At a Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District by Microsoft Teams, at the Cortland County Courthouse, in the City of Cortland, New York, on the 9th day of April 2026.

PRESENT: HON. MARK G. MASLER
Justice Presiding.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF TOMPKINS

In the Matter of
FLX STRONG, by its President Kenneth Wolkin and **CAYUGA LAKE ENVIRONMENTAL ACTION NOW**, by its President John V. Dennis,

Petitioners,

v

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

Respondents.

DECISION AND ORDER

Index No. EF2026-0069

APPEARANCES:

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Via NYSCEF

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Via NYSCEF

MARK G. MASLER, J. S. C.

Petitioners FLX Strong (FLX) and Cayuga Lake Environmental Action Now (CLEAN) commenced this CPLR article 78 proceeding seeking to challenge the interpretation made by respondent Town of Lansing Zoning Board of Appeals (ZBA) of a term in the Town of Lansing Land Use Ordinance (the zoning ordinance) as it applies to a data center proposed to be constructed on land adjoining the easterly shoreline of Cayuga Lake. In August 2025, TeraWulf Inc. announced it had entered into a lease agreement with Cayuga Operating, LLC for the purpose of constructing a data center at the site of the former Milliken Station power plant on the east shore of Cayuga Lake in the Town of Lansing, which was decommissioned in 2019.[1] The proposed data center would house large-scale computer systems to store, process, and distribute digital data. The site is located in an Industrial/Research (I/R) District. In October 2025, the developer respondents submitted an application to the Town of Lansing Planning Board for site plan review asserting that the proposed data center was a permitted use within the I/R district as either a scientific research laboratory, a general processing facility, or a warehouse. The Code Enforcement Officer (CEO) determined that the proposed project was not a permitted use in the I/R district because it was neither a scientific research laboratory, a general processing facility, nor a warehouse.

The developer respondents appealed only the CEO's determinations that the proposed project was not a general processing facility or a warehouse. By separate 3-2 votes taken at a meeting that was held on December 22, 2025, the ZBA: (1) denied the appeal to the extent of affirming the CEO's determination that the proposed data center is not a warehouse; and (2)

[1] Lake Hawkeye LLC is reportedly a subsidiary of TeraWulf. Together with Cayuga Operating Company LLC, they are collectively referred to herein as the developer respondents.

granted the appeal to the extent of concluding that the proposed data center is a permitted use in the I/R district as a general processing facility. Petitioners commenced this proceeding on January 29, 2026.

Initially, petitioners moved for an order, as relevant herein, extending their time to serve respondents ZBA, Fred DelFavero, and Cayuga Operating Company, LLC, nunc pro tunc, and deeming service that was made on or after February 20, 2026 to be timely and proper (NY St Cts Elec Filing [NYSCEF] motion number two). The ZBA and the developer respondents separately moved to dismiss the petition (NYSCEF motion numbers three and four). Oral argument was held by Microsoft Teams on April 9, 2026.

The motion to dismiss made by the developer respondents sought, among other things, dismissal of the proceeding against DelFavero on the grounds that he is neither a necessary nor proper party and that he had not been timely served. Petitioners consented to this request for relief and represented in their reply memorandum of law that the ZBA did not object to dismissal of the proceeding against DelFavero (*see* NYSCEF Doc No. 65 at 10, n 7). At oral argument, counsel for the ZBA confirmed the ZBA did not oppose dismissal of the proceeding against DelFavero. Accordingly, the petition is dismissed against DelFavero and the caption is hereby amended by deleting him as a named respondent.

At oral argument, the court granted petitioners' motion regarding service. This motion was opposed only by the ZBA. Petitioners made this motion because the third-party process server they retained timely served all respondents with copies of all commencement documents provided to the process server by petitioners' counsel except the petition. Copies of all commencement documents, including the petition, were then served on the ZBA on February 24, 2026 – 11 days beyond the deadline for timely service established by CPLR 306-b. In this

regard, the 30-day statute of limitations for challenging the ZBA determination – which was filed with the Town Clerk on December 30, 2026 – ended on January 29, 2026 and the time for service expired 15 days later, on February 13, 2026.

In support of the motion, petitioners' counsel avers that he retained the Chase Agency (Chase), which he represents is a professional third-party process server that he had successfully used numerous times in the past, to serve commencement documents on respondents. Chase reported to petitioners' counsel that the ZBA had been served on February 11, 2026 by delivery to the Lansing Town Clerk (*see* CPLR 312), two days prior to the deadline for effecting service. On February 18, 2026, petitioners' counsel reviewed the affirmation of service provided by Chase and discovered that, although the amended petition had been served on the ZBA, the petition was not included with the documents served. Petitioners' counsel requested that Chase immediately serve on the ZBA a second set of commencement documents which included the petition. Service of the second set of documents was completed on February 24, 2026 and petitioners moved, on February 27, 2026, for an extension of time to serve the ZBA, nunc pro tunc, and deeming service as re-effected on the ZBA on February 24, 2026, to be timely and proper.

"An extension of time to effectuate service beyond th[e] deadline [imposed by CPLR 306-b] may be granted, on motion, 'upon good cause shown or in the interest of justice' " (*Stevens v CG Ellis Corp.*, 236 AD3d 1132, 1134 [3d Dept 2025], quoting CPLR 306-b). To establish entitlement to an extension of time to effectuate service on good cause, petitioners were required to establish that they made reasonably diligent efforts to effect proper service (*see Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 105 [2001]; *Stevens v CG Ellis Corp.*, 236 AD3d at 1134). Petitioners diligently attempted timely service and the failure to include a copy

of the petition in the documents that were served on the ZBA is attributable entirely to the process server. Petitioners thus met their burden of establishing entitlement to an extension of time upon good cause shown.

Further, the interests of justice likewise require that petitioners' motion for an extension of time to serve the petition be granted.

> "Whether to grant an extension in the interest of justice requires a careful judicial analysis of the factual setting of the case and a balancing of the competing interests presented by the parties. Unlike an extension request premised on good cause, a plaintiff need not establish reasonably diligent efforts at service as a threshold matter. However, the court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the statute of limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a [petitioner]'s request for the extension of time, and prejudice to the [respondents]" (*Stevens v CG Ellis Corp.*, 236 AD3d at 1134 [internal quotation marks, brackets, and citation omitted]).

As previously noted, the 30-day statute of limitations for petitioners' challenge to the ZBA determination has expired. Moreover, petitioners would be unable to avail themselves of the six-month grace period provided by CPLR 205 (a) if this proceeding were to be dismissed for failure to obtain personal jurisdiction over the ZBA. Upon discovering that the documents initially served on the ZBA did not include a copy of the petition, petitioners' counsel promptly arranged to serve the ZBA with all commencement documents, including the petition, and made the instant motion. There is no prejudice to the ZBA, which was timely served with documents that alerted them to this proceeding, specifically including copies of the notice of petition, the amended notice of petition, and all supporting affirmations and exhibits thereto, which gave it notice of the action challenged and the relief sought. Based on the foregoing, and in light of the public policy favoring the resolution of disputes on the merits (*see Stevens v CG Ellis Corp.*, 236 AD3d at 1135; *Mead v Singleman*, 24 AD3d 1142, 1144 [3d Dept 2005]), petitioners' motion

(NYSCEF motion number two) is granted. Service of copies of the notice of petition, the amended notice of petition, the petition and all supporting affirmations and exhibits thereto upon the town clerk for the Town of Lansing on February 24, 2026 included copies of all documents required to be served on the ZBA at commencement (*see* CPLR 403 [b], 7804 [c]), and is deemed to have been timely made. The motion is also granted with respect to Cayuga Operating Company, LLC, which, as noted above, did not oppose petitioners' motion.

Respondents move to dismiss based on the assertion that petitioners lack standing. Initially, the ZBA and the developer respondents argue that all harms alleged by individual members of petitioners are too speculative to demonstrate an injury-in-fact different from the public at large.

> "As relevant here, for an organization to have standing to bring a CPLR article 78 proceeding challenging administrative decision-making, it must show that one or more of its members would have standing to sue, that the interests it asserts are germane to its purposes so as to satisfy the court that it is an appropriate representative of those interests[,] and that neither the asserted claim nor the appropriate relief requires the participation of the individual members. Respondents' challenges to petitioner's standing [are] premised solely upon petitioner's ability to demonstrate standing on the part of one of its members. To establish a member's standing, petitioner was required to show the existence of an injury in fact and that the in-fact injury of which it complains (its aggrievement, or the adverse effect upon it) falls within the zone of interests, or concerns, sought to be promoted or protected by the provision of law under which the administrative body has acted. The injury-in-fact requirement necessitates a showing that the party has an actual legal stake in the matter being adjudicated and has suffered a cognizable harm that is not tenuous, ephemeral, or conjectural but is sufficiently concrete and particularized to warrant judicial intervention. Additionally, in land use matters, courts have repeatedly emphasized that the harm must be different in kind or degree from the public at large" (*Matter of Friends of the Shawangunks v Town of Gardiner Planning Bd.*, 224 AD3d 961, 962-963 [3d Dept 2024] [internal quotation marks, brackets, ellipses, and citations omitted]).

In applying these principles to determination of motions to dismiss, the court "must accept the allegations in the petition/complaint as true and construe them in the light most favorable to

petitioner" (*Matter of Seneca Lake Guardian v New York State Dept. of Envtl. Conservation*, 229 AD3d 987, 989 [3d Dept 2024] [citations omitted]). In this regard, "[i]f an alleged harm is reasonably certain to occur, then it cannot be considered speculative" (*id*. [internal quotation marks and citation omitted]). Finally, it is a settled principle that standing rules should not be applied "in an overly restrictive manner where the result would be to completely shield a particular action from judicial review" (*Matter of Association for a Better Long Is., Inc. v New York State Dept. of Envtl. Conservation*, 23 NY3d 1, 6 [2014] [citation omitted]).

Members of petitioners have alleged two distinct categories of harm that must be considered. First, several members allege that they frequently visit and enjoy the Cayuga Shores Wildlife Management Area (Cayuga Shores), which adjoins the proposed data center site on the north. Cayuga Shores is owned by New York State and is managed by the Department of Environmental Conservation "for wildlife conservation, habitat, and wildlife-associated recreation, including hunting, trapping, fishing, wildlife viewing, and photography" (NYSCEF Doc No. 19, Eden affirmation, exhibit 4 at 2 [internal page numbering]). One of the proposed data center buildings would be located within 500 feet of Cayuga Shores and an electrical substation that will serve the data center is located approximately 100 feet therefrom. Christopher Tessaglia-Hymes is a member of FLX and a Field Applications Engineer who works in the field of conservation bioacoustics at the Cornell Lab of Ornithology at Cornell University. He has also been an avid birdwatcher in the Cayuga Lake basin for approximately 40 years (NYSCEF Doc No. 20). Based on his experience, including his professional expertise, he avers that Cayuga Shores has an interesting mix of habitats that provides unique opportunities to observe a variety of bird species and that Cayuga Shores has been identified as a hot spot for birders by users of the eBird app developed and administered by the Cornell Lab of Ornithology.

He has regularly engaged in bird watching at Cayuga Shores and in the area of the proposed data center (NYSCEF Doc No. 20 ¶¶ 8, 13). He further avers that the fans the developer respondents propose for cooling the data center will emit a constant, pervasive noise that, given the close proximity of the data center to Cayuga Shores, will be detrimental to bird populations at Cayuga Shores, thereby hindering his enjoyment of birding as a recreational activity (NYSCEF Doc No. 20 ¶¶ 17-20, 23).[2]

The allegations of Tessaglia-Hymes are further supported by the affirmation of Harold Mills, who resides approximately two miles south of the proposed data center (NYSCEF Doc No. 23). He is member of FLX and an engineer who has worked in the area of audio signal processing for nearly 40 years, including 12 years in the Bioacoustics Research Program at the Cornell Lab of Ornithology. He avers that operational noise from the proposed data center, which will be audible at Cayuga Shores much of the time, will reduce the quality of birding at Cayuga Shores (NYSCEF Doc No. 23 at 25-28, 31-32). Mills affirms that the noise from the proposed data center will negatively impact his enjoyment of Cayuga Shores, which he has visited for birding and recreation several times in the past two and one-half years. Two additional members of FLX – Maureen Cowen and Sabrina Johnston – aver they regularly visit Cayuga Shores and that their experiences will be negatively impacted by the proposed data center, including the noise therefrom (NYSCEF Doc Nos. 29, 30). A single member of

[2] In land use matters, a presumption of actual injury arises from close proximity (*see Matter of Veteri v Zoning Bd. of Appeals of the Town of Kent*, 202 AD3d 975, 979 [2d Dept 2022]). None of the individual members of petitioners who submitted affirmations reside close enough to the proposed data center to directly avail themselves of this presumption. However, the fact that the proposed data center would be located immediately adjacent to Cayuga Shores, i.e. in close proximity to the conservation area, supports the inference that construction of the data center would result in actual injury to those of its members who have averred they use this resource more than the public (*see generally Matter of Save the Pine Bush, Inc. v Common Council of City of Albany*, 13 NY3d 297, 304-305 [2009]).

CLEAN, John Dennis, similarly avers, among other things, that he regularly visits Cayuga Shores multiple times each year for hiking and birdwatching and that his enjoyment will be impaired by noise emanating from the proposed data center (NYSCEF Doc No. 25 ¶ 14).

The foregoing allegations, which must be accepted as true and construed in the light most favorable to petitioners, are sufficient to establish, for purposes of deciding petitioners' standing to challenge the determination made by the ZBA, that the alleged harm – i.e. that noise emanating from the proposed data center and its negative impact on the bird population will diminish the affected members' enjoyment of Cayuga Shores – is not speculative. In this regard, the ZBA argues that the harms alleged by the individual members of petitioners are necessarily speculative and do not support standing because such harms will not arise directly from the ZBA's interpretation of the zoning ordinance but, if at all, only from construction and operation of the data center, and that the harms may be ameliorated through the site plan and associated State Environmental Quality Review Act process. These arguments, which are substantively equivalent to the ZBA's further argument that petitioners' claims are not ripe for adjudication, fundamentally misconstrue the law and contradict the principle that allegations made in support of standing must be accepted as true and construed in the manner most favorable to petitioners. Indeed, it bears noting that it is the potential for injury-in-fact that gives rise to standing "without assessing the ultimate impact of the project" (*Matter of Wittenberg Sportsmen's Club, Inc. v Town of Woodstock Planning Bd.*, 16 AD3d 991, 993 [3d Dept 2005]).

The allegations of petitioners' members regarding use of Cayuga Shores also satisfy the Court of Appeals's rule for establishing standing by "demonstrat[ing] that [their] use of a resource is more than that of the general public" (*Matter of Save the Pine Bush, Inc. v Common Council of the City of Albany*, 13 NY3d 297, 306 [2009]) and that the claimed injuries to their

use and enjoyment of Cayuga Shores fall within the zone of interests to be protected by the zoning ordinance at issue (*see Matter of Friends of the Shawangunks v Town of Gardiner Planning Bd.*, 224 AD3d at 964). Thus, the foregoing members of petitioners, who frequently visit and enjoy Cayuga Shores, have made allegations of harm that "go further than mere interest in environmental conservation, and, in context, they are sufficient to demonstrate injury-in-fact *in this land use matter*" and to confer standing upon petitioners, FLX and CLEAN (*Matter of Friends of the Shawangunks v Town of Gardiner Planning Bd.*, 224 AD3d at 964 [citations omitted; emphasis added], citing *Matter of Save the Pine Bush, Inc. v Common Council of the City of Albany*, 13 NY3d at 305).

The second category of alleged harm is that noise emanating from the site will be heard by members of petitioners at their homes. Mills resides approximately two miles south of the proposed data center in an area he describes as quiet and rural with little ambient noise. He has been advised that the proposed data center will use 72 rooftop cooling units, each having three large fans. Based on his professional expertise, he opines the cooling units will generate significant and constant noise that will be audible at his home, both inside and outside, at a level negatively impacting use and enjoyment of his home. His concerns are shared by his wife, Johnston, who resides with him. Cowen avers that she resides approximately one mile from the proposed data center and that, based on the fact that she heard noise from the site when the former power station was operating, she anticipates she will be able to hear constant noise from the proposed data center within her home which will impair the peaceful enjoyment of her property.

It is well-settled that noise from a project that may be heard at a petitioner's home is an injury different from that of the public at large that confers standing and that is within the zone of

interests to be protected by zoning ordinances (*see Matter of Sierra Club v Village of Painted Post*, 26 NY3d 301, 310-311 [2015]; *Matter of Barnes Rd. Area Neighborhood Assn. v Planning Bd. of the Town of Sand Lake*, 206 AD3d 1507, 1509 [3d Dept 2022]; *Matter of Veteri v Zoning Bd. of Appeals of the Town of Kent*, 202 AD3d at 762-763; *Matter of Bonded Concrete v Zoning Bd. of Appeals of Town of Saugerties*, 268 AD2d 771 [3d Dept 2000] [environmental concerns were within the zone of interests protected by the Town's Zoning Law], *lv denied* 94 NY2d 764 [2000]; *Matter of Massiello v Town Bd. of Town of Lake George*, 257 AD2d 962, 964 [3d Dept 1999]; *Matter of McGrath v Town Bd. of Town of N. Greenbush*, 254 AD2d 614, 616 [3d Dept 1998], *lv denied* 93 NY2d 803 [1999]; *Matter of Parisella v Town of Fishkill*, 209 AD2d 850, 851-852 [3d Dept 1994]). There is no requirement that petitioners reside in close proximity to establish injury when they have alleged a particularized harm different than the public at large, nor may standing be denied because others, even many others, suffer the same injury (*see Matter of Sierra Club v Village of Painted Post*, 26 NY3d at 310-311). Thus, the allegations of Mills, Johnston, and Cowen, which must be accepted as true and construed in the light most favorable to petitioners, are sufficient to establish, for purposes of deciding petitioners' standing to challenge the determination made by the ZBA, that the alleged harm – i.e. that noise from operation of the proposed data center will be audible at their homes and disrupt their enjoyment thereof – is not speculative and establish that they will sustain an actual injury different from the public at large that is within the zone of interests to be protected by the zoning ordinance, thereby conferring standing on FLX. Accordingly, respondents' motions to dismiss for lack of standing must be denied.

In their respective motions to dismiss, the ZBA and the developer respondents assert the motion to dismiss should be granted for an additional reason. The ZBA argues that petitioners'

claims are not ripe for adjudication and the developer respondents argue that petitioners failed to state a claim for relief under CPLR article 78 based on the assertion that petitioners failed to allege that the ZBA's determination was arbitrary and capricious, violated lawful procedure, or was affected by an error of law.

The ZBA's argument that petitioners' claims are not ripe for adjudication because the potential harms they allege may be ameliorated through the site plan and SEQRA review processes does not require extended discussion. Petitioners are presumptively entitled, by statute, to challenge the ZBA's interpretation of the zoning ordinance by initiating a CPLR article 78 proceeding within 30 days after the filing of a decision in the office of the town clerk (*see* Town Law §§ 267-b [1], 267-c [1]). The challenged determination of the ZBA is a definitive decision that fixes legal rights or relationships distinctly separate from any potential SEQRA/site plan review process that may subsequently occur because the ZBA determined that the project is a permitted use of right that can proceed directly to site plan review without seeking a use variance. Thus, it presents a justiciable controversy that is ripe for review in this proceeding. Notably, the ZBA did not cite a single case holding that a final ZBA decision interpreting the provisions of a zoning ordinance was not ripe for review because further applications, such as an application for a special permit, would likely require further review of a proposed project. Accordingly, ZBA's motion to dismiss on the ground that petitioners' claims are not ripe for adjudication must be denied.

The developer respondents' argument that petitioners failed, as a matter of law, to state a claim for relief that may be awarded in this CPLR article 78 proceeding likewise does not require extended discussion. As conceded at oral argument by counsel for the developer respondents, the motion to dismiss for failure to state a claim must be denied if petitioners' allegations set

forth a claim under any one of the three grounds, i.e. that the ZBA's determination it was arbitrary and capricious, violated lawful procedure, or was affected by an error of law. In motions to dismiss CPLR article 78 petitions for failure to state a cause of action, the allegations of the petition are to be deemed true and petitioners are to be afforded the benefit of every favorable inference (*see Matter of Northway 11 Communities v Town Bd. of Town of Malta*, 300 AD2d 786, 787-788 [3d Dept 2002]; *see also Matter of Kunik v New York City Dept. of Educ.*, 142 AD3d 616, 617-618 [2d Dept 2016]).

The primary substantive challenge asserted by petitioners is that the ZBA's interpretation of the term "general processing" was erroneous, i.e. that it was affected by an error of law. Generally, interpretation of terms used in zoning ordinances involve matters of pure legal interpretation for which the court need not defer to determinations made by zoning boards of appeals (*see Matter of Yeshiva Talmud Torah Ohr Moshe v Zoning Bd. of Appeals of the Town of Wawarsing*, 170 AD3d 1488, 1489-1490 [3d Dept 2019]; *Matter of Winterton Props., LLC v Town of Mamakating Zoning Bd. of Appeals*, 132 AD3d 1141, 1142 [3d Dept 2015]; *Matter of Albany Basketball & Sports Corp. v City of Albany*, 116 AD3d 1135, 1137-1138 [3d Dept 2014], *lv denied* 23 NY3d 907 [2014]; *Matter of Mack v Board of Appeals, Town of Homer*, 25 AD3d 977, 980 [3d Dept 2006]). The developer respondents' contention that the ZBA determination is entitled to deference as a largely fact-based inquiry is not supported by the present limited record (*cf. Matter of Blanchfield v Town of Hoosick*, 149 AD3d 1380, 1382 [3d Dept 2017]; *Matter of Lumberjack Pass Amusements, LLC v Town of Queensbury Zoning Bd. of Appeals*, 145 AD3d 1144, 1145 [3d Dept 2016]). Applying the foregoing standards, it cannot be said that petitioners' arguments regarding interpretation of the term general processing by the ZBA are entirely unreasonable as a matter of law, as would be required to dismiss the petition for failure

to state claim. Accordingly, developer respondents' motion to dismiss the petition for failure to state a claim must be denied.

Based on the foregoing, (1) petitioners' motion for an order extending their time to serve respondents ZBA and Cayuga Operating Company, LLC, nunc pro tunc, and deeming such service to be timely and proper is granted (NYSCEF motion number two); (2) the ZBA's motion to dismiss is denied (NYSCEF motion number three); and (3) the developer respondents' motion to dismiss is granted to the extent of dismissing the petition as against DelFavero, and is otherwise denied (NYSCEF motion number four). The ZBA shall file its answer and the record of proceedings, and the developer respondents shall file their answer, by **May 22, 2026**. Any replies thereto shall be filed by **June 11, 2026**. The petition shall be returnable on **June 18, 2026 at 10:00 a.m.** by Microsoft Teams at a link the court will provide prior to the conference. Members of the public will be able to access the argument.

This decision constitutes the order of the court. The filing of this decision and order, or the transmittal of copies hereof, by the court shall not constitute notice of entry (*see e.g.* CPLR 2221 [d] [3]; 5513). The prevailing party shall serve notice of entry hereof as required by CPLR 2220 (b) and Uniform Rules for Trial Courts (22 NYCRR) § 202.5-b (h) (2).

Dated: April 28, 2026
Cortland, New York

ENTER

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Digitally signed by Hon. Mark G. Masler
DN: OU=Cortland County Supreme Court, O=Sixth Judicial District, CN=Hon. Mark G. Masler, E=crtmasler_chambers@nycourts.gov
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HON. MARK G. MASLER
Supreme Court Justice

The following documents filed with the Clerk of the County of Tompkins via the New York State Courts Electronic Filing System were considered herein (*see* CPLR 2219 [a]):

Document Numbers 1-31; 35-36; 42-48; 54-58; 60; 62-64.