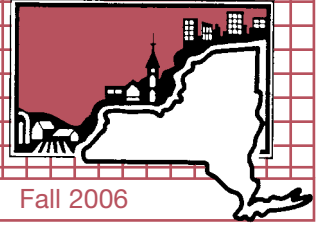


PLANNING NEWS



New York Planning Federation

279 River Street, Suite 302, Troy, NY 12180

Fall 2006

Training bill Q & A

In the summer of 2006, the New York Legislature approved a bill establishing minimum training requirements for municipal planning and zoning officials of four hours annually. Signed into law by Governor Pataki as Chapter 662 of the Laws of 2006, the training bill takes effect on January 1, 2007.

Why was the law passed?

In New York State cities, towns and villages have primary responsibility to regulate private land use through citizen planning boards and zoning boards. Their actions have a profound impact on state and local land use patterns and individual landowners.

Well-considered and timely decisions by municipal boards and commissions attract quality community development and result in fewer lawsuits and lower costs for municipal liability insurance.

The new law promotes a minimum training standard for planning and zoning board members throughout the State at no or minimal fiscal impact, while allowing municipalities a wide latitude in the training opportunities they may authorize members to receive.

Who supported passage of the new law?

The new law received broad-based support from many organizations and individuals, including the New York Planning Federation.

Wasn't training already provided for by law prior to passage of the new law?

While individual municipalities could require training of their planning and zoning board members, and some already do so, there was no uniform statutory training standard for municipal planning and zoning officials in New York State.

Are there any exceptions in the new law?

A municipality with a population of one million or more is exempt from the law's requirements.

A municipality may waive the four-hour requirement, or part of it, by passing a resolution if, in its judgment, it is in its best interest to do so.

Does the new law apply to county planning boards in charter counties?

It applies to such members if they are appointed by the county governing body.

Does the new law apply to alternate board members?

It applies to alternate board members as well as to regular board members.

What sort of training is required?

The type of acceptable training is left to the discretion of individual municipalities and could even vary for individual board members. Training can provide either basic skills or can offer new and advanced planning and zoning approaches.

Training opportunities could include courses offered by a municipality (perhaps at regular board meetings), a regional or county planning office or commission, a State agency such as the Department of State, or State associations, including the New York Planning Federation.

A wide variety of formats may also be used, including traditional classroom training, conference sessions, video and distance learning, or even self-study.

Who decides the type of training that will be used?

The legislative body for each municipality approves a course or courses of training for its boards.

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The New York Planning Federation also maintains a toll-free number for members. Call (800) 366-NYPF

THE NEW YORK PLANNING FEDERATION

is a non-profit membership organization established in 1937. Our mission is to promote sound planning and zoning practice throughout New York State.

Membership, which currently includes nearly 10,000 individuals, is open and welcome to anyone supporting this mission. Membership categories include municipalities, counties, public organizations, private businesses, individuals and libraries.

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Another successful conference!

NYPF's 2006 conference brought more than 400 municipal board members, planners, land use attorneys, engineers and interested citizens to Saratoga Springs for three days of intensive learning.

Keynote speaker Edward McMahon wowed the capacity audience on Monday, October 9th, as he eloquently presented a talk on "The Dollars and Sense of Protecting Community Character." Those who heard his hour-long program described it as "absolutely excellent," "inspiring," "terrific," "engaging" and "enlightening."

For the many who asked, a CD of Mr. McMahon's video presentation can be ordered on-line at <http://www.conservationfund.org/pagespinner.asp?article=2744&back=true>. Titled "Community of Choices," the CD sells for \$35.00 and discusses the economic, social and environmental benefits of protecting community character.

With only eleven months to go until the next conference, we are already hard at work on the 2007 program. The conference dates are October 7th to the 9th, and we'll be back in Saratoga Springs at the Saratoga Hotel & Conference Center once again.

This 69th annual conference will have one big change – rather than the traditional three-night stay of years past, the 2007 conference will run two nights and three days. Classes will end on Tuesday afternoon, rather than Wednesday morning, but we will offer the same number of sessions as in years past, starting with a program on Sunday evening. We have made this change mainly to help municipalities save money on hotel costs (anticipated savings are around \$100.00 per person) and hope that it will enable communities to send several members of their local boards to Saratoga Springs.

Please contact us with your comments and suggestions. We welcome input from our members, especially regarding sessions and speakers that you would like to see in 2007. ❖

**Got questions?
Visit our website
www.nypf.org
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Placemaking in Practice: Design Guidelines

By John J. Behan, AICP

Zoning laws often fall short in telling developers how to fit a project into your community. Sure, the zoning law will set forth lot sizes, parking requirements, height limits and yard setbacks. Many communities also have site plan review which provides authority to the planning board toward reviewing specific arrangements for building access, parking layout, lighting and landscaping.

Unfortunately, the typical site plan review law gives little guidance toward determining the key parameters for approval by using language such as “adequate landscaping” or “compatible with the character of the neighborhood.” This is where design guidelines can be helpful.

Defining a “sense of place” is more art than science. Establishing design guidelines will help communities guide the creation of a place that will sustain both the economy and the human spirit. We will have lost something if our developments offer adequate parking, yet the place that is built is unattractive and dampens the human spirit. We will have lost something if the signs and lighting overpower the landscaping and architecture. We will have lost something if we look back on what we have built and see that the cars are well cared for but the people are not.

Design guidelines offer an organized set of principles and development standards to help guide building construction, renovation and site development. They have been used to define how to successfully build or renovate in historic districts, commercial areas, residential districts, highway corridors, drinking watershed areas, rural areas and neotraditional communities.

A recommended outline for design guidelines will include the following:

Definition of character areas: For example, what is the historic development pattern in the area and are there parts of the district that have a distinct architectural

character? Perhaps part of the district has more of a “small box” franchise pattern. Design guidelines will establish how new uses or renovations are introduced to fit the desired fit and feel of the place;

Principles: For example, what are the most important concerns? In one community the first principle was “to relate buildings and sites to the Main Street frontage.” These are the big ideas that you don’t want anyone to miss or misunderstand;

Elements of the guidelines: This section addresses both district-wide concerns and special details and considerations for individual character areas. Under the heading of “elements,” include the following:

- a) **Applicability:** Defines how the guidelines are to be applied to renovations and new construction;
- b) **Architectural issues:** Include building siting, general architectural standards; height and rooflines;
- c) **Site issues:** Include transportation and mobility, linkage, curb cuts, parking and circulation, open space, landscaping, lighting and amenities.

Design guidelines are a great tool that helps communities make places special. While numerous good examples exist (*see references at end of article*), I would not recommend adopting any generic set of design guidelines from another place, but instead using them as references. It is best to engage in a public conversation about your community’s unique characteristics and develop your own set of guidelines that define your own sense of place. ❖

The author is principal of Behan Planning Associates LLC in Saratoga Springs, NY. Among the design guideline sources he recommends are those from the New York Planning Federation; the City of Seattle, Washington (www.seattle.gov/dpd/Planning/DesignReviewProgram/ApplicantsToolbox/DesignGuidelines/DPD); and the numerous municipal codes published on the General Code Publishers website (www.generalcode.com).

Training bill Q & A (continued from page 1)

What if a municipal board member receives more than the required four hours of training in one year?

Training received in excess of four hours in any one year may be carried over into another year at the discretion of the local municipality.

What if a person serves on more than one planning or zoning board? Are they required to receive four hours of yearly training for each position?

Not under the new law. However, municipalities have the discretion to require training in excess of the four-hour yearly minimum.

What if a municipal board member fails to meet the minimum training requirements established by a municipality?

Board members failing to receive training required by their municipality are ineligible for reappointment to their respective boards.

Will more training programs be made available to municipalities?

Yes. New training programs are in the works and will begin to be available early in 2007. ❖

Information for this article was assembled by NYPF Senior Planner Katherine Daniels from a fact sheet published by the NYS Legislative Commission on Rural Resources, as well as from the training bill.

NYPF Training Opportunities

The New York Planning Federation already offers a number of options designed to help communities meet the new annual training requirements. These include:

The Annual Planning & Zoning Conference: a three-day conference held each October featuring 28-30 hours of training for planning and zoning board members;

The Annual Summer School: a one-day session held in various locations around the state and featuring 4-6 hours of training;

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NYMIR Zoning School: A cost-free downloadable program with ten hours of training. It is available on the NYPF website (www.nypf.org).

Planning and Zoning Training Series: Basic and advanced two-hour and half-day training sessions held in your community. See the NYPF website for details.

Smart Growth Short Course Series: Various two-hour courses held in your community on a range of topics. See the NYPF website for details.

Additional training for 2007 will be presented in detail in our winter newsletter. Included will be interactive on-line training; tailored training packages; and a statewide training clearinghouse that local boards could consult to learn of training opportunities in their region. ❖

Case Law Update

By David R. Everett Esq. and Todd M. Mathes, Esq.

Recently, both the New York courts and U.S. Supreme Court have decided a number of land use and environmental cases. Some of the more interesting and important cases are summarized below:

Statute of Limitations

In *Eadie v. Town Board of the Town of North Greenbush* 7 N.Y. 3d 306 (2006), the Court of Appeals held that a SEQRA based Article 78 challenge to a rezoning action was properly brought within 4 months of the rezoning, despite the fact that the action was commenced more than 4 months after the SEQRA findings were adopted. The Court's logic was that the Petitioners did not suffer a

concrete injury until the Town Board approved the rezoning. The Court expounded however that "this does not mean that, in every case where a SEQRA process precedes a rezoning, the statute of limitations runs from the latter event, for in some cases it may be the SEQRA process, not the rezoning, that inflicts the injury of which the petitioner complains."

The Court gave as an example the possibility that certain mitigation measures adopted in SEQRA findings would immediately injure those challenging the rezoning. The injury, and therefore the time to bring a challenge, would run from the adoption of the SEQRA findings, not the enactment of the legislation. This ruling means only that uncertainty will continue to surround challenges to municipal SEQRA based land decisions and that commencing actions often and early remains a necessity.

County Referral

In *Batavia First v. Town of Batavia* 28 A.D.3d 1257 (4th Dept. 2006), the Court overturned the lower court's holding that the Town of Batavia Planning and Zoning

Continued on page 7



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The following have joined the Planning Federation since our last newsletter. We thank each of you for your support and encourage you to contact us with any questions or concerns.

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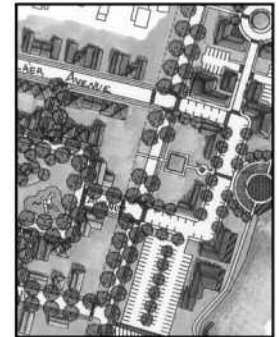
Orange County Citizens Foundation, Inc.

preferred. Must be able to attend night meetings and travel to the southern U.S. Strong writing, quality assurance and organizational skills are also required; a positive attitude and willingness to participate in engineering and architecture projects are pluses. Competitive salary, excellent benefits, exciting work environment and opportunities for advancement. Contact Andrew J. Raus, AICP at Clark Patterson Associates, 186 North Water St. Rochester, NY 14604 or ARaus@ClarkPatterson.com. ❖

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Case Law Update (continued from page 5)

Boards erred by not referring Parts 2 and 3 of a full Environmental Assessment Form (EAF) to the County Planning Agency, as required under General Municipal Law § 239-m. The municipal actions which Petitioners challenged included site plan, special use permit and variance approvals, and a related SEQRA negative declaration. The Court held that the Town met the referral requirements of General Municipal Law § 239-m by referring “all of the materials that the...Board would consider in issuing a negative or positive declaration, i.e. the underlying appreciation and supporting studies, reports, maps and plans...” including Part 1 of the EAF.

Eminent Domain

In *C/S 12th Ave. LLC v. City of New York* 32 A.D.3d (1st Dept. 2006), the Court upheld New York City’s use of eminent domain. The City and the Metropolitan Transit Authority exercised their powers pursuant to the Eminent Domain Procedures Law to obtain land for a subway extension project on Manhattan’s West Side. In addition to Petitioners’ contentions that the City’s use of eminent domain was in error, Petitioners alleged that the rezoning of their property constituted illegal and unconstitutional

spot zoning in violation of their equal protection rights. In examining this claim, the Court found that there was a rational relationship between the disparate treatment of the parcel being taken and surrounding parcels, and served the legitimate government purposes of well-planned development, job growth and expansion of the local tax base. This is a significant decision in furtherance of the U.S. Supreme Court’s ruling in *Kelo v. City of New London*, as well as because further eminent domain proceedings are pending in New York City in relation to Forest City Ratner’s “Atlantic Yards” redevelopment proposal.

The authors are attorneys with the law firm of Whiteman, Osterman & Hanna.

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