



## CHARLES W. MALCOMB

Partner; Public Authority Practice Co-Leader

[cmalcomb@hodgsonruss.com](mailto:cmalcomb@hodgsonruss.com) 716.848.1261

Chuck concentrates his practice on environmental law, energy law, land-use law, municipal law, and real estate development. He has experience working with both private and public clients on issues involving both state and federal environmental statutes, and he assists municipalities with a wide range of legal issues, including environmental review and zoning.

A primary part of Chuck's work focuses on the State Environmental Quality Review Act (SEQRA) where he has extensive experience guiding municipalities and developers through its requirements. Successful projects include environmental assessments for large-scale telecommunications projects, power generation projects (including some of the largest wind farms in the eastern United States and both utility and small-scale solar projects), infrastructure improvements, and public and private developments, from project inception through successful litigation. He has assisted in drafting scoping documents, environmental impact statements, findings statements, decisions, and guiding public review. Chuck also counsels clients on local, state, and federal permitting processes, including compliance with historic preservation laws, the Clean Water Act, the Clean Air Act, and other federal environmental statutes and regulations.

Chuck frequently gives presentations and provides training programs for local government officials across the State on SEQRA, zoning, environmental law, land-use law, and ethics. He regularly presents at the Summer School and Annual Meetings of the Association of Towns and provides training for the New York Planning Federation. He has trained code enforcement officers and town and village justices on zoning and building code enforcement, and has published articles on investigating and prosecuting violations. In addition, Chuck has provided training to planners and local government officials on NYS Agriculture and Markets law, and the protections applicable to farm operations, including the limitations on municipal regulations.

The Guaranty Building  
140 Pearl Street  
Suite 100  
Buffalo, NY 14202

### Practices & Industries

Brownfield Redevelopment  
Business Litigation  
Cleantech  
Environmental  
Green Building  
Land Use & Economic Development  
Municipal  
Oil & Gas  
Public Authority  
Renewable Energy  
Wine, Beer & Spirits

### Admissions

New York

### Education

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

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As part of his municipal practice, Chuck serves as the attorney for an upstate New York municipality addressing the full-range of general municipal issues. He regularly counsels municipal clients on leasing, ethics, environmental matters, zoning, assessment, eminent domain, and procurement. Chuck represents clients engaged in farm operations in County-adopted, State-certified Agricultural Districts and have assisted in securing municipal approvals for operations, including renewable energy projects. He has also defended lawsuits challenging municipal approvals to farm operations. His further litigation experience includes tax assessment matters, land use issues, environmental enforcement, and other issues before administrative and judicial forums. He has drafted laws for municipalities on a variety of subjects.

Chuck also counsels clients in the oil and gas industry on a variety of matters, including environmental compliance and administrative enforcement defense. Chuck and his colleagues represent several oil and gas companies in defending lawsuits alleging pollution resulting from drilling activities.

Chuck has represented clients with matters pending before the State Liquor Authority, including applications for licenses. Specifically, he has provided guidance to wineries and distilleries with respect to licensing issues and compliance with Federal and State laws regulating the sale and consumption of alcohol.

In addition, Chuck is conversant in Russian.

## Honors

- Listed, *Best Lawyers in America* (Land Use and Zoning Law; Litigation-Municipal Law; and Municipal Law) 2023 - 2024
- Listed, *Upstate New York Super Lawyers* (Environmental) 2021 - 2023
- Listed, *Upstate New York Super Lawyers Rising Stars* (Environmental) 2014 - 2020

## Experience

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.

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.

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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.

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 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.

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 advised the developer on all legal aspects of the permitting and IDA financing of multiple wind energy projects in Western New York providing power for more than 50,000 homes. The projects include over a hundred turbines, over 20 miles of access roads, electric collection systems, an operations and maintenance building, and a substation. Our work included guiding the environmental impact review processes, representing the company at public hearings, obtaining land use permits, defending the company in lawsuits from opposing neighbors, and negotiating road use and host community agreements. We served as local finance counsel in obtaining benefits from the IDA, and all real estate matters related to the project, including survey due diligence and acting as the title examiner for the projects.

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A Hodgson Russ team represented the Buffalo Sabres and its affiliate, HARBORCENTER, in conjunction with the development of HARBORCENTER, an approximately \$200 million, 600,000-square-foot sports, retail, entertainment, parking, and hospitality complex. This first-of-its-kind mixed-used facility includes two ice rinks; a 19-story, full-service Marriott hotel; a sports-themed nightclub and restaurant; retail space; and an 800-car parking facility, all of which are connected to the existing Key Bank Center via skywalk. Hodgson Russ has worked with the Sabres on all aspects of this project from its inception, including environmental review, contract negotiations, permitting, construction, economic development incentives, financing, and tax planning.

Hodgson Russ has represented many local businesses and developers across New York State, including an 18-hole golf course, a winery, a family-owned meat market, and a developer of a large mixed-use business/residential park. This representation has included state and local code interpretation, analysis of permitting requirements, the preparation and presentation of environmental and zoning applications, and defending approvals and permits in litigation.

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.

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 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.

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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**

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

Grand Island: Zoning Revisions Proposed to Limit Warehouse Size  
*Grand Island Dispatch*, September 6, 2023

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

ECC Seeks Dismissal of 'Frivolous' Giambra Lawsuit  
*Buffalo News*, December 23, 2014

Oil and Gas Trade Group Sets Agenda for Buffalo Meeting  
*Buffalo Business First*, November 6, 2014

Six Hodgson Russ Attorneys Newly Admitted to New York State Bar  
April 1, 2011

Six Hodgson Russ Attorneys Newly Admitted to New York State Bar  
March 11, 2010

### **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

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

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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

Christopher Canada and Charles Malcomb Appointed As Co-Chairs of Hodgson Russ Public Authority Practice  
*Hodgson Russ Press Release*, May 18, 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

Sixty Hodgson Russ Attorneys Named to 2019 Upstate New York Super Lawyers  
*Press Release*, August 12, 2019

Sixty-One Hodgson Russ Attorneys Named to 2018 Upstate New York Super Lawyers  
*Press Release*, August 20, 2018

## **Publications**

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

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

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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

National Grid Petition Seeks Retroactive Cost Increases From Multiple Solar Projects, Ability to Increase Costs on Future Projects

*Hodgson Russ Renewable Energy Alert*, January 16, 2024

NYSERDA Reports on the Impacts of the Inflation Reduction Act and Submits Proposal Stretching Funding for Additional Solar Capacity

*Hodgson Russ Renewable Energy Alert*, January 11, 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

## **Presentations & Events**

New York Government Finance Officers' Association Western Holiday Seminar

New York Government Finance Officers' Association, RIT Conference Center, Rochester, December 9, 2021

Virtual IDA Academy

April 13, 2021

Hodgson Russ Municipal Webinar

January 27, 2021

Zoning Enforcement in Local Justice Courts

New York Planning Federation, November 10, 2020

AECOM Ethical Considerations for Municipal Officers

Albany, NY, September 25, 2019

Zoning & Land Use Fundamentals for Municipal Officials

Millennium Hotel, 2040 Walden Avenue, Cheektowaga, NY, June 13, 2019

Niagara Frontier Section Air & Waste Management Association 2019 Annual Enrichment Seminar

Templeton Landing, Buffalo, NY, January 24, 2019

34th Annual School Client Conference

Millennium Hotel Buffalo, January 18, 2019

New York State Bar Association, Local and State Government Law Section Fall Meeting

Buffalo, New York, September 28-29

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WSTBOA Educational Conference  
Mayville, New York, September 11, 2018

### **Professional Affiliations**

- Environmental Law Institute
- New York State Bar Association
- Bar Association of Erie County

### **Community & Pro Bono**

- Rivershore Foundation, Inc. board member