

Controversial Land Uses

Capital District Regional Planning Commission

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Unknown unknowns

- *“There are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don't know we don't know. And if one looks throughout the history of our country and other free countries, it is the latter category that tends to be the difficult ones.”*

Zoning and planning authority

- Zoning - NY General City Law § 20; NY Town Law § 261; NY Village Law § 7-700
- Zoning interpretation - NY General City Law § 81-a; NY Town Law § 267-a; NY Village Law § 7-712-a
- Variances - NY General City Law § 81-b; NY Town Law § 267-b; NY Village Law § 7-712-b
- Comprehensive plans - NY General City Law § 28-a; NY Town Law § 272-a; NY Village Law § 7-722
- Site plan review - NY General City Law § 27-a; NY Town Law § 274-a; NY Village Law § 7-725-a
- Special permits - NY General City Law § 27-b; NY Town Law § 274-b; NY Village Law § 7-725b

Land use controls

- Definitions
- Districts
- Dimensional/aesthetic requirements
- Discretionary review
- Comprehensive planning
- Moratoria
- Police power/licensing regulations

Constitutional limitations

- First Amendment freedom of expression
- First Amendment freedom of religion
- Second Amendment
- Fourth Amendment search and seizure
- Fifth Amendment takings
- Fourteenth Amendment procedural due process
- Fourteenth Amendment substantive due process
- Fourteenth Amendment equal protection

Federal & state preemption

- FHA - Fair Housing Act
- ADA - Americans with Disabilities Act
- RLUIPA - Religious Land Use and Institutionalized Persons Act
- TCA - Telecommunications Act
- NYS Human Rights Law
- NYS Environmental Conservation Law
- NYS Public Service Law
- Miscellaneous state laws - public health law, manufactured housing, mining, social services law, alcoholic beverages, agriculture

Signs & billboards

- PSEG Long Island LLC v. Town of North Hempstead, 158 F.Supp.3d 149 (EDNY 2016)
- Vosse v The City of New York, 2016 WL 6037372, 2016 U.S. App. LEXIS 18483 (2d Cir. 2016)
- Matter of Ravena- Coeymans-Selkirk Cent. Sch. Dist. v Town of Bethlehem, 156 A.D.3d 179 (NY App. Div. 3d Dept. 2017)
- Expressview Development, Inc. v. Town of Gates Zoning Bd. of Appeals, 147 A.D.3d 1427 (NY App. Div. 4th Dept. 2017)
- Matter of Franklin St. Realty Corp. v NYC Env'tl. Control Bd., 2019 NY Slip Op 08976 (N.Y. 2019)
- Robar v. Vill. of Potsdam Bd. of Trs., 2020 U.S. Dist. LEXIS 172001 (NDNY 9/21/20)

Group homes

- Sunrise Detox, LLC v. City of White Plains, 769 F.3d 118 (2d Cir. 2014)
- Rehabilitation Support Services, Inc. v. City of Albany, N.Y., 2015 WL 4067066 (NDNY 2015)
- Cole v. Town of Esopus, 55 Misc. 3d 382 (Albany County 2016)
- Step By Step, Inc. v. City of Ogdensburg, 2016 WL 1319081 (NDNY 2016)
- Phillips v. Delaney, 2020 U.S. Dist. LEXIS 184022 (SDNY 10/2/20)

Wireless communications

- Sprint Spectrum L.P. v. Willoth, 176 F.3d 630 (2d Cir. 1999)
- N.Y. SMSA Ltd. P'ship v. Town of Riverhead, 45 Fed. Appx. 24 (2d Cir. 2002)
- TCG N.Y., Inc. v. City of White Plains, 305 F.3d 67 (2d Cir. 2002)
- New York SMSA Ltd. Partnership v. Town of Clarkstown, 612 F.3d 97 (2d Cir. 2010)
- City of Arlington v. FCC, 569 U.S. 290 (2013)
- Crown Castle NG East Inc. v. Town of Greenburgh, 552 Fed. Appx. 47 (2d Cir. 2014)
- T-Mobile South, LLC v. City of Roswell, Ga., 135 S. Ct. 808, 190 L. Ed. 2d 679 (2015)
- Orange County-County Poughkeepsie Ltd. Partnership v. Town of East Fishkill, 2015 WL 6875162 (2d Cir. 2015)
- City of Portland v. United States, 969 F.3d 1020 (9th Cir. 2020)

Animals

- Knoll v. City of Oneonta, 2006 N.Y. Misc. LEXIS 3290 (NY Sup. Ct. Otsego County 2006)
- Town of Clifton Park v. Sarris, 81 A.D.3d 1207 (3d Dept. 2011)
- La Russo v. Neuringer, 105 A.D.3d 743, 962 N.Y.S.2d 633 (2d Dep't 2013)
- Salton v. Town of Mayfield Zoning Bd. of Appeals, 116 A.D.3d 1113 (3d Dept. 2014)
- Meier v. Village of Champlain Zoning Bd. of Appeals, 129 A.D.3d 1364 (3d Dept. 2015)
- Blanchfield v. Town of Hoosick, 149 A.D.3d 1380, 53 N.Y.S.3d 226 (3d Dep't 2017)
- Wen Mei Lu v. City of Saratoga Springs, 162 A.D.3d 1291, 2018 WL 2973744 (3d Dep't 2018)
- Matter of McFadden v Town of Westmoreland Zoning Bd., 2019 NY Slip Op 06348 (N.Y. App. Div. 4th Dept. 8/22/19)

Short term vacation rentals

- Atkinson v. Wilt, 94 A.D.3d 1218 (NY App. Div. 3d Dept. 2012)
- Fruchter v. Zoning Bd. of Appeals of Town of Hurley, 133 A.D.3d 1174 (NY App. Div. 3d Dept. 2015)
- Matter of Cooperstown Eagles, LLC v Village of Cooperstown Zoning Bd. of Appeals, 161 A.D.3d 1433 (NY App. Div. 3d Dept. 2018)
- Matter of JNPJ Tenth Ave., LLC v Department of Bldgs. of the City of N.Y., 2019 NY Slip Op 09390 (NY App. Div. 1st Dept 2019)
- Airbnb, Inc. v. City of New York, 373 F. Supp. 3d 467 (SDNY 2019)
- Matter of Churchill v Town of Hamburg, 2020 NY Slip Op 05356 (NY App. Div. 4th Dept. 10/2/20)

Destination events

- Kabrovski v. City of Rochester, New York, 149 F. Supp. 3d 413 (WDNY 2015)
- Lavender v Zoning Board of Appeals of Town of Bolton, 2016 WL 3919056, 141 A.D.3d 970 (NY App. Div. 3d Dept. 2016)
- Cleere v. Frost Ridge Campground, LLC, 155 A.D.3d 1645 (NY App. Div. 4th Dept. 2017)
- Brophy v. Town of Olive Zoning Board of Appeals, 166 A.D.3d 1123 (NY App. Div. 3d Dept. 2018)
- Town of Delaware v Leifer, 2019 NY Slip Op 08446 (NY 2019)

Homeless shelters

- BAM Historic Dist. Asso. v. Koch, 723 F.2d 233 (2d Cir. 1983)
- Matter of Sullivan v Board of Zoning Appeals of City of Albany, 144 A.D.3d 1480 (NY App. Div. 3d Dept. 2016)
- Neighborhood in the Nineties, Inc. v City of New York, 2019 NY Slip Op 31258(U) (NY Sup. Ct. NY County 5/1/18)
- Matter of West 58th St. Coalition, Inc. v City of New York, 188 A.D.3d 1 (NY App. Div. 1st Dept. 2020)
- Niebauer v City of New York, 2020 N.Y. Misc. LEXIS 4053 (NY Sup. Ct. NY County 8/3/2020)
- Matter of Sandora v City of New York, 186 A.D.3d 1225 (NY App. Div. 2d Dept. 9/2/2020)

Cemeteries

- Oakwood Cemetery v Village/Town of Mount Kisco, 981 NYS2d 786 (NYAD 2 Dept 2014)
- Roman Catholic Diocese of Rockville Centre, N.Y. v. Incorporated Village of Old Westbury, 128 F. Supp. 3d 566 (E.D. N.Y. 2015)
- White Plains Rural Cemetery Association v City of White Plains, 2019 WL 362123, 2019 N.Y. App. Div. LEXIS 605 (NYAD 2 Dept. 1/30/2019)
- Ferncliff Cemetery Association v Town of Greenburgh, 124 NYS 3d 61 (NYAD 2 Dept. 5/20/2020)

Energy

- Wind
 - Matter of McGraw v Town Bd. of Town of Villenova, 186 A.D.3d 1014 (NY App Div 4th Dept 8/20/20)
- Solar
 - Matter of Perkins v Town of Dryden Planning Bd., 172 AD3d 1695 (N.Y. App. Div. 3d Dept 2019)
 - Matter of Biggs v Eden Renewables LLC, 2020 NY Slip Op 07011 (NY App Div 3d Dept 11/25/20)
- Fracking
 - Matter of Wallach v. Town of Dryden, 2014 WL 2921399 (N.Y. 2014)

Mining

- Subdivisions, Inc. v. Town of Sullivan, 92 A.D.3d 1184, 938 N.Y.S.2d 682 (3d Dep't 2012)
- Stone Industries, Inc. v. Zoning Bd. of Appeals of Town of Ramapo, 128 A.D.3d 973 (2d Dep't 2015)
- Matter of Frontier Stone, LLC v Town of Shelby, 2019 NY Slip Op 05852 (N.Y. App. Div. 4th Dept. 7/31/19)
- Matter of Circle T Sterling, LLC v Town of Sterling Zoning Bd. of Appeals, 2020 NY Slip Op 05348 (4th Dept 10/2/20)

Miscellaneous housing

- Houseboats
 - Korbel v. Zoning Bd. of Appeals of Town of Horicon, 28 A.D.3d 888 (3d Dept. 2006)
 - Beneke v. Town of Santa Clara, 36 A.D.3d 1195 (3d Dept. 2007)
- Mobile homes
 - 13391 Broadway LLC v. Vill. of Alden, 2020 U.S. Dist. LEXIS 222942, 2020 WL 7028601 (WDNY 11/30/20)
- Sex offender housing
 - Matter of Khan v Annucci, 2020 NY Slip Op 04946 (NY App Div 2d Dept 9/16/20)
- Correctional facilities
 - County of Herkimer v. Village of Herkimer, 109 A.D.3d 1166, 971 N.Y.S.2d 764 (4th Dep't 2013)

Miscellaneous

- Retail
 - A&P v. Town of E. Hampton, 997 F. Supp. 340 (EDNY 1998)
 - Feinberg v. Apple, Inc., 2016 U.S. Dist. LEXIS 105703 (SDNY 2016)
- Abortion clinics
 - Brighton Residents Against Violence to Children, Inc. v. MW Props., LLC, 304 A.D.2d 53 (4th Dept. 2003)
- Check cashing
 - Sunrise Check Cashing & Payroll Servs., Inc. v Town of Hempstead, 20 N.Y.3d 481 (2013)

Miscellaneous

- Racetracks
 - Dietrich v. Planning Bd. of Town of West Seneca, 118 A.D.3d 1419, 988 N.Y.S.2d 760 (4th Dep't 2014)
 - Leb. Valley Auto Racing Corp. v. Cuomo, 2020 U.S. Dist. LEXIS 143223 (NDNY 9/11/20)
- Shooting ranges
 - Hunter Sports Shooting Grounds, Inc. v Foley, 2019 NY Slip Op 33459 (NY Sup Ct Suffolk County 11/21/19)
 - Demunn v. Sheepdog Warrior LLC, 2020 WL 6318221 (NDNY 10/28/20)
- Solid waste
 - Iza Land Mgmt. Inc. v. Town of Clifton Park Zoning Bd. of Appeals, 262 A.D.2d 760 (3d Dept. 1999)
 - Matter of Town of Waterford v New York State Dept. of Env'tl. Conservation, 2020 NY Slip Op 06180 (NY App Div 3d Dept 2020)
 - Incorporated Vil. of Lindenhurst v One World Recycling, LLC, 2020 NY Slip Op 05037 (NY App Div 2d Dept 2020)