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## **CAPITAL DISTRICT REGIONAL PLANNING COMMISSION TRAINING Troy, NY**

### **PREVENTING (OR AT LEAST PREVAILING IN) ARTICLE 78 CHALLENGES TO PLANNING AND ZONING DECISIONS**

**MARK SCHACHNER, ESQ.**  
**October 23, 2026**

- I. WHAT IS AN ARTICLE 78 PROCEEDING**
- II. WHO CAN MAINTAIN IT**
- III. WHO/WHAT GETS SUED**
- IV. LITIGATION BURDEN**
- V. PRESUMPTIONS AND DEFERENCE**
- VI. POSSIBLE LEGAL GROUNDS (ILLEGALITY OF DECISION)**
- VII. SUBSTANTIVE CHALLENGE VS. PROCEDURAL CHALLENGE**
- VIII. HOW TO PREVENT (OR AT LEAST PREVAIL)**
- IX. MORE COMPLEX/CONTROVERSIAL APPLICATION, GREATER LEVEL OF FORMALITY**
- X. EFFECT OF "PRECEDENT"**
- XI. PREPARING DECISION MOTION IN WRITING IN ADVANCE**
- XII. ASSISTANCE OF MUNICIPAL COUNSEL (INCLUDING PREPARATION OF DRAFT DECISION(S))**
- XIII. MINUTES AND DECISION DOCUMENTS DETAILED AND ACCURATE**

#### **XIV. DEFENDING ARTICLE 78 PROCEEDINGS**

#### **XV. RESULT IN THE (UNLIKELY) EVENT OF FAILURE**

Mark Schachner is the Senior Principal Attorney of MILLER, MANNIX, SCHACHNER & HAFNER, LLC in Glens Falls. While the firm maintains a general practice of law, Mr. Schachner's efforts are concentrated in the areas of municipal, environmental, land use and planning/zoning law. Mr. Schachner and his colleagues represent numerous municipalities in Essex, Franklin, Fulton, Hamilton, Herkimer, Saratoga, Warren and Washington Counties. They also serves as Counsel to the Saratoga County Water Authority, the Gloversville-Johnstown Joint Sewer Board, Fonda-Fultonville Joint Sewer Board, Glens Falls Open Door Mission and LifeWorks Community Action (formerly Saratoga County Economic Opportunity Council). Mr. Schachner's practice includes extensive participation in regulatory proceedings before the New York State Department of Environmental Conservation, Adirondack Park Agency and Lake George Park Commission. He is a graduate of Brown University and Boston University Law School. He is author of the chapter entitled "Environmental Law - New York State Environmental Quality Review Act ("SEQRA")" in the book Pitfalls of Practice published by the New York State Bar Association in 1993 and 2002. Mr. Schachner has lectured about municipal, environmental, planning and zoning law matters at numerous conferences throughout the State. He is President of the New York Planning Federation.