

LAND USE & ECONOMIC DEVELOPMENT

Hodgson Russ's land use and economic development practice is among the most experienced in New York State. Our attorneys represent industrial, commercial, and residential developments, working in numerous jurisdictions and with all related agencies to secure approval of development requests. We assist in obtaining appropriate land use permits and approvals needed to develop real property, ensuring compliance with all applicable local, state, and federal laws.

We assist with a wide range of projects that vary in size and complexity for corporations, financial and educational institutions, nonprofit entities, and commercial and residential developers. Our attorneys handle all aspects of site development, including zoning variances, special permitting, tax abatements, and economic development initiatives. Our attorneys also provide strategic counsel related to purchase and financing of undeveloped land, transfer of development rights, and planning for future expansion.

Hodgson Russ represents clients in litigation when disputes arise in land use cases, including frequently representing local governments and municipalities in complex, often controversial, land use matters that often involve litigation. We appear on behalf of clients before planning commissions, city councils, and county boards at the local level as well as represent clients in appeals before administrative bodies and the courts.

Experience

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.

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

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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 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.

Represented a global chemical manufacturer in its expansion in Upstate New York. The transaction involved the purchase of vacant land, negotiation of railroad rights and related industrial development authority benefits.

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.

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

Assisted a plastics manufacturer with the purchase of real property and securing of industrial development agency incentives for the purpose of expanding their manufacturing operations.

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

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determination in writing to allow intelligent judicial review. After-the-fact rationale should not be considered by the reviewing court. This matter set significant precedent in the Fourth Department.

In the News

'The Goal is to Spur Redevelopment': Court Sides with Amherst in Boulevard Mall Eminent Domain Case
WKBW-TV, October 19, 2023

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

Buffalo Business First - Thought Leaders: Finding Solutions
Buffalo Business First, November 3, 2017

Press Releases

Amy D'Ambrogio Joins Hodgson Russ LLP
June 6, 2023

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

Publications

For Zoning Determinations, the Third Department Confirms that “Filed” Means Filed
Hodgson Russ Land Use & Economic Development Alert, October 22, 2021

New York State Passes \$3 Billion Act for Environmental Restoration and Protection – Next Stop, the Ballot Box
Hodgson Russ Environmental Alert, April 6, 2020

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

Land Use & Zoning 201
Albany Law School, April 12, 2024

2024 Annual Enrichment Seminar
Ethical Considerations for the Private and Public Engineer
Templeton Landing, 2 Templeton Landing, Buffalo, NY 14202, January 25, 2024

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

Land Use Application Bootcamp
December 8, 2023

Short-Term Rentals: Navigating Uncharted Waters of Airbnb and VRBO Zoning and Land Use Issues
NBI Presents: New York Land Use and Zoning From Start to Finish CLE
August 24, 2022

Challenging and Defending the Constitutionality of Zoning and Land Use Actions
NBI Presents: New York Land Use and Zoning From Start to Finish CLE
August 23, 2022

NYSEDC Spring IDA Academy
April 13, 2021

Fall 2020 IDA Academy
November 17, 2020

NYSEDC IDA Academy
Melville Marriott, Long Island, New York, November 14, 2019