

## MUNICIPAL

Across New York State municipalities face a wide range of challenges as they provide services to their residents. At Hodgson Russ our multidisciplinary municipal law team delivers value by assisting communities with the full range of legal and practical aspects of their endeavors. Led by former municipal officials, our team understands government from the inside, and provides cost effective assistance across the full range of issues, including labor and employment, economic development and public finance, zoning and land use, energy and environmental law, real property tax and eminent domain, construction project advice, as well as general municipal law, all backed by relentless advocacy for our clients in state and federal judicial and administrative forums.

Whether as general counsel, bond counsel, or as special counsel for specific projects or matters, Hodgson Russ attorneys can assist in all phases of municipal operations.

### **Labor and Employment Law**

Our labor and employment clients include public employers with both union and nonunion workforces. The firm's labor attorneys represent well over 100 public sector clients in the areas of contract negotiation, dispute resolution, discrimination case defense, and more. We regularly advise on matters arising from employee grievances and interpretation of union contracts. We aggressively defend employment discrimination matters in administrative and judicial forums.

We have extensive experience advising clients on compliance with New York State and federal laws and regulations concerning wage and hour laws, development of employment policies, employee discipline and discharge, and compliance with all other employment regulations affecting the employment relationship in New York State.

The firm's labor attorneys regularly appear before the Equal Employment Opportunity Commission, the U.S. Department of Labor, the New York Public Employment Relations Board (PERB), as well as before other state administrative agencies involved in employment matters and both state and federal courts.

### **Environmental Law**

Municipal clients face environmental challenges for their own operations as well as in the community from private enterprises. The experienced members of the Hodgson Russ Environment & Energy Practice Group provide comprehensive legal services to municipal clients as they navigate the complex body of law and regulations designed to protect public health and the environment. Our clients face

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### **Professionals**

#### **Attorneys**

Mohammed Alam  
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Luisa Bostick  
Christopher Canada  
George Cregg  
Emanuela (Amy) D'Ambrogio  
Veronica Devries  
Glen Doherty  
Andrew Drilling  
Joshua Feinstein  
Emily Florczak  
Cheyenne Freely  
Peter Godfrey  
Alicia Legland  
Matthew Liponis  
Ryan Lucinski  
Charles Malcomb  
Elizabeth McPhail  
Adam Perry  
Michael Risman  
Edmund Russell III  
Aaron Saykin  
A. Joseph Scott III  
Daniel Spitzer  
Alicia Stoklosa  
Jeffrey Stone  
Jeffrey Swiatek  
Marla Waiss

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a full range of environmental questions concerning wind and solar energy siting (including Article 10 proceedings) DEC and EPA enforcement actions, managing landfills and other waste disposal operations, fuel storage concerns, deteriorating housing stock, and brownfield cleanup and reuse. We are also well versed in the requirements for environmental evaluation of property and facilities and have guided many projects through the SEQRA review process.

Our representation on environmental matters includes litigation before state and federal administrative and judicial tribunals. The group's members advise our municipal clients on environmental compliance, OSHA compliance, insurance, and audits and potential environmental liabilities associated with transfers of assets and financing transactions. The group has experience handling matters involving SEQRA, RCRA, TSCA, CERCLA, the Clean Water Act, the Clean Air Act, toxic torts, and related insurance questions.

Hodgson Russ assists communities implementing sustainability and green energy and building programs. We provide assistance in implementing stormwater controls, energy efficiency programs, and green infrastructure implementation.

Hodgson Russ also assists communities in obtaining funding for environmental protection and remediation. The firm is well versed in the Environmental Facilities Corporation programs and grant requirements and has successfully represented communities in obtaining financing for such projects.

### **Land Use and Zoning**

Hodgson Russ attorneys regularly provide service to municipalities in all aspects of land use and zoning matters. The firm's services in this area include:

- Assisting in preparation of master plans and drafting local statutes to implement master plans and other desired changes in local regulation.
- Providing complete guidance in complying with the State Environmental Quality Review Act (SEQRA). Hodgson Russ has assisted many communities in all phases of the SEQRA process, from preparation of environmental assessment forms through issuance of negative and positive declarations and drafting and review of environmental impact statements. Hodgson Russ has successfully represented numerous municipalities in litigation arising out of the SEQRA review process.
- Providing legal representation for planning boards and zoning boards to address applications and interpret local codes and state law. Hodgson Russ has assisted in drafting decisions and statements of findings, as well as in guiding municipalities through complex approval processes.

Pietra Zaffram  
Nadene Zeigler  
Henry Zomerfeld

### **Paralegals**

Paula Hearn

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- Providing assistance in dealing with regulatory requirements such as historic preservation regulations and reviews by state agencies such as the New York State Department of Environmental Conservation and State Office of Historic Preservation.
- Assisting in reviewing proposals for alternative energy systems such as wind and solar farms. Efforts include drafting ordinances, reviewing specific proposals, negotiating host community agreements, and defending decisions.

Hodgson Russ is a member of the New York Planning Federation, which has been focused on promoting sound planning, land use and zoning practices in New York State since 1937.

### **Public Finance**

Hodgson Russ maintains an extensive public finance practice, advising municipalities, school districts, public agencies, and authorities with respect to all aspects of their cash flow and infrastructure financings, from the structuring phase through the closing of permanent financing. In doing so, the firm's attorneys work with the financial advisors, engineers, architects, and other professionals retained by the client, as well as representatives of the Rural Development Administration and, in New York State, the Dormitory Authority, the Environmental Facilities Corporation, the State Education Department, and other involved agencies. This team of attorneys also provides legal services to underwriters, banks, trustees, and project developers in connection with a wide range of municipal, project development, and other public financings.

The firm is listed in the Municipal Bond Attorneys section of The Bond Buyer's Directory of Municipal Bond Dealers of the United States (the so-called "Red Book"). Hodgson Russ attorneys have acted as bond counsel or underwriter's counsel in connection with the issuance of industrial revenue bonds, revenue anticipation notes, tax anticipation notes, budget notes, certificates of participation, statutory installment bonds, bond anticipation notes, and serial bonds.

### **Litigation**

Hodgson Russ represents municipalities in all judicial and administrative forums, successfully litigating municipal issues at all levels, including the United States Supreme Court.

Litigation attorneys are resident in each of our offices, supported by a full complement of experienced paralegal specialists and staff. This experience and depth allows the firm to competently and efficiently handle litigation in any forum and to respond immediately to the problems or emergencies frequently encountered in the municipal setting. Litigation services include full representation at all administrative levels. The firm regularly represents clients at state agency hearings, and it provides representation for local governing boards in the permit-issuing process.

We have successfully litigated a wide array of zoning, employment, environmental, and numerous other cases for and on behalf of municipalities. Our successes include the defense of permit decisions and the environmental review process for numerous large projects throughout New York. We consistently defend town boards, planning boards, and zoning boards in connection with decisions made for their communities.

### **Real Property Tax Assessment**

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Taxes are the lifeblood of municipal government and Hodgson Russ attorneys provide skilled, practical guidance to municipalities, school districts, and counties, in all matters of real property tax administration. The firm advises county tax directors, municipal assessors, school district business managers and other stakeholders on a wide variety of real property tax issues. These issues start implementing revaluations and tax exemption applications, tax collection issues establishing and negotiating PILOT agreements, assessment grievance filings, as well as administrative and judicial proceedings at the trial and appellate level. Our experience includes former industrial lands and the complex issues raised by contaminated properties. We have worked on tax disputes involving some of the largest contaminated sites in the country. Our experience also includes working with properties that include power generation assets like wind farms and co-generation facilities, oil and gas facilities, pipelines, telecommunication towers, wineries and other agricultural properties.

### Experience

Hodgson Russ reversed on appeal an approximately \$3 million judgment in a municipal labor dispute and obtained dismissal of the pleadings of a multimillion-dollar collective action against a municipality under New York State insurance laws. The case involved the use of five insurance tax proceeds.

In *Maraschiello v. City of Buffalo*, Hodgson Russ obtained summary judgment and successfully defended an appeal before the U.S. Court of Appeals for the Second Circuit. The plaintiff was next in line for promotion on the civil service eligible list for police inspector. After he lost his opportunity for promotion, he sued claiming reverse discrimination. In forcefully rejecting the plaintiff's contention that Buffalo acted for impermissible race-based reasons in discarding civil service exam results, the Second Circuit emphasized that Buffalo's "problem was the test itself, rather than with a particular set of results." The Second Circuit's decision has broad significance for municipalities and other employers nationally as it makes clear that employers retain substantial discretion to design and implement new employment procedures for purposes of complying with Title VII and other anti-discrimination law, despite claims by majority plaintiffs that such compliance efforts constitute reverse discrimination.

Terrence M. Gilbride led a team of Hodgson Russ attorneys that counseled Allegany County in conjunction with the development of a new municipal courthouse facility. This project was one of the first municipal projects in the state, if not the first, to take advantage of recent statutory modifications exempting public construction projects with project labor agreements from the multiple prime contractor requirements of the Wicks Law. This structure enabled the project to come in on time and below budget. We also served as State Environmental Quality Review Act (SEQRA) counsel for this project and successfully defended the county in litigation brought on environmental and state law grounds.

The Appellate Division, Fourth Department dismissed two cases brought by telecommunications companies claiming their installations were exempt from real property taxes. In the case of *Level 3 Communications v. Chautauqua County*, the court upheld the dismissal of a proceeding seeking a tax exemption for fiber optic installations under the exception for property used in the transmission of radio and television signals. In the related case of *Level 3 Communications v. Erie County*, the court modified the lower court decision and dismissed a similar proceeding claiming a tax exemption for fiber optic installations under the radio and television transmission exception. Mike Risman successfully defended these two attempts by the telecommunications industry to circumvent and undermine the recent ruling of the New York Court of Appeals upholding the real property taxation of fiber optic cables in the case of *T-Mobile Northeast, LLC v. City of Mount Vernon*,

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which was also handled by Mike. These decisions are of statewide importance in upholding the taxation of fiber optic installations of telecommunication companies.

After a 13 year battle, the petitioners ultimately failed in their efforts challenging a zoning law and negative declaration which prevented them from any mining and excavating creating a stone quarry in an overlay zoning district formed to protect a neighboring wildlife refuge. Petitioners had commenced a multi-prong assault on the legislation. New York's appellate court for the 4<sup>th</sup> Department determined that 1) the overlay district law did not clearly conflict with town's comprehensive plan; 2) the town board sufficiently analyzed relevant areas of environmental concern in adopting overlay district and issuing negative declaration, satisfying their SEQRA obligations, 3) the overlay district law was not preempted by Mined Land Reclamation Law; and 4) changes made to drafts of local legislation that do not result in a substantially different law do not require additional public hearings or re-referral to planning boards. Charles Malcomb and Dan Spitzer handled this matter on behalf of the town, including drafting the town's mining and excavation and overlay district laws, guiding the environmental and public review, and successfully defending the town in multiple judicial proceedings asserting state statutory and federal constitutional claims.

The Ghent Planning Board issued a Negative Declaration, the Ghent ZBA granted area variances, and the Claverack Planning Board granted site plan approval. Although Hodgson Russ represented the applicant, it took the lead in defending the actions of the municipal boards and prevailed in all three proceedings. Each matter involved the preparation of a certified record, drafting pleadings, and preparing memoranda of law. One required approval, a special use permit from the Ghent Planning Board, was denied. Hodgson Russ successfully challenged this denial as arbitrary and capricious and not supported by the evidence in the record. Supreme Court, Columbia County ordered the approvals be granted. These matters involved the construction of a proposed refrigerated warehouse facility across the border of two towns in Columbia County.

Hodgson Russ successfully defended the City of Buffalo's use of employment promotional exams against two federal putative class-action challenges by a group of African-American firefighters. After a bench trial, the district court ruled that the examinations were valid, non-discriminatory selection devices that were job related and consistent with business necessity, even though they statistically favored non-minority candidates. A Hodgson Russ attorney successfully briefed and argued the appeal in the U.S. Court of Appeals for the Second Circuit, which affirmed the district court's ruling.

Following the expiration of the provisions of the New York State General Municipal Law authorizing industrial development agencies to issue bonds to assist nonprofit corporations in financing capital projects, attorneys at Hodgson Russ developed a financing structure using locally created local development corporations (LDCs) to fill the void. As part of the LDC structure developed by the Hodgson Russ attorneys, we were successful in obtaining a private letter ruling from the Internal Revenue Service confirming our structure and providing that bonds issued by the LDCs would be eligible for exemption from federal income taxation.

A Developer commenced an Article 78 proceeding challenging, among other things, members of a village board of trustees' right to deliberate and vote on a project about which the members expressed personal opinions. The project was a controversial development project and prior to their election, board members had expressed their views on the project, both before and during their campaigns for office. Hodgson Russ represented the board of trustees and its members when the developer argued that the expression of opinions and signing a petition against a project were examples of bias requiring the

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board members to recuse themselves. Supreme Court, Monroe County agreed and annulled the determination, finding that the board members had a prohibited conflict of interest, and enjoined them from any deliberations or voting with respect to the project. The Fourth Department reversed, holding that mere expressions of opinion, absent more, are not enough to demonstrate bias. Elected, public officials should be free to express their views to their constituents, especially during their run for election. This is a seminal case that clarifies that the mere expression of opinion does not require disqualification of board members.

Hodgson Russ successfully defended the ZBA before the Supreme Court, Erie County and the Fourth Department. The applicant sought a use variance to permit commercial parking in a residential area, across the street from his commercial operation. The ZBA applied the factors for granting a use variance and issued a written decision. After nearby residents challenged the ZBA's determination granting the use variance on several grounds.

A petitioner obtained a special use permit and site plan approval for a wind project. Due to delays, the Petitioner applied for the first extension, which was granted. They then changed the project and applied for a second extension, which was denied. The applicable standard is whether there was a change in circumstances that would justify denial of an extension request. The project changes proposed by Petitioner warranted denial. Petitioner then argued that no extension was necessary because the approvals were challenged and the doctrine of equitable tolling extended the durational limits. Hodgson Russ argued successfully that the doctrine of equitable tolling is inapplicable in the State of New York. This decision made new law in the State of New York, specifically, whether the doctrine of "equitable tolling" extended durational limits of permits while litigation challenging those approvals is pending.

Hodgson Russ served as counsel to a New York State county in conjunction with the development of a new municipal courthouse facility. This project took advantage of statutory modifications exempting public construction projects with project labor agreements from the multiple prime contractor requirements of the Wicks Law. This structure enabled the project to come in on time and below budget. We also served as State Environmental Quality Review Act (SEQRA) counsel for this project and successfully defended the county in litigation brought on environmental and state law grounds.

Hodgson Russ attorneys represented a public authority in a multimillion dollar construction litigation filed by a contractor involving the rehabilitation of runways at the Buffalo International Airport. After discovery, our attorneys obtained summary judgment on behalf of our client. The summary judgment dismissal was affirmed by the Appellate Division.

In *M.O.C.H.A. Society, Inc. v. City of Buffalo* (2013), the U.S. Court of Appeals for the Second Circuit affirmed the district court's ruling in favor of Hodgson Russ's client, the City of Buffalo, that evidence did not support the plaintiffs' challenge to the Buffalo Fire Department's drug testing policy.

The U.S. Court of Appeals for the Second Circuit affirmed the dismissal of First Amendment retaliation and New York State whistleblower claims made by Mark Sacha, a former assistant district attorney fired by Erie County District Attorney Frank A. Sedita, III. Sacha's lawsuit was previously dismissed by U.S. Chief District Court Judge William M. Skretny. Sacha appealed Judge Skretny's ruling, claiming he was fired in retaliation for alleging that District Attorney Sedita and his predecessor, District Attorney Frank J. Clark, were corrupt. The court found Sacha's speech while employed as an assistant district attorney was so potentially disruptive to the Erie County District Attorney's Office as to justify terminating his employment. The court also stated, "We have considered Sacha's remaining arguments and find they are without merit."

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Partner Adam W. Perry led the Hodgson Russ defense team.

Hodgson Russ drafted a municipality's Waterfront Planned Development District Law. We represented the town in reviewing the application to create a new plan for development, including the environmental review and coastal zone consistency review under the Local Waterfront Revitalization Plan.

U.S. District Judge Charles J. Siragusa granted summary judgment and dismissed a wrongful death lawsuit brought against one of Hodgson Russ's municipal clients. The lawsuit was brought by the widow of a man who died of a heart attack after being taken into police custody for trying to prevent officers from entering his home to arrest his son on a warrant. The widow alleged that the police officers used excessive force and caused her husband's death. She also accused the town of neglect in training and hiring its police force. The court ruled that the police department acted properly and vindicated the police officers. Hodgson Russ attorneys filed a motion for summary judgment, asserting that the police officers acted reasonably in their use of force, were responsive to the now-deceased's medical needs, and did not proximately cause his death. To support the defense's argument, Hodgson Russ obtained a neighbor's surveillance video, which captured the entire incident. Hodgson Russ had the video converted to real time by a certified videographer, which was then submitted to the court as evidence. After viewing the video numerous times, the court concluded that it contradicted many crucial points of the plaintiff's argument. Specifically, it failed to show the officers using excessive force to restrain the plaintiff's husband. Furthermore, it showed the officers performing CPR on the plaintiff's husband when it was clear he was in distress, refuting the son's claim that the officers did not assist his father.

Hodgson Russ attorneys represented an industrial development agency in all aspects of a financing transaction for the development of a major renewable energy facility in northern New York State. The scope of this more than \$490 million project included three wind farm projects involving more than 100 sites scattered over 5,000 acres of land. The project was named North American Renewables Deal of the Year by *Project Finance* magazine, Renewables Deal of the Year by *Infrastructure Journal*, and Environmental Deal of the Year in the Americas by *Project Finance International*.

In a favorable decision obtained by Hodgson Russ, the U.S. Court of Appeals for the Second Circuit affirmed a judgment in favor of a New York State town, its chief of police, and one of its officers—all Hodgson Russ clients. Michael B. Risman represented the defendant-appellees. The Second Circuit decreed that the plaintiff-appellant's claims of false arrest, false imprisonment, and malicious prosecution allegations stemming from the appellant's arrest and prosecution for the alleged rape of his teenage daughter (charges that were eventually dismissed) were all without merit, primarily citing the appellant's failure to prove a lack of probable cause necessary to support his arguments. The town's police officers arrested the appellant, after his daughter identified him as her assailant. The court concluded that probable cause was satisfied by various means, including, but not limited to, the victim's initial statement. The court affirmed the district court's granting of the defendant's motion to dismiss the case.

Hodgson Russ has a full-service approach to handling problems for school district clients when public opinion is a particular concern. Over approximately a six-month period, the firm guided a school district client through disciplinary matters involving tenured teachers that garnered much public attention because of statements by an authority figure from a municipality. Not only did the firm give substantive advice on the disciplinary process for the employees, it also assisted the district in navigating the court of public opinion.

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On behalf of a county ethics board, Hodgson Russ attorneys defeated Due Process and First Amendment claims along with a state statutory claim brought by a former county legislator. After the legislator was fined by the ethics board for submitting an inaccurate financial report, he sued, asserting the board's procedures failed to provide adequate notice or opportunity to be heard.

He also claimed that his First Amendment rights were violated by the alleged political motivation of the county and the board. First at the District Court level and again at the Second Circuit, Hodgson Russ obtained summary judgment for the county rejecting all constitutional claims and upholding the Board's action.

Hodgson Russ has represented both municipalities and developers in the negotiation of host community agreements and payment-in-lieu-of-taxes (PILOT) agreements on more than 500 MW of wind energy facilities.

Hodgson Russ represents an industrial development agency in the \$50 million relocation of a manufacturing facility to address local flooding issues. The industrial development agency acted as a conduit for a variety of federal, state, and local grants and loans, and acted to assemble the real estate comprising the new site through condemnation and negotiation. The agency is also acting as the lead entity in addressing State Environmental Quality Review Act (SEQRA) and federal wetland issues.

Hodgson Russ represented an intervenor supporting a ZBA's interpretation, in a matter requiring an understanding of the interplay of amendments to a municipal zoning ordinance over the last 50 years. The ZBA rendered an interpretation that certain height limitations (imposed as conditions to a prior rezoning) were no longer applicable, but did not issue formal written findings. Hodgson Russ argued, successfully, that the ZBA's decision was a matter of "pure legal interpretation" and that no written findings were required. Supreme Court, Erie County conducted a de novo review and upheld the ZBA's determination. The Fourth Department affirmed.

Hodgson Russ attorney Michael Risman successfully represented the City of Mount Vernon before the New York Court of Appeals in the case of *T-Mobile Northeast, LLC v. City of Mount Vernon*. The case involved an issue of statewide importance as to whether telecommunication facilities and fiber optic cables are taxable as real property in New York State and was argued at a Special Session of the New York Court of Appeals in Kingston, New York, honoring the 200-year anniversary of the Ulster County Supreme Court.

Learn more on the significance of this ruling in our Hodgson Russ alert here: <https://www.hodgsonruss.com/newsroom-publications-10856.html>

Since this original landmark win, Mike has been successful in defending his clients in two similar rulings: <https://www.hodgsonruss.com/experience-981.html>

Hodgson Russ successfully litigated at the appellate level a case of first impression concerning permit determinations involving municipal permitting authority over a biomass facility on the basis of greenhouse gas emissions. The matter involved an attempt to convert a former fossil fuel to a wood burning plant. Hodgson Russ led the environmental inquiry that determined that the project was not carbon neutral and would in fact result in significant increases in hazardous air emissions. The decision upheld the right of a municipality to use the State Environmental Quality Review Act and the local zoning code to deny a permit on the basis of harmful emissions.



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Hodgson Russ has represented counties and local industrial development agencies in the restructuring of the provision of public nursing home services. In several situations, the restructuring involved the transfer of the nursing home from the local county to a private owner and operator. In one situation, we formed a local development corporation controlled by the local county to operate the local nursing home.

Hodgson Russ successfully represented a village in setting up a unique public-private partnership for a landfill gas-to-energy project, including negotiating and drafting the joint venture agreements, obtaining required land use rights, negotiating upgrades to local and regional transmission system, drafting the interconnection and financing agreements, and guiding the environmental evaluation. Our firm also assisted the village in obtaining a debt-exclusion certification from the New York State Comptroller's Office based on the self-liquidating nature of the debt incurred, so that the village's debt statement was not affected by the financing of this project.

Represented a large public sector entity in the purchase of a historic building in Niagara Falls, NY, to facilitate future redevelopment.

Acted as real estate counsel to a mid-sized town in Western New York on various real estate matters, including road, utility and common space dedications in connection with residential development and various title matters.

Hodgson Russ represents a regional planning commission in the structuring of a solution to the combined sewer outflow issue involving six municipalities along the Hudson River. The total cost of the capital project is in excess of \$80 million and is expected to take place over a 15-year period. The municipalities are entering into an intermunicipal cooperation agreement, and our role is to design the financing structure to provide for the financing.

Hodgson Russ represented a municipality in creating a cluster subdivision that significantly increased open space and reduced area drainage issues. In recent years, Hodgson Russ has also successfully represented the municipality's board and zoning board of appeals in crafting and defending decisions authorizing telecommunications facilities, use variances, subdivisions, site plans, and special use permits.

Successfully obtained summary judgment in favor of housing authority on common law indemnification claim against contractor as relates to personal injury claim of subcontractor injured on premises during construction project.

Assisted a large town in Western New York with real estate matters, including the negotiation of amendments, extension and leases for the construction of new cell tower sites.

Several Hodgson Russ municipal clients have asked us to consider the legal issues relating to the conveyance of municipality-owned capital projects. One such project involved the conveyance of a large municipally owned landfill to a private owner and operator. Issues addressed included the treatment and use of the sale proceeds and status of the tax-exempt bonds previously issued by the municipality to acquire and improve the landfill.

Hodgson Russ represented a citizens group opposed to the development of a casino resort. The town board issued a negative declaration without setting forth its determination, in a written form, providing a reasoned elaboration. Instead, the board's special counsel prepared rationale after-the-fact. Supreme Court, Seneca County approved of this approach, but the Fourth Department reversed. The Fourth Department determined that SEQRA requires the lead agency to set forth its determination in writing to allow intelligent judicial review. After-the-fact rationale should not be considered by the

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reviewing court. This matter set significant precedent in the Fourth Department.

In *Casciani v. Town of Webster and Nesbit*, Hodgson Russ successfully defended a municipality in a federal lawsuit brought by a high-net-worth individual claiming his civil rights had been violated by an ordinance prohibiting him from landing his helicopter at his residence. Even though the plaintiff submitted over two dozen affidavits and three expert reports, the district court granted the municipality summary judgment and the Second Circuit affirmed.

Hodgson Russ defended a Western New York municipality and six of its police officers in an action alleging false arrest and excessive force. After a two-week trial, the jury returned a verdict in favor of the defendants on all claims.

Hodgson Russ attorneys represented a New York municipality in all phases of land use and environmental review for a senior housing facility in a sensitive environmental area. Using sustainable design techniques, the project was sited to avoid wetlands impacts and preserve important open space. Drainage improvements for the subdivision also alleviated problems in adjoining areas. Habitats of species of concern were preserved, and the area's supply of affordable senior housing significantly increased. Our work included a successful defense of the project in a lawsuit brought in New York State Supreme Court.

Hodgson Russ successfully represented a county executive in a dispute with another elected official over the scope of the elected officials ability to establish specific salaries for managerial appointments. The case turned on the interpretation of provisions within the county's charter, which were unique to the county. Employing the authority granted to it by this State Legislature to adopt charter provisions, the legislature had reserved for itself the authority to establish salaries, but the elected official asserted that the grant of budgetary authority sufficient to pay a specific salary was the equivalent of approval of that higher salary. Hodgson Russ successfully argued that municipal authority is not expanded beyond what is explicitly stated in the law, and that the rules of statutory interpretation prevented the elected official from transferring budgetary authority from the county legislature to the official.

Hodgson Russ attorneys led by Michael B. Risman represented a city housing authority in a New York State Supreme Court case in which two petitioners asked to be reinstated to the board of commissioners of the housing authority and one petitioner asked to be reinstated as executive director. Two of the petitioners had been elected to the board of commissioners but failed to take the oath of office within thirty days, as required by the Public Officers Law. This resulted in their board positions being vacant. Despite having been informed of this, the two petitioners participated in a board meeting after the 30-day period. At this meeting, the hiring of the third petitioner as executive director of the housing authority was voted on and passed by a vote of four to three, with the two petitioners voting in favor of the hiring. The judge ruled in favor of the housing authority, stating that the two petitioners' offices were officially vacant due to their failure to file oaths of office and therefore their votes at the meeting, necessary to hire the third petitioner, were not legitimate. None of the petitioners were reinstated to the disputed positions.

With deep experience in all areas of complex municipal law, Hodgson Russ has a proven track record of success in representing municipalities on challenging real property tax assessment cases. In a case involving several public entities in multiple jurisdictions and a large publically traded telecommunications company, partner Michael Risman successfully defended the clients, which included a regional county, city, two villages and five school districts in a Supreme County Court over the taxability of fiber optic cables. The outcome helped save our clients more than a million dollars over a six-

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year period.

A favorable decision obtained by a Hodgson Russ team led by Michael B. Risman could discourage the practices of owners of low-income housing who use disputed income and expense information to challenge real property assessments. In the case, Hodgson Russ defended a town assessor in responding to a petition brought by the owner of a low-income housing facility. The property owner claimed in a tax certiorari proceeding that the town's assessment of the property was illegal and sought to have the assessed value of the low-income housing facility dropped. The owner cited Section 581-a of the Real Property Tax Law (RPTL), which gives the owners of low-income rental properties the right to have their properties valued for tax purposes by the "capitalization of income" method. Assessing a property's value using this method requires the owner to provide information detailing the property's income and expenses — and in many cases, property owners have done so with the expectation that assessors must accept only the information they submit and take it at face value. However, in this case, Mike argued there were numerous concerns with the information provided by the owner of the building, including questions about the reasonableness and accuracy of the expenses claimed and the fact that the owner used only one year's worth of income and expenses to calculate the appraised value, rather than the standard and more appropriate five-year average of income and expenses. The judge ruled in the town assessors favor and denied the property owner's motion for summary judgment. The ruling made clear that municipal assessors have the right to question the expenses claimed by owners of low-income housing for tax assessment purposes.

The Appellate Division for the 4<sup>th</sup> Department unanimously held that the petitioner had no standing to sue in his attempts to challenge a negative declaration issued under the SEQRA by a municipality's Planning Board regarding the demolition and reconstruction of an apartment complex with that city. He did not show the requisite environmental injury that differs from that of the public at large in order to challenge the Planning Board's SEQRA determination. His interest in historic preservation, his interest in photographing the apartment building and his position on the Preservation Board of the municipality were all insufficient to confer standing to sustain the lawsuit. Nor did the petitioner have standing on behalf of the apartment complex tenants. Charles Malcomb and Adam Perry handled this matter on behalf of the property developer.

### **In the News**

Hodgson Adds Ex-Barclay Tax Pro to Energy Team  
*Law360*, June 9, 2023

Coronavirus Resource Center

Are Conduit Debt Issuers Liable for Unpaid Water Rents and Building Code Violations for the Buildings they "Own" Due to Bond Financing; Court of Appeals to Decide  
*New York Law Review*, January 13, 2021

With moratorium still in place, Frankfort officials developing new solar project regulations  
*Times Telegram*, November 20, 2020

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Former Lockport police officer drops lawsuit over dismissal

*The Buffalo News*, June 11, 2020

Industry Roundtable: Economic Development

*Albany Business Review*, October 18, 2019

Judge Ends Historic Desegregation Order for Buffalo Firefighters

*Buffalo News*, February 9, 2019

IDA Approves Pilot Program With Mohawk Solar

*The Recorder*, January 4, 2019

Circuit Upholds Drug Testing of Buffalo Firefighters

*New York Law Journal*, July 5, 2013

2nd Circuit Rebuffs Challenge to Buffalo Firefighter Test

*Thomson Reuters News & Insight*, July 30, 2012

## Press Releases

Hodgson Russ LLP Adds Two Attorneys

July 6, 2023

Amy D'Ambrogio Joins Hodgson Russ LLP

June 6, 2023

## Publications

Supreme Court Provides Further Guidance on Public Officials First Amendment Rights on Social Media

*Hodgson Russ Media & First Amendment and Municipal Alert*, March 20, 2024

2024 Draft Solar and Wind Valuation Model Under Real Property Tax Law § 575-b Released for Public Comment

*Hodgson Russ Renewable Energy & Municipal Alert*, January 3, 2024

The Intersection of New York's Public Utility Use Variance Standard and the Climate Leadership and Community Protection Act

*New York Law Journal*, October 26, 2023

Updates to State Building Codes will Require Local Revisions: Given the Added Workload on Code Enforcement, Municipalities May Wish to Evaluate the Sufficiency of Local Permit Fees

*Hodgson Russ Municipal Alert*, November 28, 2022

Mandating Low Carbon Concrete to Achieve Embodied Carbon Reductions in the Building Sector

*Hodgson Russ Municipal Alert*, May 16, 2022

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Budget Bill Amends Assessment Challenges to Renewable Energy Projects Under Real Property Tax Law § 575-b  
*Hodgson Russ Renewable Energy & Municipal Alert*, May 3, 2022

Temporary Restraining Order Halts Assessment Model for Wind and Solar Projects Under Real Property Tax Law § 575-b  
*Hodgson Russ Renewable Energy and Municipal Alert*, April 29, 2022

New York State Legislature Amends Open Meetings Law to Allow for Videoconferencing  
*Hodgson Russ Municipal and Education Alert*, April 19, 2022

New York City Bans Gas Hookups in New Buildings; is the State Next?  
*Hodgson Russ Renewable Energy Alert*, January 19, 2022

New Bill Pushes Decarbonization of the Building Sector Across New York  
*Hodgson Russ Renewable Energy Alert*, November 30, 2021

## Presentations & Events

Local Government Training - Case Law Updates and Ethical Standards for Planning and Zoning Boards  
Erie County Fire Training Academy, 3359 Broadway, Buffalo, NY 14227, May 6, 2024

Municipal Law Seminar  
M Hotel Buffalo, 2040 Walden Ave., Buffalo, NY 14225, April 30, 2024

New York State Bar Association Annual Meeting 2024  
New York Hilton Midtown, January 16, 2024

Land Use Application Bootcamp  
December 8, 2023

Northeast Summer Seminar 2023  
Lake George, New York, August 11, 2023

Local And State Government Law Section Spring 2021 Forum (Part 2): Ethics Of Leaving Public & Private Legal  
Employment & Virtual Court Appearances  
May 20, 2021

Local And State Government Law Section Spring 2021 Forum (Part 1): Enacted State Budget 2021-2022 & SEQRA  
Overview/CLCPA  
April 19, 2021

NYSEDC Spring IDA Academy  
April 13, 2021

Virtual IDA Academy  
April 13, 2021

Hodgson Russ Municipal Webinar

MUNICIPAL

January 27, 2021

