



HENRY A. ZOMERFELD

Senior Associate

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Henry concentrates his practice in environmental, energy, land use, and municipal law. His broader practice includes representing businesses and municipalities in a variety of commercial and contract-based litigation, tax assessment litigation under the Real Property Tax Law, and special proceedings under Article 78 of the Civil Practice Law and Rules.

As part of his municipal practice, Henry represents and counsels municipalities in a variety of matters, including those related to zoning, land use, code enforcement, takings, the State Environmental Quality Review Act, the Freedom of Information Law, and the Open Meetings Law. In addition, he represents municipalities and school districts in defending tax assessment challenge litigation.

Henry draws on his experience in the property tax arena to advise developers of renewable energy projects across New York State on real property tax implications, including the interplay of Real Property Tax Law Section 487 exemptions and payment-in-lieu-of-taxes (PILOT) agreements. Through his efforts, developers are able to better evaluate and prepare for real estate tax liabilities before and during the life of their projects. He represents developers and other clients before boards of assessment review and in Supreme Court litigating property tax exemptions and valuation issues. As part of his property tax practice, Henry also counsels clients on real property exemptions and incentives, including Real Property Tax Law Section 420-a for non-profit entities and Real Property Tax Law 485-b for commercial and industrial facilities.

In connection with his practice, Henry counsels both municipalities and private clients on land use and real estate development issues, including area and use variances, and project approvals, and has represented these clients in litigation over zoning matters.

As part of his broader practice, Henry also serves as outside general counsel for a public university student government. In this capacity, he advises on policy matters, regulatory and legal compliance, risk management, and contract review and

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Practices & Industries

Brownfield Redevelopment
College & University
Environmental
Land Use & Economic Development
Municipal
Real Property Tax Assessment &
Eminent Domain
Renewable Energy

Bar Associations

New York State Bar Association
Bar Association of Erie County

Admissions

New Jersey
New York
U. S. District Court, Western

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negotiation.

Honors

- Listed, *Best Lawyers in America* Ones to Watch (Commercial Litigation, Energy Law, Environmental Law, Municipal Law), 2021 - 2024
- Listed, *Upstate New York Super Lawyers* Rising Stars (Environmental Litigation), 2017 – 2023
- Rising Champion For Justice, *Erie County Bar Association Volunteer Lawyers Project*, 2023
- Robert J. Connelly Excellence in Trial Advocacy Award, 2013
- Associate Editor, *Buffalo Journal of Gender, Law & Social Policy*, 2013 - 2014
- Competitor, Philip C. Jessup International Moot Court Competition (advanced to the 2014 international rounds; 7th Best Oralist in the World/3rd Best Oralist in the U.S. out of approximately 600 oralists)

Other Experience

Experience

The Hodgson Russ team of Daniel Spitzer, Alicia Legland, Meredith Morgan, and David Stark acted as counsel on regulatory and zoning matters for a joint venture between two of the nation's leading energy solutions companies. The two businesses, a Mid-Atlantic owner-operator of commercial renewable energy projects and a renewable and a natural gas company in the Southwest, entered into a financing arrangement with a commercial bank supporting four energy storage projects in the City of New York. Energy storage is an essential element in the State's aggressive plan for reducing reliance on fossil fuel facilities.

Hodgson Russ secured a victory for the Trustees of the Masonic Hall and Asylum Fund (the "Masonic Hall"), in litigation challenging the Town of Henrietta's denial of a Real Property Tax Law Section 420-a real property tax exemption. This provision establishes a two-prong test, that the property be owned by a non-profit entity and used for non-profit purposes. On the second prong, state law allows the exemption for vacant land where there are concrete plans for a future use, even if the construction has not yet started. The Town's denial focused on this second prong.

District of New York

U. S. Bankruptcy Court, Western
District of New York

Education

State University College at Buffalo,
B.A., cum laude

University at Buffalo School of Law,
J.D.

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Monroe County Supreme Court granted the Masonic Hall's Petition because the evidence demonstrated that the Masonic Hall had legitimate plans for a future senior living and fraternal complex, had spent substantial sums in furtherance of the project, and had applied for (and eventually received) the required zoning approvals. The Court rejected the Town's arguments that the property was revenue-producing and that insufficient efforts had been made to satisfy the legal requirements. In addition to granting the exemption, the Court granted full refunds of property taxes with statutory interest, and, notably, granted costs and disbursements against the Town.

A copy of the decision is available [here](#). The key takeaway from this case is the importance of building a record through Board minutes, budget, correspondence, applications, and contracts demonstrating the future use is a legitimate goal, particularly if it takes years of planning and fundraising before a project is in use.

If you have any questions on real property tax exemptions or other real property tax issues, contact Daniel Spitzer, Henry Zomerfeld, or Michael Risman in our [Tax Assessment Practice](#).

Peter Lutz and Henry Zomerfeld were successful in obtaining an exemption under Real Property Tax Law § 420-a for a non-profit client's medical office that it purchased in the City of Rochester. The City initially denied the exemption because the property was leased to a third-party. After demonstrating that the lessee was a related non-profit entity carrying out the mission of the non-profit lessor, the Rochester Board of Assessment Review recommended the Assessor grant the exemption. The Assessor accepted the recommendation and granted the exemption. As a result, the property is wholly exempt from property taxes for this year. The exemption will remain subject to annual renewal.

Successfully resolved multi-year litigation on behalf of a New York-based hospital and healthcare system resulting in sizeable refunds to the client. The litigation concerned the allocation of the Real Property Tax Law Section 420-a exemption for nonprofit entities based on the use of the properties. New York law imposes a two-part test to qualify for the exemption: the property must be both owned by the exempt entity and used for an exempt purpose. What constitutes an exempt use by the entity has been a source of increasing litigation in New York as taxing jurisdictions, facing fiscal restraints, are more aggressive in denying exemptions. The resolution of the litigation included the proper allocation of the property tax exemption and resulted in tax refunds with interest, which in total exceeded \$1.3 million.

In the News

N.Y. High Court to Decide Fate of City Property Tax Reform Suit
Bloomberg.com Daily Tax Report, January 3, 2024

New York Court Sides with Masons in Property Exemption Suit
Tax Notes State, May 8, 2023

Kenmore Seeks to Take Insty-Prints Site for Police Expansion
Buffalo News, September 14, 2022

Kenmore announces plans for KPD building expansion
Ken-Ton Bee, June 15, 2022

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Absence of Lease or Contract Provision Concerning Payment of Property Taxes Deemed Fatal in Tax Assessment Challenge

American College of Real Estate Lawyers (ACREL) - News & Notes, November 12, 2019

New York Court of Appeals Sides with NYCOM: Telecommunications Infrastructure and Fiber Optic Cables Are Taxable Real Property

NYCOM Municipal Matters, June 17, 2019

Press Releases

55 Hodgson Russ LLP Attorneys Named to 2023 *Upstate New York Super Lawyers* List
August 23, 2023

83 Hodgson Russ LLP Attorneys Ranked in 2024 Edition of *Best Lawyers in America*
August 17, 2023

Hodgson Russ LLP Honored with 2023 New York State Bar Association President's Pro Bono Service Award
April 17, 2023

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of *Upstate New York Super Lawyers*
Hodgson Russ Press Release, August 23, 2022

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

Fifty-Four Hodgson Russ Attorneys Ranked in 2021 Edition of *Upstate New York Super Lawyers*
Hodgson Russ Press Release, August 20, 2021

55 Hodgson Russ Attorneys Ranked in 2022 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2021

Henry Zomerfeld Appointed Chair of the Environmental Law Committee of the Bar Association of Erie County
Hodgson Russ Press Release, June 23, 2021

Hodgson Russ Attorneys Ranked in 2021 *Best Lawyers in America: Ones to Watch*
Hodgson Russ Press Release, September 15, 2020

Sixty-Two Hodgson Russ Attorneys Named to 2020 *Upstate New York Super Lawyers*
Hodgson Russ Press Release, September 8, 2020

Publications

Temporary Restraining Order Rejected in the Latest Attack on RPTL § 575-b Assessment Model
Hodgson Russ Renewable Energy Alert, May 13, 2024

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2024 Assessment Model Finalized for Solar and Wind Projects in New York: Will Project Tentative Assessments on May 1 be Accurate?

Hodgson Russ Renewable Energy Alert, May 2, 2024

New York Public Service Commission Commences Grid of the Future Proceeding

Hodgson Russ Renewable Energy Alert, April 23, 2024

Appellate Court Clarifies Scope of Required CLCPA Compliance and Confirms Ripeness Under SAPA for Challenges to Agency Declaratory Rulings

Hodgson Russ Renewable Energy Alert, April 3, 2024

EPA Finalizes Standards Impacting Hazardous Air Pollution Emissions at Gasoline Distribution Facilities

Hodgson Russ Environment & Energy Alert, March 29, 2024

Inter-Agency Fire Safety Working Group Releases Proposed Revisions to NYS Fire Code Related to Battery Energy Storage Systems

Hodgson Russ Renewable Energy Alert, February 22, 2024

Applicant's Partial Loss of Site Control Results in First ORES Denial of Section 94-c Permit Application

Hodgson Russ Renewable Energy Alert, February 20, 2024

Diamonds Are Forever, But New York Tax Exemptions Are Not

Hodgson Russ Real Property Tax Assessment & Eminent Domain Alert, January 29, 2024

NYSDEC Releases New Draft Guidance Related to Discharges of PFOA, PFOS and 1,4-Dioxane for Public Review and Comment

Hodgson Russ Environmental Alert, January 25, 2024

FY 2025 Executive Budget: Governor Hochul Proposes to Expedite and Consolidate Environmental Review and Permitting for Major Renewable Electric Generation and Transmission Facilities

Hodgson Russ Renewable Energy Alert, January 23, 2024

Presentations & Events

Local Government Training - Case Law Updates and Ethical Standards for Planning and Zoning Boards
Erie County, 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

Land Use & Zoning 201

NYSBA, Albany Law School, April 12, 2024

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2024 Annual Enrichment Seminar

Ethical Considerations for the Private and Public Engineer

Air & Waste Management Association - NFS, Templeton Landing, 2 Templeton Landing, Buffalo, NY 14202, January 25, 2024

New York State Bar Association Annual Meeting 2024

New York Hilton Midtown, January 16, 2024

Land Use Application Bootcamp

National Business Institute Inc. (NBI), December 8, 2023

38th Annual School Client Conference

Buffalo Marriott Niagara 1340 Millersport Hwy, Amherst, NY 14221, January 13, 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

National Business Institute, August 24, 2022

37th Annual School Client Conference

Buffalo Niagara Marriott, 1340 Millersport Hwy, Amherst, NY 14221, May 6, 2022

Cannabis Issues That Will Affect the Municipalities

Association of Erie County Governments, Bravo Cafe and Catering, April 28, 2022

Professional Affiliations

- Chairperson, Bar Association of Erie County, Environmental Law Committee
- Member, New York State Bar Association, Committee on Condemnation, Certiorari and Real Estate Taxation; Committee on Legal Education and Admission to the Bar
- Member, Bar Association of Erie County, Committee on Eminent Domain and Tax Certiorari
- Associate member, New York State Assessors Association

Community & Pro Bono

- Director, Board of Directors, Buffalo Niagara River Land Trust, March 2024-present
- NYSBA Empire Counsel Award, 50 or more hours of *pro bono* work
- President Elect, Director, and Former Secretary, University at Buffalo Law Alumni Association and Graduates of the Last Decade ("GOLD") Group 2016- Present
- President, Volunteer Lawyers Project Rising Champions for Justice, 2022
- Community Council Member, Buffalo State Newman Center, 2022

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- Assistant Coach, Buffalo State Mock Trial, 2011-2015
- Member, Order of Barristers Honor Society, 2014
- Bar Association of Erie County: Volunteer Lawyers Project

