

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

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In the Matter of the Application of:

DANIEL R. SACK,

**ORDER**

Petitioner,

Index No.: 2019-000073

For a Judgment pursuant to CPLR Article 78,  
GML §51 and CPLR §3001,

vs.

CITY OF BUFFALO COMMON COUNCIL  
and  
TM MONTANTE DEVELOPMENT LLC,

Respondents.  
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UPON reading petitioner Daniel R. Sack’s verified petition, with exhibits attached thereto, which seeks (1) an order declaring that the Linwood Lafayette Urban Development Action Area designated by respondent Common Council of the City of Buffalo (“Common Council”) on April 16, 2019 is inconsistent with the policy and purposes state in Article 16, Section 691 of the New York State general Municipal Law; (2) an order annulling and setting aside respondent Common Council’s April 16, 2019 resolution designating the Linwood Lafayette Urban Development Action Area; (3) and an order permanently enjoining respondent Common Council from approving, granting, or otherwise authorizing tax incentives, loans, or other forms of financial aid pursuant to General Municipal Law Article 16 to respondent TM Montante Development LLC (“TMM”) or any other person, firm or corporation relating to an urban development action area project with the Linwood Lafayette Urban Development Action Area; and

UPON reading respondent TMM’s verified answer with objections in points of law, and upon reading the affirmation of Jennifer C. Persico, Esq., with exhibits attached thereto, and upon reading the affidavit of Byron Deluke, with exhibit

attached thereto, and upon reading respondent TMM's memorandum of law in support of the answer; and

UPON reading respondent Common Council's verified answer with objections in point of law, and upon reading the affirmation of Carin S. Gordon, Esq., and upon reading the affidavit of Scott C. Billman, Esq., with exhibits attached thereto, and upon reading the certified record of proceedings; and

UPON reading petitioner Daniel R. Sack's verified reply, and upon reading the reply affirmation of Arthur J. Giacalone, Esq., with exhibit attached thereto, and upon reading petitioner's reply memorandum of law; and

UPON the parties' consent to have this matter decided upon the papers submitted and without oral argument or a hearing upon the application; it is hereby

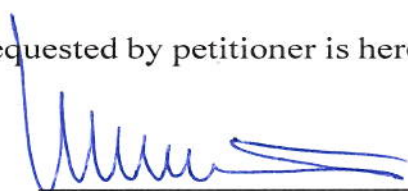
**ORDERED** that this Court declares that the Linwood Lafayette Urban Development Action Area designated by respondent Common Council on April 16, 2019 is inconsistent with the policy and purposes stated in Article 16, Section 691 of the New York State General Municipal Law; and it is further

**ORDERED** that respondent Common Council's actions were contrary to law, arbitrary and capricious and an abuse of discretion; and it is further

**ORDERED** that respondent Common Council's April 16, 2019 resolution designating the Linwood Lafayette Urban Development Action Area is hereby annulled and set aside, and it is further

**ORDERED** that the remaining relief requested by petitioner is hereby DENIED.

Dated: December 17, 2020

  
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Hon. Mark A. Montour, JSC