

APPELLATE DIVISION UPHOLDS TOWN OVERLAY DISTRICT PROTECTING WILDLIFE REFUGE

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 4th 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.

Attorneys

Charles Malcomb

Daniel Spitzer

Practices & Industries

Municipal

