



## DANIEL A. SPITZER

Cleantech, Green Building, Land Use & Economic Development, Real Property Tax Assessment & Eminent Domain Practices Leader, Renewable Energy Practice Co-Leader

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Dan concentrates his practice on issues involving environmental law, renewable energy, sustainable development, land use law, municipal law, and real estate development. His practice involves numerous renewable energy projects, including representing municipalities, developers, land owners, and financing entities. His work, from project inception through successful litigation, includes some of the largest wind farms in the eastern United States; multiple utility and small-scale solar projects; and landfill, gas-to-energy, biomass, storage, transmission, and energy efficiency projects. He successfully litigated a case of first impression concerning a municipality's right to regulate power-generating facilities based on greenhouse gas emissions.

A primary part of Dan's work focuses on National Environmental Policy Act (NEPA) and State Environmental Quality Review Act (SEQRA) review and compliance with federal and state environmental statutes. His work includes environmental assessments for large-scale telecommunications projects, infrastructure projects and power generation projects. He counsels agencies and private clients on compliance with historic preservation laws, the Clean Water Act, the Clean Air Act, and other federal environmental statutes and regulations. His projects include coordinating responses among federal and state agencies as part of federal and state environmental assessments.

Dan's general municipal practice involves a wide area of services. He regularly counsels municipal clients on budgeting, leasing, environmental, zoning, assessment, financial, eminent domain, and other matters. His litigation experience includes tax assessment matters, land use issues, financial matters, and other issues before administrative and judicial forums. He assists developers and communities in development projects, including obtaining financial assistance and complying with historic preservation guidelines. Dan has successfully represented clients in local governmental and judicial forums, including cases involving zoning and development decisions. He has drafted laws for municipalities on issues ranging from enforcing zoning codes and green buildings, to regulations under the

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### Practices & Industries

Environmental  
Cleantech  
Renewable Energy  
Oil & Gas  
International-U.S. Cross-Border  
Administrative & Regulatory  
Agriculture  
Brownfield Redevelopment  
Business Litigation  
Cannabis & Hemp  
Europe-U.S. Cross-Border  
Food & Beverage  
Foreign Embassies & Consulates  
Green Building  
Land Use & Economic Development  
Manufacturing

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Telecommunications Act of 1996. He is well versed in the requirements of the State Environmental Quality Review Act and has guided many communities through the environmental review process.

Dan's practice also includes work in areas concerning the valuation of property. He represents property owners and municipalities in condemnation proceedings and tax assessment challenges, from the initial filing of claims, all the way through to trial. His clients include municipal redevelopment agencies, developers, and taxpayers throughout New York State.

Dan brings a strong background in municipal affairs to his practice from an earlier era in his career, when he served as finance director for a sizeable city in Arizona.

## Honors

- Listed, *Best Lawyers in America* (Cleantech Law) 2020 - 2023
- Listed, *Chambers USA: America's Leading Lawyers for Business*, (Environment) 2021 - 2023
- Listed, *Upstate New York Super Lawyers*, (Environmental) 2012 - 2023
- Recipient, *Lawyer Monthly's* Clean Technology Law Firm of the Year, USA, 2017
- Recipient, City & State Corporate Social Responsibility (CSR) Award, 2017
- Listed, *Buffalo Business First's* Who's Who in Law (Energy)
- Former editor in chief, *Buffalo Law Review*

## Experience

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 referral to planning boards. Charles Malcomb and Dan Spitzer handled this matter

Municipal

Municipal Finance & Special Districts

Public Authority

Real Property Tax Assessment & Eminent Domain

Tax Credits

Telecommunications

Wine, Beer & Spirits

## Admissions

New York

## Education

State University of New York at Oswego, B.S., cum laude

University at Buffalo School of Law, J.D., magna cum laude

University of London School of Oriental and African Studies, MSC, with merit

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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.

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 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

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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 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.

As the opportunity for solar energy projects has improved with reduced costs and increased incentives, Hodgson Russ has assisted local governments, school districts, and private landowners in all phases of solar projects. In one situation assisted with the creation of a new intergovernmental municipal and school district entity to procure solar power, including all aspects of forming the entity and establishing its governing structure. Hodgson Russ drafted RFPs and RFIs allowing government and private entities to obtain cost effective renewable energy. Hodgson Russ also represented a large urban school district in the procurement of systems on over district buildings. The firm also drafted and negotiated power purchase agreements, leases, Grant applications, PILOTs, and other contracts enabling projects to move forward.

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*.

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.

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.

The increased use of intermittent energy sources such as wind and solar, coupled with the closure of large generating facilities, has created a growing need for energy storage facilities to ensure efficient operation of the electric grid. But communities have not enacted regulations for battery storage, complicating approvals. A Hodgson Russ team led by Daniel Spitzer recently obtained approval for one of the first standalone systems in Western New York. On behalf of the client, the team worked with the local municipality to understand the issues presented by the new technology, guided the environmental review process, obtained site plan and special use permit approval, and negotiated a payment-in-lieu-of-taxes

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(PILOT) agreement.

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.

After GE closed its Lufkin operations in Wellsville, N.Y., a HR team led by Daniel Spitzer helped the Allegany County Industrial Development Agency acquire the building and bring in as a replacement an advanced manufacturing firm. Elizabeth Holden undertook aspects of the real estate transaction, including negotiating the terms of the transfer from GE and the new lease. Michael Hecker directed the environmental review and drafting of the environmental covenant governing the transfer and reuse of the building, and protecting the IDA from any preexisting site concerns. Joseph Scott assisted the IDA in arranging financial incentives to bring about the expansion of a local hi-tech manufacturer, including a PILOT which deviated from the IDA's Uniform Tax Exemption Policy.

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 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.

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](#).

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

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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.

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.

Daniel Spitzer led the Hodgson Russ team representing the City of Lockport and the Greater Lockport Development Corporation (GLDC) throughout the Richmond Avenue Redevelopment Project. Richmond Avenue is a triangular-shaped block in Lockport, New York facing the Erie Canal. The buildings on the property were built in the 1870's, some with stone from the original Erie Canal. The mercantile buildings on the block had been in decline for a number of years when the City and its local development agency undertook the redevelopment project, which is located in the City's Historic District. Our tasks included...

- obtaining approval of the redevelopment project from the State Office of Historic Preservation.
- leading the brownfield remediation process through drafting grant documents, assisting with engineering contracts, and reporting required by the state brownfield development regulations.
- assisting in acquiring property interests in the block, including condemnation of some properties.
- preparing documents for the partnership between the GLDC and a private developer for redevelopment of Richmond Avenue post-remediation, including developer agreement, master lease, management agreement, and loan documents.

Our firm serves as key outside counsel to a California-based energy company regarding their solar development projects. The Hodgson Russ team including Elizabeth Holden, Andrea Gervais, Betsy Mills and Jennifer Anthony provide advice, review and guidance on real-estate based development issues in a time-sensitive and consistent manner for the client's development team across four states. Dan Spitzer, Ryan Cummings, Chuck Malcomb, Mila Buckner and Jennifer Schlumberger provide permitting, PILOT Agreement, contract assistance and litigation support, including a successful Public Service Commission petition on their behalf.

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

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

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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.

## **In the News**

Dan Spitzer Named to City & State's "Trailblazers in Law" List  
*City and State*, March 18, 2024

Court Determines 2023 Cheektowaga Property Assessments Were Legal  
*The Buffalo News*, February 11, 2024

City Lawyers Call Latest NFR Eminent Domain Challenge Just 'Another Delay Tactic'  
*Niagara Gazette*, September 16, 2023

City Lawyers Recommend Rejection of NFR Settlement Agreement  
*Niagara Gazette*, July 19, 2023

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

Falls City Council Moves Forward with Plans for Centennial Park Project  
*Niagara Gazette*, November 23, 2022

GE's Impact on U.S. Energy Goals Tied to Environmental Liability  
*Bloomberg Law*, November 15, 2021

Thought Leaders - Electric Vehicles are Coming. Will Buffalo-Niagara Be Ready?  
*Buffalo Business First*, October 29, 2021

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

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Trustees on Board With Offshore Wind Plan  
*The East Hampton Star*, October 1, 2020

## Press Releases

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

Hodgson Russ LLP Receives Multiple Top Marks from *Chambers USA Guide 2023*  
June 6, 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

Hodgson Russ Receives Top Marks for *Chambers USA 2022 Guide*  
*Hodgson Russ Press Release*, June 2, 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

Hodgson Russ Receives Top Marks for *Chambers USA 2021 Directory*  
*Hodgson Russ Press Release*, May 26, 2021

Daniel Spitzer and Charles Malcomb Honored by JD Supra  
*Hodgson Russ Press Release*, March 31, 2021

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

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



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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**

Energy Storage Summit USA  
SunGrid, Austin, TX, March 19 - 20, 2024

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

New York Solar Summit  
NYSEIA, Albany Capital Center, November 9, 2023

Large Scale Solar USA  
Austin, Texas, May 3, 2023

Decarb Summit 2023  
Companies for Net Zero, New York, NY, March 22, 2023

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Energy storage gets a boost from the Inflation Reduction Act  
RENMAD, October 12, 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  
National Business Institute, August 23, 2022

37th Annual School Client Conference  
Buffalo Niagara Marriott, 1340 Millersport Hwy, Amherst, NY 14221, May 6, 2022

Solar & Storage Finance USA 2021 Virtual Summit  
October 7, 2021

Understanding The Impact Of NYC's Climate Mobilization Act  
NYSBA, April 21, 2021

### **Professional Affiliations**

- New York State Bar Association
- State and Local Government Section Executive Committee, Committee on Transportation
- American Bar Association
- Erie County Bar Association
- New York Solar Energy Industries Association Policy Committee
- Adjunct Professor, UB School of Law, Fall 2016, "Endangered Species Act" Seminar