

Pace University

DigitalCommons@Pace

---

Pace Law Faculty Publications

School of Law

---

12-21-2005

## Mandated Training: Program Proposed for Local Decision-Makers

John R. Nolon

*Elisabeth Haub School of Law at Pace University*

Jessica A. Bacher

*Elisabeth Haub School of Law at Pace University*

Follow this and additional works at: <https://digitalcommons.pace.edu/lawfaculty>



Part of the [Land Use Law Commons](#)

---

### Recommended Citation

John R. Nolon & Jessica A. Bacher, Mandated Training: Program Proposed for Local Decision-Makers, N.Y. L.J., Dec. 21, 2005, at 5, <http://digitalcommons.pace.edu/lawfaculty/679/>.

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Faculty Publications by an authorized administrator of DigitalCommons@Pace. For more information, please contact [dheller2@law.pace.edu](mailto:dheller2@law.pace.edu).

**Mandated Training:  
Program Proposed for Local Decision Makers**

Written for Publication in the New York Law Journal  
December 21, 2005

John R. Nolon and Jessica A. Bacher

[John Nolon is a Professor at Pace University School of Law, Counsel to its Land Use Law Center, and Visiting Professor at Yale's School of Forestry and Environmental Studies. Jessica Bacher is an Adjunct Professor at Pace University School of Law and a Staff Attorney for the Land Use Law Center. Michelle Greenbaum conducted research used in this article.]

**Abstract:** Local land use boards, made up of volunteers from the community, decide a majority of the land use issues in New York's municipalities, as well as most other states. In the past, these decision makers were not required to obtain formal training. Now, several states and municipalities are recognize the substantial impact of land use board decisions, and as a consequence, are providing innovative training for their board members. Land use law becomes more complicated with each passing hour, and through proper training, land use board members can become informed decision makers who maximize the potential of their communities.

\*\*\*

The New York State Legislature has been very generous to local governments regarding land use control. It has delegated to them considerable control of what happens to the Empire State's landscape, seldom preempted that authority, occasionally provides guidance, and sometimes provides funding for quality community activity. Land use regulations are adopted by the legislative bodies of the state's 1544 cities, towns, and villages and administered by locally-created planning and zoning boards. Approximately 80% of the state's municipalities legislate in the land use area and have created administrative boards that make land use decisions. We estimate, at a minimum, that there are from 15,000 to 20,000 individuals, mostly volunteers, who serve on these local legislatures, boards, and agencies. This is a considerable corps of critical individuals charged with regulating the private use of the land, with determining where development goes, and with how local natural resources are to be conserved.

The generosity of the legislature in empowering our towns with legislative authority and land use discretion makes it all the more important that this small army of select leaders be good at what they do. The state legislature, after many years of considering the issue, has before it a modest but important measure that would require planning and zoning board members to receive training on their roles and responsibilities. Until recently, such a requirement was resisted in part because of the difficulty of getting to training programs in some parts of the state. Despite aggressive

training programs offered by the Department of State, universities, counties, regional planning agencies, and non-governmental organizations and yearly sessions on basic and advanced land use strategies offered at meetings of the Association of Towns and New York Planning Federation, it remained true that some remote towns and villages would be inconvenienced by a requirement that their board members travel to these training programs. In addition, there was little evidence that localities in New York themselves were adopting training requirements for their volunteers or that other states were adopting state-wide training requirements.

All that has changed. Now, in addition to the excellent continuing training programs regularly offered, there is an on-line training program available to board members in the comfort of their homes; many local governments are now requiring or encouraging their board members to get training; other states have adopted training bills; and the nation-wide importance of land use decision making has led the American Planning Association to adopt training for board members as one of its top three priorities.

Bills pending before the Assembly and Senate would put New York on the ledger of states that require a modest amount of training. In the Assembly (A07985) and in the Senate (S03094), there are proposals that seek to “promote training opportunities for municipal planning and zoning officials.” The bills would require that members of the planning boards and zoning boards of appeals complete four hours of training each year. If the bills are passed, New York will recognize a bottom-up trend at the local level in this state and join an increasing number of other states that require training for land use board members.

The bills’ statement of purpose illustrates the importance of training board members. Land use boards make significant decisions regarding the real property in the community. They approve applications for land subdivision and site development and issue special permits and variances for a number of proposed land uses. These volunteers have substantial discretion in interpreting the land use plans, zoning laws, and land use regulations and comprehensive plans adopted by their local legislative bodies. Improper decisions can cause financial hardship to landowners and lead to costly lawsuits, while well-considered and timely decisions will ensure the development of quality communities. Good land use decisions maintain property values, mitigate negative traffic impacts, protect the environment, and reduce flooding and sedimentation. According to a recent amendment to the Assembly bill, “[t]here is consensus among planning federations, builders institutes, insurance companies, economic development corporations, land preservation trusts and environmental groups that well educated municipal planning and zoning board members are better prepared to make land use decision in their communities ... [and] are essential to community health and vitality.”

### **Training Readily Available**

The bills' language affirms the availability of expert and convenient training programs. "The legislature finds that training in municipal planning and zoning is readily available from a variety of sources on-line and through traditional formats at no cost to municipalities or members of local boards." The bills state that electronic media, video, distance learning, traditional classroom training, as well as traditional training programs may be employed in order to meet the training requirement. An example cited is the free training program made available through the New York Municipal Insurance Reciprocal, called the Land Use Training Program for Local Government Officials. It is an online training program designed to teach the basics of New York land use law and is available from the New York Planning Federation at [www.nypf.org/training.htm](http://www.nypf.org/training.htm). Interestingly, the New York Municipal Insurance Reciprocal – which provides casualty insurance to hundreds of New York municipalities – makes this training program available because of its concern over, and the expenses associated with, the rising rate of land use litigation in the state. Ensuring competent land use decisions has become part of its insurance program.

The pending bills include a waiver provision that allows a municipality to exempt one or more individuals from the provision's training requirement for good cause shown. This blunts any criticism that the training requirement will effect a hardship in some particular community because of unique local circumstances. The bills also specify that no decision of a planning or zoning board will be invalidated because one or more board members fail to obtain required training.

### **State Mandated Training in Other States**

If the legislature adopts these bills, it will join other states that have established training standards for land use board members. In 2001, Kentucky adopted legislation requiring training of local officials to ensure high quality land planning.<sup>1</sup> Volunteer board members must complete at least four hours of orientation training within one year prior to appointment or within 120 days of appointment and then participate in at least eight hours of training every two years thereafter. The Kentucky program requires the locality to organize or identify training programs and to pay for attendance where necessary. The law specifies that the training should cover land use planning, zoning, floodplains, transportation, community facilities, ethics, public utilities, wireless telecommunications facilities, parliamentary procedure, public hearing procedure, administrative law, economic development, housing, public buildings, building construction, land subdivision, and powers and duties of the board of adjustment. Appointed board or commission members who fail to complete the requisite training are subject to removal.

Tennessee also requires training for members of planning commissions and zoning boards of appeal.<sup>2</sup> Board members must receive at least four hours of training and continuing education in at least one of thirteen subject areas similar to those outlined in the Kentucky legislation. The Tennessee legislation contains a provision

---

<sup>1</sup> KY. REV. STAT. § 147A.027 (2001).

<sup>2</sup> The Planning Commission and Board of Zoning Appeals Training and Continuing Education Act, TENN. CODE ANN. § 13-3-101 (2002).

allowing municipalities to opt out of the state requirements by adopting a training program of their own.

South Carolina requires six hours of orientation training for new board members on specified subjects and then three hours each year thereafter.<sup>3</sup> The legislation mandates what subject matters the training should cover, and creates a state oversight board to review and approve training courses. Legislation in Louisiana lists and describes the training that should be obtained, then requires local boards to determine how that training should be provided.<sup>4</sup> Local board members in Louisiana must complete four hours of training before taking office.

### **Locally Mandated Training in New York**

A number of local governments have enacted legislation requiring training for planning and zoning board members in their jurisdictions. In Orange County, Article II of chapter 27 of the Goshen Town Code requires that members of the planning board, zoning board of appeals, and environmental review board receive a minimum of six hours of training through a program approved by the town board. Board members' positions are conditioned on completion of the training and they may be removed for failure to complete the requirement. The Town of LaGrange, in Dutchess County, requires training for its land use board members. Section 43-3(C) of the Town Code requires a minimum of one hour of training related to the board's authority within one year of appointment and at least one additional hour of training in each calendar year following appointment. The law requires that the town pay any expenses incurred and provides that board members may be removed from office for failure to comply. The law lists several approved training programs, including those offered by the New York Department of State, the New York State Association of Towns, the New York State Department of Environmental Conservation, and the Dutchess or Westchester County Planning Federations. Unless the LaGrange town board removes a non-complying board member, that individual may continue to serve and his votes are still valid.

In 2005, the Town of Watertown in Jefferson County adopted a law requiring four hours of training annually for its zoning board of appeals and planning board members. The town adopted the law to protect property owners from improper decisions that could result in financial hardship; "attract promoters of sound residential, commercial and industrial projects;" and decrease the number of lawsuits that result from erroneous decisions by land use boards. The findings state that "numerous opportunities are available to obtain approved training at no cost or at minimum cost from not-for-profit organizations, state or municipal agencies" and the town makes available a list of such programs to its board members.

In 1993, Rockland Municipal Planning Federation began a series of Certification Courses on land use and zoning issues to respond to a need to educate land use board members. The Federation sought support from the local municipalities and prepared

---

<sup>3</sup> S.C. CODE ANN. § 6-29-1340 (2003).

<sup>4</sup> H.B. 1082, 2004 REG. SESS. (LA. 2005).

sample resolutions for adoption by the towns and villages. Twenty local governments in Rockland County and the county itself have passed a resolution endorsing participation in the certification program and six local governments have passed local laws requiring attendance. To date, the Rockland Municipal Planning Federation has certified 520 board members. To become certified initially, board members must complete three courses that focus on different aspects of their roles and responsibilities. Every two years thereafter, board members must attend an update session to be recertified. The Federation offers these courses free of charge.

Under a program administered by the Land Use Law Center of Pace University Law School, over 20 land use boards in the lower Hudson Valley area have self-certified the training of a majority of their board members. The program uses the New York Municipal Insurance Reciprocal (NYMIR) Internet training program. Local land use leaders who participate in the Center's four-day Land Use Leadership Alliance training program are encouraged to return home and assume responsibility for certifying their planning, zoning, and conservation boards, as well as their legislative bodies. In addition to giving each training volunteer the Internet address of the NYMIR training program, the Center provides them with a hard copy of all nine components of the program and a CD to be taken home and copied for those who prefer to work with a more tangible medium. Under this program, the Town of Beekman in Dutchess County has certified all three of its boards: its legislature as well as its planning board and zoning board of appeals.

### **Should Training be required in New York?**

In every part of the state, land use challenges abound. In some communities, the issue is rural poverty, in others the need for urban revitalization. The pace of development is too quick in some places and too slow in others. The state legislature placed decisions about growth management, and managing to grow, in the hands of over 15,000 local volunteers. The competitiveness of the state, the quality of its environment, and the qualities of its communities all depend on the competency of these important public servants. The legislature seems poised to pass legislation that will ratify the importance of the critical role they play and make it clear that these volunteers can and should become trained and informed decision makers.