SUPREME COURT
STATE OF NEW YORK COUNTY OF TOMPKINS

In the Matter of the Application of

FLX STRONG by its President Kenneth Wolkin and CAYUGA LAKE ENVIRONMENTAL ACTION NOW by its President John V. Dennis,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law and Rules,

vs.

TOWN OF LANSING ZONING BOARD OF APPEALS, TERAWULF INC., CAYUGA OPERATING COMPANY LLC, LAKE HAWKEYE LLC, and FRED DELFAVERO,

Respondents.

VERIFIED PETITION

Index No.:

Petitioners FLX Strong by its President Kenneth Wolkin and Cayuga Lake Environmental Action Now ("CLEAN") by its President John V. Dennis (together "Petitioners"), by their undersigned attorney, Stephen D. Daly, Esq. of Citizen Environmental Law PLLC, for their Verified Petition in this special proceeding brought pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR"), allege as follows:

INTRODUCTION

1. This proceeding seeks to correct fundamental errors of law and violations of lawful procedure committed by the Town of Lansing Zoning Board of Appeals ("ZBA") in its decision concerning a proposed large-scale data center campus along the shores of Cayuga Lake.

2. In December 2025, in a narrow 3-2 vote, a bare majority of the ZBA adopted an interpretation of the Town's zoning ordinance (the "Ordinance") holding that the legacy use

category of "general processing" encompasses "*anything*" a business might process, including virtual, computational data processing.

3. In the near term, this interpretation allows the proposed data center to bypass the use-variance process entirely and proceed to site plan review as of right. Over the longer term, the ZBA's reading collapses the Ordinance's carefully drawn use distinctions, effectively rendering nearly any commercial or business use a form of "general processing," since nearly every type of business processes something.

4. The ZBA's decision stretches a legacy industrial category, "general processing," to fit modern digital infrastructure. Any such expansion of permitted uses must be accomplished, if at all, by legislative amendment of the Ordinance by the Town Board, not by *ad hoc* reinterpretation from the ZBA.

5. To reach its conclusion, the ZBA disregarded two critical textual facts: (1) the Ordinance pairs "general processing" exclusively with "light manufacturing and assembly" in Schedule I,[1] and (2) "processing" is included in Ordinance § 270-3 as an activity of a manufacturing establishment. It is undisputed that the proposed data center involves no manufacturing or assembly of any kind.

6. The erroneous substantive decision the ZBA reached is attributable, in part, to procedural defects that compromised deliberation and the integrity of the decision-making process.

7. Notwithstanding extensive public interest—including the commentary of 43 individuals who spoke at the public hearing—the ZBA resolved the appeal in just *twelve days*,

[1] Schedule I is **Exhibit 1** to the Affirmation of Stephen D. Daly, Esq. filed herewith. Unless otherwise specified, exhibits referenced herein refer to those accompanying the Daly Affirmation.

from deeming the application complete on December 10 to voting on December 22. Although the ZBA had up to two months to decide the appeal following the public hearing, it elected to do so on a markedly compressed schedule that curtailed deliberation on a novel and consequential zoning question.

8. That truncated process amplified the role of the ZBA Chairperson and his predisposition on the dispositive legal issue. The Chair cast the decisive vote after having previously expressed, in private email communications months earlier, that he "personally hope[d]" the project "is eventually approved."

9. No one was better positioned than the Chair to achieve the outcome he had stated he preferred. Before casting his deciding vote, he openly admitted to having prejudged the core legal question—whether a data center was a permitted use under the Ordinance—stating:

> And being an officer on this committee … I can state that no one ever said anything about the data center not being an approved use. Really until I saw [the Code Enforcement Officer's] letter, I had no idea this was a possibility. Everyone I had spoken to had treated it as an accepted [use] … So I was a bit shocked …

Exhibit 2 (Summary Transcript pg. 5).

10. These statements do not demonstrate that the data center is a permitted use. They instead constitute direct evidence of bias and prejudgment by the Chair on the central legal question, and that prejudgment plainly carried through to his vote. He cited it expressly as a basis for his decision.

11. As a matter of law and procedural due process, the ZBA's determination cannot stand. Petitioners therefore seek a judgment annulling the ZBA's decision and remanding the matter for reconsideration of the legal question before an impartial quorum, excluding the Chairperson.

PARTIES

12. Under CPLR § 1025, an action may be brought by or against the president or treasurer of an unincorporated association on the association's behalf in accordance with the General Associations Law.

13. Petitioner FLX Strong is an unincorporated association based in Lansing, New York. Its members include residents of the Town of Lansing, Tompkins County, and the surrounding area, as well as representatives of regional and statewide environmental and energy justice-focused organizations, including CLEAN.

14. Mr. Kenneth Wolkin is the elected President of FLX Strong.

15. The affirmation of Kenneth Wolkin, describing FLX Strong, is filed herewith and incorporated herein by reference.

16. Petitioner CLEAN is an unincorporated environmental advocacy organization based in Lansing, formed in 2017 to protect Cayuga Lake from the potential negative impacts of industrial and commercial operations.

17. Mr. John V. Dennis is the President of CLEAN's steering committee.

18. The affirmation of John V. Dennis, describing CLEAN, is filed herewith and incorporated herein by reference.

19. Respondent Town of Lansing Zoning Board of Appeals ("ZBA") is located at 29 Auburn Road, Lansing, New York 14882.

20. The ZBA is authorized under Town Law § 267-a and the Town Ordinance § 270-56 to reverse, affirm, or modify an interpretation issued by the Town's Code Enforcement Officer ("CEO") regarding the Ordinance.

21. Respondent TeraWulf, Inc. ("TeraWulf") is identified as an appellant in ZBA Appeal 25-10 and is described as a lessee and developer of the Project.

22. Upon information and belief, TeraWulf maintains its principal place of business in Maryland (9 Federal St., Easton, Maryland 21601) and is incorporated in the State of Delaware.

23. Respondent Lake Hawkeye LLC is identified as an appellant in ZBA Appeal 25-10 and is described as a lessee and developer of the Project.

24. Upon information and belief, Lake Hawkeye is a Delaware limited liability company and a subsidiary of TeraWulf.

25. Respondent Cayuga Operating Company LLC ("Cayuga Operating") owns the property on which the Project is located and is identified as an appellant in ZBA Appeal 25-10.

26. Cayuga Operating is a New York State limited liability company with headquarters at 122 East 42nd Street, 18th Floor, New York, New York 10168.

27. Respondent Fred DelFavero is identified as the applicant in TeraWulf's site plans for the Project and is the individual to whom the CEO addressed his underlying zoning determinations.

28. Upon information and belief, Fred DelFavero resides in New York State and his principal place of employment is located at 228 Cayuga Drive in Lansing, the site of the proposed Project.

29. TeraWulf, Lake Hawkeye, Cayuga Operating, and Mr. DelFavero (together, the "Developers") are joined as respondents in the event they could be affected by a judgment in the Petitioners' favor.

PETITIONERS' STANDING

30. Petitioners' standing as aggrieved parties arises from the ZBA's approval of Appeal 25-10 in favor of the Developers and the concrete impacts the Project is likely to have on Petitioners and their individual members.

31. Unless the determination in Appeal 25-10 is annulled, the Developers will be able to proceed to site plan review as of right, as though the Project were a permitted use in the I/R district. Treating the Project as a permitted use may also reduce the level of scrutiny applied in any future environmental review under the State Environmental Quality Review Act ("SEQRA").

32. The ZBA's classification of the Project as "general processing" constitutes a concrete determination applicable to the specific Project proposed at 228 Cayuga Drive.

33. Petitioners are both unincorporated associations. The same standing test applies to an unincorporated association bringing an action under the General Associations Law as to any other association or organization. *See Dental Soc. Of New York v. Carey*, 61 N.Y.2d 330, 334-35 (1984); *Mulgrew v. Board of Educ. Of the City School Dist. of the City of N.Y.*, 75 A.D.3d 412, 413 n.1 (1st Dept. 2010).

34. An organization has standing when (1) at least one of its individual members has standing, (2) the interests asserted are germane to the organization's purpose, and (3) the participation of individual members is not required for the relief sought. *Matter of Cobbs Hill Vil. Tenants' Ass'n v. City of Rochester*, 194 A.D.3d 1437, 1440 (4th Dept. 2021). This three-part test is easily satisfied here.

35. First, this lawsuit is germane to the purposes of both FLX Strong and CLEAN, as described in the affirmations of Mr. Wolkin and Mr. Dennis. Both organizations are dedicated to

protecting the Cayuga Lake watershed from the potentially harmful environmental and community impacts of data centers and other commercial or industrial uses.

36. Second, the direct participation of Petitioners' individual members is unnecessary. Petitioners seek annulment of the ZBA's decision based on errors of law and violations of lawful procedure, and the merits of this proceeding focus entirely on the ZBA, not on Petitioners' members.

37. Finally, as described in the accompanying affirmations of Maureen Cowen, Harold Mills, Sabrina Johnston, Christopher T. Tassaglia-Hymes, Joel Podkaminer, John V. Dennis, and Brian Eden, each incorporated by reference, one or more individual members of both FLX Strong and CLEAN have standing in their own right.

38. To establish individual standing, a member must show (i) an "injury-in-fact," and (ii) that the injury falls within the "zone of interests" protected by the statute at issue. *Matter of Clean Air Coalition of W.N.Y., Inc. v. N.Y.S. Pub. Serv. Comm'n*, 226 A.D.3d 108, 115 (3d Dept. 2024); *see also Matter of Saratoga Lake Protection & Improvement Dist. v. Dept. of Pub. Works of City of Saratoga Springs*, 46 A.D.3d 979, 981 (3d Dept. 2007). An "injury-in-fact" requires a direct harm that differs from that of the public at large. *Id.*

39. Diminished environmental, aesthetic, or recreational interests constitute injuries-in-fact. *Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany*, 13 NY3d 297, 305 (2009). Likewise, agency action that directly harms members' use or enjoyment of an affected natural resource satisfies the requirement. *See, e.g.*, *Soc'y of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 776 (1991).

40. As detailed in the accompanying witness affirmations, the Project's construction and operation are likely to cause concrete, particularized injuries to Petitioners' members different in degree or manner from the public at large, including:

a. Reduced use and enjoyment of recreational activities at the neighboring Cayuga Shores Wildlife Management Area ("Cayuga Shores WMA") due to increased noise and light pollution;

b. Harm to environmental interests, including impacts on bird species at Cayuga Shores WMA;

c. Reduced use and enjoyment of residential property because of noise and light pollution;

d. Diminished enjoyment of lake recreational activities due to increased noise, lighting, and potential water-quality concerns;

e. Potential decreases in grid reliability owing to increased energy demand; and

f. Reductions in property values

41. Each of these injuries falls squarely within the zone of interests protected by the Ordinance, which is intended to promote the health, safety, and general welfare of the community.

42. The Town's Ordinance governs zoning within the Town of Lansing. The zone of interests of the Ordinance is broad. The Ordinance aims to:

a. Promote the health, safety and general welfare of the community;

b. Reduce congestion and prevent the overcrowding of land;

c. Avoid undue concentration of population;

d. Facilitate the adequate provision of transportation, water, sewage disposal, schools, parks and other public services;

e. Conserve the value of property; and

f. Establish zoning regulations to encourage appropriate development consistent with the Town's Comprehensive Plan.

Ordinance § 270-2.

JURISDICTION AND VENUE

43. This Court has jurisdiction pursuant to CPLR §§ 7801 and 7803.

44. Venue lies in the Supreme Court, Tompkins County, pursuant to CPLR § 7804(b), because the principal office of the ZBA is located there, *id.* § 505(a), and it is where the ZBA made the determinations challenged in this proceeding, *id.* § 506(b).

FACTS

The Town of Lansing Ordinance

45. This proceeding challenges the ZBA's legal interpretation of the Town's zoning Ordinance, specifically its construction of the phrase "general processing."

46. Schedule I of the Ordinance lists permitted uses within each zoning district in the Town, including the Industrial/Research ("I/R") district at issue here.

47. It is "a basic tenet of zoning jurisprudence that an ordinance which lists permitted uses excludes any uses that are not listed." *Old Westbury v. Alljay Farms, Inc.*, 100 A.D.2d 574, 575 (2d Dept. 1984); *see* Ordinance § 270-8 ("Any land use not specifically permitted" under the zoning ordinance "shall be disallowed.").

48. Under this zoning scheme, if a proposed use does not appear in the Ordinance, then it is not permitted.

49. Only the Town Board is authorized to amend the Ordinance. The last comprehensive overhaul occurred in 2003, although individual sections have been amended periodically since then.

50. The phrase "general processing" has appeared in the Ordinance as a permitted use category since at least 1998. *See* **Exhibit 3** (Schedule I to Ordinances dated Jan. 2001 and July 1998).

The Data Center Project

51. In August 2025, the Developers issued a press release announcing plans to construct a large-scale data center project in the Town of Lansing.

52. The announcement generated widespread public concern and controversy.

53. The Developers proposed constructing and operating a data center campus at the site of the former Milliken Station power plant at 228 Cayuga Drive (the "Project"), adjacent to both Cayuga Lake and the State-protected Cayuga Shores WMA.

54. A data center is a facility that houses servers, data-storage devices, and networking infrastructure to support digital applications and services.

55. The Developers' proposed data center is designed as a multi-tenant facility providing power and secure space for other organizations' computer equipment. The operator, TeraWulf, manages the environment and connectivity, but not the data itself.

56. To the extent any data is used for computational purposes or processing, such activities occur virtually and do not alter the facility's physical characteristics for zoning purposes.

57. According to the Developers' website, the Project will be developed in phases and is expected to scale to 400 MW, roughly the power demand of a small city. A facility of this size

generates continuous, 24-hour noise due to the cooling systems required to prevent equipment from overheating.

58. The first phase of the Project, consisting of three large structures and an associated substation, is proposed less than 450 feet from Cayuga Shores WMA, an important environmental and recreational resource along the lake. The Affirmation of Brian Eden, filed herewith and incorporated by reference, describes the importance of the Cayuga Shores WMA in relation to the missions of CLEAN and FLX Strong.

The CEO Determines that the Project is Not Permitted

59. The Milliken Station power plant operated for decades as a preexisting, nonconforming use until it ceased operations in 2019. Any new use at the site, including the Project, must therefore comply with the Town's current zoning requirements.

60. The Project is proposed in an I/R district, which permits only specified uses to proceed to site plan review. As noted above, these uses are identified in Schedule I to the Ordinance.

61. There is no dispute that "data center," or any comparable industry term, does not appear as a permitted use in the I/R district or elsewhere in the Ordinance.

62. In October 2025, the Developers submitted an application for site plan review to the Town of Lansing Planning Board.

63. In support of their site plan application, the Developers argued that the Project qualified as one of several permitted uses in the I/R district, including a scientific research laboratory, a general processing facility, and a warehouse for the storage of goods.

64. The Developers thus claimed that the Project was a modern equivalent of one or more of these traditional permitted uses.

65. The permitted-use categories invoked in the Developers' appeals, *i.e.* "scientific research laboratory," "general processing," and "warehousing/storage of goods," have appeared in the Ordinance since at least 1998.

66. At that time, large-scale data centers did not exist, and the plain language of the Ordinance reflects that reality: there is no permitted-use category for "data centers" or similar terms in the I/R district.

67. In letters dated October 23, 2025, and November 10, 2025, the Town CEO informed the Developers that the Project was not a permitted use in the I/R district and therefore ineligible for site plan review.

68. The CEO determined that the Project was neither a scientific research laboratory, a general processing facility, nor a warehouse for the storage of goods.

69. A true and correct copy of the November 10, 2025 letter, in which the CEO issued an interpretation of the Ordinance under § 270-62 finding that the Project did not constitute a general processing facility, is attached as **Exhibit 4.**

70. The CEO concluded, in relevant part:

> The proposed use is a data collection campus which is not defined by the Town of Lansing Zoning Code and is not on the list of allowed uses in the I/R Zoning District. [] § 270-8 of the Town Zoning Code disallows uses not specifically permitted. … The determin[ation] by the Zoning Officer after an exhaustive review is that the primary use of the proposed project at 228 Cayuga Drive…is not meeting any of the permitted uses in the I/R District…

Id.

The Developers Appeal to the ZBA

71. In two separate matters, ZBA Appeals 25-9 and 25-10, the Developers appealed the CEO's October 23 and November 10 determinations.

72. In ZBA Appeal 25-10, the subject of this proceeding, the Developers appealed the CEO's determination that the Project was neither a general processing facility nor a warehouse for the storage of goods. A copy of the Developers' application in support of Appeal 25-10 is attached as **Exhibit 5.**

73. In Appeal 25-10, the Developers argued that the Project satisfied the plain language of the Ordinance as a permitted "general processing" use. They asserted that the data center constituted general processing because it would involve "the processing of research data through continuous computational operations." *Id.* at pg. 3 (Application).

74. The ZBA reviewed both appeals on an expedited timeline, holding three meetings within twelve days despite significant public interest and comment. The meetings were held on December 10, December 16, and December 22.

75. There was no legal necessity to expedite consideration of the appeals. The ZBA had up to two months to render a decision following the public hearing. *See* Town Law § 267-a.

76. Upon information and belief, the ZBA expedited its consideration in order to decide the appeals before the end of December, when its membership was scheduled to change effective January 1, 2026.

The December 16 Public Hearing

77. On December 10, 2025, the ZBA first convened to discuss Appeals in 25-9 and 25-10. At that meeting, the ZBA scheduled a public hearing for December 16, less than one week later.

78. On December 16, 2025, the ZBA held two public hearings on the appeals. The meeting lasted about three and a half hours.

79. In advance of the hearing, the ZBA declined to accept written public comments, requiring any written submission to be delivered by hand at the December 16 hearing. This effectively prevented members of the public who could not attend in person from submitting comments.

80. The CEO was unable to attend the public hearing on December 16 and instead submitted a notarized statement explaining the basis for his determination. A copy of the CEO's statement is attached as **Exhibit 6.**

81. During the hearing, a Town staff member read portions of the CEO's statement into the record, but the reading was disjointed and difficult to follow.

82. It is unclear whether ZBA members reviewed the CEO's full written statement before reaching their decision. Before casting his deciding vote, the Chairperson stated: "I wish [the CEO] was here to explain that all to us but we weren't able to have him for any of our meetings to this point." See Ex. 2 (Summary Transcript).

83. Nothing prevented the ZBA from keeping the hearing open to allow the CEO to appear in person before a decision was made. Nevertheless, the ZBA chose to expedite the proceedings and decided the appeals within days of closing the public hearing.

84. Nearly all public comments at the hearing opposed the appeals and the proposed data center. Forty-three members of the public spoke on December 16. Only four of the speakers offered comments in support of the appeals.

85. Many opposing speakers (including members of FLX Strong and CLEAN) noted that a data center or any similar use is not a permitted use in an I/R district. They also emphasized that only the Town Board, not the ZBA, may amend or expand the Ordinance's list of permitted uses.

86. FLX Strong, through counsel, submitted both written and oral comment on the appeals. A copy of the written submission, delivered by hand at the hearing, is attached as **Exhibit 7.**

87. Counsel for FLX Strong also noted that several legal authorities cited in the Developers' Appeal 25-10 either did not exist or were misquoted.

88. Nearly 200 pages of written comments were submitted to the ZBA, in addition to several hours of oral comments.

89. At the close of the public hearing, the Chairperson announced that the ZBA would decide both appeals at its December 22 meeting, just six days later.

90. Upon information and belief, the ZBA did not have sufficient time to review and consider the extensive public submissions.

The ZBA Vote on December 22

91. On December 22, 2025, the ZBA reconvened to deliberate and decide both appeals.

92. During the deliberations, the members of the ZBA primarily relied upon their own research as opposed to referencing the evidence submitted by the public at the hearing.

93. Regarding ZBA Appeal 25-09, the ZBA voted 4-1 to deny the appeal, finding that the data center is not a scientific research laboratory. This determination is not challenged in this proceeding.

94. The ZBA then turned to Appeal 25-10, considering whether the Project qualified as a permitted use in the I/R district as either (1) a warehouse for the storage of goods or (2) as a general processing facility.

95. First, after deliberation, the ZBA voted 3-2 to deny the claim that the Project was a warehouse for the storage of goods. This determination is not challenged here.

96. Second, the ZBA considered whether the Project constituted a "general processing" facility and therefore a permitted use.

97. In a 3-2 decision, with the ZBA Chairperson serving as the swing vote, the ZBA granted the appeal and overturned the CEO's determination. The ZBA concluded that the Project fell within the category of "general processing" and was therefore a permitted use in the I/R district.

The ZBA's Interpretation in Appeal 25-10 Constituted An Error of Law

98. The ZBA's written decision in Appeal 25-10 was filed with the Town Clerk's office on December 30, 2025. A copy of the written decision and resolution granting ZBA Appeal 25-10 is attached as **Exhibit 8.**

99. As part of its decision, the ZBA did not identify any flaw in the CEO's reasoning.

100. Instead, the ZBA reasoned that the phrase "general processing" is not defined in the Ordinance and is not limited to the processing of tangible goods.

101. It concluded that the word "general" expands the word "processing," "***thus encompassing anything that can be processed as a business***." *Id.* (emphasis added).

102. Accordingly, the ZBA determined that because the Project's proposed "function is to house, process, and disseminate data," the facility constituted "general processing" and was therefore a permitted use in the I/R district.

103. The ZBA's interpretation is irrational and cannot be reconciled with the plain language of the Ordinance. The mere fact that the phrase "general processing" is undefined does

not render the term ambiguous, nor does it authorize interpreting the term to include "anything" a business might process.

104. A zoning ordinance must be interpreted in context, according to common usage, and in harmony with the overall statutory scheme.

105. The ZBA violated these principles by interpreting the term "general processing" separate from its context within the Ordinance. Its reading expands the term so broadly that it could encompass virtually any business uses.

106. In the Ordinance, the word "processing" is consistently used to refer to the physical processing of tangible goods as in manufacturing.

107. The Ordinance provides that a facility that engages in "processing" is a type of "Manufacturing Establishment." Ordinance § 270-3.

108. The proposed Project includes no manufacturing or commercial production component.

109. The Project will therefore not engage in any activities resembling "processing" as the term is used in the Ordinance.

110. This conclusion is bolstered further by the words associated with the phrase "general processing" in Schedule I, the list of permitted uses. Ex. 1, excerpted below. There, "general processing" is included only as a composite category of uses, also including "light manufacturing and assembly."

		Residential			Commercial		
	Lakeshore	Low Density	Moderate Density	Mixed Use	Mix Use	General Business	Industrial/Research
Land Use or Activity	L1	R1	R2	R3	B1	B2	IR
Agricultural, industrial or educational research, design and production of prototypes (not as a home business)	N	N	N	N	P*	P*	P*
General processing, light manufacturing and assembly	N	N	N	N	P*	P*	P*

111. "General processing," in other words, is not a free-floating, abstract category as the ZBA treated it. It is clearly understood in context as meaning processing activity of the same general character as light manufacturing and assembly.

112. The phrase "general processing" never appears anywhere else in the Town Code or Ordinance, except as paired with light manufacturing and assembly in Schedule I.

113. Meanwhile, data- or information-centric uses such as offices or telecommunications facilities are listed elsewhere in Schedule I and are not grouped among the manufacturing-related uses that include "general processing."

114. The statutory interpretation principle of *noscitur a sociis* is a "fundamental maxim" of law that provides that "associated words explain and limit each other. In effect, it is a rule of construction whereby the meaning of a provision may be ascertained by a consideration of the company in which it is found and the meaning of the words which are associated with it." *Popkin v. Security Mut. Ins. Co.*, 48 A.D.2d 46, 48 (1st Dept. 1975).

115. The ZBA's construction of "general processing" as encompassing "anything that can be processed as a business" violates this principle, as virtually any business can be characterized as processing *something*. This would render the term "general processing" so broad as to swallow every other use category.

116. The ZBA's interpretation collapses the structural coherence of Schedule I. If adopted, it would render obsolete numerous distinct use categories, all of which could be recharacterized as "general processing," including commercial excavation, laundry services, banks, veterinary clinics, professional offices, commercial greenhouses, farms, funeral homes, and landfills.

117. Zoning codes historically use "processing" to refer to physical processing, material transformation, or industrial/quasi-industrial activity. The Ordinance is no different. The Ordinance has consistently reflected an intent to refer to physical, not virtual, processing activities.

118. FLX Strong submitted evidence showing that earlier versions of the Ordinance listed "general processing" as a type of "commercial assembly," see below:

LAND USE OR ACTIVITY	RA	L1	R1	R2	R3	B1	IR
3. Commercial assembly: jewelry, leather, fabric, scientific instruments and similar small items, General processing, light manufacturing, assembly (not a home business)	P	N	N	SC 802.0.	SC 802.0.	SC 802.0.	SC 802.0.

3. Commercial assembly: jewelry, leather, fabric, scientific instruments and similar small items, General processing, light manufacturing, assembly (not a home business)	P	N	N	SC 802.0.	SC 802.0.	SC 802.0.	SC 802.0.

Ex. 3 (Schedule I to Ordinances dated Jan. 2001 and July 1998).

119. When the Code was later amended in 2003, "general processing" was paired as a separate use with light manufacturing and assembly. Nothing in the amendment suggests the term was intended to expand to include the processing of "anything" by a business.

120. The ZBA ignored this evidence and instead imported a modern, technical meaning into the older land-use term without textual support.

121. While the ZBA asserted in its written decision that "general processing" must be broader than "processing," the Ordinance treats both terms as manufacturing-related activities. "Processing" is expressly identified as a form of manufacturing, and "general processing" appears only in the composite category "general processing, light manufacturing and assembly." Read in context, "general processing" plainly refers to processing of the same general character as light manufacturing and not abstract data manipulation.

122. The ZBA's interpretation was therefore irrational and ignored the context in which "general processing" appears in the Ordinance.

The Chairperson Prejudges the Project and Central Legal Issue

123. Appeal 25-10 was decided by a razor thin margin, with the Chairperson casting the deciding vote in favor of the outcome that advanced the Developers' Project.

124. Upon information and belief, the Chairperson approached the appeals with a closed mind and a predilection towards resolving the central legal issue in the Developers' favor.

125. As noted above, the Developers announced their Project in August 2025. At about the same time, the Town Board began considering a controversial temporary moratorium on large-scale development in the Town.

126. Against this backdrop, and before the ZBA appeals were pending, the ZBA Chairperson emailed the Town Supervisor on September 4, 2025, stating that the "[b]ottom line" was that the Town "could use the money" from the Project and that he "personally hope[s] [the data center] will eventually get approved." **Exhibit 9**.

127. In a follow-up exchange on September 5, 2025, the Chairperson commented favorably on the Project's proposed location at the former Milliken Station site, stating: "Clearly this data center isn't going to get a warm reception locally. But if having a coal fired power plant there was fine for years, perhaps people aren't really keeping things in perspective. And if that used to be the Town's biggest taxpayer, I can't see why a data center wouldn't end up in the same role. This seems like more of an opportunity than a threat to me." *Id.*

128. The Chairperson continued to comment on the Project. On a local listserv in October 2025, while the moratorium was under consideration by the Town Board, he posted frequently on the proposal.

129. On October 1, 2025, the Chair stated as follows on the listserv:

> It's hard for some people to swallow, but we can't stop AI or data centers no matter what we do. All we're really attempting here is determining whether we want to share in the upsides of hosting a large new employer and taxpayer. Which is up to the community – we have the right to make a bad decision if we want…

Exhibit 10.

130. On October 8, 2025, he again posted favorably about the Project's anticipated tax revenue, stating:

> …That's still over $1M per year to the Town, plus a ton of money for the local school district. Even if those numbers are off a bit it's still a lot of money, all for public purposes. I hope we can find a way to make this work for everyone.

Exhibit 11.

131. On October 29, 2025, he posted:

> It's also worth remembering that the Town Board and almost every other politician in the County…came out strongly in favor of the data center proposal in 2019 and 2020 when it first came to light. And the current version of the proposal is much more suitable and less disruptive to the area than that earlier one.

Exhibit 12.

132. Later during deliberations in the ZBA appeal, the Chairperson referenced the same resolutions, stating: "The Town had resolutions in 2019 and 2020 both saying we would like to see this turned into a data center … The Town took no steps to change the zoning at that time." Ex. 2 (Summary Transcript pg. 4).

133. On October 29, he also suggested that the Town's zoning "lags reality," stating on the listserv:

> Zoning is a tricky issue, and tends to lag reality due to how long the comprehensive plan and rezoning process takes. … [I]f we want the future to be better, we can't follow the accepted wisdom of 2018 blindly.

Ex. 12.

134. The Chairperson neither disclosed his views nor recused himself from considering the appeals.

135. Instead, he cast the deciding vote in favor of the Project, concluding that it was a permitted "general processing" use.

136. Before casting his vote, the Chairperson explained that it had never occurred to him that a data center might not be a permitted use in the I/R district, stating:

> If this was not an approved use, why was anyone pushing for [the moratorium] when there was nothing else happening in the town. And being an officer on this committee …I can state that no one ever said anything about the data center not being an approved use. Really until I saw [the CEO's] letter, I had no idea this was a possibility. Everyone that I had spoken to had treated it as an accepted use. So I was a bit shocked [when I saw the CEO's letter] …

Ex. 2 (Summary Transcript pg. 5).

137. This rationale proved decisive in the appeal and advanced the very outcome that the Chairperson had earlier expressed that he "hoped" would occur in his September 4 email to the Town Supervisor, see Ex. 9.

PROCEDURAL ISSUES

138. Petitioners have no available administrative remedies.

139. Petitioners have made no previous application for the relief sought in this Petition.

140. Petitioners have no adequate remedy at law.

141. This lawsuit was timely commenced within 30 days of the filing of the ZBA's decision with the Town Clerk, *see* Town Law § 267-c(1).

FOR A FIRST CAUSE OF ACTION FOR AN ERROR OF LAW, PETITIONERS ALLEGE AS FOLLOWS AGAINST THE ZBA:

142. Petitioners repeat and reallege the foregoing allegations of this Petition, as if set forth in this paragraph at length.

143. On questions of pure statutory reading and analysis, the Court owes no deference to the ZBA's interpretation of the Ordinance. *Matter of Kreger v. Town of Southold*, 230 A.D.3d 781, 782 (2d Dept. 2024); *Fox v. Town of Geneva Zoning Bd. of Appeals*, 176 A.D.3d 1576, 1577 (4th Dept. 2019).

144. The text of the Ordinance must be interpreted according to its plain meaning. It must further be construed as a whole and its various sections considered together. *Matter of Peyton v. New York City Bd. of Stds. & Appeals*, 36 N.Y.3d 271, 280 (2020).

145. A ZBA's interpretation that contradicts the structure and plain meaning of the Ordinance is affected by an error of law and subject to annulment.

146. The ZBA's interpretation of "general processing" in Appeal 25-10 was affected by an error of law and contrary to the plain language of the Ordinance because it ignored the context in which the phrase appears in the Ordinance and collapsed use categories.

147. Read in context, "general processing" in the Ordinance plainly refers to industrial-type processing of materials of the same general character as light manufacturing and assembly, as opposed to the virtual manipulation of data in a server hall.

148. The ZBA further disregarded that a "manufacturing establishment" is defined in the Ordinance as "[a]n establishment, the principal use of which is…processing…of materials, goods or products." Ordinance § 270-3.

149. There is no dispute that the Project involved no manufacturing or commercial production component.

150. The ZBA's interpretation of the phrase "general processing" is irrational, internally inconsistent, and makes the Ordinance self-contradictory. It must therefore be annulled.

FOR A SECOND CAUSE OF ACTION FOR VIOLATIONS OF LAWFUL PROCEDURE AND ARBITRARINESS, PETITIONERS ALLEGE AS FOLLOWS AGAINST THE ZBA:

151. Petitioners repeat and reallege the foregoing allegations of this Petition, as if set forth in this paragraph at length.

152. An impartial decisionmaker is a core guarantee of due process. This principle applies to proceedings before administrative agencies.

153. Prejudgment is a form of bias and partiality.

154. An Article 78 proceeding is an appropriate vehicle for challenging the denial of due process and lawful procedure by an administrative agency.

155. The ZBA's determination in Appeal 25-10 must be annulled because it was made in violation of lawful procedure and arbitrary and capricious, having been tainted by a partial and biased decision-maker.

156. The ZBA is a quasi-judicial body required to provide a fair hearing before an impartial decisionmaker.

157. A biased decisionmaker cannot render a rational or lawful decision.

158. The Chairperson admitted to having prejudged the central interpretative question the ZBA was tasked to decide, namely whether the Project was a permitted use in the I/R district. His prejudgment carried through to his vote when he voted that the Project was a permitted use ("general processing") in the I/R district.

159. Upon information and belief, the Chairperson approached the hearing and deliberations with a closed mind on the core legal issue.

160. The ZBA Chairperson further confided to the Town Supervisor in a private email exchange that he personally "hoped" the data center was approved, an outcome he later advanced by casting the decisive vote in favor of the Project.

161. The ZBA Chairperson neither disclosed his predisposition nor recused himself.

162. The ZBA Chairperson's prejudgment and bias created an intolerably high risk of bias that tainted the ZBA's decision when he voted in favor of the Developers' appeal.

163. The Chairperson's participation tainted the ZBA's determination as to necessitate annulment of the ZBA's decision granting the appeal.

164. The ZBA needlessly expedited the proceedings in Appeal 25-10, which (i) prevented the development of a complete record, including the CEO's participation, and (ii) left inadequate time to consider and weigh the extensive evidence submitted at the hearing concerning a novel and consequential zoning decision.

WHEREFORE, Petitioners respectfully request that this Court enter a Judgment against Respondents pursuant to CPLR §§ 7803(3) and 7806 as follows:

1. Annulling the ZBA's determination that the Project is a permitted "general processing" use and remanding the matter for a de novo hearing and decision under the correct legal standard, before an impartial quorum, with the Chairperson disqualified;
2. Granting Petitioners their costs and disbursements; and
3. Granting such other and further relief as the Court deems just and proper.

Dated: Fairport, New York
January 29, 2026

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Counsel for Petitioners

SUPREME COURT
STATE OF NEW YORK COUNTY OF TOMPKINS

In the Matter of the Application of

FLX STRONG by its President Kenneth Wolkin and CAYUGA LAKE ENVIRONMENTAL ACTION NOW by its President John V. Dennis,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law and Rules,

vs.

TOWN OF LANSING ZONING BOARD OF APPEALS, TERAWULF INC., CAYUGA OPERATING COMPANY LLC, LAKE HAWKEYE LLC, and FRED DELFAVERO,

Respondents.

VERIFICATION

Index No.:

I, Stephen D. Daly, Esq., of legal age, affirm under penalty of perjury pursuant to N.Y. C.P.L.R. § 2106 (as amended) the following:

1. I am counsel for Petitioners in this special proceeding.
2. I maintain an office in Monroe County, New York, which is a different county than where either Petitioners are based, which is Tompkins County.
3. I participated in the proceedings before the ZBA at issue and I have reviewed those records in the administrative record that were made available via the Freedom of Information Law or otherwise publicly available.

4. I have reviewed the contents of this Petition and verify that the statements contained herein are true to the best of my knowledge, except as to matters alleged on information and belief, and as to those matters, I believe them to be true.

Pursuant to N.Y. C.P.L.R. 2106 (as amended), I affirm this 29th day of January 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters alleged on information and belief and as to those matters I believe them to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

Stephen Daly