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State Supreme Court annuls “Linwood Lafayette Urban Development Assistance Area” designation at former Millard Fillmore Hospital Gates Circle site

Court declares Buffalo Common Council’s action “arbitrary and capricious” and without a “rational basis,” sets aside city’s “gerrymandered” inclusion of Gates Circle and rights-of-way on Delaware, Linwood & Lafayette in the LLUDAA, and questions the “curious” branding of a prominent neighborhood as a “slum.”

A November 15, 2019 Decision of the Hon. Mark A. Montour, Justice of the Supreme Court, annuls and sets aside the City of Buffalo’s April 16, 2019 resolution creating the “Linwood Lafayette Urban Development Action Area” [LLUDAA] at the site of the former Millard Fillmore Gates Circle Hospital, and holds that the designation is “inconsistent with the policy and purposes stated in Article 16, Section 691 of the New York State General Municipal Law.”

Creation of the Linwood Lafayette Urban Development Action Area had been requested this past spring by TM Montante Development LLC, proposed to Buffalo’s Common Council by the Buffalo Urban Development Agency [BURA], and endorsed by Mayor Byron Brown’s Office of Strategic Planning, as a mechanism to provide the Tonawanda developer with enhanced tax incentives and financial assistance.

The legal challenge to the city’s creation of the LLUDAA was brought by petitioner Daniel Sack, a long-time Elmwood Village resident. Mr. Sack argued that the generous financial assistance available once a city designates an Urban Development Assistance Area was not intended as a way to jump-start Montante’s redevelopment of the Gates Circle site, but was meant for use only in a very narrow situation: as an incentive to private businesses to correct or prevent blight and deterioration of city-owned property where the property had been acquired through urban renewal powers, tax foreclosure proceedings, or similar processes, *and* the land is “appropriate for urban development.”

Justice Montour’s Decision agrees with petitioner’s argument, and sternly rejects the Common Council’s argument that its exercise of discretion was not reviewable by the court. The court’s ruling also questions the city’s “gymnastic exercise of juxtaposing terms and language” to justify its branding of the Gates Circle neighborhood a slum, observing: “So, if the LLUDAA is in the middle of a ‘vibrant and affluent neighborhood’ considered to be a ‘prominent area’ of the City” – as the Common Council concedes – “then it begs the question how the area can be a ‘slum’ in danger of further deterioration.”

Mr. Sack’s attorney, Arthur J. Giacalone, had the following reaction to the decision: “*The court has rightfully insisted that we must be a city of laws. It will be a great day for city residents when City Hall becomes as bold and imaginative when addressing the needs of Buffalo’s less fortunate as it was in its efforts to bail out an underfinanced private developer.*”

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