

April 28, 2020

VIA EMAIL & U.S. MAIL

Mr. Mark Witmer
Town Supervisor
Town of Caroline Town Hall
P.O. Box 136
Slaterville Springs, NY 14881
clerk@townofcaroline.org

Re: Proposed Local Law Seeking to Impose a Moratorium

Dear Supervisor Witmer:

This Firm represents Franklin Land Associates, LLC regarding the above referenced matter. We submit this letter in further opposition to the proposed Moratorium, and our prior comment letter, attached, is incorporated by reference to this opposition.

The Town Board held a meeting on April 15, 2020 during which time a proposed 180-day moratorium was introduced, with eleven individuals commenting during the privilege of the floor portion of the meeting. Out of the eleven commenters, all commenters, except Franklin, provided detailed reasons for their support of the moratorium. Unfortunately, all of the comments (except one) related to only one topic – Franklin’s proposed +/-9,300 square foot retail convenience store. The commenters were focused on a host of matters utterly irrelevant to local land use authority and a comprehensive plan, namely their speculation and disapproval of the inventory of the retail convenience store, the potential wages, and where the revenues from the store would go.

Further unsubstantiated and speculative remarks were provided regarding traffic impacts and the presence of asphalt pavement. Franklin’s engineer responded to these comments, noting that review and approval by the appropriate governmental agencies, i.e. the New York State Department of Transportation and New York State Department of Environmental Conservation is already underway. Nevertheless, based on their singular focus on Franklin’s project, these comments demonstrate the illegality of the Town’s moratorium effort.

A moratorium, as stated previously by Franklin, is not warranted or permissible when used to single out and target a single project. The residents who commented made clear that stopping Franklin’s project was their sole objective in seeking a moratorium. Unsubstantiated public opposition, particularly where, as here, engineering analysis and preliminary approvals from the

governing regulatory agencies is contrary to such opposition, cannot form the basis for a moratorium. No more can the speculation regarding matters unrelated to zoning and land use, such as store inventory, wages, and the nature of ownership of the retail convenience store, support the imposition of a moratorium.

It is clear that this proposed moratorium is nothing more than the Town Board interjecting itself into Franklin's lawful site plan application process to appease a vocal group of citizens opposed to a lawful use. Not only is this ad hocery unlawful and discriminatory, but it is unnecessary. As stated previously, a single application does not warrant a Town-wide effort to use every tool at its disposal to stop the project, which is obviously occurring here.

Franklin continues to object to the imposition of any moratorium, and to the expenditure of any Town resources on such efforts. A property owner is entitled to predictability in land use regulations, and the proposed Moratorium and all that would follow vitiates those rights. Should the Town adopt the Moratorium, Franklin reserves all of its rights, up to and including seeking immediate judicial relief and annulment of any such moratorium.

Very truly yours,

COUCH WHITE, LLP

Alita J. Giuda

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AJG/nls

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Dear Supervisor Witmer:

This Firm represents Franklin Land Associates, LLC regarding the above referenced matter. As discussed below, both the proposed Local Law itself, as well as the Town of Caroline's consideration of the Local Law suffer from many infirmities. However, what is truly stupefying is the timing of the proposed moratorium. By its own terms the Local Law recognizes that the Town has supposedly been working on updating its Comprehensive Plan for at least 6 years, which is 2,190 days. Yet, until the Franklin Land Associates application, during this entire era the Town had not enacted a moratorium on development. Now, according to the proposed Local Law, not only does the proposed moratorium need to be enacted immediately, but the "update" to the Comprehensive Plan is purported to be completed within 180 days. This does of course raise the question of why the proposed moratorium is necessary now with only 180 days remaining in the update process, when it was apparently not required during the first 2,190 days of the Comprehensive Plan update process.

Given these circumstances, as well as the apparently blatant politics driving the current effort to enact a moratorium on all development in the Town, we are compelled to oppose the adoption of the proposed Local Law Providing for a Moratorium on Actions Subject to Site Plan or Subdivision Review for a Period of 180 Days (the "Moratorium"). This effort is not only legally suspect, but is unnecessary.

Franklin Land Associates, LLC ("Franklin") is under contract to purchase property in the Town of Caroline (the "Town"). Franklin submitted the necessary documentation to obtain approvals in February, 2020 for a proposed Dollar General convenience store. In fact, the Town forwarded our application to the Review Board within a week of receipt, and scheduled the project for the Review Board's March 17, 2020 meeting. Unfortunately, this meeting was cancelled

because of the current COVID-19 pandemic. However, absent this development the review would already be underway. Franklin's project is being pursued in equitable and legal reliance upon the Town's zoning and planning efforts being in full compliance with all legal requirements.

We object to the Town Board's consideration of the Moratorium in the manner proposed. Given the limited access to Town Board activity with the Town's offices closed, the 3 minute comment limit is unreasonable. Similarly, holding review of the Moratorium until 8 pm will limit the public's ability to participate, given technological constraints to access the meeting.

Further, the Town's actions, including the proposed Moratorium, have interfered with the land use review process and would prejudice the exercise of Franklin's rights to develop its project. Sound planning principles hold that a municipality should engage in a thoughtful and deliberative process to create a land use plan that takes into account the needs of the community as a whole.

The Town asserts that the comprehensive planning process requires the imposition of the Moratorium process. However, to date, only a few very general documents related to a Comprehensive Plan have been publicly shared, and those documents indicate that the comprehensive planning process is at the early stages. Based on the public records, no updates on the status of the Comprehensive Plan process have been recently shared, nor has any draft plan been circulated for public review. There is no public record that the comprehensive planning process is nearing completion. Even given the current COVID-19 limitations, any discussions about any planning and zoning process, must occur only during a properly convened meeting of the Town Board, with any decisions made in accordance with all applicable legal requirements.

The Moratorium is also premature, in no small part because of the immediate impact it would have in halting otherwise lawful applications from being processed. Further, the Town cannot have rationally determined that a moratorium is necessary under these circumstances. To put a 6-month moratorium in place given the unknown, and, despite the alleged passage of 6 years, certainly early stage of the comprehensive planning process is an abuse of power, to the detriment of the property rights of Franklin and every other application and property owner in the Town.

Given that the Town records indicate that a Comprehensive Plan update has been under consideration in some form since at least "the past six years," there is no indication that consideration and adoption of a new Comprehensive Plan would be completed any time soon, let alone within the 180 days stated in the Moratorium. The Town should at least be honest about this prospect with its citizens so that are fully informed when considering and commenting upon the merits or demerits of the Town's proposed action. Giving the Town Board carte blanche to stop development for an indeterminate period is violative of law, due process, and any notion of fairness.

In addition, there is no evidence that the Town is under pressure from any deluge of land use applications¹ that might possibly warrant a moratorium during a legitimate planning process. To the contrary, the Town has posted on its website a Petition signed by various individuals² that seeks a shut-down of development, and more specifically, Franklin's proposed project. This, at a minimum, insinuates that the Moratorium is a knee-jerk reaction to public opposition. Proper comprehensive planning considers the needs of the community as a whole, and should not be swayed by the whims of a vocal minority, or even a majority, of the public. For the Town to seek a moratorium in response to just one project, particularly when it is based solely on unsubstantiated public opposition, is contrary to proper land use and zoning principles. As such, not only is the Town's haste and determination here unwarranted, it is highly suspect.

Even absent these issues, the Moratorium is fatally defective, both procedurally and substantively. Its purported rationale, that the comprehensive planning process that is now in its sixth year suddenly warrants a moratorium stopping all development, on the basis of "protection of the Town's interests, and the public health and welfare" lacks any detail, let alone sufficient explanation of the evils to be curtailed to support an immediate, 180 day moratorium.

The Moratorium is also defective, unreasonable and excessive because it prohibits any application for development that would require site plan review or subdivision. An exclusion for smaller commercial developments should be added, because they would be consistent with the type of growth that the initial comprehensive survey data shows the Town wants. (These include, for example, promoting local employment opportunities, and supporting opportunities for new small businesses.) As it stands, the Moratorium seeks to preclude any development whatsoever, without having identified any perceived evils or influx of development that have actually occurred, or any reasonable timeframe within which the Town will actually complete its comprehensive planning process.

Further, the waiver provision included in the Moratorium is unconstitutional, unlawful, and unreasonable. *See* Moratorium §7. The purpose of a waiver is to provide a constitutional relief valve such that property owners may exercise their constitutional rights to develop their properties in accordance with existing laws where appropriate. It is not an opportunity for the Town to impose a burdensome and complex review process, including reviewing items such as whether a proposed application will cause a host of potential impacts more numerous than those to be reviewed during the State Environmental Quality Review Act (*see, e.g.* Moratorium §7(A)(4)), or to consider the potential impact to climate change from a project. *Id.* §7(A)(6).

A waiver looks to the hardship presented to the applicant by a moratorium denying them an opportunity to develop their land. Inasmuch as the Moratorium seeks to impose what is in

¹ And, given the current state of the economy during the COVID-19 pandemic, including, notably, the ban on construction other than essential construction, a rush for building permits would not be anticipated.

² Franklin additionally objects to the Town Board's consideration of the Petition to the extent that the signatures it contains are from individuals who do not reside in the Town of Caroline.

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essence a full site plan review on a proposed application for a waiver, prior to any recipient of a waiver undergoing those processes, it is unlawful.

Franklin objects to the Moratorium, and to the expenditure of any Town resources on such efforts. A property owner is entitled to predictability in land use regulations, and the proposed Moratorium and all that would follow vitiates those rights. Should the Town adopt the Moratorium, Franklin reserves all of its rights, up to and including seeking immediate judicial relief and annulment of any such moratorium.

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