From: Parlin, Molly D. <MParlin@woh.com>
Sent: Monday, November 3, 2025 3:59 PM
To: Clerk's Office
Cc: Bakner, Terresa; Yvonne Taylor
Subject: Public Comment on Temporary Moratorium from Seneca Lake Guardian
Attachments: Ltr to Town of Lansing re Temporary Moratorium.pdf

Dear Ms. Munson:

On behalf of our client, Seneca Lake Guardian, we submit the attached public comment letter on the proposed Temporary Moratorium. We kindly ask that you direct this comment letter to Supervisor Groff and place it in the record for the public comment hearing.

Thank you,

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November 3, 2025

Ruth Groff, Supervisor
Town of Lansing
PO Box 186
29 Auburn Road
Lansing, NY 14882

Re: Public Comment on Proposed Local Law Establishing a Temporary Moratorium on Land Use Development Reviews and Approvals and Land Development Actions for a Period of Three Hundred and Sixty-Five Days (the "Moratorium")

Dear Supervisor Groff and Members of the Board:

This firm represents Seneca Lake Guardian ("SLG"), an organization of concerned citizens, local business owners, and regional environmental groups dedicated to preserving and protecting the health of the Finger Lakes. SLG submits this comment letter in support of the proposed local law establishing the Moratorium, as referenced above, and respectfully urges the Board to vote in favor of its passage at the next Town Board meeting.

As a threshold matter, SLG notes that many of the public comments on the proposed local law submitted to date relate specifically to the "Cayuga Data Campus," a single project that is merely in the preliminary stages of development and has no formal application before the Town at this time. Indeed, the Cayuga Data Campus is, at this stage, merely a conceptual proposal for a former coal fired power plant property located within the Town and has no investment-backed expectation of obtaining local approvals.[1] The proposed Moratorium, on the other hand, is of general applicability and would affect any development proposals across the community in any zoning district. Thus, comments related to the Cayuga Data Campus are outside the scope of the Town's request for public comment on the proposed Moratorium, and SLG respectfully urges the

[1] We have attached for the Board's consideration a legal analysis of why the Cayuga Data Campus has not acquired any vested right to continue development notwithstanding the Moratorium (*see* Attachment A).

Town to focus on the purpose of the proposed Moratorium (and indeed any moratorium) which is the preservation of the status quo while the community amends its zoning to update it in line with the Comprehensive Plan.

As noted in the proposed local law, the purpose of the Moratorium is to facilitate the Town's meaningful examination of its zoning code, "including the terms and standards for discretionary reviews (such as site planning, and related land use reviews), the allowed uses in differing areas and zones of the Town, and to implement the multi-year project the Town has long considered to implement environmental protection overlay districts ("EPOD") to protect important riparian areas, Cayuga Lake, and other unique ecological, environmental, cultural, aesthetic, and archeological resources of and in the Town." The practical effect of the Moratorium is that the status quo will be preserved while the Town undertakes such examination. Pausing development during this time will allow the Town to fully explore its municipal land use controls and regulation of land development, so that the Town can better promote its community planning values as identified in the Town's Comprehensive Plan. We note that the proposed local law contains exemptions for projects that have already received final/conditional final approvals from the Town and for other carefully considered situations where expeditious review is warranted (e.g. residential development, agricultural actions, and small businesses). In addition, it contains a "hardship provision" whereby an applicant or owner of property affected by the Moratorium who would suffer an extraordinary hardship as a result of its limitations may apply for variance.

This effort comes in the wake of the Town's receipt of a $100,000 Smart Growth Community Planning Zoning Grant from the State of New York earlier this year. Since that time, the Town has worked diligently to complete all preliminary steps necessary to receive the grant money, including entering into the necessary contracts, creating and appointing members to a Zoning Advisory Committee, retaining consultants to identify gaps in current zoning, and working with its legal counsel to draft the proposed local law establishing the Moratorium. SLG commends the Town's swift efforts to put this critical grant money to use.

With respect to the legal authority to enact the proposed local law, New York courts have long held that land use moratoria are appropriate mechanisms for addressing long-range community planning and zoning objectives.[2] A moratorium is legally defensible when: (1) it has a reasonable timeframe; (2) it has a valid public purpose; (3) the burden imposed by it is shared by the public at large; (4) applicable procedures for its adoption were strictly adhered to; and (5) it has a time certain when it will expire.[3]

Each of those elements is present here. First, the Town's proposed one-year timeframe is, by all accounts, reasonable, as moratoria of this duration are frequently upheld by courts.[4] Second, the Moratorium as proposed is clearly in furtherance of a valid public purpose—e.g., to update zoning laws using State grant money awarded for that very purpose. Indeed, "a moratorium on

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[2] *See* Land Use Moratoria, JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES, New York Department of State (reprinted 2024), p. 2.
[3] *See id.* at 6.
[4] *See id.* at 8; *see also, e.g., Matter of Laurel Realty, LLC v. Planning Bd. of Town of Kent*, 40 AD3d 857 (2d Dep't 2007).

land uses or development will be considered a valid interim measure if it is reasonably designed to temporarily halt development while the municipality considers comprehensive zoning changes and the enactment of measures to specifically address the matters of community concern."[5] Third, as noted above, this moratorium is of general applicability, and the burden of paused development imposed by it will equally impact the public at large. It does not, as some of the public comments suggest, single out any particular use or specific development project. With respect to element four, the Town followed all applicable procedures, including referral to the county planning agency under General Municipal Law section 239-m. Finally, the proposed local law expressly provides for expiration within one year of its enactment.

Based on the foregoing, SLG applauds the Town's actions in putting forth a valid and legally defensible draft local law enacting a temporary moratorium on development while it undertakes review of its current zoning laws. SLG strongly urges the Town to move forward with its adoption.

Very truly yours,

/s/ *Terresa Bakner*

Terresa M. Bakner

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[5] *Id.*

Attachment A - Vested Rights Analysis

Following release of the proposed Moratorium for public comment, TeraWulf, Inc. ("TeraWulf"), developer of the proposed Cayuga Data Campus to be located at 228 Cayuga Drive in the Town of Lansing, has inundated the Town Board with legal correspondence and requests in an effort to intimidate the Board and publicly undermine its authority to pass such a Moratorium. In a letter dated October 31, 2025, TeraWulf's legal counsel makes baseless allegations that the Town has violated the State's Open Meetings Law, Freedom of Information Law, and the NYS Lobbying Act, and goes so far as to demand the Town Board's immediate withdrawal of the proposed Moratorium. Consistently absent from TeraWulf's threatening correspondence, however, is any claim or analysis of the Cayuga Data Campus's entitlement to local approvals under the current zoning law. Indeed, TeraWulf has utterly failed to demonstrate it has acquired a "vested right" necessary to continue its project during the Town's proposed temporary moratorium on land use development. This is because, consistent with the analysis presented below, TeraWulf has no vested right to develop the Cayuga Data Campus.

New York courts have identified certain circumstances under which property owners who have acquired a vested right in a particular use prior to the government's enactment of a land use moratorium may proceed under the law as it existed prior. This principle was first established by the Court of Appeals in *People v. Miller*, when it held that "existing non-conforming uses will be permitted to continue, despite the enactment of a prohibitory zoning ordinance, if, and only if, enforcement of the ordinance would, by rendering valueless substantial improvements or businesses built up over the years, cause serious financial harm to the property owner." The Court of Appeals has since clarified that "where a more restrictive zoning ordinance [i.e. - a moratorium] is enacted, an owner will be permitted to complete a structure or a development which an amendment has rendered nonconforming ***only where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of the amendment***" (*Ellington Construction Corp. v. Zoning Board of Appeals of the Incorporated Village of New Hempstead*, 77 N.Y.2d 114, 122 [1990] [emphasis added]).

In *Pete Drown, Inc. v. Tn. Bd. of the Tn. of Ellenburg*, the Appellate Division, Third Department held that where "there has been no construction or other change to the land itself, and no indication that the improvements or expenditures made in reliance on the prior state of the law cannot be recouped in the marketplace or put to equal use despite the new law's requirements, enforcement of the new law cannot be said to cause the type of serious harm necessary to justify a finding that rights vested prior to its enactment" (229 A.D.2d 877, 879 [3rd Dept., 1996] [citations and internal quotation marks omitted]). In *Ronsvalle v. Totman*, the Third Department similarly held that because the landowner did not apply for the building permits until the day the zoning was amended, no permit was ever issued, and no work other than soil testing had been commenced, the activities undertaken in furtherance of the project "were neither the type that would inequitably cause a serious hardship or loss nor were performed in reliance on a permit legally issued" (303 AD2d 897 [3d Dept 2003] [citations and internal quotation marks omitted]).

In this case, TeraWulf has reportedly made only a conceptual incomplete application to the Town Planning Board. It has no pending complete permit applications, no issued permits, and no local approvals in place. All plans presented by TeraWulf to date have been preliminary and conceptual in nature. Upon information and belief, TeraWulf has yet to even place a shovel in the ground at the site, much less begin erecting structures there.

Accordingly, there is no merit to any claim that TeraWulf has acquired a vested right to develop the site. After the Moratorium is in place and new zoning is adopted, TeraWulf, like any other project developer in a similar situation, will be foreclosed from asserting any kind of vested right in continuing development under the current zoning law and will be required to comply with the new zoning law adopted by the Town (*see, e.g.*, *Alscot Investing Corp. v. Incorporated Village of Rockville Centre*, 64 N.Y.2d 921 [1985] [holding that there was no detrimental reliance on the village's prior sign code because the petitioner filed his application after the moratorium was put into effect]).