

CHAPTER 87

BASIC COURSE IN LAND USE LAW AND PLANNING TRAINING PROGRAM

Authority

N.J.S.A. 40:55D-8, 23.3, and 23.4; and P.L. 2005, c. 133.

Source and Effective Date

Effective: May 20, 2014.
See: 46 N.J.R. 1473(a).

Chapter Expiration Date

Chapter 87, Basic Course in Land Use Law and Planning Training Program, expires on May 20, 2021.

Chapter Historical Note

Chapter 87, Basic Course in Land Use Law and Planning Training Program, was adopted as new rules by R.2006 d.266, effective July 17, 2006. See: 38 N.J.R. 37(a), 38 N.J.R. 3019(c).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 87, Basic Course in Land Use Law and Planning Training Program, was scheduled to expire on July 17, 2013. See: 43 N.J.R. 1203(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 87, Basic Course in Land Use Law and Planning Training Program, was scheduled to expire on January 13, 2014. See: 43 N.J.R. 1311(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 87, Basic Course in Land Use Law and Planning Training Program, was extended by gubernatorial directive from January 13, 2014 to July 13, 2014. See: 46 N.J.R. 335(a).

Chapter 87, Basic Course in Land Use Law and Planning Training Program, was readopted, effective May 20, 2014. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

5:87-1.1 Heading and scope

(a) The rules contained in this chapter shall be known as the "Rules for the Basic Course in Land Use Law and Planning Training Program."

(b) These rules are to implement the mandatory training program required by P.L. 2005, c. 133 (N.J.S.A. 40:55D-23.3 and 23.4).

(c) These rules govern the prescribed evaluation by the State of the training of a member or alternate member of a municipal planning board, zoning board of adjustment or combined board in the State of New Jersey.

5:87-1.2 Authority

These rules are promulgated by the Commissioner of the Department of Community Affairs pursuant to the authority of the "Mandatory Education Bill for Planning and Zoning Board Members," (sections 2 and 3 of P.L. 2005, c. 133 (N.J.S.A. 40:55D-23.3 and 23.4)).

5:87-1.3 Intent and purpose

The purpose of the Training Program shall be to provide a basic understanding of the role and duties of members and alternate members of municipal planning boards, zoning boards of adjustment and combined boards as set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the relationship of their roles and responsibilities to the neighboring municipalities, regional planning entities, counties, and State agencies. Members are encouraged to continue their education beyond this basic course during their tenure on their respective board(s).

5:87-1.4 Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the rules and to this end, the provisions of the rules are severable.

5:87-1.5 Definitions

Unless otherwise defined in this subchapter, words and terms shall have the same meanings set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-4 to 7.

“Approved course” means a course, approved by the Commissioner of the Department of Community Affairs, offered by an institution or organization or entity that satisfies the mandatory curriculum of the Training Program and for which members and alternate members of municipal planning boards, zoning boards of adjustment or combined boards shall receive certification.

“Board” means a municipal planning board, zoning board of adjustment or combined board as referenced in N.J.S.A. 40:55D-23.3(a).

“Certificate of Completion” means written documentation provided to the member or alternate member of a municipal planning board, zoning board of adjustment or combined board from the Commissioner evidencing satisfactory completion of the Training Program requirements.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Course provider” means an institution or organization or entity certified by the Commissioner to offer an approved course.

“Department” means the New Jersey Department of Community Affairs.

“Member” means individual serving as primary or alternate appointed representative to a municipal planning board, zoning board of adjustment, or combined land use board.

“Training Program” means the mandatory basic course in land use law and planning required by sections 2 and 3 of P.L. 2005, c. 133 (N.J.S.A. 40:55D-23.3 and 23.4).

“Waiver” means a determination by the Commissioner of the Department of Community Affairs that a member or alternate member of a municipal planning board, zoning board of adjustment or combined board has completed a course of study which is equivalent to or more extensive than the course offered pursuant to (sections 2 and 3 of P.L. 2005, c. 133; (N.J.S.A. 40:55D-23.3 and 23.4)).

5:87-1.6 Applicability; fees; board membership

(a) Except as provided in N.J.A.C. 5:87-1.7, the provisions of this subchapter shall apply to any person serving as a member as of the date that the Training Program is first offered, and to members appointed thereafter.

(b) Municipalities may establish fees, pursuant to N.J.S.A. 40:55D-8, to defray the costs of tuition for those members required to take the course in land use law and planning as required pursuant to P.L. 2005, c. 133 (N.J.S.A. 40:55D-23.3 and 23.4).

(c) Municipalities shall provide to the Commissioner by September 15, 2006 and thereafter biannually, every January and July, a current list of members, their addresses, the date of their appointment to the board, and the date of their term expiration, using GovConnect at <http://www.nj.gov/dca/lgs/>

or by completing the List of Planning/Zoning Officials form available on the Office of Smart Growth website at www.state.nj.us/dca/osg.

5:87-1.7 Exemptions

(a) The following members shall not be required to meet the educational requirements established pursuant to section 3 of P.L. 2005, c. 133 (N.J.S.A. 40:55D-23.3):

1. The mayor or persons designated to serve on a municipal planning board in the absence of a mayor who serves as a Class I member pursuant to section 14 of P.L. 1973, c. 291 (N.J.S.A. 40:55D-23);

2. A member of the governing body serving as a Class III member pursuant to section 14 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-23);

3. Any person who is licensed as a professional planner and maintains a certificate of license issued pursuant to chapter 14A of Title 45 of the Revised Statutes which is current as of the date upon which that person would otherwise be required to demonstrate compliance with the provisions of sections 2 and 3 of P.L. 2005, c. 133 (N.J.S.A. 40:55D-23.3 and 23.4); and

4. Any person who offers proof of having completed a course in land use law and planning that is equivalent to or more extensive than that required under the provisions of N.J.S.A. 40:55D-23.3 and as set forth in N.J.A.C. 5:87-3.1 within 12 months of the date upon which that person would otherwise be required to demonstrate compliance with the provisions of the “Mandatory Education Bill for Planning and Zoning Board Members” (N.J.S.A. 40:55D-23.3 and 23.4) and which, in the determination of the Commissioner, is equivalent to or more extensive than the course defined by the provisions of N.J.A.C. 5:87-3.1.

5:87-1.8 Compliance period

(a) Any member or alternate board member serving as of the date the Training Program is first offered shall satisfactorily complete the Training Program by January 17, 2008.

(b) Any board member appointed after the date upon which the Training Program is first offered shall satisfactorily complete the Training Program within 18 months following the date of their appointment.

(c) A board member who fails to satisfy the requirements of the Training Program within the prescribed 18-month period shall be deemed ineligible to continue to serve as a board member. Any board member deemed ineligible for failure to complete the required Training Course shall be removed as a member of the applicable board by the governing body of the affected municipality at its first regular public meeting following the expiration of the prescribed 18-month period. Any board member removed under this provision shall not be eligible for subsequent appointment to any board (as defined in N.J.A.C. 5:87-1.5) without first successfully completing the Training Program.

(d) Any board member serving a one-year term who does not complete the course within 18 months of the initial appointment or within 18 months from the date an approved course is first offered, whichever is later, must successfully complete the Training Program before becoming eligible for subsequent appointment to any board.

(e) A hearing or proceeding held, or decision or recommendation made, by a planning board or zoning board member shall not be invalidated if a board member has participated in the hearing or proceeding or in the decision-making or recommendation leading to board action and that member is subsequently determined to be ineligible to serve as a board member by reason of their failure to complete the requirements of the Training Program.

SUBCHAPTER 2. DELIVERY OF THE TRAINING PROGRAM

5:87-2.1 Course providers

The Training Program shall be offered by approved course providers as designated by the Commissioner. The Training Program shall consist of five hours of scheduled instruction and be effectively structured and efficiently run so that a board member can satisfy the course requirements in one day. The approved course providers may charge a reasonable tuition to cover the cost of offering the Training Program. The municipality whom the board member represents is responsible to pay the cost of tuition.

5:87-2.2 Written proposal for course approval

(a) Any person, institution, organization or entity seeking to become an approved course provider must first receive the approval of the Commissioner that the proposed course satisfies the mandatory curriculum of the Training Program set forth in N.J.A.C. 5:87-3. The person, institution, organization or entity must submit a written proposal to the Commissioner requesting approval at least 60 days in advance of the date the course is first offered. The proposal must contain the following:

1. A description of the length of the course, total number of sessions, length of session(s), and the frequency with which they are offered;
2. A description of the course content broken down by session. Any practical work to be completed by board members shall be identified in the proposal;
3. A list of any text or materials to be used during the course. The description shall identify whether the text or materials shall be mandatory or recommended;
4. The names of the instructors and their licensing credentials, as required by N.J.A.C. 5:87-4.1;

5. The number of times the course shall be offered per year; and

6. A statement of agreement that the person, institution, organization or entity shall notify the Commissioner if the approved course is withdrawn or changed at anytime. Notification must be received by the Department within 10 business days from date the course is withdrawn or changed, including an explanation of the changes.

5:87-2.3 More extensive course offerings

A person, institution, organization or entity providing a more extensive course than the Training Program may seek approval from the Commissioner that the course, or a component thereof, satisfies the Training Program curriculum. The person, institution, organization or entity must meet the requirements under N.J.A.C. 5:87-2.2 to be considered for course approval.

5:87-2.4 Commissioner approval

(a) Upon determining that the course satisfies the requirements of the Training Program curriculum, the Commissioner shall:

1. Issue a letter designating the person, institution or organization or entity as an approved course provider, setting forth any terms or conditions of such approval; and
2. Place the name of the person, institution, organization or entity and the course on the Department's list of approved courses only after all terms or conditions of approval are satisfied. The list shall be made available to the public at www.state.nj.us/dca/osg.

(b) When a training program is approved by the Commissioner, the approved course provider offering the course may include in the course description the statement "This course satisfies the requirements of the Basic Course in Land Use Law and Planning Training Program required pursuant P.L. 2005, c. 133 and has been approved by the Commissioner of the Department of Community Affairs."

5:87-2.5 Periodic review of approved courses

The Commissioner reserves the right to periodically review approved courses and approved course providers to evaluate whether the approved courses or course providers continue to conform to the requirements of this chapter.

5:87-2.6 Revocation of approval

The Commissioner may revoke his or her approval of an approved course or approved course provider if the course provider no longer offers the course or the approved course is no longer in conformity with the requirements of this chapter. Whenever approval is revoked or a course has been withdrawn by an approved course provider, a new proposal and the Commissioner's approval of that proposal shall be required before the course may again be offered as satisfying

the requirements of the Training Program. Course descriptions must be amended to remove the statement contained in N.J.A.C. 5:87-4.3 immediately upon revocation of Commissioner's approval.

SUBCHAPTER 3. MANDATORY CURRICULUM OF TRAINING PROGRAM

5:87-3.1 Training Program curriculum

(a) This subchapter sets forth the basic requirements for the Training Program curriculum. Course providers may offer one combined course for all members, or separate courses for zoning board members and planning board members, or for new members versus experienced members. However, the course must cover each of the topics listed in this subchapter in order to be considered for approval by the Commissioner.

(b) The Training Program shall have three key segments:

1. An overview of board responsibilities and differences between the boards;
2. The municipal master plan; and
3. The process of reviewing development applications.

5:87-3.2 Overview of board responsibilities and differences between the boards

(a) The purpose of the segment of the training course entitled "overview of board responsibilities and differences between the boards" is to provide a focused view of the primary responsibilities for each board (planning boards, zoning boards and combined boards) as set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (MLUL), and to identify the differences between the boards. The mandatory topics to be covered in this segment of the Training Course include:

1. The difference between planning boards, zoning boards and combined boards;
2. The authority for board action, including the MLUL, the Local Redevelopment and Housing Law N.J.S.A. 40A:12A-1 et seq., local ordinances passed pursuant to the MLUL, and board by-laws;
3. Board membership;
4. The purposes of public planning;
5. The planning process and an overview of the New Jersey planning system;
6. The relationship of boards to other local entities, including, but not limited to, the governing body, environmental commission, historic preservation commission, board of education, and the local administration including

the town administrator and the fire, health, police, emergency management and building officials;

7. The primary responsibilities of the planning board, including approval of, and amendment to, the master plan, conducting a master plan re-examination report, recommendations as to the official map or any amendment thereto, declaring an "area in need of redevelopment" and reviewing proposed redevelopment plans, preparation of the capital improvement program, and the development and/or review of site plan, subdivision and zoning ordinances;

8. The primary responsibilities of the zoning board, including the grant of variances from the zoning ordinance, interpretation of the zoning ordinance, decisions on appeals of alleged errors of administrative officers' interpretation of the zoning ordinance, and preparation of an annual report;

9. Conflicts of interest set forth in N.J.S.A. 40:55D-23b, applicable to planning boards, and N.J.S.A. 40:55D-69, applicable to boards of adjustment;

10. The requirements of the Local Government Ethics Law, in which every municipal board member and employee must file a financial disclosure statement pursuant to N.J.S.A. 40A:9-22.4; and

11. Upholding the requirements of the Open Public Meetings Act or "Sunshine Law," N.J.S.A. 10:4-6 et seq., including scheduling and noticing meetings; conducting open and closed meeting sessions; and consequences of violating the Sunshine Law.

(b) In the course of covering the topics in the section, the approved course shall identify and describe:

1. The contents of a master plan;
2. The contents of a site plan;
3. The contents of a subdivision and zoning ordinance;
4. The relationship of the master plan to a zoning ordinance;
5. A variance and a waiver; and
6. The differences between C and D variances and permitted, non-conforming and conditional uses.

5:87-3.3 The municipal master plan

(a) The purpose of the "municipal master plan" segment of the Training Program is to provide an overview of the elements of a master plan; development and reexamination of the master plan; the relationship of the master plan to the ordinances and regulations implemented by the boards, and the availability of certain planning tools to implement the vision of the master plan. Required areas for discussion in this segment shall include, but are not limited to:

1. Review of the mandatory and optional elements of the master plan as required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (MLUL). The overview of the master plan elements may also include a review of other planning elements not necessarily addressed in the MLUL, such as the community history, the community vision, neighborhood preservation plans, a design element and redevelopment plans;

2. Background studies that inform the master plan, including, but not limited to:

i. The population, employment and housing characteristics of the municipality and the relationship of the information to population, employment and household projections contained in the State Development and Redevelopment Plan adopted pursuant to the State Planning Act, N.J.S.A. 52:18A-203, the applicable Metropolitan Planning Organization, and the Council on Affordable Housing;

ii. The Natural Resources Inventory prepared by the Environmental Commission;

iii. The Historic Preservation Plan prepared by the Historic Preservation Commission;

iv. Brownfields inventory;

v. The build-out analysis;

vi. The master plan reexamination reports prepared according to the MLUL;

vii. The zoning board of adjustment's annual report; and

viii. The processes of cross-acceptance, plan endorsement and center designation set forth in the State Planning Act, N.J.S.A. 52:18A-203 et seq., and the State Planning Rules, N.J.A.C. 5:85; and

3. Discussion on smart growth planning principles, redevelopment, center-based development, transit villages, clustering and transfer of development rights and zoning as planning concepts and tools available to planning boards to implement the vision of the master plan for balancing future development and conservation in the municipality. In addition, region-specific issues such as the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., should be discussed for board members from municipalities that have substantial active commercial agriculture.

5:87-3.4 The development application review process

(a) The purpose of the development application review process segment of the Training Program is to provide an overview of the development applications that come before the boards pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., (MLUL), the administration of the applications, the review of the applications, and the hearing

process. The mandatory topics to be covered in this segment of the Training Program include:

1. How to read, analyze and review a land development plan. In addition to the technical aspects of reading a plan, the analysis shall explore site visits and the relationship of the plan to local design standards and regulations, including site plan, subdivision, zoning and health regulations. The analysis shall also explore the relationship to county and state regulations, including the Department of Environmental Protection environmental rules, the Department of Transportation highway access rules and the Department of Community Affairs Residential Site Improvement Standards, and, where applicable, the land use and development rules of the Highlands Council, New Jersey Meadowlands Commission and the Pinelands Commission. In addition to discussing appropriate board questions, the overview of the review of the plan should include the role of reports from professionals representing the board, the applicant and the public;

2. The topics that need to be addressed when reviewing administration of an application, include, but are not limited to, notices, the determination of a complete application pursuant to a duly adopted checklist, the time periods in which boards must act and automatic approvals; and

3. The elements of the hearing procedure, including, but not limited to, quorums, the role of the applicant, public and board members, including the chair, expert witnesses, evidence, public questions and testimony and board questions, the burden of proof, finding of fact, motions and resolutions, and who qualifies to vote.

SUBCHAPTER 4. TRAINING PROGRAM ADMINISTRATION

5:87-4.1 Standards for instructors

The instructors of the Training Program shall be licensed professional planners or attorneys experienced in land use matters and licensed to practice in New Jersey.

5:87-4.2 Standards for determining satisfactory completion of Training Program

(a) All course participants are required to take a test developed by the Commissioner in order to ensure that members attended and understood the course material. The test shall be a 10-question multiple-choice open book exam and shall change periodically. Course participants will be permitted to use the New Jersey Municipal Land Use Law along with notes and course materials for reference while completing the test. The Commissioner shall provide the test directly to the course providers prior to Training Program

offerings. The course providers shall distribute the tests to participants at the conclusion of the course instruction.

(b) In order to receive a certificate of completion, participants must demonstrate an adequate understanding of the Training Program material by attending the entire course and taking a test at the conclusion of the course instruction. Seventy percent accuracy on the test shall constitute a passing score. The tests shall be graded by the course providers.

(c) In instances where a participant attends the course but does not complete the course or achieve at least a 70 percent score on the test, the participant shall receive an incomplete for the course. The participant must retake the course and test before the expiration of the 18-month period prescribed for completion of the required course. Failure to satisfactorily complete the course or to re-take the test within the required time period set forth in N.J.A.C. 5:87-1.8 shall result in the participant receiving no certification for the course.

(d) Within 14 days following a Training Program offering, the course provider shall submit to the Commissioner and the municipal clerk a list of the members who attended the Training Program, the date of the Training Program, the municipality for whom the member represents and a copy of the graded tests that have received a passing score.

(e) Upon receipt of the records indicated in (d), the Commissioner shall issue a Certificate of Completion to each Training Program participant who satisfactorily completes the training program requirements and the municipal clerk. The municipal clerk shall notify the planning, zoning and combined boards of each member who has received a certificate of completion upon receipt of the certificate.

5:87-4.3 Waivers

(a) A member shall be eligible for a waiver of the required Training Program if he or she has completed a course of

study that the Commissioner deems to be equivalent or more extensive than the Training Program:

1. Within 12 months prior to July 17, 2006 for members as of July 17, 2006; or
2. Within 12 months prior to the date of appointment for new members.

(b) Members must complete a Waiver Request Form available on the Department's website at www.state.nj.us/dca/osg, and submit a course description, official transcript or certificate of completion and other related documentation, together with a completed Waiver Request Form, to the Commissioner for review.

(c) Within 30 days of receipt of the Waiver Request Form, the Commissioner shall make a determination on the waiver request and respond in writing to the member with a copy to the municipal clerk.

5:87-4.4 Record retention

(a) The following records pertaining to satisfactory completion of the training program shall be maintained by the Department for three years after expiration of appointment, whether due to the end of a term, automatic vacation from a board, and/or resignation:

1. The name and address of the member;
2. The date of appointment to a board;
3. The date(s) when the member took an approved course;
4. Satisfactory completion of the course; and
5. Copies of the graded tests.

(b) A copy of the Certificates of Completion shall be permanently maintained by the Department.