “clients” and the planner in private practice is faced

with the task of arbitrating between these two.

VALUE JUDGEMENTS

If we as planners are to go about our task in a professional manner, then the following must always be borne in mind:

- (i) the interests of the client – in this respect the client has a particular problem or project that he/she wishes to have either solved or pursued. The private practitioner is bound to strive for this as this is the essence of the service he provides. There is a proviso however, and that is, the present code of professional conduct does stipulate that: “Every member shall be required to uphold the dignity of the profession” as well as act towards his client in a fiduciary capacity. If we are to uphold the dignity of the profession then we must, in the private sector, look beyond pure profit motives.

There is a problem here however, and that is, if a consultant does differ with his client on any planning issue, then he is in danger of losing his client to another practitioner whose ethics are not in the least bit concerned with the dignity of the profession, and this puts the consultant in a dilemma. What is needed, is a tightening up of the current code and its enforcement, and until this is done, we in private practice will continue to have problems. If one looks to the British code for some guidance in this regard, the following extracts are of value:

- “Every member or student is to conduct himself in such a manner as to uphold the reputation of the Institute, and in no way to prejudice his own professional status as one who provides services related primarily to his professional training and experience for remuneration related strictly to those services in accordance with personal integrity.”
- “A member must not hold, assume, accept or retain a position in which his interest is in conflict with his professional duty.”
- “A member must not undertake any duties or carry out any

instructions of an employer, client or superior which involve making statements purporting to be his own but which are contrary to his bona fide professional opinion.”

(The Town Planning Institute Year Book, 1968).

If these are examined closely, then it becomes clear that these three extracts do provide pointers as to where we might search for solutions to our problems on ethical matters. The following are of immediate importance and are presented for consideration.

(a) *The quality of our professional training*

Our planning schools should not only provide an adequate training in respect of planning theory and practice, but they should also be concerned with instilling a professional attitude and approach. To this end it is contended that the responsibilities implicit in our professional activities should be articulated and their implications examined. In addition to this, it is the duty of the Institute to ensure, when examining the various curricula at undergraduate and post graduate levels, that the various courses contain these elements.

(b) *Monitoring of the individual, or individual firms*

Where adverse publicity is directed at the profession as a result of the work of an individual or firm, there must be an inquiry into the professional conduct of those involved. If the Institute, being the profession's representative body, does not act in this regard then the abuse will continue because those who do act unprofessionally know there will be no repercussions.

It is hoped that once the Statute is approved, and really little can be done without it, this matter will be considered a priority and examined in detail as this is not only in the interests of the profession, but also of the public. Furthermore, it strengthens the hand of the private practitioner inasmuch as his professional obligations are concerned, because it helps to reduce the dilemma described earlier. If the relationship between the practitioner and his client is strained because of

valid planning considerations conflicting with the client's interest, the practitioner will be assured that no other colleague will take on the task because each is bound by the same code of conduct and knows that the code will be enforced.

(c) *Monitoring of planning related decision making at local, provincial and national level*

There are problems in this regard as neither the Administrator nor the Townships Board are obliged to give reasons for decisions taken at these levels. This is unfortunate, because this only serves to compound the problem for the planning profession as it can lead to “underhand” dealings or irresponsible decisions which undermine good town planning practice and procedures, as well as doing untold harm to the profession's standing in society. The profession should take an active interest in these matters and strive to become an important moderator in the decision making arena. In turn this greater concern will force the private practitioner as well as his colleague in a public authority to be more responsible.

(d) *Involvement of the Profession's members*

It is contended that the output of the profession has a direct relationship to the involvement, or lack thereof, by its members. The concerns expressed above can only be effectively carried out if there is a sincere concern by those in our ranks for good town planning and the provision of a useful service. Attempts to improve the quality of the planning service are to a large extent thwarted if the task of improving our practice and procedures is left to a dedicated few. It is also contended that we must look beyond ourselves and what we can take from the Institute and adopt a view of rather what we can contribute in the interests of the profession and ultimately the public, whom we are supposed to serve.

- (ii) the interests of other parties – in this respect the planner is bound to examine the effects of the task laid before him by the client on other parties or groups. Should these

prove to be of importance, then the planner is bound, in terms of what has been discussed earlier, to inform his client of the implications and suggest modifications or alternatives.

- (iii) the interests of the profession – whether the planner is in private practice or not, being a professional, the planner must always strive to improve the quality of the planning service. Amongst other things this implies the use of sound planning principles founded upon practice and theory. All too often, these principles are either deliberately omitted or used only to suit a particular set of circumstances. For example, a structure plan document is being prepared by our firm for a town in the Transvaal, and in the analysis there is a section devoted to the various types of vegetation to be found in the municipal area and surrounds. One particular plant community is, according to the Department of Nature Conservation, of particular national importance and it has been suggested by this authority that this plant community be preserved. Just recently another private planning concern was given the task of locating an airfield and in the analysis of this particular project the section devoted to vegetation was not only scant, but also misinformed the local authority concerned about the national importance of this plant community. In point of fact this report indicated that this plant community was of no importance at all. The question that needs to be asked, is: what does a member of the public, who reads both reports for the structure plan and the airfield project think? On the one hand, importance is attached to the subject whilst on the other hand, no importance is attached at all. This certainly does not reflect positively on our profession and is therefore likely to result in more harm than good.

Another example is one of more recent origin, and this relates to a township being established by a major company in Sandton. The planners in this instance succumbed entirely to the wishes of the client and as a result open spaces are

inadequate and important physical features which have aesthetic and recreational value to the future community as well as others in the area have been blatantly disregarded. In the past two weeks there have been at least two newspaper articles questioning the planning rationale. This once again reflects poorly on the profession and makes it vulnerable to severe criticism.

- (iv) the environment – natural and man-made. These are included here because neither can “speak” for itself and as such are open to all forms of abuse as they can be used and manipulated at will. We, as planners have a responsibility to future generations and as such we are, as far as possible, bound not to create problems for future generations but rather to avoid them. This can only be meaningfully achieved if due consideration of environmental issues is taken at the outset.

CONCLUSIONS

Planners in private practice must accept the responsibilities that are implicit in our sphere of activities. We cannot afford a professional perception of our activities that excludes any of the factors mentioned above and it is contended that should any be omitted, we will have failed in our endeavours to fulfil our basic obligation: to improve the quality of life for all, both now and in the generations to come. In point of fact we may even cease to call ourselves planners.

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