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Land Use and SEQR Case Law Update

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Agenda

- Introduction
- Trending Topics
- Zoning Overview
- SEQRA Overview
- Case Law Updates

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Trending Topics

- Energy Problems
  - Timing/siting issues
  - Environmental Review
- CLCPA / Environmental Justice Siting Law
  - State agencies have new obligations, but so do municipalities.
- NYSDEC Wetlands
  - Implementation of Wetlands Regulations halted.

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Introduction To Zoning

- Zoning is a Police Power
- Police Power belongs to State
- Land use control delegated by State to municipalities by enabling acts:
  - General City Law §§ 26 to 39(PB); §§ 81 to 83a(ZBA)
  - Town Law §§ 261 to 285
  - Village Law §§ 7-700 to 7-742
  - Municipal Home Rule Law
- OK provided not inconsistent with enabling acts

Common Approvals

- Site Plan Approval
- Special Use Permit
- Subdivision
- Use Variance
- Area Variance

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Site Plan Approval

- Local governments have authority to create Planning Boards
- PB can review and approve, modify or disapprove Site Plans
- Site Plans must be prepared in accordance with requirements in local law
- PB is **authorized to consider the arrangement**, **layout** and **design** of the Site Plan
- **Cannot consider elements not enumerated in enabling legislation** or local law
- May require public hearing

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PBs Review Site Plan For:

- Parking and access
- Screening
- Signage
- Landscaping
- Architectural features
- Location and dimensions of buildings
- Adjacent land uses and physical features meant to protect adjacent uses
- Any additional elements in local ordinance including aesthetics

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SUPs

- Special Use Permits (also called Conditional Use Permits or Restricted Use Permits)
- SUP confers special authority to use property in manner expressly authorized
- Not a variance
- **Presumption use in harmony with neighboring uses**
- **Burden of proof much lower than variance**
- Entitled to approval upon showing of compliance with legislatively established conditions
- Municipality can choose which board issues

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ZBA Decisions

- **Minimum variance requirement – Applies to both area and use variances**
- **Precedent based on past decisions**
- **ZBAs often fail to apply the required standards**

ZBA – Area Variance

- Authorization to use land in a manner prohibited by dimensional or physical requirements
- Balancing Test: "The **benefit to the applicant** if the area variance is granted, as **weighed against** the **detriment to** the **health, safety and welfare of** the neighborhood or **community**."

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The Five Criteria to be Considered in Applying the Balancing Test:

1. **Will** variance **create undesirable change to character** of the neighborhood?
2. **Can** the **benefit** sought **be achieved by some other feasible method**?
3. **Is** the **variance substantial**?
4. Will the variance have an **adverse** impact on physical or environmental **conditions**?
5. Was the alleged **difficulty self-created**?

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ZBA – Use Variance

- Authorization to use land in a manner not permitted or expressly prohibited
- Unnecessary Hardship Test: Applicant shall demonstrate to the ZBA for **each and every permitted use** in the zoning district that:
    1. The applicant cannot realize a reasonable return, provided **that lack of return is substantial** as demonstrated by competent financial evidence
    2. The alleged **hardship** relating to the property in question is **unique**, and does not apply to a substantial portion of the district or neighborhood
    3. The requested use variance, **if granted**, will **not alter the essential character of the neighborhood**
    4. The alleged **hardship** has **not** been **self-created**

GML §239-m

- Certain zoning decisions must be referred to County Planning prior to action – approval or denial
- Can be administrative with planning staff, or go to full County Planning Board
- **Failure to make the referral** when required is a jurisdictional defect – rendering the **approval or denial null and void**

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GML §239-m

- **County referral required for**:
  - adoption or amendment of comp plan
  - zoning law adoption or amendment
  - special use permits
  - site plans
  - use and area variances
  - other local zoning approvals

- **IF the property involved is within 500 feet of:**
  - A municipal boundary;
  - Existing or proposed County or State park or recreation area;
  - Existing or proposed County or State parkway, thruway, expressway, road or highway;
  - Right-of-way of any County stream or drainage channel;
  - Existing or proposed boundary of any County or State-owned land on which a public building is situated;
  - Boundary of a farm located in State ag district (except for area variance).

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What Must be Supplied to County

- "Full Statement" of zoning application
  - All materials required for complete application
  - Substantially same form and content to that which is before referring board
- Not required to provide parts 2 and 3 of EAF

GML §239-m Process

- County has 30 days to recommend:
  - Approval; Modification; or Denial; *OR*
  - That proposed action has no significant county-wide or intercommunity impacts
- Can still issue binding recommendation if at least 2 days before final local action

Final Local Board Action

- Free to disregard County, BUT must do so by supermajority vote
- 30 days to file report with County
- If disregard County - must explain reasons
- Substantial changes require new referral
- Also keep in mind:
  - §239-n referrals for subdivision plats
  - §239-m notice to neighboring municipality for zoning applications on property within 500 feet of municipal border

Conditions

- Authority to impose conditions upon zoning approvals is limited
- Conditions must:
  - Be reasonable;
  - Relate to the proper objectives of zoning (i.e., health, safety and welfare of the community); and
  - Directly relate to and incidental to the proposed use of the land
- Conditions should be stated clearly and provided to applicant in writing

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Good Quotes From the Court of Appeals on Conditions

- "**All too often**, the **administrative** or legislative **determination** seems to **turn on the identity of the applicant or the intended user**, rather than upon neutral planning and zoning principles." St. Onge v. Donovan.
- The error of this approach is lack of adherence to the fundamental rule **that zoning deals basically with land use** and not with the person who owns or occupies it. Id.

Voting Requirements

- A majority of the full Board (not just those present) is required to approve any Board action
  - Abstentions are no votes for counting purposes
  - 7 member board (4 affirmative votes required)
  - 5 member board (3 affirmative votes required)

- Majority plus one required to override County recommendation on GML §239-m referral

What SEQRA Requires of You:

- Agencies must incorporate environmental considerations directly into decision-making and mitigate adverse environmental effects.
- Agencies must strike balance between social/economic goals and the environment.

The Basics

- The rule:
  - **No** state or **local governmental agency may undertake**, **fund or approve** an action until the agency has performed an adequate environmental review consisting of an evaluation of the nature, type, size and scope of the action, and an assessment of whether the action has the potential to have a significant environmental impact.

The Basics (Cont'd)

- If the action is one which may have a significant adverse environmental impact, an environmental impact statement ("EIS") must be prepared.
- SEQRA is not a SEPARATE PERMIT OR APPROVAL.
- Rather, it is a process that takes place in conjunction with other permits or approvals.

"Agencies" and "Actions"

- First SEQRA question is always:
  - Do you have an "agency" taking an "action"?

What Is an Agency?

- "A state or local agency"
- State agency: Any state department, agency, board, public benefit corporation, public authority or commission
- Local agency: Any local agency, board, authority, district, commission or governing body including any city or county, or other political subdivision of the state
- "An agency shall be a corporate governmental agency, constituting a public benefit corporation. " GML § Article 18-A

What Is an Action?

- Actions include projects or physical activities such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure that:
  - Are **directly undertaken by an agency**;
  - Involve **funding by an agency**; or
  - **Require** new or modified **approvals from an agency** or agencies.

What Is an Action? (Cont'd)

- **Actions also include**:
  - Planning and **policy making activities** that may affect the environment and which commit an agency to a definite course of future decisions; or
  - **Adoption of rules, regulations and procedures** including local laws, codes, ordinances, executive orders and resolutions that may affect the environment.

What Is Not an Action?

- Actions do not include:
  - **Enforcement proceedings** or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;
  - **Official acts of a ministerial nature**, involving no exercise of discretion; or
  - **Maintenance or repair** involving **no substantial changes** in an existing facility or structure.

The Process

- When to start the SEQR review process (as soon as you receive an application).
- Who Starts (Lead Agency, Involved Agencies, Interested Agencies) – Often started by a local government board: PB, TB, and infrequently a ZBA.
- Note: Every project does not require a Lead Agency; sometimes all agencies must make their own decision.

Classifying the Action

- To make DOS, lead agency must classify the action:
  - Type I
  - Type II
  - Unlisted

Type I Actions

- More likely to have a significant adverse environmental impact
- SEQRA regulations include a list of specific activities that are Type I
  - The adoption of changes to zoning regulations that will affect more than 25 acres
  - A non-residential development project that will result in a physical alteration of more than 10 acres

Type II Actions

- Do not to have a significant adverse environmental impact, or are otherwise precluded from review — not subject to SEQRA
  - The replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site
  - The purchase or sale of furnishings, equipment or supplies, including surplus government property other than land or hazardous materials

Unlisted Actions

- Any action that is not on the Type I or Type II action lists
- IMPORTANT: The environmental impacts of a particular action are not particularly relevant to classifying the action;
- The issue is whether the action involves activities that are on the list.

Applicant Preparation of the Environmental Assessment Form

- **Type I Actions require** the Applicant to complete **the Full EAF**
- Unlisted Actions allow the Applicant to complete the Short EAF
  - The Full EAF provides more information for the Lead Agency, and it may be beneficial in cases of a large Unlisted Action to have the Applicant complete the Full EAF

Establishing a Lead Agency

- **Coordinated review is mandatory for Type I actions**; optional for unlisted actions;
- In order to initiate a coordinated review, agency **must circulate** to **all potentially involved agencies**:
  - **Part 1 of the EAF** completed by the applicant, and
  - **A copy of any application** it has received.
- **Notify other agencies that a lead agency must be agreed** upon within **30 calendar days**.

Determination of Significance

- Lead agency makes decision based on:
  - Classification of action (Type I; Type II; Unlisted)
  - EAF
  - Other relevant information
- Negative declaration
- Positive declaration
- Conditioned negative declarations

Negative Declaration

- Determination that Project will not have any significant adverse environmental impacts
- "Significant" is determined by Lead Agency
  - The determination is not math (1 + 1 + 1 equals significant)
  - It is a policy decision.

Positive Declaration — Start EIS Process

- Lengthy and complex process
- Rounds of public hearings/opportunity for public input
- **Culminates in the preparation of a final EIS** and **the adoption of a findings statement** by the lead agency

Notice and Filing Requirements

- A Type I negative declaration, conditioned negative declaration, positive declaration, notice of completion of an EIS, EIS, notice of hearing and findings must be filed with:
  - The lead agency must retain a copy of the declaration in its own files, with the Environmental Notice Bulletin, and it must provide notice to, and file a copy of the declaration with
    - (i) the chief executive officer of the political subdivision in which the action will be principally located;
    - (ii) the lead agency;
    - (iii) all involved agencies;
    - (iv) any person who has requested a copy; and
    - (v) if the action involves an applicant, with the applicant.
  - Notice of a Type I negative declaration, conditioned negative declaration, positive declaration, draft and final scopes and completion of an EIS must be published in the Environmental Notice Bulletin (ENB)

Notice and Filing Requirements Cont.

- Negative Declarations for Unlisted Actions
  - The Agency must maintain a copy of the negative declaration in its files.
- Type II Action
  - No filing or notice requirements.

SEQR Resources

- DEC SEQR Home Page
- EAF's
- EAF Workbooks
- EAF Mapper
- SEQR Handbook – Updated 2020
- CRIS Mapper
- Disadvantaged Community Assessment Tool (DCAT)

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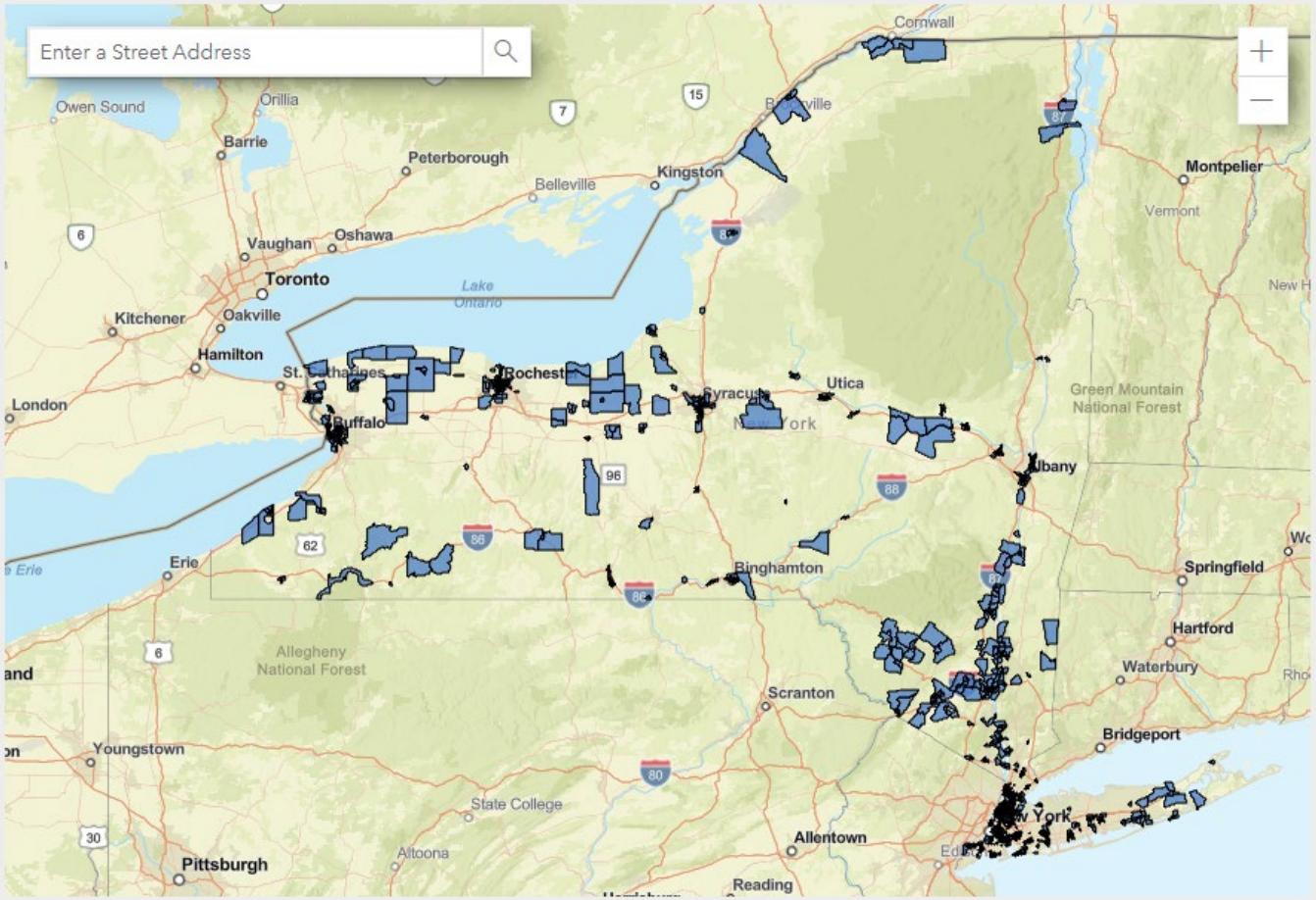

SEQRA – Substantial Deference

- **Al Asphalt Corp and Anor v. Town of Hamburg Town Bd., CA 24-01562 (4th Dept) March 20, 2026**
- Courts defer to agency SEQRA decisions when the review is reasoned and supported by the record.
- A proposed asphalt facility was denied after the Town classified it as an Unlisted SEQRA action and identified environmental deficiencies.
- The appellate court upheld the Town's SEQRA classification and project denial as rational, lawful, and supported by consultant analysis and environmental review.

SEQRA – Hard Look

- **Tammy Bigelow et al. v. Town of Willsboro Planning Board et al, 243 A.D. 3d 659 (3d Dept 2025)**
- SEQRA requires a documented, record-based "hard look," and failure to notify the news media of a meeting schedule will not invalidate a meeting if the meeting notice was publicly posted, and the meeting was open to the public.
- After an initial self-storage site plan and special use permit were annulled due to zoning conflicts, the Planning Board approved the resubmitted plan without a hard look or a written waiver supported by a record

SEQRA – Capacity

- **Seneca Meadows, Inc. v. Town of Seneca Falls, 2025 WL 3635447 (CA 2025)**
- The Court of Appeals' reaffirmation that property owners directly affected by governmental actions, such as zoning changes, do not need to allege specific environmental harm to have standing under SEQRA.

CLCPA

- **Glen Oaks Village Owners, Inc. v. City of New York, 44 N.Y.3d 468 (2025)**
- When the state enacts comprehensive legislation on a subject like greenhouse gas emissions, it does not necessarily preclude local governments from implementing their own measures to further those objectives, especially when the state legislation is aspirational and leaves room for local action.
- The Court of Appeals upheld New York City's building emissions law, ruling that the CLCPA does not preempt local greenhouse gas regulations and affirming the City's authority to enact climate measures alongside state law.

Reviewing Wrongly Issue Variance

- **Franklin Square Realty Associates, LLC v. Board of Appeals of the Town of Hempstead, 232 A.D. 3d 814 (2d Dept 2025)**
- A use variance allows only a specific nonconforming use and does not change zoning classifications, and municipalities are not estopped from correcting past administrative errors.
- Property owners sought a building permit for a self-storage facility on split-zoned land, relying on a 1959 use variance, but the Town Board upheld the permit denial, and the court found the Board's determination rational, concluding the prior variance was improperly granted and did not authorize the proposed use.

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Public Notices

- **Socha v. Town of Starkey, 239 A.D. 3d 1298 (4th Dept 2025)**
- Failure to comply with statutory notice requirements renders land-use approvals void, and vested rights cannot arise from permits or variances issued without jurisdiction due to procedural defects.
- Property owners obtained a use variance and building permit to replace an oversized shed, but errors in the variance application caused defective public notice, depriving the ZBA of jurisdiction; the court held the variance and permit void ab initio, found no vested rights, and upheld the ZBA's later denial of a corrected application

ZBA Denials

- **McGinn v. Zoning Board of Appeals of Town of East Hampton, 241 A.D. 3d 1340 (2d Dept 2025)**
- A zoning board's denial must be supported by substantial evidence; where an applicant demonstrates compliance with code requirements and reasonably addresses alternatives, denial of a permit is arbitrary and cannot stand.
- Waterfront property owners sought a natural resources special permit to build a dock, which the Town ZBA denied, but the Supreme Court annulled the denial, finding the ZBA's determination unsupported by substantial evidence and remitted the matter for issuance of the permit.

Community Opposition Not Enough

- **853–855 McLean, LLC v. City of Yonkers, 237 A.D. 3d 1189 (2d Dept 2025)**
- A special use permit denial must be supported by substantial evidence of adverse impacts, and community opposition alone is insufficient to justify denial.
- A property owner sought a special use permit to operate a convenience store with a gas station, which the Planning Board approved but the City Council denied based on community opposition; the court annulled the denial, finding it unsupported by evidence and directed issuance of the permit.

Non-Conforming Use

- **Van Dam Specialty & Promotion, Inc. v. Board of Standards and Appeals of City of NY, 242 A.D. 3d 892 (2d Dept 2025)**
- The party asserting a legal nonconforming use bears the burden of proof, and while unchanged uses may be protected, expansions beyond original approval forfeit nonconforming status.
- The property owner sought to register two rooftop billboards as legal nonconforming uses after DOB denial; the court partially annulled the Board's determination, finding the denial arbitrary as to the west-facing sign but rational as to the east-facing sign, which had increased in size beyond its original permit.

No MOU to Bind Successor Town Board

- **Hudson View Park Company v. Town of Fishkill, 2025 WL 3670600 (CA)**
- Under the term limits doctrine, municipalities may not contractually bind successor governing bodies on legislative or governance matters such as zoning absent specific statutory authorization.
- A developer sued the Town after a newly elected Town Board terminated review of its rezoning petition despite a prior MOU committing the Town to continue review; the courts held the MOU unenforceable because it improperly bound successor boards on zoning decisions.

County Referral

- **Johnson v. Zoning Board of Appeals of Village of Brockport, 240 A.D.3d 1243 (4th Dept 2025)**
- Failure to comply with mandatory county referral requirements is a jurisdictional defect that voids a zoning board's determination and prevents the statute of limitations from running.
- Earthborn Materials sought an area variance to operate outdoor processing and material storage in a district requiring fully enclosed uses, but the court annulled the ZBA's approval because the application was never referred to the county planning agency as required by General Municipal Law § 239-m, rendering the approval null and void.

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Zoning Laws

- **Ahmed v. Inc. Village of Scarsdale, 244 A.D.3d 913 (2d Dept 2025)**
- Municipal ordinances regulating building aesthetics are a valid exercise of police power and are enforceable where they are reasonably related to preserving community character.
- Ordinances must provide clear guidelines that were sufficiently definite to give a person of ordinary intelligence fair notice of what would be allowed and provided clear standards for enforcement officials to make determinations without arbitrary and discriminatory application.
- A homeowner challenged the denial of an initial building permit by the Village's Board of Architectural Review and the validity of the Village's aesthetic ordinance, but after failing to timely appeal the denial, the court upheld the ordinance and granted summary judgment to the Village.

Eminent Domain

- **Village of Kiryas Joel v. Mezrich Estates Condominiums, 237 A.D.3d 724 (2d Dept 2025)**
- In eminent domain proceedings, the statute of limitations begins to run upon the public hearing on the proposed project, and failure to timely commence the action is fatal absent admissible proof justifying an extension.
- The Village of Kiryas Joel sought to condemn condominium property to rehabilitate and widen roads in response to traffic congestion, safety issues, and related public nuisances, but the court dismissed the proceeding as time-barred, holding that the three-year statute of limitations began running at the public hearing on the project and expired before the petition was filed, with no admissible evidence supporting tolling.

Eminent Domain

- **Matter of Willow Ridge Country Club, 241 A.D.3d 1582 (2d Dept 2025)**
- In eminent domain cases, prepayment premium provisions in mortgage agreements generally do not apply where condemnation proceeds are applied to outstanding principal without penalty, and the mortgage lien is replaced by an equitable lien on the award.
- The Town of Harrison condemned the Willow Ridge Country Club property, and the appellate court held that TD Bank, as mortgagee, was not entitled to a prepayment premium or legal fees from the condemnation proceeds because the taking extinguished the mortgage lien and the mortgage terms required condemnation awards to be applied to principal without penalty.

Eminent Domain

- **Town of Ramapo v. Weis, 238 A.D.3d 882 (2d Dept 2025)**
- Consequential damages are unavailable where a property owner retains reasonable access to public roadways and where the claimed loss stems from the taking of adjacent property rather than the owner's own land.
- The Town of Ramapo condemned land along Route 306 for a sidewalk and road-widening project, and the appellate court granted summary judgment to the Town, finding that the condemnee did not own one of the affected parcels, retained reasonable access to his property, and could not claim compensation for the loss of a setback or buffer resulting from the taking of neighboring property.

Eminent Domain

- **Coalition for Fairness in SoHo and NoHo, Inc. v. City of New York, 2026 WL 88133 (Court of Appeals 2026)**
- A legislatively imposed conversion fee does not violate the Takings Clause where it is a monetary obligation, does not require the transfer of a property interest, and does not diminish existing property rights.
- After New York City rezoned SoHo–NoHo to allow former artist-only units to convert to unrestricted residential use upon payment of a one-time fee, occupants challenged the fee as an unconstitutional taking; the Court of Appeals reversed the Appellate Division and upheld the fee, finding it lawful.

Wetlands

- **Chautauqua Lake Property Owners Association, Inc. et al v. The State of New York et al.**
- Even for statewide regulatory programs, agencies must fully comply with SEQRA by taking a documented "hard look" at both benefits and adverse impacts, and failure to do so can result in wholesale annulment of the regulations.
- The Albany County Supreme Court invalidated the DEC's 2025 freshwater wetlands regulations (6 NYCRR Part 664), finding that the agency conducted an inadequate SEQRA review by relying on a short-form Environmental Assessment Form that failed to assess potential adverse and growth-inducing environmental impacts raised during rulemaking.

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Questions?

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Thank You

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