



## Social Media and Ethics in Land Use

**November 9, 2011**  
 4:00 p.m. – 5:30 p.m. ET

Conference resources online  
[www.planning.org/audioconference/ethics](http://www.planning.org/audioconference/ethics)

Ask questions  
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## Today's Speakers



**Patricia E. Salkin**, Raymond & Ella Smith Distinguished Professor of Law, Director of the Government Law Center, Albany Law School



**Julie A. Tappendorf**, AnceI, Glink, Diamond, Bush DiGianni & Krafftner P.C., Chicago, Illinois

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## Social Networking – What is It?

- A new set of internet tools that enable shared community experiences, both online and in person.
- A community, in this context, is a group of people with common interests who connect with one another to learn, play, work, organize and socialize.
- A communications frontier.

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## Sharing of Information

It is appropriate for planners, government officials, and project sponsors to consider the use of these social networks as tools for

- inviting public input
- gauging support with respect to proposed projects
- informing the public
- Increasing participation in the land use process, and
- yielding better plans and regulations



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## Examples of How Social Networking Is Being Used in the Land Use Context



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## Wikiplanning



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## High-Tech Charrettes

APA [Planning Magazine](#) article "High-Touch/High-Tech Charrettes (October 2011)

- Arapahoe Square Charrette, Denver
- Plan El Paso Charrette, El Paso
- Mission Road Innovation Charrette, Alberta, Canada
- Open City Hall, Ashland Oregon
- Somerville Inner Belt Brick Bottom Plan, Somerville, Massachusetts

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## Chicago Metropolitan Agency for Planning (CMAP)

The CMAP Facebook page allowed CMAP to "share news items, events, and to video fans" and "provide an easy opportunity for audience building." In this way, CMAP believes it was able to inform and engage its targeted audience.



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## Roanoke, Virginia, the County Board of Supervisors



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## Private Sector/Project Sponsor Use of Social Networking Sites

White Flint Partnership

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## Part One: What Can Social Networking Do for You?

1. Cost Effective Way to Communicate with Community Members
2. Greater Public Participation
3. One-Stop Shopping (for records & information)
4. Transparency
5. Broader Interest in Issues

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## Advantages of Using Social Networking in Land Use Project Review

Greater Public Participation

- A 2004 Neilson/Net Ratings survey found that 75% of all Americans have Internet access at home, and a study by the Pew Internet and American Life project showed that 77% of Internet users have gone online to search for information from government agencies or to communicate with them.

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**Networking**

Social networking sites allow internet users with similar interests to unite and discuss topics of interest.

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**Social Networking is Cost-Effective**

- Those involved in the land development process spend less money using social networking sites to collect and communicate information.
- Posting surveys and information on social media decreases the cost of postage and paper.
- Developers, organizations, and local governments can post information quickly and obtain feedback with equal speed.

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**Creates a Real-Time Public Record of Project Information**

- Using social networking sites also creates a record of feedback that is stored in one place.
- Can post meeting minutes, records, project proposals, applicable local laws and other important documents used in the planning process.

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## Disadvantages of Relying on Social Networking in the Land Use Context

Discrimination in the Land Use Process

- Certain community voices will not be heard in the process
- Internet use differences have been found between economic classes, age, culture identity and education levels.

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## Social Networking is Not a Replacement for In-Person Communication

Although social networking offers quick and efficient solutions to participation in the planning process, a question remains as to whether cyberspace can adequately replace real-time and face-to-face questions and answers that town meetings provide.



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## Part Two: Legal Issues – More Questions than Answers?

1. Open Meetings Act and Freedom of Information Act (FOIA) Compliance
2. First Amendment and Privacy Issues
3. Discrimination
4. Copyright Issues
5. Who speaks for the government?

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### Open Meetings Act

Will social media interactions and communications by your government officials be considered "meetings" subject to OMA?

### Freedom of Information Act

Is information on your site subject to release under FOIA?

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### Records Retention

- Are communications and other information posted on your sites subject to local record retention laws?
- The Florida Attorney General stated that a Facebook page was created for "a public purpose and in connection with the transaction of official business of the city." Therefore, communication through such a webpage is subject to the public records law if the communication concerns the business of the city. Such content is subject to review.

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### First Amendment & Privacy Issues

- Are comments posted on social media sites protected by the First Amendment?
- What must you do (or not do) to protect individual privacy?

### Copyright Issues

- Do you have permission to use content posted on your social media sites (i.e., plans, photos, and videos)?

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## Suggestions

- Understand the content of posts is part of the public domain
- Employ the use of a site moderator
- Use a combination of in person and internet based social networking sites to disseminate information and build networks
- Adopt a social media policy to set guidelines for the usage of the site

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## Importance of a Social Media Policy

A good social media policy will:

1. Define the purpose and scope for use of social media
2. Identify a moderator in charge of the site
3. Develop standards for appropriate public interaction and posting of comments
4. Establish guidelines for record retention and compliance with FOIA and OMA
5. Implement an employee access and use policy and incorporate it into employee handbook or personnel policy
6. Establish policies for public officials use of social media

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## Part Three: Ethical Considerations for Planners

1. Certified planners, who are members of the American Institute of Certified Planners (AICP), must subscribe to that certifying entity's code of ethics.
2. A primary ethical responsibility for professional planners is to build "better, more inclusive communities."
3. Social networking may help this goal, but this help may be limited, as many groups of people have statistically been shown to not utilize the internet. This could amount to social injustice.

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**AICP Rules of Conduct – Rule 1**

Rule 1 requires planners to provide “adequate, timely, clear, and accurate information on planning issues.”

- Certified planners have an obligation not to post misinformation on social networking sites.

**AICP Rules of Conduct – Rule 7**

Rule 7 of the AICP Code protects client confidences from being exposed by planners.

- Certified planners must be careful not to inadvertently share confidential information when discussing specific projects on a social networking site.

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**AICP Rules of Conduct – Rule 8**

Rule 8 of the AICP Code states that planners “shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.”

- Certified planners must be careful not to use social media to hold private conversations with planning process participants.

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**AICP Rules of Conduct – Rule 11**

Rule 11 of the AICP Code provides that planners may not “solicit prospective clients or employment through the use of false or misleading claims, harassment, or duress.”

- Certified planners should proceed with caution about what they post on social networking sites relating to their professional employment and work.

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## AICP Rules of Conduct – Rule 19

Rule 19 of the AICP Code prohibits the failure to disclose the interests of the planner's client or employer when participating in the planning process and also prohibits participation in an effort to conceal the true interests of a client or employer.

- Certified planners should be mindful of the need to self-identify and to identify who their clients are when they post information and comments to social media sites..

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## Ethical Considerations for Quasi-Judicial Bodies

- Zoning boards of appeal at times function in a quasi-judicial capacity in that they are vested with authority to be neutral decision makers in the planning process.
- Therefore, it is useful to consider local and state judicial advisory opinions as persuasive guidance as to how zoning board members should conduct themselves on social networking sites.

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## Impropriety

- Integrity in the system must be maintained, and the use of social networking does not change this.
- Listing "friends" that are attorneys, witnesses, or parties to the matter can be an issue, as it could cause impressions of impropriety to other judges, such as that the judge might favor one attorney over another in his court.
- Similarly, zoning boards should not be able to favor one party over another in a matter because of their personal relationship through social networking, as they have a duty of impartiality to their constituents.

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## The Future of Social Networking

- It is Not Going Away
- Body of Opinions and Case Law will Grow
- Use Caution
- Be Specific in Disclaimers
- Be Inclusive – Social Networking is not a Pure Substitute

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## Questions and Answers



**Patricia E. Salkin**, Raymond & Ella Smith Distinguished Professor of Law, Director of the Government Law Center, Albany Law School



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