

PLANNING BOARD OVERVIEW

NYS Department of State
Division of Local Government Services

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PLANNING BOARD OVERVIEW

Welcome to the New York State Department of State's self-study course "Planning Board Overview."

This course provides an overview of the fundamental powers and duties of town, village and city planning boards. Both the administrative and regulatory roles of the planning board will be discussed, including comprehensive planning, site plan review, special use permits, and subdivision review. The role of the planning board in making recommendations to the zoning board of appeals, the importance of board procedures, referrals to the county planning agency and the importance of making findings will also be discussed.

Not everything you need to know fits in this presentation, so additional information has been included on the course webpage, such as a glossary, contact information for the Department of State, and links to other online resources.

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MEASURING YOUR PRE-COURSE KNOWLEDGE OF PLANNING BOARDS

Before you proceed through the course, you will need to answer ten questions which will gauge your knowledge of the topic. The same questions will be offered at the end so you can see if your knowledge has increased by taking the course. The course should take you about 90 minutes. Let's get started.

Select the correct answer.

- (1) State law allows for municipalities to authorize the use of alternate members in the event:
 - a) That a regular member is absent
 - b) An alternate has a strong opinion about the application at hand
 - c) That a regular member has a conflict of interest
 - d) That they would otherwise not meet quorum requirements

- (2) The new State training requirement:
 - a) Only applies to new members
 - b) Is meant to provide work for state employees
 - c) Requires all planning board members to complete at least four hours of training per year
 - d) Should be applied to members on a case by case basis

- (3) A comprehensive plan is:
 - a) Meant to serve as the foundation for all zoning regulations
 - b) A document or culmination of materials that provide an outline for orderly growth
 - c) A land use plan

- d) All of the above
- (4) Site Plan Review does all of the following EXCEPT:
- a) Pertain to a single piece of property
 - b) Relate to all sizes of parcels of land
 - c) Review design and layout of the site
 - d) Require issuance of a certificate of appropriateness
- (5) Subdivision regulations may:
- a) Establish minimum lot sizes
 - b) Authorize approval of lot configuration and layout
 - c) Control the uses which may be placed upon the property
 - d) Affect dimensional requirements of setbacks
 - e) Subdivision regulations authorize the planning board to approve the configuration and layout of lots.
- (6) In order to comply with the Open Meetings Law, you must:
- a) Provide notice and access to the media and public
 - b) Allow only residents to attend
 - c) Provide background material on applications to all of the public
 - d) All of the above
- (7) SEQRA review is the responsibility of:
- a) The State
 - b) The consulting engineer
 - c) Whoever has the most funding or time
 - d) The lead agency
- (8) Who may not legally serve on the Planning Board?
- a) Member of the local governing board
 - b) Zoning Enforcement Officer
 - c) A resident who has actively spoke in opposition to applications at planning board hearings in the past
 - d) A member of the local Chamber of Commerce
- (9) A site visit is not subject to the requirements of the Open Meetings Law if:
- a) There is less than a quorum of the full board or a committee of the board
 - b) The board members keep silent and only resort to eyeball rolling and writing each other notes
 - c) If the board gets together and sneaks on the property after hours without anyone knowing
 - d) If the board splits up in teams of two and meets afterwards at the coffee shop to discuss the project
- (10) The requirements for referral to the County Planning Agency are meant to:
- a) Insure that the local planning boards don't make mistakes in the planning process
 - b) Take projects into consideration on a regional level and use the county planning agency's expertise and knowledge of past and proposed development in nearby communities
 - c) Insure that notice of the application is given to all of the municipalities in the county
 - d) Further the goals of the county legislators that appointed them

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ANSWERS TO MEASURING YOUR PRE-COURSE KNOWLEDGE OF PLANNING BOARDS

(1) State law allows for municipalities to authorize the use of alternate members in the event? For alternates to fill in for sick or absent members, the local government must pass a local law superseding and amending state law.

(2) The new State training requirement?

The correct answer is that state law requires all planning board members to complete at least four hours of training per year.

(3) A comprehensive plan is?

All of the following: Meant to serve as the foundation for all zoning regulations; a document or culmination of materials that provide an outline for orderly growth; and a land use plan.

(4) Site Plan Review does all of the following EXCEPT?

The only item that does not describe site plan review is the issuance of a certificate of appropriateness.

(5) Subdivision regulations may?

Subdivision regulations may not establish minimum lot sizes - that is a function of zoning.

(6) In order to comply with the Open Meetings Law, you must?

The Open Meetings Law requires notice and access to the media and public. Meetings may not be restricted to residents of the community. Currently, background material does not have to be provided to the public, but it may be accessed through a Freedom of Information Law request.

(7) SEQRA review is the responsibility of?

SEQRA review is the responsibility of the lead agency.

(8) Who may not legally serve on the Planning Board?

The correct answer is that a member of the local governing board may not also serve on the planning board.

(9) A site visit is not subject to the requirements of the Open Meetings Law if?

A site visit is not subject to the requirements of the Open Meetings Law if there is less than a quorum of the full board, or less than a quorum of an officially appointed committee of the board.

(10) The requirements for referral to the County Planning Agency are meant to?

Referral to the County Planning agency is done so certain projects will be considered on a regional level, using the expertise and knowledge of the county planning agency.

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PLANNING BOARD MEMBERSHIP

Members of a planning board are public officers and therefore must be at least 18 years of age, a United States citizen, and a resident of the municipality on whose board they serve. For

example, residents of a village may serve on the village planning board or the planning board of the town in which the village lies because they are residents of both. However, a resident of a town outside of a village may serve on the town's planning board but not the village's.

The appointing authority in towns is the town board, in villages it is the mayor with the consent of the village board of trustees, and in cities it is the mayor with the consent of the city council. Members of the local governing board may not serve as planning board members.

Each member serves a term of office equal in years to the total number of members on a board. State statutes provide for five or seven member planning boards. Someone on a planning board of seven members serves a seven-year term. The law also allows municipalities containing state agricultural districts to dedicate one of those positions on the planning board to someone involved in agricultural pursuits. This is a modification of an older provision that some municipalities are still operating under which allows a municipality to appoint an extra member to represent agricultural interests.

Members who stay on the board past their term of office are known as "holdovers." They can continue serving until the appointing authority tells them to leave or until someone is appointed in their place.

State law allows the appointment of alternates to the planning board following the adoption of a local law or ordinance. They are appointed in the same manner as regular members, but their terms are established by local rather than state law. A typical term is two years.

Under state law, alternates may serve in the event of a conflict of interest. However, they may also serve in place of absent members if a local law is passed superseding state law. Which alternate serves for a given application or on a given night is usually left up to the chair of the planning board.

Pursuant to Public Officers Law, upon appointment each member must take and file an "Oath of Office" with the municipal clerk. This must be accomplished within 30 days of the commencement of each term of office (or partial term). If the oath is not filed on time the member could be replaced at any time. Failure to file an oath does not invalidate decisions made while a member was serving without having taken and filed his or her oath.

The NYS Oath of Office reads, "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of [Planning Board Member], according to the best of my ability."

Governing boards have the authority to remove members for "cause," such as failure to attend meetings; reoccurring inappropriate behavior, failure to fulfill training requirements set by the municipality; or because of a State or local ethics violation. A member cannot be removed merely because the mayor or town board is unhappy with his or her voting record on the board. The governing board of the municipality must hold a public hearing before removing a member for cause.

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TRAINING REQUIREMENTS

State law requires that members of planning boards receive at least four hours of training each year. Training in excess of four hours in any one year may be carried over into succeeding years.

Local governing boards determine what training qualifies for credit. Generally, local governments have decided that land use training presented by the Department of State, the Department of Environmental Conservation, and other State agencies qualifies for the mandatory training.

Other qualified training providers may include but are not limited to county planners; municipal organizations (such as the New York Planning Federation, the New York Conference of Mayors, and the New York Association of Towns); academic institutions such as Pace University and Albany Law School; and private-sector planners, attorneys, and engineers. DVDs or online tutorials like this one can also be approved modes for board members to receive instruction. Training requirements may be modified or waived by the local governing board if judged to be in the municipality's best interest. One reason for a waiver could be that the members have sufficient planning credentials.

To be eligible for reappointment to the planning board, members must have completed the training required by their prior term. Training is tracked locally, usually by a municipal clerk, board secretary, or municipal planner or department head.

A member's failure to comply with the training requirements cannot be cause for their decision on an application to be voided.

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ADVISORY POWERS OF THE PLANNING BOARD

Planning boards have two types of powers: advisory and regulatory. Advisory powers come from either State statute or the local governing board. Planning boards offer advice on the following items:

- Comprehensive plans and plan amendments
- Land use regulations
- Land use studies, maps & reports
- Capital budgets
- Proposed actions by other boards
- Area variance requests

Let's look a little closer at some of these advisory powers. We'll address comprehensive plans separately.

Land Use Regulations: State statutes authorize the planning board to recommend to the governing board regulations relating to any subject matter over which the planning board has jurisdiction. Adoption of regulations must be by local law or ordinance.

Studies, Maps & Reports: The planning board has the authority to make investigations, maps, reports and recommendations relating to the planning and development of the municipality as it seems desirable. For example, a study of historic resources along the Hudson River. The

governing board establishes the budget for the planning board, which may limit the number of studies it can conduct.

Referrals From Other Boards: The governing board may provide by resolution for the reference of any matter to the planning board before final action is taken on it by an office or officer of the municipality. The office or officer of the municipality with jurisdiction can be prevented from acting until the planning board has submitted its recommendation, or until a reasonable amount of time has passed in which the planning board could have made a recommendation.

Area Variances: When one or more features on a subdivision plat does not comply with the physical or dimensional restrictions in zoning regulations an area variance is necessary in order for the planning board to approve the application. When reviewing the area variance request, the zoning board of appeals must request that the planning board provide a written recommendation concerning the proposed variance.

Subdivision plats showing cul-de-sacs or corner lots off loop roads often need area variances. The unusual shapes of the lots may not conform to traditional zoning requirements that require minimum frontage or certain width to depth ratios. The need for the variance is often identified by the local official receiving the application, who may suggest the subdivision applicant also apply to the zoning board of appeals. Review may continue on the subdivision plat pending ZBA action, but the planning board should not take final action prior to the ZBA acting on the variance request.

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COMPREHENSIVE PLANS

The planning board may develop, or may assist in developing, the municipal comprehensive plan.

What is a comprehensive plan? State statutes define and describe what constitutes the Comprehensive Plan. It is:

- An expression of a municipality's goals and recommended action to achieve those goals.
- A document which focuses on immediate and long-term protection, enhancement, growth and development of the municipality.
- An outline for orderly growth, providing continued guidance for decision-making on matters like zoning or capital improvements.

The comprehensive plan is also known as a master plan, land use plan, or comprehensive master plan. It gives direction and meaning to all other planning activities. It is the foundation that gives a strong base to land use decisions communities make that have a profound impact on what the community will be in the future.

The statutes which address local comprehensive planning are Town Law § 272-a, Village Law § 7-722, and General City Law § 28-a.

Zoning regulations must be in accordance with a comprehensive plan. When zoning follows the comprehensive plan, it will provide a defense against spot zoning challenges. Spot zoning is the

rezoning of a single parcel of land for the benefit of the owner and without any relation to a logical plan for the surrounding area. So if the comprehensive plan identifies a parcel as being properly zoned or rezoned, although different from neighboring parcels if it is in accordance with the short and long term planning goals of the community, then this would not be considered spot zoning.

For more information, please see the Department of State publications, Zoning and the Comprehensive Plan and Defining a Community through the Plan.

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CREATING AND AMENDING THE COMPREHENSIVE PLAN

In order to be a living document, the comprehensive plan must be created in partnership with the governing board, planning board, other interested municipal officials, and the public.

Formal action on the plan originates with the governing board, who determines who will prepare the proposed comprehensive plan. The governing board may prepare the plan themselves and may utilize a consultant for that purpose; they may create a special board that includes some members of the planning board, or they may assign the task to the planning board. Even if the planning board does not have a formal role in shaping the comprehensive plan, it may still offer its comments and recommendations.

Essential to the preparation of a comprehensive plan is the input of the community. Residents should, and do, have a say in the development of the plan. According to the statute, at least two public hearings must be held on the comprehensive plan, but most municipalities will want to provide additional opportunities for public input on the plan or plan amendments. For example, the public might participate in surveys, charrettes, and meetings that shape the plan.

When the community uses a non-statutory method of adoption, statutory requirements for public hearings in adopting a comprehensive plan do not apply. However, public involvement above and beyond the requirements is the key to getting community support and a best representation of that community.

No matter who prepares it, deciding whether to adopt the comprehensive plan is the responsibility of the governing board.

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IMPLEMENTING THE COMPREHENSIVE PLAN

The value of planning comes from the municipality's willingness to implement the plan. The plan should be reflected in amendments to land use regulations, adoption of new laws guiding development such as design guidelines, capital improvement budgets, and economic development activities.

You may wonder why the planning board can have such a potentially large role in comprehensive plan development and yet does not have authority to adopt the plan. It is because the planning board does not have the power to adopt the tools to implement the plan, but the governing board does. The authorization of the governing board is needed for the above

actions, as well as for applying for appropriate State, Federal and privately funded programs and providing needed matching funds.

Private actions will also play a large role in implementing the plan. A municipality may be able to zone land for commercial purposes and even offer location incentives, but businesses won't start up or expand to the area without private investment in time and money. For example, a community may designate an area to be a town center, but without private interest and investment this goal may not come to fruition. The best practice in this regard is to have realistic goals, build infrastructure, adjust regulations, and provide incentives to support those goals. To summarize, amend land use regulations; develop design standards or guidelines; budget for capital improvements; seek funding; and encourage private actions.

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REGULATORY POWERS OF THE PLANNING BOARD

Planning boards are granted regulatory powers either by state statute or by a local governing board. The only regulatory power specifically delegated to planning boards is the power to review subdivision plats. However, that power may not be exercised unless the local governing board formally adopts a resolution, local law or ordinance authorizing the planning board to do so.

With the exception of subdivisions, state statutes give the local governing board the option of delegating regulatory power to the planning board. If the legislative body chooses to delegate, it must formally specify the extent to which they may exercise these powers. For example, what requirements may be placed on applicants as part of their submissions, or for project improvements?

In addition to subdivision review, the review of site plans and special use permits are frequently assigned to planning boards. As of 2008, 73 percent of cities, towns and villages in New York review subdivisions, and 70 percent review site plans.

Planning boards are often authorized to use a variety of other tools that are relevant to community character and which serve to create or to contribute to a sense of place. For example:

- A governing board may authorize the planning board to review the design of new signs for their appearance, safety and compatibility with the neighborhood. Review of signs could be incorporated into site plan, subdivision, or special use permit review, or be performed as a separate process.
- Municipalities that have properties or buildings listed in a State or Federal historic district may wish to designate those areas as local historic. Some local historic preservation laws allow the planning board to regulate exterior changes to historic structures, which if approved, will result in the issuance of a Certificate of Appropriateness.
- Review of the architectural design of a building may be similar to those features examined in historic preservation. The difference will lie, however, in that historic significance is not the issue, but rather incorporation of design elements that promote compatibility of neighborhood design.

Next we will open the books on each of the three regulatory powers of the board.

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GROWING A COMMUNITY: REVIEW OF SUBDIVISION PLATS

State law authorizes governing boards to grant the power to review subdivision plats only to a planning board. See:

- General City Law §32 and §33
- Town Law §276 and §277
- Village Law §7-728 and §7-730

A subdivision is the division of a parcel of land into a number of lots, blocks or sites, with or without streets, for the purpose of sale, transfer of ownership, or development. Review of subdivisions looks at the design and improvements to be made to the parcel.

Subdivisions may be defined by local regulations as either “major” or “minor.” By doing so, a municipality may adopt two different review processes, with the minor subdivision process having fewer requirements and less extensive criteria than that of the major subdivision. A common threshold is the number of proposed lots. For example, a subdivision resulting in four or more lots could be classified as major, and those below this threshold as minor. Other thresholds which could be used to classify a subdivision as being major or minor could include: construction of a new street, extension of municipal infrastructure, or adjustment of a lot line between two adjacent parcels.

Subdivision review regulates the design and improvements of the entire neighborhood. Possible review elements include lot configuration, landscaping, drainage, street pattern, service access, streets and roads, utility installation, sidewalks and curbs. The items on this list should be looked at both individually and as a package ---does this subdivision make sense? Do all the elements work as a whole? Is the layout compatible with environmental features such as hills, ravines, wetlands, and adjacent area uses?

The list of review elements in your local subdivision law or ordinance and the detail it contains will determine what controls the Planning Board has over subdivision plats.

Subdivision regulates design and improvements. It cannot be used to establish minimum lot sizes, dimension requirements, or control uses on the property. Those things are functions of zoning. Subdivision review cannot be used to regulate the style or design of buildings - that is a function of site plan review. Finally, subdivision review is not a substitute for health department review of sewer and water services.

The cluster subdivision process enables and encourages flexibility of design and development of subdivisions so as to preserve natural and scenic qualities of open land. Cluster subdivision allows the developer to work with the natural features and topography of the land to determine best where to build and where to conserve. The benefits include preservation of open space, recreational opportunities, and cost savings to the municipality and developer. See:

- General City Law §37
- Town Law §278
- Village Law §7-738

The planning board needs specific authorization from the local governing board to review cluster subdivision plats, and the board needs to identify in what districts they may be approved. The number of lots that would be allowed if the land were conventionally subdivided may not be exceeded. However, there is flexibility in the size and layout of lots, open space and recreation areas.

Planning boards may be authorized to mandate cluster development as distinct from merely allowing it as an option to the developer. The governing board adopts local procedures for subdivision review, which can be a one-step final plat review process, or a two-step process that includes both preliminary plat review and review of final plats. One benefit of having preliminary plat review is that modifications may be discussed and made in the early stages of plan development before significant expenditures have been made to design the subdivision plat. The statutes require that public hearings be held before both preliminary and final plat approval. For more information please see the Department of State publication, Subdivision Lessons.

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SITE PLAN REVIEW

While the subdivision of land and the installation of improvements like sidewalks and roads have literally shaped our communities, we are also deeply affected by the buildings and activities occurring on individual parcels of land. The exercise of site plan review gives cities, towns and villages the opportunity to “fine tune” development on individual parcels of land which can differ quite dramatically from each other.

What is a site plan? A "site plan" is a rendering, drawing, or sketch that contains specific elements and meets specifications established by the local governing board in a zoning ordinance or local law. In other words, a site plan shows the arrangement, layout and design of the proposed use of a single parcel of land. For more information please see the Department of State publication, Site Development Plan Review.

The governing board must adopt a local law or ordinance covering four major issues:

- The uses subject to site plan review.
- Who will review and enforce site plans.
- Development considerations included in site plan review
- The local procedures.

The local procedures will indicate if a public hearing will be necessary prior to a decision on a site plan. Public hearings are not required under state law. If not required by local law, a hearing may still be held at the option of the reviewing board.

The reviewing board is identified by the governing board. They may name the planning board, zoning board of appeals, some other board, or the retain all or some of site plan review authority for themselves.

The site plan law or ordinance should also specify submission requirements, such as application forms, fees, the need for surveys, number of copies, or even the need for aerial photos or photo simulations. The governing board should identify a local officer who will enforce the need for site plan review and compliance with approved plans and conditions of approval. This would typically be the zoning enforcement officer or building inspector. See the example from the Town of Danube.

Site plan regulations could be applied to many uses ranging from a small retail store to a “mega-mall,” or a single-family home to a large manufactured housing park. Site plan review regulations can be applied to certain uses throughout the community, such as a convenience store, bank, gas station, or fast food restaurant; or could be applied to certain uses within specific zoning districts or overlay zones, such as commercial uses in historic districts or car repair facilities in aquifer protection districts; or some combination of the above. Site plan reviews can include both small and large scale proposals ranging from gas stations, drive-in facilities and office buildings to complex ones such as shopping centers, apartment developments and planned unit developments.

The number of development factors to be evaluated can be large. Therefore, it is necessary to determine the important elements early in the process, such as at the pre-submission conference. Listed here are examples of the types of elements that might be reviewed:

Regional and local environs

- Relationship to comprehensive plan

Environmental impact

- Historic and archaeological
- Natural features
- Soil characteristics
- Surface drainage & ground waters

Circulation - vehicular/pedestrian

Design and aesthetics

Site Usage & Structures

Signs & Landscaping

Miscellaneous

- Construction specifications

Factors to be reviewed and the relative weights given to them will vary from site to site. For example, higher priority will be given to analyzing the effects of commercial traffic, topography and noise for an industrial development proposal than it will for a residential one. Pedestrian safety, neighborhood facilities and services would be more important considerations in review of a proposal in a residential district.

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SPECIAL USE PERMITS: MAKE SURE IT FITS

A special use permit is a tool which adds flexibility to the zoning law. It is a way of allowing uses on some parcels which may not be suitable everywhere in a district but are still considered desirable, such as gas stations, fast food restaurants, and home occupations. It allows the crafters of the zoning law to designate certain uses as allowable in a zoning district, but

recognizes that the use would not be appropriate in all parts of the district. Thus, special requirements may be established that limit where certain uses can go in the district.

A special use permit is an authorization to use land in a way which is permitted by zoning, subject to requirements designed to assure that the proposed use is in harmony with the zoning law and the use will not adversely affect the neighborhood if the requirements are met. Some boards refer to this as a "special exception" or "conditional use", but the state statutes use the term "special use permit."

The special use permit technique deals with use compatibility, and only allows uses on a particular site if they can meet additional requirements of the zoning law.

New York State statutes give the authority to adopt and administer special use permit laws or ordinances to cities and towns, and grants villages the authority to adopt and administer special use permit laws. See:

- General City Law §27-b
- Town Law §274-b
- Village Law §7-725-b

The standards and procedures which must be followed also appear in the local zoning law. There are usually two types of standards provided. The first are standards that apply to all special uses, such as the paperwork that must be submitted for review. The second type of standards is specific to certain uses. For example, there may be standards for kennels that limit the number of dogs over a certain age or require fences be of a certain height. A standard for a home occupation could limit the size of the business sign or require a certain number of off-street parking places. Standards that are general, such as "adequate parking" will usually be upheld, but it is better to be more specific.

State law requires a public hearing before a special use permit application is approved, as well as notice to adjacent municipalities and referral to the county if distance thresholds are triggered.

Under the law, the governing board of the municipality may retain the authority to review some or all applications. Governing boards usually opt not to be involved in special use permit applications, other than some uses likely to be controversial, like adult entertainment or wind energy devices. Instead, they delegate their authority to review some or all applications to the planning board or zoning board of appeals, or some other board created for the review of applications.

Uses that are allowed by special use permit must be listed in the zoning law under each district they will be allowed in. When determining what uses will be allowed, the local government should keep in mind that the courts have said that listing a use as allowed is tantamount to a legislative finding that the use is in harmony with the zoning plan and will not adversely affect the neighborhood and surrounding area, assuming the requirements have been met.

In making its decision, the board may impose conditions which relate to the impact of the development on the land. An example would be a requirement that a gas station could be built in a residential neighborhood on the main thoroughfare if the applicant can provide adequate parking, drainage, lighting, and screening from nearby uses, and if the size and layout of the

gas station would not adversely affect the neighborhood. The conditions may not relate to the internal operation of the activity.

Applicants and the public often get confused about whether a special use permit or a use variance is needed. As mentioned above, a special use permit is for a use that is allowed by zoning. It is actually listed in the law as permissible, subject to additional requirements. A use variance is required in order to use land for a purpose not allowed by the zoning regulations. The use is not listed as a permitted use in the district, so an application must be made to the zoning board of appeals.

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MEETINGS AND HEARINGS

Nearly all of the activities of a planning board will take place in public. These activities will typically be either meetings of the board or hearings to receive public input. Often, the board will have both a meeting and several hearings on the same night.

The planning board may also hold more interactive sessions, such as workshops and charrettes used to solicit input on how parts of the community should be developed.

Let's now explore the ins and outs of public meetings.

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MEETINGS OF THE PLANNING BOARD

The purpose of a meeting is to allow the public to observe and listen to the deliberations of the planning board.

Following proper procedure for meetings and hearings allows for the equitable treatment of applicants and residents. For more information, see the Department of State publication *Conducting Public Meetings and Public Hearings*.

A meeting requires a majority or "quorum" of all members of the full board. A full board is the total number of members if all vacancies were filled and all members were present. A quorum is required for the board to conduct business. On a five-member board, the quorum is three; on a seven-member board, the quorum is four.

Alternate members may serve in the event of a conflict of interest, or if authorized by local law, may help with quorum deficiencies. If alternates are appointed to the board, they may serve in the place of regular members.

The service of one or more alternates does not change the quorum and majority requirements of the board. As an example, a five-member board with alternates serving in place of two regular members remains a five-member board with a quorum majority requirement of three. For more information regarding quorums, please see the Committee on Open Government's *Open Meetings Law Advisory Opinion* listing on the Department of State website.

AUDIO: What is a meeting? That is a question that arose on day one in 1977 and at the time the word "meeting" was defined a little bit differently than it is today. A meeting was

defined initially to mean the formal convening of a public body for the purpose of officially transacting public business. Well all over the state various kinds of boards, councils, and committees were saying “We’re not going to vote, we’re not going to take action, we’re not transacting public business. This isn’t a meeting it’s a work session, it’s a workshop, it’s a study session, its everything but a meeting.

Well the issue went to court involving so called work sessions held solely for the purpose of discussion and with no intent to take action. The case went to the Court of Appeals, the state’s highest court, and the Court of Appeals said very simply, that anytime a majority gathers for the purpose of conducting public business, even if there is no intent to take action, regardless of what the gathering is called, yes, that is a meeting that falls within the framework of the Open Meetings Law.

In order to ensure that the meetings of the planning board are in compliance with the Open Meetings Law, the following must be adhered to:

- Notices of meetings must be given to the media and posted in a conspicuous place within the municipality.
- Applications and other board business must be discussed at meetings open to the public. However, while the Open Meetings Law gives the public the right to be present at meetings, it does not give the public the right to speak. The right to speak exists only at public hearings.
- As you heard Bob Freeman, Executive Director of the Committee on Open Government, say, “workshop” or agenda sessions, as well as site visits where discussion will take place, qualify as meetings if a quorum is present and applications before the board are discussed.
- Site visits which are undertaken to merely observe and acquire information are not subject to the Open Meetings Law. Boards may also decide to visit the site in numbers that would not constitute a quorum of the board or of a subcommittee of the board, or if the applicant does not object to the public being on the site, simply treat the site visit as an open meeting.

Good preparation for meetings ensures that everyone's time is spent wisely and appropriately. In order to increase the effectiveness of a Planning Board meeting, please consider the following suggestions:

- Before the meeting is even scheduled, make sure you have good forms and checklists to help applicants be properly prepared to meet with the board. See the example on the course webpage of a site plan review checklist from the Town of Union Planning Board.
- Get the necessary authority enacted to allow the Zoning Enforcement Officer to act as a gatekeeper to the planning board by reviewing applications to ensure the projects are allowed by zoning. If the uses are not allowed by zoning, the applicant either needs to get a use variance or a zoning amendment.
- Request enough copies of materials from the applicant for the board members, municipal staff, and other agencies to review well in advance of the meeting
- Confirm your meeting logistics, such as the reservation of the room, access to the municipal building after hours, accessibility for the physically challenged, size of the room compared to the anticipated crowd, and availability of equipment.
- Have a written agenda to help provide structure to the meeting. However, the agenda is only a tool and need not be followed.

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EXECUTIVE SESSIONS UNDER THE OPEN MEETINGS LAW

Audio: Should we talk about what's open and what's not? Yeah, executive sessions, executive sessions. The phrase "executive session" is defined by the Open Meetings Law to mean "a portion of an open meeting during which the public may be excluded. So an executive session is not separate from a meeting, it is part of a meeting.

Audio: To conduct an executive session a simple procedure must be accomplished in public, it involves three elements. Number one, somebody on the board has to introduce a motion in public to "close the doors." Number 2, the motion must indicate what the board intends to discuss. And number 3, the motion must be carried by a majority vote of the total membership, not withstanding absences or vacancies. If the board meets and there are only 3 members present – 3 out of 5 – and the vote to do whatever is maybe 2 to 1 it doesn't carry. In a vote consisting of 5 members there must always be 3 affirmative votes to do whatever it is that the board is empowered to do.

From there, the next question is "does the subject matter fit within the grounds for entering into executive session?" As Bob Freeman, Executive Director of the Committee on Open Government just told you, there are eight subjects that may be discussed behind closed doors, including:

- (1) matters which will imperil the public safety if disclosed;
- (2) any matter which may disclose the identity of a law enforcement agent or informer;
- (3) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- (4) discussions regarding proposed, pending or current litigation;
- (5) collective negotiations pursuant to Article 14 of the Civil Service Law (the Taylor Law);
- (6) the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- (7) the preparation, grading or administration of examinations; and
- (8) the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

One of the exceptions to the Open Meetings Law is that a board may meet in private to discuss matters made confidential by state or federal law. For example, they may receive legal advice from their attorney under the attorney-client privilege.

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MEETING DATES & LOCATIONS

While state and local statutes contain the notice requirements for public hearings, the Open Meetings Law sets the notice requirements for meetings. Here's Bob Freeman talking about notice requirements.

Before every meeting the law requires that notice be given, and the notice requirements are easy to accomplish. The law simply requires that notice of the time & place be given to the news media, and posted on one or more designated, conspicuous public locations. If a meeting is scheduled at least a week in advance, the law requires that notice be given not less than 72 hours prior to the meeting. If a meeting is scheduled less than a week in advance, notices must be given to the news media and posted – the law says – to the extent practicable at a reasonable time prior to the meeting.

The Open Meetings Law was amended in 2009 to require that when a public body has the ability to do so, notice of the time and place of a meeting should also be posted on the public body's website. The time frames are the same as for other meeting notices. Keep in mind that this is not a substitution for the other posting requirements of the Open Meetings Law.

The Open Meetings Law also addresses notices that must be made when videoconferencing is used to conduct a meeting. In that case, the public notice for the meeting must inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

Section 103 of the Open Meetings Law now requires that public bodies make reasonable efforts to hold meetings in rooms that can "adequately accommodate" members of the public who wish to attend. For example, if a typical board meeting attracts 20 attendees, and meetings are held in a meeting room which accommodates approximately 30 people, there is adequate room for all to attend, listen and observe. But in the event that there is a contentious issue on the agenda and there are indications of substantial public interest, numerous letters to the editor, phone calls or emails regarding the topic, or perhaps a petition asking officials to take action, the new provision would require the public body to consider the number of people who might attend the meeting and take appropriate action to hold the meeting at a location that would accommodate those interested in attending, such as a school facility, a fire hall or other site.

Changing the location of a meeting may require providing notice of the new location in compliance with the Open Meetings Law.

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PUBLIC HEARINGS OF THE PLANNING BOARD

- A public hearing is held for a different reason than a public meeting.
- A public meeting is intended to give the public the opportunity to listen and observe.
- A public hearing is a session held for the particular purpose of receiving public comment on a particular issue, and is subject to additional noticing requirements.

Examples of applications that require a public hearing are subdivision and special use permits, and sometimes site plans.

Public hearings may be held in conjunction with meetings.

Generally, notices of hearings must be printed in a newspaper of general circulation in the municipality at least five days before the scheduled date of the hearing. The public hearing shouldn't be held until the planning board has made a determination of significance.

Notices must be sent to the parties involved in the application at least five days before the hearing, and if applicable, sent to park commissions and county planning agencies. Details about hearing notices can be found in the enabling statutes.

General Municipal Law Section §239-nn was enacted to require municipalities to communicate with one another about applications that could have an impact beyond municipal borders. It requires that notices of special use permits, site plan, and subdivision plat applications that include property within 500 feet of a municipal boundary be sent by regular mail or electronic transmission (examples include email and facsimile) to the clerk of the adjacent municipality at least 10 days before the public hearing.

In addition to being legally required, this intermunicipal communication serves to foster good relationships, and gives notices to potentially impacted municipalities of their opportunity to speak on such a proposal.

Local land use laws may also specify local requirements for noticing hearings. For example, New York State Statute does not require that hearing notices be sent to neighbors of the subject property but some municipalities require such notice. Some municipalities require that the property that is the subject of the hearing be posted. Other municipalities provide extra notice as a courtesy, some as a posting on a municipal website, others as an e-mail to people who have requested such notices.

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MAKING LEGALLY DEFENSIBLE DECISIONS

Decisions of the planning board are often subject to legal challenges, both when the Planning Board denies an application or approves an application. Many of the challenges are based on defects in procedures, not necessarily poor decisions. To eliminate the basis for many challenges, be sure to follow all required procedures like the ones addressed in the following slides.

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COUNTY PLANNING AGENCY REFERRAL

General Municipal Law Section §239-m and §239-n are intended to bring inter-community and county-wide planning and zoning considerations to the attention of neighboring municipalities. Local boards are required to refer certain types of land use actions to the County Planning Agency if the subject properties of the applications are within 500 feet of certain areas.

The types of applications before the planning board that must be referred to the County Planning Agency if they are for property within certain geographic triggers include:

- Special use permits
- Site plans
- Other zoning authorizations
- Subdivisions where authorized by county legislative body under General Municipal Law §239-n

Please consult with your county planning agency if you are from a charter county, as the rules for referral may be slightly different.

If the applications mentioned involve property within 500 feet of the following geographic triggers, they are subject to county referral:

- A municipal boundary
- The boundary of a state or county park or recreation area
- The right-of-way of a state or county road
- The right-of-way of a county-owned stream or drainage channel
- A boundary of state or county land on which a public building is located
- A boundary of a farm operation that is located in a state agricultural district

A good practice would be to create a map of your municipality highlighting the areas which trigger review by the county, like the one shown here. Tools that can create this map range from a geographic information system or GIS, to a paper map and a highlighter.

A written agreement between a municipal board and the County Planning Agency can list types of applications that do not have to be referred to the county. This is especially useful for applications that both parties agree have no county wide or regional concern. These are usually lower impact actions that are exempted, such special use permits for accessory structures on residential lots, site plan review for a change in tenant where the tenant is not significantly modifying the building footprint, and lot line adjustments.

Applications that are exempt from referral should be clearly stated in a written document formally adopted by both parties.

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COUNTY REFERRAL TIMING

The planning board is required to transmit to the county or regional planning agency, a full statement of an action reviewable under General Municipal Law §239-m or §239-n.

A “full statement” consists of all application materials required by and submitted to the planning board, including part one of the environmental assessment form (EAF), as well as any other materials required by the planning board to make a SEQRA determination. In addition, an agricultural data statement is required if the property involved in the application is within a state agricultural district containing a farm operation or within 500 feet of a farm operation in a state agricultural district.

A full statement must be sent to the county planning agency at least ten days prior to a public hearing on the site plan or special use permit, and a subdivision plat if authorized by the county legislative body. If no public hearing is needed for a site plan, the referral must be sent before final action can be taken by the local Planning Board.

The county planning agency will respond to the application in one of four ways. It can:

- (1) Recommend approval of the application as submitted;
- (2) Recommend approval of the application with modifications;
- (3) Recommend disapproval of the application; or
- (4) Report that the application will have no significant county-wide or inter-community impact.

The planning board has jurisdiction to take final action when the earlier of the following occurs: it receives the recommendations of the County Planning Agency, OR thirty days have passed since the county's receipt of the full statement. The time period may be extended if agreed to by both the county and local planning bodies.

It is important that the local planning board does not take action prematurely. The board cannot take early votes conditioned on the county planning agency's later recommendation for approval.

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STATE ENVIRONMENTAL QUALITY REVIEW

The State Environmental Quality Review Act (SEQRA) and its regulations require an additional layer of consideration of the environment that local land use regulations may not address. The planning board must determine what type of action the project is. Type II actions are presumed as having no adverse environmental impact and therefore are not subject to review. Examples of Type II actions are construction or expansion of a primary, non-residential structure under 4000 sq. ft, and construction of garages, fences, and home swimming pools. If a project is not on the Type II list, the SEQRA process must continue.

It is highly likely the planning board will review many projects subject to further review under SEQRA, and that the planning board will designate itself as lead agency, responsible for coordinating the process with other boards and agencies that also have jurisdiction to make decisions on the project. The lead agency must either issue:

- a negative declaration, which finds that the project will not result in a significant adverse environmental impact; or
- a positive declaration, which finds it may have one or more significant adverse effects on the environment. If an agency issues a positive declaration, an environmental impact statement must be prepared.

If a negative declaration of significance has been rendered, the board can proceed to hold the public hearing for the subdivision, site plan, or special use permit application. If a positive declaration of significance has been made, the public hearing on the application should not be held until after a draft environmental impact statement (DEIS) has been accepted by the planning board as complete.

For more information about SEQRA, see the New York Department of Environmental Conservation's Division of Environmental Permits website.

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MAKE FINDINGS THAT SUPPORT ACTIONS

Findings are an analysis which applies law to facts, leading to conclusions. Findings support the approval or denial of an application by explaining the factual basis of the decision, and by linking it to the applicable state or local regulations. They should also support why a condition was imposed.

While the land use enabling statutes do not require that planning boards make findings of fact, or state reasons for their decisions, the courts will want to review findings if there is a challenge of a denial of an application or of substantial condition.

Findings of fact should be made in two stages. First, the findings simply recite the facts which show the problem to be addressed. For example, "the applicant proposes to remove all the walnut trees on the property." This should then be tied to a harm or problem, such as "Removal of all the walnut trees will remove the existing screening between the convenience store and the adjoining residential properties, thereby exposing them to glare from the lights of the store and reducing the privacy of the homes."

The second step links the problem or harm to a criterion in local law that justifies the imposition of a condition, because there must be authority in the ordinance or law to impose a condition or deny a project based upon an identified factor. In the example given, the findings might list the section of the site plan review law allowing the planning board to require landscaping to serve as a visual and/or noise buffer.

Findings should be approved by the board - not merely drafted by the board's attorney - and inserted in the record of the application.

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TAKING ACTION ON APPLICATIONS

Planning boards must act within 62 days after the close of a public hearing. A resolution for any action by a planning board can only pass if it is approved by a majority of the entire board.

Here is an example of passage by a majority vote: A board made up of 7 members meets, with 5 members present. A motion is made to approve an application, and 4 members vote in favor of the motion. In this case, the motion passes and the application is approved.

Here is an example where a motion fails. A board that officially consists of 5 members meets. There is one vacancy on the board, and one member cannot attend the meeting. Three members do attend, and they constitute a quorum of the board. A motion is made to approve an application, and 2 of the 3 members vote in favor of the motion. Even though a majority of members present vote in favor of the motion it is not approved. To approve a motion you need a majority of the full strength of the board agreeing, in this case at least 3 out of 5 members. The motion fails and no action has been taken.

Keep in mind that the chairperson of the board is a full member and can vote on applications. This is contrary to Robert's Rules of Order, which is not the law in New York State, and is meant for large parliamentary-type meetings or stockholders meetings

The planning board has some options in how it addresses a failed motion. A board member may immediately offer another motion, which may get enough votes. That motion could be to do the opposite of what was previously voted on, or perhaps add conditions to the original motion. If a majority vote cannot be reached on any motion, the members should continue discussing

the application, its potential impacts, and consider possible conditions or alterations to the application that might lead to a majority action on a motion.

Reaching a decision in a timely manner is especially critical when reviewing a preliminary or final subdivision plat. If a planning board fails to take action on a plat within the time prescribed and after completion of all requirements under the state environmental quality review act, or within an extended period established by mutual consent of the owner and the Planning Board, the plat shall be deemed granted approval. That is referred to as "default approval."

If the county planning agency recommends disapproval of the application, or approval with modifications, the planning board may only act contrary to the county recommendation by a majority-plus-one-vote of all the members of the planning board. For example, a county planning agency sends to a planning board of five members a report recommending the denial of an application. To override the county and approve the application, the majority of that board (three), plus one, for a total of four, would have to vote to approve it. This is true even if the county recommendation comes in after 30 days from the date it was referred, as long as the recommendation is received at least two days before the local board's decision.

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FILE DECISIONS

The land use statutes require that decisions on site plans, special use permits, and preliminary and final subdivision plats be filed with the municipal clerk within 5 business days of the day the decision was made. A copy of the decision must be mailed to the applicant. Failure to file a decision on a subdivision plat could result in a default approval.

If the application was subject to county planning agency referral under General Municipal Law §239-m or §239-n, a report of the decision must be sent to the county within 30 days. If the decision constituted an override of the county planning agency's recommendation, the reason for the override must be included in the report.

Since the filing of the decision is subject to deadlines, and also triggers other time frames, it is important for the board to know what it means to "file a decision." The answer to that lies in local rules of procedure. The filed "decision" may simply be the draft minutes showing the board's vote on the motion or some other locally defined document; however, the Department of State recommends that a separate decision document be prepared that contains the text of the motion that is passed, the conditions that were established for an approval, and the vote of each member.

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CHALLENGING A DECISION OF THE PLANNING BOARD

If a party with standing is unhappy with a decision of the planning board the party may appeal the matter to the State Supreme Court in what's referred to as an Article 78. Challenges must be initiated within 30 days of the decision being filed with the municipal clerk. Decisions of the Planning Board may not be appealed to the zoning board of appeals or to the local governing board.

To continue to the quiz or skip to the final slide.

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MEASURING YOUR POST-COURSE KNOWLEDGE OF PLANNING BOARDS

- (1) Who may not legally serve on the Planning Board?
 - a) Member of the local governing board
 - b) Zoning Enforcement Officer
 - c) A resident who has actively spoke in opposition to applications at planning board hearings in the past
 - d) A member of the local Chamber of Commerce
- (2) The new State training requirement:
 - a) Only applies to new members
 - b) Is meant to provide work for state employees
 - c) Requires all planning board members to complete at least four hours of training per year
 - d) Should be applied to members on a case by case basis
- (3) State law allows for municipalities to authorize the use of alternate members in the event:
 - a) That a regular member is absent
 - b) An alternate has a strong opinion about the application at hand
 - c) That a regular member has a conflict of interest
 - d) That they would otherwise not meet quorum requirements
- (4) In order to comply with the Open Meetings Law, you must:
 - a) Provide notice and access to the media and public
 - b) Allow only residents to attend
 - c) Provide background material on applications to all of the public
 - d) All of the above
- (5) A comprehensive plan is:
 - a) Meant to serve as the foundation for all zoning regulations
 - b) A document or culmination of materials that provide an outline for orderly growth
 - c) A land use plan
 - d) All of the above

- (6) Site Plan Review does all of the following EXCEPT:
- a) Pertain to a single piece of property
 - b) Relate to all sizes of parcels of land
 - c) Review design and layout of the site
 - d) Require issuance of a certificate of appropriateness
- (7) A site visit is not subject to the requirements of the Open Meetings Law if:
- a) There is less than a quorum of the full board or a committee of the board
 - b) The board members keep silent and only resort to eyeball rolling and writing each other notes
 - c) If the board gets together and sneaks on the property after hours without anyone knowing
 - d) If the board splits up in teams of two and meets afterwards at the coffee shop to discuss the project
- (8) Subdivision regulations may:
- a) Establish minimum lot sizes
 - b) Authorize approval of lot configuration and layout
 - c) Control the uses which may be placed upon the property
 - d) Affect dimensional requirements of setbacks
 - e) Subdivision regulations authorize the planning board to approve the configuration and layout of lots.
- (9) The requirements for referral to the County Planning Agency are meant to:
- a) Insure that the local planning boards don't make mistakes in the planning process
 - b) Take projects into consideration on a regional level and use the county planning agency's expertise and knowledge of past and proposed development in nearby communities
 - c) Insure that notice of the application is given to all of the municipalities in the county
 - d) Further the goals of the county legislators that appointed them
- (10) SEQRA review is the responsibility of:
- a) The State
 - b) The consulting engineer
 - c) Whoever has the most funding or time
 - d) The lead agency

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ANSWERS TO MEASURING YOUR POST-COURSE KNOWLEDGE OF PLANNING BOARDS

(1) Who may not legally serve on the Planning Board?

The correct answer is that a member of the local governing board may not also serve on the planning board.

(2) The new State training requirement?

The correct answer is that state law requires all planning board members to complete at least four hours of training per year.

(3) State law allows for municipalities to authorize the use of alternate members in the event? State law allows for alternate members to be used in the event of a conflict of interest. For alternates to fill in for sick or absent members, the local government must pass a local law superseding and amending state law.

(4) In order to comply with the Open Meetings Law, you must? The Open Meetings Law requires notice and access to the media and public. Meetings may not be restricted to residents of the community. Currently, background material does not have to be provided to the public, but it may be accessed through a Freedom of Information Law request.

(5) A comprehensive plan is? All of the following describe the comprehensive plan: It is meant to serve as the foundation for all zoning regulations; it is a document or culmination of materials that provide an outline for orderly growth; and it is a land use plan.

(6) Site Plan Review does all of the following EXCEPT? The only item that does not describe site plan review is the issuance of a certificate of appropriateness.

(7) A site visit is not subject to the requirements of the Open Meetings Law if? A site visit is not subject to the requirements of the Open Meetings Law if there is less than a quorum of the full board, or less than a quorum of an officially appointed committee of the board.

(8) Subdivision regulations may? Subdivision regulations may not establish minimum lot sizes - that is a function of zoning.

(9) The requirements for referral to the County Planning Agency are meant to? Referral to the County Planning agency is done so certain projects will be considered on a regional level, using the expertise and knowledge of the county planning agency.

(10) SEQRA review is the responsibility of? SEQRA review is the responsibility of the lead agency.

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COURSE WRAP UP

You have completed the Department of State's Planning Board Overview course. You have been presented with an overview of the possible powers and duties of a Planning Board, and its need to make decisions based on and supported by facts and local regulations.

Decisions rendered by the planning board affect property rights and the preservation and future development of municipalities. These decisions should not be taken lightly, and must be in accordance with the law. Local officials are encouraged to continue learning more about land use planning, regulations, and procedures by reading publications and legal memoranda from the Department of State's James A. Coon Technical Series. Some of these resources can be found in the attachments to this course. You can also learn more by attending training sessions conducted by the Department's planners and attorneys, and by taking the Department's other

online courses. Our website contains a calendar listing training being offered by the Department of State, other state agencies, and local government and academic organizations.

Our staff is also available to provide technical assistance to local government officials during regular business hours. Our contact information and links to more information about planning boards and land use regulation can be found at the top of your screen in the attachment section of this course.

Thank you for your interest in how planning boards function.