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## **LEGAL ALERT**

### **New York State Court of Appeals Restores Planning Board's Authority in *Smith v Town of Thompson Planning Board***

In a big win for local governments, the Court of Appeals unanimously reversed the Appellate Division today in *Matter of Smith v. Town of Thompson Planning Board*, reinstating the Supreme Court's judgment in favor of the Planning Board. The case arose when a developer sought site plan approval and a special use permit to build two warehouse buildings in the Town of Thompson, and the Planning Board granted approval conditioned on the property's use as a warehouse under the Town Code, which separately defines and prohibits distribution centers in the zone. The state's highest court held that there was no error of law or abuse of discretion in that determination. The petitioners (a group of property owners) had argued that the number and density of loading docks in the project proposal "likely" indicated the actual use would differ from what the Board approved, but the Court of Appeals found that speculation insufficient to disturb a rational administrative determination. The Board's SEQRA review, conducted on the same warehouse-limited basis, was likewise upheld.

NYAOT filed an amicus brief in this case, as the Third Department's decision put planning boards and local governments statewide in an untenable position, treating routine application review as code interpretation and opening the door to ZBA referral requirements, even where no genuine ambiguity in the code existed. The Court of Appeals' decision reaffirms the proper standard of review under CPLR Article 78 and the deference courts owe to rational planning board determinations supported by the record. Local governments can now count on the fact that when a board conditions approval on a specific permitted use and bases its SEQRA review on that same limitation, it has adhered to the law, and a challenger's speculation about what an applicant might do in the future is not grounds for reversal.