

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

In the Matter of the Application of

The Tap Room at the Lafayette, Inc.
d/b/a Hotel @ the Lafayette, and also
d/b/a The Pan American Grill and Brewery
391 Washington Street
Buffalo, NY 14203

PETITION/COMPLAINT

Index No. 2019/

Honorable _____

Kathleen Ambrose, Individually and as
Managing Member of Groom Service LLC
391 Washington Street
Buffalo, NY 14203

Classic Events @ the Lafayette, LLC
d/b/a Marquis de Lafayette
329 Washington Street
Buffalo, NY 14201

ABL Leasing, LLC
391 Washington Street
Buffalo, NY 14203

The Buffalo Lafayette Leasing, LLC
391 Washington Street
Buffalo, NY 14203

H@ LOFTS, LLC
391 Washington Street
Suite 800
BUFFALO, NEW YORK, 14203

Signature Development Buffalo, LLC
391 Washington Street
Buffalo, NY 14203

Edward Fibich
d/b/a Dark Horse Hair Studio
391 Washington Street
Buffalo NY 14203

Petitioners,

For a Judgment Pursuant to Article 78 of the
Civil Practice Laws and Rules, and Claims

- Against -

Mayor Byron Brown
In his official capacity as
Mayor of the City of Buffalo
201 City Hall
68 Niagara St.

Buffalo, NY 14202
The City of Buffalo NY
68 Niagara St,
Buffalo, NY 14202

The City of Buffalo Planning Board
901 City Hall
68 Niagara St.
Buffalo, NY 14202

The City of Buffalo Zoning Board of Appeals
68 Niagara St.
Buffalo, NY 14202

Braymiller Market Inc. a/k/a Bray Miller Markets
6936 Gowanda State Road (Route 62)
Hamburg, NY 14075

Ciminelli Realty Development Corp.
50 Fountain Plaza
Buffalo, NY 14203

201 Ellicott, LLC
350 Essjay Road
Williamsville, NY, 14221

Respondents.

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Petitioners, by and through their attorney, Muscato and Shatkin, PLLC, with Richard E. Stanton, Esq. appearing of Counsel, as and for their Verified Petition herein, come forth and allege upon information and belief as follows:

I. THE NATURE OF THE ACTION

1. This is an action brought pursuant to Article 78 of the NY CPLR challenging The City of Buffalo's (the City's) threatened imminent closure and transfer of a public parking facility for the construction of a food distribution warehouse, mini-market, and a 202-unit apartment complex (The Project);

2. As is set forth in greater detail below the Petitioners allege:

a. the threatened transfer of 201 Ellicott Street is an exceedance of the City's lawful authority (City Charter and Code §§ 27-2, 27-6, and 27-13, General Municipal Law §§ 72-j, 507, 556) and is now a threatened violation of the restrictions set forth on the City concerning disposition of real estate at §37 of Second Class Cities Law; and

b. The City of Buffalo's Planning Board, Zoning Board of Appeals (ZBA), and Common approvals of the item were all reliant upon an approval process which SEQRA Determination of Significance which failed to comply with the substantive and procedural mandates of Article 8 of the State Environmental Conservation Law ("ECL"), commonly referred to as the State Environmental Quality Review Act (hereinafter referred to as "SEQRA"); and

3. This action further seeks to compel, pursuant to Article 6 of the Public Officer's Law the City's compliance with Freedom of Information Law demands served upon the City on May 14th, 2019.
4. The Petitioners further allege, for the reasons set forth below that the City's removal of mandatory terms secured through a publicly noticed procurement process denied Petitioners equal protection to under the laws of the State of New York.
5. This Petition is brought pursuant to CPLR §7803(1-4) based upon:
 - a. the Municipal Respondents (City of Buffalo, City of Buffalo Planning Board, and City of Buffalo Zoning Board of Appeal) failure to perform actions enjoined upon them by law (CPLR 7803(1)); and
 - b. the Municipal Respondent's threatened disposition of real property at 201 Ellicott Street would be an act in exceedance of their lawful authority (CPLR 7803(2)); and
 - c. the Planning Board's represented determinations made as Lead Agency under SEQRA, also relied upon by the ZBA and City of Buffalo Common Council, and threatened to be relied upon by the Mayor and the City Departments, was made in violation of lawful procedure, was arbitrary and capricious, and an abuse of discretion (CPLR 7803(3)); and
 - d. the ZBA's determinations made concerning the issuance of an area variance was made in violation of lawful procedure, was arbitrary and capricious, and an abuse of discretion (CPLR 7803(3));
 - e. the ZBA's determinations are arbitrary and capricious not being supported by substantial evidence (CPLR 7803(4)); and

f. The Common Council's approval of the disposition of the property at 201 Ellicott Street was made in violation of lawful procedure, was arbitrary and capricious, and an abuse of discretion (CPLR 7803(3));

6. This Petition is further submitted in support of the request for *mandamus* relief directing the City, and its Boards, and agencies including but not limited to the Planning Commission to fully comply with Petitioners' FOIL requests (See *Exhibit A*).

7. This Petition is further submitted in support of the application for preliminary injunctive relief necessary to preserve the *status quo* until this matter may come to be fairly adjudicated.

8. This Petition is further submitted in support of the Petitioners' application for permanent injunctive relief until such time as a proper environmental review is coordinated and thence completed after a thorough study of the potential significant adverse impacts of the site on sensitive areas of the host environment, and a weighing of the same is made against economic and social benefits and costs of the Project, all as required pursuant to Article 8 of New York State's Environmental Conservation Law.

II. THE PETITIONERS

9. The Petitioners are individuals, and entities who have either invested in, and improved property along Washington Street, across from 201 Ellicott Street, and thence moved there business there and/or began residing there.

10. The Petitioners use and enjoyment of their property interests is now threatened by the City's combined threat of:

- a. unassessed noise impacts from two years of construction activities, followed by perpetual truck noise and compressor noise from a poorly designed site plans that would have trucks with warning beepers backing into the Oak Street Arterial as they access the truck bay at the proposed food warehouse;
- b. and removing more than 370 parking spaces from Ellicott, and replacing it with high intensity residential use with out parking. The City is threatening to do this when another 629 space garage (The Mohawk Ramp) serving the immediate area ar threatening to become unavailable, based upon its deteriorated condition.¹

12. The threat of the imminent loss of the Mohawk Ramp does not appear to have been disclosed by City staff to the Planning Board who issued the Negative Declaration terminating the environmental review process, or the Common Council who voted on the land sale, or the ZBA tasked with determining if granting of variances in support of the Project posed any adverse impacts on the neighborhood.
13. The Petitioners are threatened with uncontrolled noise impacts, and the immediate loss of the more than three hundred parking spaces they and their land usage rely upon, and whose enjoyment of reasonable quiet in their homes and businesses is threatened by the City's issue of a Negative Declaration without assessing potential impacts of nuisance

¹ BCAR who operates the Ellicott Street ramp also operates the Mohwk Ramp which has approximately 609 spaces and a 708 car waiting list, for daytime parking..(See Exhibit C), and a 4 ½ year waiting list of 708 vehicles. While the City and the Project Sponsors represented it would be available for night time parking, they failed to disclose that it was recently found in an Engineering Report submitted to BCAR to be in poor condition, and there is a determination that it will need approximately \$5,000,000 over the next two years(See *Exhibit D*), and BCAR is looking at demolition recommendations on the Mohawk Ramp. See *Exhibit E*.

noise threatened by the construction of the Project, and mobile and stationary noise sources which were not assessed during the permitting process.

14. For the reasons set forth below, it is respectfully submitted that the Petitioners are the very individuals the environmental laws, and other land-use laws, and municipal land disposition laws, the application of which are the subject of this action, were intended to benefit.

A. Petitioner ABL Leasing, LLC, and The Buffalo Lafayette Leasing, LLC

15. The Buffalo Lafayette Leasing, LLC, is one the owners of 391 Washington St., Buffalo NY, who leases out the commercial space at the Lafayette Hotel Building.

16. The petitioners ABL Leasing LLC is the owner of the upper floors of the Lafayette Hotel Building which contains 92 residential living spaces.

17. 391 Washington St. is the address of the Lafayette Hotel Building, which is listed on the National and State Register of Historic Places.

18. The Lafayette Hotel Building is a circa 1902 seven-story steel and concrete building designed in the French Renaissance style by architect Louise Blanchard Bethune, and the firm of Bethune Bethune and Fuchs . *See Exhibit E.*

19. In 2002 it was published and documented by local architectural historian that the Lafayette Hotel building was in a state of decline. *See Exhibit F.*

20. From at least 2002 through 2010, the Lafayette Hotel structure was underutilized, in a state of dilapidation on the upper floors, and many portions of the lower floors were largely vacant, and dilapidated. (id)

21. In about 2010, the current ownership group, and their agents, completed an architectural study of the premises, and it was thence added to the National Register of Historic Places. After the National Register listing the property was thence restored, top to bottom, in accordance with the United States Secretary of the Interior Standards for the Restoration of Historic Places. Completion of the work done in accordance with standards was monitored by the New York State Office of Historic Places.
22. Since 2010 the ownership group of the Lafayette Hotel building has expended over \$30 million in the renovation of the structure.
23. Since 2010 numerous small and medium-size businesses have also invested in the premises.
24. The Commercial occupants whose businesses are in threat of displacement if their guests are deprived quiet enjoyment, or the parking relied upon by the businesses include:
 - a. The Hotel at the Lafayette,
 - b. Classic Events at the Lafayette, LLC d/b/a Marquis the Lafayette ;
 - c. a CrossFit gym; and
 - d. Made by Anatomy Wedding Dresses,
 - e. Signature Development LLC,
 - f. Groom Services LLC; and
 - g. offices of at least two mental health counselors whose patients require quiet counseling sessions, and reasonable parking accommodations.
25. The gross investment to restore the present premises of the Lafayette Hotel Building and restorative active use is estimated to be about \$50 million.
26. The Lafayette Hotel Building has in excess of 70 daily employees, contains a 57-room luxury boutique hotel, a restaurant and banquet facility which holds over 600

annual events (including over 100 weddings), 92 apartments, and numerous small businesses.

27. As is set forth in greater detail below each of the businesses is severely dependent on the 375 parking spaces owned by the city of Buffalo at 201 Ellicott St. and operated by Buffalo Civic Auto Ramps (BCAR).
28. As of February 28, 2019, BCAR reported a daytime waiting list of 2846 spaces on behalf of 2042 persons at their nine downtown parking facilities.(See Exhibit B)
29. 201 Ellicott Street is the closest parking facility servicing the Petitioners properties. The closest structured parking facilities which service the Petitioners property are the Mohawk Ramp and the Adams Ramp.
30. The Mohawk parking ramp is a 629-space facility with a waitlist for 708 spaces submitted on behalf of 547 persons or entities. The Mohawk parking ramp reports a 4 ½ year average wait time documents the critical parking shortage stifling business development in the corridor. *See Exhibit B.*
31. The 257 space Adams Ramp reports a 236 vehicle wait list and claims a 2 to 4 month wait time. (id)
32. Exacerbating the daytime parking shortage already existent is the imminent threat of demolition of the dilapidated Mohawk structure and its 724 spaces. The report to the BCAR Board on March 26, 2019, which recommends the demolition of the Mohawk Structure (*See Exhibit D*), does not appear in the public record filed with the City Common Council, the Planning Board, or the ZBA.
33. The City, in awareness of the dire daytime parking shortage threatening the use and enjoyment of the Lafayette Hotel structure, required in their publicly noticed request for proposals for the redevelopment of 201 Ellicott that any prospective bidder on

redeveloping the project include, as a mandatory element, a parking structure to preserve spaces for the Lafayette Hotel Building and the Liberty Building. *See Exhibit I.*

34. The owners of the Lafayette Hotel Building have standing based upon the imminent threat of their use and enjoyment of their owned structure by the planned removal of parking, as well as threatened noise impacts addressed in greater detail below, which were not assessed in the mandatory environmental impact review.
35. The owners of the Lafayette Hotel Building also have standing based upon the failure of the ZBA, Planning Board, and Common Council to consider potential aesthetic adverse impacts threatened by the construction of an incongruous food warehouse, and convenience food market structures, substantially contiguous to it in discord with the Secretary of the Interior Standards. (See Ben Siegel Affidavit).
36. The Petitioners, ABL Leasing, LLC, and The Buffalo Lafayette Leasing, LLC membership group contains developers who were entitled to rely upon the representations of the city concerning the preservation of parking at the 201 Ellicott St. property for their benefits, and has standing to challenge the bad faith bait-and-switch practice of the municipality which threatens their use and enjoyment of their property, and further threatens to displace their tenants. The membership group contains developers who were dissuaded from bidding on the redevelopment Project after the City represented in their public bidding that it would require a parking structure as a mandatory element of the redevelopment plan to service the Lafayette Hotel and Liberty Building.

B. Petitioner The Tap Room at the Lafayette

37. The petitioner The Tap Room at the Lafayette Inc., (The Tap Room and Hotel) is a New York State domestic corporation that has invested approximately \$10 million in the renovation of 391 Washington St. since approximately 2010.

38. The Tap Room and Hotel's investments involved the creation of two businesses in the structure, the first being the Hotel at the Lafayette, and the second being the Pan-American Grill and Brewery.

39. The Hotel is a 57-room luxury boutique hotel includes over 13,000 ft.² of event spaces. The hotel hosts over 1400 overnight guests annually, and many of the guestrooms of the hotel face 201 Ellicott Street.

40. Significant noise pressures anticipated, but not assessed in the limited environmental review of the Project, would include construction noise over a one to two-year period, and forever operating noises associated with the food warehouse and market operations. The threatened operating noises would include: a) sound pressures generated from compressors on the roof of the market and warehouse which would be unimpeded as they impacted hotel and apartment spaces, and b) noise pressures generated by delivery trucks forced to back up onto Oak Street by the site plan approved by the planning board.

41. As is set forth in the attached affidavit of John Schenne, P.E. noise pressures which were not fully identified in the EAF (SEQR document which commences the Environmental Review), or rationally assessed by the Planning Board, ZBA, or Common Council would be anticipated to create an intolerable condition for use and enjoyment of the hotel and apartment space for sleeping, and quiet enjoyment required by guests and occupants. (See Schenne Affidavit).

42. The Pan-American Grill and Brewery facility relies upon parking nearby to market to 600 events it holds annually and does not find it feasible to market luxury destination events, in the competitive Western New York market, that rely upon public transit. The City's bait-and-switch in their land disposition, that resulted in pulling parking away from the area, after it was publicly noticed the project would include it, adversely impacts the Pan American Grill and Brewery operations, and threatens with displacement. The City's pregnant omission in its failure to disclose the likely imminent loss of the Mohawk Spaces, in whole or in part, exacerbates the impact of the City' bait-and-switch bidding procedure.

43. The owners of the Tap Room and Hotel also have standing to challenge the failure to assess noise and traffic impacts and impacts on their historic structure they've invested in under seeker as well as have the right to rely upon the city's representations that they would protect their parking in the initial bidding of the project.

44. The Hotel and Tap Room relied on its business arrangements with 201 Ellicott St. for parking necessary to the survival of their operations. The loss of 201 Ellicott Street, and the threatened demolition of the Mohawk Ramp, and the current lack of capacity for daytime parking at both the Mohawk Ramp, and Adams Ramp threatens the Hotel and Tap Room with displacement and the loss of the use and enjoyment of their property.

C. Petitioner Classic Events @ The Lafayette, LLC

45. Classic Events, LLC is a catering business that operates three banquet rooms, kitchen, office, and storage area within the Lafayette Hotel Building.

46. Since 2012 they have invested approximately \$450,000 into their premises.

47. They submit the threatened loss of the 375 spaces at 201 Ellicott St, compounded by the new demand imposed by the re-use of their property, and other projects under

construction, would critically threatened their ability to market the spaces they have developed for banquets.

48. Since 2012 They have regularly utilized 201 Ellicott parking in virtually all of their events, and the valet parking they provide to their guests relies upon the spaces they have at 201 Ellicott St..

49. Classic Events was one of the initial investors on the previously abandoned east side corridor abutting downtown, and they now are being threatened with displacement and loss of use and enjoyment of their premises by the city's proposed disposition of the property without compliance with applicable law, and without considering the impacts of their actions on the surrounding urban fabric..

D. Petitioner H@ Lofts, LLC

50. The petitioner H@ Lofts, LLC owns the 92-room AM&A's Warehouse Lofts located at 369 Ellicott Street. The AM&A's Warehouse Lofts are located in the second of the three historic structures sited across from 201 Ellicott Street. The third historic structure is the former AM&A's stores located just south of the Warehouse Lofts. The former AM&A's stores are under construction for conversion to over 300 room hotel with 40,000 square feet of banquet space, and two 100 seat restaurants.

51. H@ Lofts spent approximately \$10 million rebuilding a former dilapidated warehouse and re-purposing and utilizing it as a home to a community of quality, loft-style apartments.

52. The use and enjoyment of the H@ Lofts property, for the purpose it was redeveloped at the cost of \$10 million, is threatened by the noise impacts from the construction and future operation planned the 201 Ellicott St. site.

53. The threatened use and enjoyment of the property threatened by the failure to assess environmental impacts on the human environment confer standing under seeker to H@ Lofts LLC.

54. It is further submitted that H@ Lofts LLC was entitled to rely upon the representations of the city concerning the preservation of parking at the 201 Ellicott St. property and has standing to challenge the bait-and-switch practice of the municipality's illusory bidding of the Project, and failure to disclose other likely loss of parking, that now threatens their existence. The membership group of H@ Lofts loss LLC contains developers who could otherwise have been on the redevelopment of the property if the city did not represent in their public bidding that it would require a parking structure to service existent improvements in the area.

D. Petitioner Groom Service, LLC and Kathleen Ambrose

55. Groom Service, LLC is a New York State limited liability corporation which has Kathleen Ambrose as a member.

56. Groom Service, LLC is a brick-and-mortar hair salon and beauty bar inside of the Hotel Lafayette Building. The ownership group has spent approximately \$500,000 to develop their premises to service their customers. Groom Service LLC's managing member, who knows her own business best, submits she is dependent upon available daytime parking for her clients, and the loss of the parking she relies upon, threatens her business with displacement.

57. Kathleen Ambrose, the managing member of Groom Service, LLC resides in the neighboring AM&A's Warehouse Lofts. She has already experienced intolerable noise in her dwelling space caused by the backup signals mandated on construction vehicles at the AM&S

stores redevelopment. The early morning noise from the beepers is intolerable because it penetrates through the walls of the building and disrupts sleep patterns.

58. The nuisance beeper noise she experiences through current construction activities is anticipated to be a permanent activity if the active food warehouse is developed under the current site plan, which requires trucks to back onto the Oak Street arterial, in order to enter the designated ports for delivery at the 14,000 square foot food warehouse being permitted by the City. (See 201 Ellicott Site Plan – *Exhibit J*).

59. Kathleen Ambrose's use and enjoyment of both her business property and her personal residence, is threatened by the municipal respondents' failure to assess loss of daytime parking and noise impacts in the environmental review process, which was mandated under SEQRA, prior to their approval any aspect of the Project.

E. Petitioner Edward Fibitch and Dark Horse Hair Studio

60. Edward Fibitch, like Kathleen Ambrose, is an individual who resides in the AM&A's Warehouse Lofts.

61. He, like Kathleen Ambrose, has a residence which needs to be protected from the intolerable noise pressures threatened both by the construction proposed for 201 Ellicott St., and the post-construction operational noise threatened by air compressors on the roofs of the warehouse and market building, and delivery vehicles forced to the backup onto Oak Street by virtue of the site plan approved by the City's Planning Board .

62. Edward Fibitch also operates Dark Horse Hair Studio at 403 Main St. which is one block away 201 Ellicott St.

63. Mr. Fibitch reports that the greatest threat to his business and use enjoyment of the premises he leases at 403 Main St., is loss of daytime parking for his customers.

64. He has invested approximately \$75,000 over the past three years building up his business at Dark Horse Hair Studio.

65. His business is in the category of small local businesses threatened with displacement by the proposed project.

66. His use and enjoyment of his residence is threatened by noise pressures.

67. It is submitted that Edward Fibitch has standing to challenge the City's actions at issue.

F. Petitioner Signature Development, LLC

68. Signature Development LLC is a local development company whose members share an interest in the ownership of the Lafayette Hotel Building, and the AM&A's Warehouse Lofts.

69. Signature Development LLCs members were dissuaded from bidding on the redevelopment of 201 Ellicott St. based upon the assurance by the city in the bidding requirements that the parking needs of the Lafayette Hotel would be protected by the requirement of a parking structure which would reserve spaces for them. The City's solicitation of bidders on the Project contained the following language:

"Mayor Byron W. Brown's Office of Strategic Planning is seeking qualifications from interested developers to demonstrate their capacity to **develop a mixed-use project that includes a full line grocery store, a significant residential element (with a possibility for condominiums), and a required parking ramp.** A proposed office use will only be considered if it results in new jobs for Downtown or a type of office space not currently available in the Downtown market. The Request for Qualifications (RFQ) process will result

in the City designating a developer (“Designated Developer” or “Developer”) for 201 Ellicott Street. This RFQ seeks a developer that can incorporate a grocery component into a multi-story, potentially multi-building, mixed-use project

See Exhibit I, p.2.

70. While the City has ignored the Petitioners’ counsel FOIL demands requesting all communications with the developer the now approved Project does not match the mandatory requirements of what was publicly noticed.

71. Based upon the foregoing it is respectfully submitted that Signature Development, LLC is an entity who has standing to challenge the city’s failure to comply with the bidding requirements for municipalities concerning governing disposition of real property (See Second Class Cities Law §37, General Municipal Law §§ 72-j, 507, 556 507, and City of Buffalo Charter and Code § 27-2, 27-6, and 27-13).

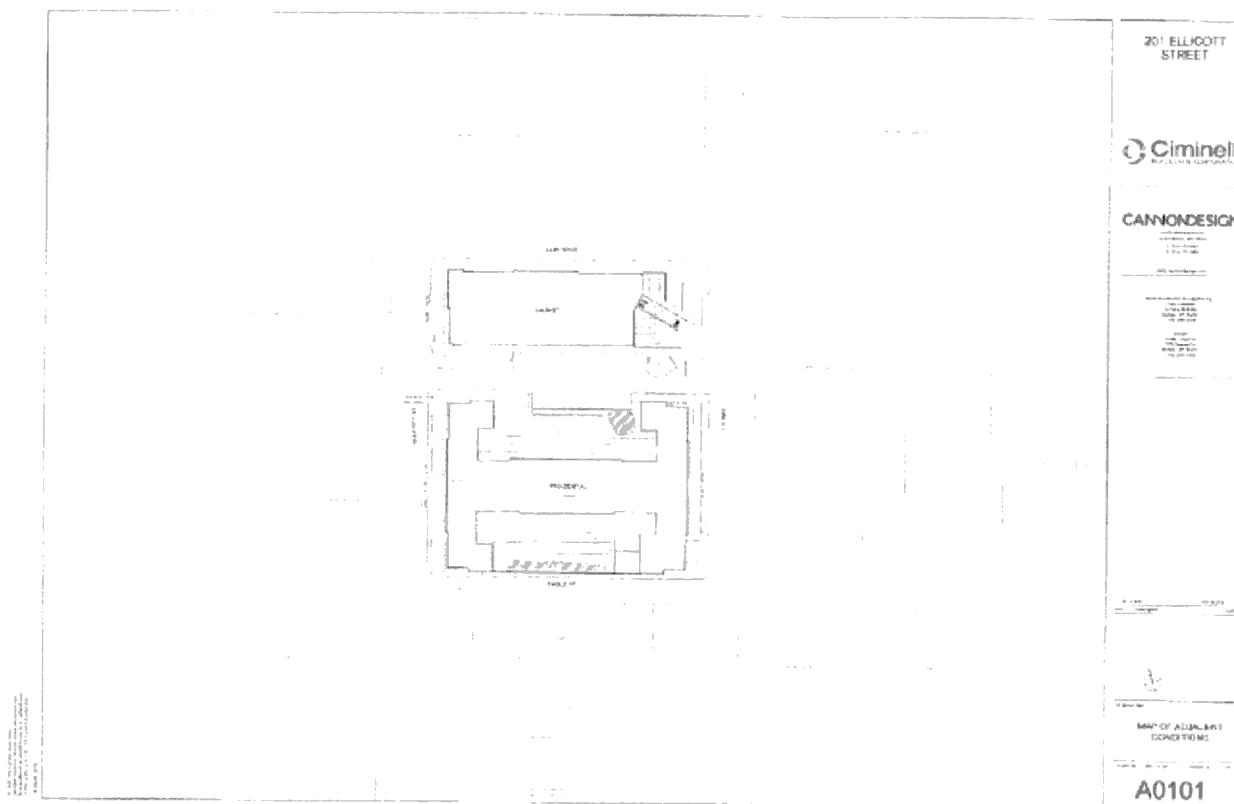
III. THE LAND AT ISSUE

72. 201 Ellicott St., the land at issue is approximately 2.5 acres of land, owned by the City of Buffalo and currently operated as a fully utilized daytime parking lot servicing the Petitioners properties. It is directly across Washington Street from the Lafayette Hotel, and the AM&A's Warehouse Lofts, all of which are depicted on the Google Street image set forth below.



73. The Site contains approximately 370 public parking spaces, on land believed to have been acquired, owned and held to serve the public parking needs.

74. In addition to the 2.5 acres on site to be physically altered, the Project will also require curb cuts and aprons on City property outside the parcel boundaries on the Oak Street Arterial, and on Washington Street. A depiction of the proposed Project Site Plan and its surround area extracted from the Site Plan is reproduced below.



75. The approved Site plan illustrates the City appears abandoned the noticed competitive procurement requirement of its RFP (Exhibit I), that structured parking be made available for neighboring structures, and now intends to remove all the parking relied upon by the neighboring properties at the site and replace it with a 202 unit apartment complex, a 14,000 square-foot fresh food distribution warehouse with four bays requiring vehicles to back onto the Oak Street Arterial and a 6,000 square-foot food mart.

76. The Planning Board approval of the Site Plan irrationally assumed that the 201 working families, and the workers servicing the space would require zero new daytime parking

spaces, and approved plans based upon that assumption, despite the fact that the existent conditions show a 4 ½ year wait for daytime parking.

77. The land at issue abuts three historic premises, two of which have been fully restored and support at least seven small businesses, one luxury hotel, 71 employees, and approximately 150 apartments. The two fully restored structures are the Lafayette Hotel Building, and the AM&A's Warehouse Lofts.

78. The third historic structure (the AM&A's Stores) has plans approved for a 340 room hotel, 40,000 square feet of banquet space, and two restaurants each built for approximately 100 seats. The third structure, once completed, would add approximately 100 more employees to the immediate area. The daytime parking needs for the third already approved Project were ignored.

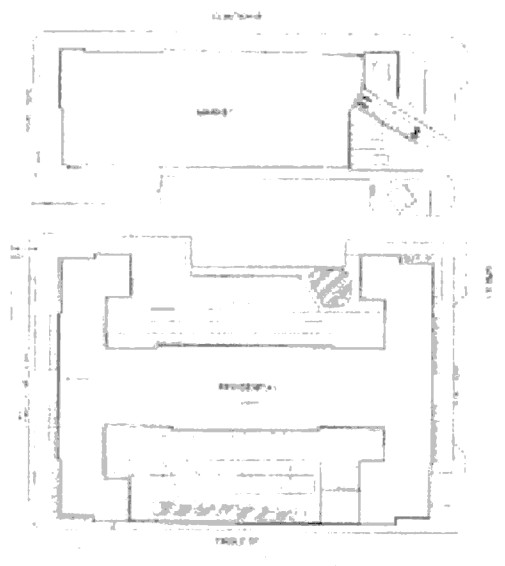
79. While the City's publicly noticed competitive procurement process required all successful bidders include a structured parking facility which would continue to provide parking to the Lafayette Hotel Building and the Liberty Building, sometime after Ciminelli Realty Development Corp. was selected as the designated developer, and competition for the site was removed, the City allowed Ciminelli to ignore the required parking structure in its plans..

80. The City, without requiring a rebidding of the Project, thence consented to Ciminelli submitting their new proposed Project to the Planning Board, without the mandatory element of a structured parking garage.

81. On June 11, 2019 the Common Council authorized the Mayor to execute Deeds transferring title to the site, anytime after June 26, 2019.

82. The Site Plan development is dependent upon New York State Department of Transportation granting of curb cuts for trucks to back into Oak Street, and those curb cuts have not been granted. No coordination of the environmental review of the Project, and no authorization of curb cuts for trucks to back into a State Arterial has been found in the limited

records made available by the city. The acute angle at which the delivery trucks are expected to back into the premises from the Oak Street Arterial, and then back out of it is depicted on the cut out from the Site plan set forth below. Oak Street is on the right, is depicted with a truck in the upper right corner. The image was cut from the approved site plan.



83. As is set forth in the accompanying Affidavit of Benjamin Michael Siegel the building of a 14,000 square foot warehouse on site would also require the issuance of a special use permit for the Common Council, which has never been sought.

84. The project site is not in an urban renewal area, the project is not part of an urban renewal plan, and the parking held in trust for the use of the public has never been formally abandoned, and thus for the reasons set forth below the transfer required competitive bidding.

85. Although federal monies are anticipated to be allocated to the housing aspects of the Project, no compliance with the National Environmental Policy Act of 1970 has been discerned, from the limited records made available by the city.

86. The Development of the Project Site has moved forward with no modeling of adverse noise pressures on the surrounding residential properties, and hotel properties, which will be suffered during construction activities, and the operation of the food warehouse and mini-mart.

87. While the city has assessed nighttime parking activity they have not assessed impact of the project and the loss of daytime parking spots on the surrounding businesses, nor have they considered the cumulative impacts of the loss of daytime parking modeled with the already property at the former AM&A's stores and the anticipated, but not publicly disclosed loss of parking planned with the demolition of the Mohawk Ramp.

88. The transportation demand study appears to have departed from the International Traffic Engineers guidance documents (ITE Standards), and determined zero day time parking spaces would be required for the 201 low income working families residing in the new Project. The assumption that only night-time parking is required is an irrational departure from the ITE Standards, and ignores the reality that low income persons often work 2ND and 3RD shifts and daytime parking is often what they need most.

89. The Project site is a critical component of daytime downtown parking relied upon by the neighboring businesses, which invested over \$50,000,000 in rebuilding previously abandoned urban fabric, and thence moved into the formerly largely abandoned historic structures developed by some of the Petitioners.

IV. THE RESPONDENTS

90. Mayor Byron Brown is named solely in his official capacity as the Mayor of the City of Buffalo. The petitioners seek to enjoin him from taking any action in furtherance of the sale of property including but not limited to execution of any deeds or instruments of indentured transferring title or control or ownership of the Project site out of the City of Buffalo.

91. The petitioners further seek Mayor of the City of Buffalo, and his agents, and the City of Buffalo be enjoined from authorizing the issuance of any permits for construction activities at the site, until this matter may come to be fully heard.

92. The City of Buffalo Planning Board is the agency who solicited lead agency status for the site, and thence issued the Negative Declaration and site plan approvals, all of which the petitioners seek to have determined null and *void ab initio*.

93. The City of Buffalo Zoning Board of Appeals is the entity that issued the area variances challenged by the petitioners based upon the failure to rationally assess requests against the criteria set forth in General City Law 81-b. The petitioners seek to have the Zoning Board of Appeals grant of area variance determined null and *void ab initio*.

94. Ciminelli Development Corp. the designated developer for the site is believed property interest in the permits and approvals the city seeks to have determined null and *void ab initio*.

95. 201 Ellicott, LLC is identified as a party designated to take title to the site by the Common Council of the City of Buffalo and is a party identified is one whose interests might be impacted by the outcome of this action, and is thus named as a party.

96. Braymiller Markets Inc. , also known as Bray Miller Markets has been identified in the site plan application materials as a potential tenant at the site, and is named is party to the extent that their interests may be impacted by the outcome of this action.

V. THE CITY IS THREATENING TO TRANSFER REAL PROPERTY IN EXCEEDANCE OF THEIR LAWFUL AUTHORITY.

86. Section 27 of the City Code provides the mechanisms by which the City has been authorized to dispose of Real Property.

87. § 27-4. Sale of Abandoned Real Property addresses the mechanisms for Sale of Abandoned Property, and allows for the sale at Public Auction, or if the property has never been put to public use, or the public use has been abandoned, it may be sold by auction, or by two-thirds vote of the Council on an Appraisal.

88. Here there has been no public auction to identify the highest bidder for the property, nor has there been any abandonment of the property held in trust for use and enjoyment of the public. The property remains actively used for the parking purpose for which it was developed, and the Petitioners remain dependent on its continued usage.

89. It is respectfully submitted that 27-4 of the Code does not apply to the instant transaction where the Property at issue held for the public benefit has never been abandoned and remains in public use.

90. § 27-13 the City Code dictates the process for the "Sale or Lease of Property for Development or Redevelopment." It provides that

Real property or any interest therein and appurtenances thereto belonging to or in the control of the city, necessary for or incidental to the clearance, replanning, development or redevelopment, reconstruction and rehabilitation in substandard and insanitary areas, or for urban renewal, may be sold or leased for a term not exceeding ninety-nine years, or otherwise disposed of, to any person, firm or corporation at public auction or by sealed bids at the highest marketable price or rental, when authorized by resolution of the council, which

shall designate the officer to conduct such sale or lease together with the terms and conditions thereof. Notice of the time and place of auction or the date when bids will be received, with a brief description of the property or interest therein to be sold or leased, shall be published at least once each week for two weeks in the official publication of the city and in such other publication or publications specified by the council. Upon the receipt of such bids, the person designated to receive them shall forthwith report and certify to the council the highest marketable price or rental, and the council may thereupon, by a vote of three-fourths of its members, order the sale or lease.

91. Here, there has simply been no finding of substandard, or slums or blight authorizing the sale for development, nor has there been any receiving of sealed bids for public auction establishing a disposition to the highest bidder. Thus, the property is not being lawfully disposed for redevelopment pursuant to the Code.

92. While General Municipal Law §§ 507, and 556 contain limited provisions for transfer of blighting property in an urban renewal area done, when the transfer is done as part of the implementation of an urban renewal plan, no plan has been identified covering the site in question, nor has it ever been found that the parking lot that serves the surrounding improvements is blighting any usage.

93. Second Class Cities Law, which has been found applicable to the City of Buffalo, provides the general guidance and restrictions where no Urban Renewal Plan is applicable. §37 requires the City Ordinances to restrict dispositions of real property to the highest bidder with the following language “In case of a proposed sale or lease of real estate or of a franchise, the ordinance must provide for a disposition of the same at public auction to the highest bidder”.

94. To the extent the City attempts to interpret their Ordinances in conflict with §37 they would simply be unauthorized.

95. Based upon the foregoing it is respectfully submitted that the City of Buffalo's Counsel's authorization of the sale of the property, based upon an undisclosed appraisal, without ever having determined that property was abandoned or abandonable, and no longer necessary for public usage, is a breach of the public trust prescribed by the laws of general applicability and thus should be determined *void ab initio*.

**VI. PETITIONERS IDENTIFIED POTENTIAL SIGNIFICANT ADVERSE IMPACTS
THE MUNICIPAL RESPONDENTS REFUSED TO RATIONALLY ASSESS**

96. While the Common Council appears to have noticed no public hearing prior to their 2019 vote on the transfer of the property, the public was allowed to be heard before the Planning Board and the Zoning Board.

97. At the ZBA and Planning Board hearings petitioners did raise issues and concerns about the loss of parking in the daytime, and the impact on their use and enjoyment of their own properties, which was not assessed in the negative declaration.

98. The Transportation Demand Study obfuscated the daytime parking shortage and relied upon surplus parking at nighttime events, and further assumed none of the new users introduced to the site would require daytime parking, and City staff failed to disclose cumulative adverse impacts threatened by the need to demolish or rebuild the Mohawk Ramp.

99. While the public record has not yet been produced it is also believed that representatives of the public did identify threats to their own use and enjoyment of property that could result in a loss of their business at the public hearings. The dislocation of persons and small businesses is a recognized potential significant adverse impact that would have needed to have been assessed and was not.

100. It is further submitted that before the Zoning Board of Appeals, the managing member of 201 Ellicott LLC, did raise the potential for significant adverse noise impacts that have never been assessed, and the Zoning Board of Appeals grant a variance without considering the potential adverse impacts of noise threatened by the proposed use and operation of 201 Ellicott St. on the surrounding fabric. Adverse noise is a recognized environmental impact which was never rationally assessed for either long-term construction activities, or post construction impacts caused by the operations incidental to the food warehouse and mini-market.

101. Upon information and belief, the compatibility of the proposed Project with the surrounding historic structures on the National Register was identified, however the impacts were never assessed by the lead agency themselves in accordance with the standards set by the Secretary of the Interior. As is set forth in the accompanying affidavit of trained architect Benjamin M Siegel, the proposed Braymiller Market is objectively not of the same scale and mass as the surrounding historic structures. As the Google Street image set forth the above depicts, the parking lot and the site currently front the historic structures. The lack of similar fenestration and building materials make it incongruous and incompatible with the surrounding urban fabric along Washington Street.

VII. THE PLANNING BOARD'S REVIEW OF THE PROJECT UNDER SEQRA

A. *The Procedural Deficiencies in the Environmental Review Process*

102. The Planning Board's review of the Project commenced with the filing of a Environmental Assessment Form and Site Plan Application by agents of Ciminelli Real Estate. The EAF is submitted herewith as Exhibit H.

103. The Planning Board solicited for itself lead agency status, taking upon itself initial responsibility to comply with the procedural and substantive mandates of SEQRA.

104. Pursuant to 6 NYCRR 617.2(m) a properly completed EAF must contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment.

105. The LEAF is a form prepared by the New York State Department of Environmental Conservation (NYSDEC) to implement the requirements of SEQRA. The LEAF has three parts to it: the first is the project description prepared by the sponsor; the second is the review of potential project impacts prepared by the lead agency; the second part of the EAF was not identified in the public record of the boards made available to the public, and was not produced in response to petitioner's FOIL demands, which appear to have been constructively denied for reasons set forth later.

106. In its identification of approvals and consistency with zoning the EAF at page 3 omits the fact that a Special Use Permit, and perhaps rezoning would be required from the Common Council, because of the size of the proposed warehouse and mini-market, and the fact that the

structures lacks multiple stories, and is thus are not permissible as a “stacked” structure. (See affidavit of Benjamin Siegel).

107. From the FEAF we learned that the construction of the project is anticipated to be over two years in duration. (*See Exhibit K at p. 3*)

108. In the EAF, the Project applicant was required to answer whether or not the proposed action will produce noise exceeding ambient noise levels during construction, operation or both, and if the answer is yes, the applicant was required to provide detail including sources time of day and duration of the noises. (*See Exhibit K at p. 8*)

109. On the EAF the applicant did acknowledge it would be producing noise in exceedance of ambient noise levels during construction and subsequent operations but failed to provide the requisite “detail” so that potential adverse noise impacts could be rationally assessed. No noise assessment study was ever produced identifying the sources of noise the degree of their exceedance over ambient backgrounds and their likely impact on the surrounding residential and hotel land usage

110. As is set forth in the accompanying affidavit of John Schenne, P.E. the likely noise impacts are so intense that they would likely be found intolerable applying New York State DEC guidance document standards for evaluation.

111. At page 13, the mandatory form asks the applicant to identify any buildings on the National Register of Historic Places, and the applicant unexplainably fails to identify the neighboring structure of the Lafayette Hotel which is approximately 40 feet from the proposed project. In addition, he omits the AM&A’s Warehouse Lofts and the AM&A’s stores buildings and thus never assessed potential impacts of the incompatible and incongruous proposed one-story sheet-metal and concrete marketing warehouse on the historic structures.

112. A properly prepared LEAF is necessary to help the Lead Agency to determine the substantive likely Project impacts, the full scope of involved Agencies 6 NYCRR 617.6(ii and iii), whether the Project is a Type 1 action r 6 NYCRR 617.6(1)(iv).

113. Here the LEAF was deficient at identifying potential noise impacts and structures of historic significance in immediate proximity to the project and further failed to identify the shortage of daytime parking spaces which the neighboring business district fabric relied upon for survival.

114. In disregard to the stated policy in 6 NYCRR 617.3, and failed to make the public file available for review at their office while Common Council action was still pending

B. The Procedural Deficiencies of the SEQRA Process Resulted in a Substantive Failure to Identify and Assess the Potentially Significant Adverse Environmental Impacts Threatened to the Residents

115. The initial substantive task of the Planning Board after they solicited and accepted lead agency responsibilities was to determine if the project posed any potential significant adverse impact on the human environment. In making their determination they are bound to follow the dictates of six NYCRR 617.7. If any potential significant adverse impact was identified during the review period, and before final approvals were granted, they were required to mandate an Environmental Impact Statement be prepared.

116. Only if a Lead Agency rationally determines that there is no potential for any significant adverse impact on any aspect of the environment are they authorized to issue a negative declaration.

117. 6 NYCRR 617.7 (c) provides the criteria for determining if an environmental impact is potentially significant. It provides in relevant part as follows

(1) To determine whether a proposed Type I or Unlisted action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria in this subdivision. The following list is illustrative, not exhaustive. These criteria are considered indicators of significant adverse impacts on the environment:

(i) **a substantial adverse change** in existing air quality, ground or surface water quality or quantity, **traffic or noise levels**; a substantial increase in solid waste production....

(v) **the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character**;

.... (viii) **a substantial change in the use, or intensity of use, of land** including agricultural, open space or recreational resources, **or in its capacity to support existing uses**;

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

(x) the creation of a material demand for other actions that would result in one of the above consequences;

(xi) **changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment**; or

(xii) **two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.**

(2) For the purpose of determining whether an action may cause one of the consequences listed in paragraph (1) of this subdivision, **the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions** which are:

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof, or

(iii) dependent thereon.

(3) **The significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:**

(i) its setting (e.g., urban or rural);

- (ii) **its probability of occurrence;**
- (iii) **its duration;**
- (iv) its irreversibility;
- (v) its geographic scope;
- (vi) **its magnitude;** and
- (vii) the number of people affected.

[Bold Emphasis Added]

118. As is set forth in the Schenne Affidavit, here we have the potential significant adverse effect in noise levels both during the two-year construction. And forever thereafter, after the warehouse and mini- market is placed in operation, thus the duration is both long-term, and potentially forever, and significant, and intense, and thus potential significant adverse impacts on noise could not be ruled out, and the negative declaration was not justified under the criteria set forth by 6 NYCRR 617.7 (c)(i).

119. Here we had no noise assessment ruling out the potential significant adverse impacts on noise, and the conclusions of the Planning Board relied upon by the ZBA in the Common Council are not supported by the agenda items that were before the Planning Board and posted on the city's website.

120. As set forth above the three National Register structures on Washington Street were not identified in EAF, and there was no application of the Secretary of the Interior Standards by the Planning Board to rationally assess impacts on the National Register structures. Thus the Planning Board's determination that there were no impacts on structures of historic and aesthetic significance is not found in their own documentation of their review of the record. The potential impacts on the historic structures was required to be rationally assessed, by the Lead Agency themselves, pursuant to 6 NYCRR 617.7(c)(v), and the Planning Board published agenda items does not support this was done.

121. Considered together, the removal of the parking spaces at 201 Ellicott, together with the plans to pull the Mohawk ramp from service, and the imposition several hundred people per day at the 201 Ellicott site which will increase the demands for daytime parking at the site, all pose a cumulative effect. Considered together, as they must be, the loss of the parking together with the future and ongoing actions reduces the capacity of the area to support the existing uses and was a mandatory factor that had to be considered in the Negative Declaration (See 6 NYCRR 617.7 (c)(viii)), and was not.

122. Here we do have two or more elements likely to stress out the capacity of the restored historic structures to continue to function. We have the potential bombardment of the structures with intolerable noise based upon a poor site plan that will follow the two years a construction activity, and the loss of parking necessary to support the structures. While it is submitted in each factor alone should have triggered the requirement of an environmental impact study, and precluded a negative declaration, together they further exacerbate the need for an environmental impact study according to the criteria set forth in 6 NYCRR 617.6 (c)(1)(xi).

123. Although the Planning Board staffs failure to allow review of the Record before the Planning Board, together with the delay in response to FOIL demands somewhat hinders the identification of their SEQRA work product and process, it appears the Planning Board failed in their performance of their substantive duties under SEQRA and its implementing regulations at 6 NYCRR 617.7 by:

- a. failing to properly identify the daytime parking shortage in the area which threatens the displacement of local businesses;
- b. failing to identify the extent, duration, and intensity of noise pressure impacts; and

- c. failing to produce a record of communication with the New York State Department of Transportation showing the potential impacts on the Oak Street Arterial were never assessed in a coordinated review prior to the issuance of the negative declaration; and
- d. failing to identify at the commencement of the environmental review process potential impacts on the Lafayette Hotel and perform any view shed studies on the same, and assess potential impacts pursuant to the Secretary of the Interior Standards.

VIII. THE CITY'S CONSTRUCTIVE DENIAL OF THE FOIL REQUESTS

- 124. The ZBA granted the first approval for the project on May 15, 2019.
- 125. Counsel for the petitioners submitted a FOIL demand on the City Clerk, who is the City's FOIL Officer on May 17, 2019. (See Exhibit I).
- 126. The City's Office of Strategic Planning responded on May 22, 2019 that the material would be available within 20 days which would have on or about Thursday June 13, 2019, or about two business day before the expiration of challenging the ZBA grant of the area variances for the Project.
- 127. On May 29, 2019 counsel for the petitioners went to the Planning Board's office and requested to see the public file that is traditionally kept on a table for public viewing while matters are pending.
- 128. At the time of the request action by the Common Council was still pending.

129. The City's Director of Planning responded that the file was put away, and she was too busy to have it placed on the table.

130. The City then declined to produce any of the materials reviewed by the public bodies throughout the time period when the first Article 78 Petition was required to be filed.

131. Based upon the foregoing, the Petitioners do request the Court to stay the proceedings on this Petition, and Order the City to timely provide the complete response to the FOIL demands, and then allow Petitioners reasonable time to amend their pleadings.

IX. CLAIMS FOR RELIEF

As and For a First Claim for Relief

132. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

133. Based upon the foregoing it is respectfully submitted that the Common Council of the City of Buffalo exceeded its lawful authority in approving the sale of 201 Ellicott St. to 201 Ellicott LLC without any proof of public bidding were commended competitive procurement.

As and For a Second Claim for Relief

134. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

135. Based upon all of the foregoing it is submitted that with the Planning Board's failure to commence an environmental review with an adequate environmental assessment form upon receipt of the Site Plan Application, and based upon the Planning Board's failure to coordinate the environmental review for all the required actions with all involved agencies with a sufficiently complete EAF, and based upon the failure of the environmental review to evaluate all the raised potential significant impacts of the Project on the host environment, and the refusal to comply with FOIL requests which would have facilitated meaningful public comment, and based upon the refusal to rationally weigh potential significant adverse impacts against the net social and economic impacts in a Findings Statement it is submitted that the Planning Board failed to perform actions enjoined upon them by law.

As and For a Third Claim for Relief

136. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

137. It is herein alleged that the Planning Board acted outside their lawful authority in issuing a Site Plan approval for a Project that required a Special Use Permit from the Common Council before the land could be used to site a 14,000 square foot warehouse.

As and For a Fourth Claim for Relief

138. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

139. Based upon the inadequacy of the environmental review process it is hereby submitted that the Planning Board, and ZBA have taken action included but not limited to granting Site Plan approval and use variances, which are in exceedance of their lawful authority and they should be enjoined from issuing final approval and permits to the Project until such time as the mandates of SEQRA are procedurally and substantively met.

As and For a Fifth Claim for Relief

140. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

141. The Planning Board's determination that the Project posed no potential significant adverse impacts on the environment is not supported by the Record, and is arbitrary and capricious

As and For a Sixth Claim for Relief

142. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

143. The ZBA's assumed determinations that the Project would not produce an undesirable detriment to nearby properties as required by Gen. City Law 81-b (4)(i) was arbitrary and capricious, and the grant of the variance without a record supporting no adverse change on the Petitioners property was an exceedance of their lawful authority.

As and For a Seventh Claim for Relief

144. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

145. The ZBA's assumed determinations that the Project would not produce an adverse impact on the physical or environmental conditions in the neighborhood as required by Gen. City Law 81-b (4)(iv) was arbitrary and capricious, and the grant of the variance without a record supporting no adverse impact on the neighborhood of any kind was an exceedance of their lawful authority.

As and For an Eighth Claim for Relief

146. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

147. The City is threatening to transfer land, and issue permits in exceedance of their lawful authority, and preliminary and injunctive relief is warranted.

As and For a Ninth Claim for Relief

148. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

149. Based upon the foregoing the Planning Board has engaged in violations of lawful procedure with regard to both compliance with the State's Environmental Quality Review Act and also with regard to filing of documents and making them available to and for public review and copying pursuant to FOIL.

As and For a Tenth Claim for Relief

150. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

151. Based upon the Planning Board's failure to fully consider the potentially significant adverse impacts on the host environment which includes but is not limited to noise impacts during two years of construction, removal of critical day time parking to the restored urban fabric including buildings of historic and aesthetic significance, and approving a Site Plan that would have vehicles backing up on a State arterial road, it is respectfully submitted that the Planning Board failed to comply with SEQRA's mandate of avoiding, minimizing or mitigating the Project's potential adverse impacts to the maximum extent possible and the issuance of the Conditioned Negative Declaration was arbitrary and capricious and an abuse of discretion, and the approval of the Site Plan was an exceedance of lawful authority.

As and For an Eleventh Claim for Relief

152. The Petitioners' counsel submitted FOIL demands upon the Municipal Respondents Foil Officer on May 17th, 2019.

153. On May 22nd, the Planning Department responded they would produce the documents in 20 days.
154. On May 29th, the Planning Director declined to show the Petitioners counsel records believed to be kept open as a matter of practice while a Project approval is pending.
155. The Planning Department thence delayed providing any documents in response to the FOIL demands while the time to challenge the first final approval was pending, and now as of the last date for filing a challenge to the first action taken in furtherance of the Project, the files pertaining to the approvals not contained in the Agenda packets have not been produced.
156. Based upon the foregoing, the Petitioners request this Court grant mandamus relief directing the City, Planning Board, the Planning Department, the Office of the Mayor, to fully comply with the FOIL demands.

As and For A Twelfth Claim for Mandamus Relief

157. The Petitioners repeat and re-allege each and every of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
158. Based upon the foregoing, it is respectfully submitted that the Petitioners have established a reasonable likelihood of success on the merits based upon the respondent Planning Commission's failure to comply with the procedural and substantive mandates SEQRA.
159. It is further submitted that the tearing up of the municipal parking resource the neighboring business rely upon, and the imminent commencement of two years of excavation and construction activities on a site with no restrictions, or safeguards to

protect the community against deleterious noises poses a potential threat to the neighbors of the Project that warrants a balancing of the equities in favor of the issuance of preliminary injunctive relief.

160. It is further submitted that Record does not support that all approvals have been granted so as to allow the Project to proceed. Namely there is no showing of NYS DOT approval of the curb cuts to allow trucks to back up on a State Arterial, and no showing of any compliance with NEPA so as to allow the expenditure of federal funds upon which the housing Project relies, nor has there been an application for the Special Use Permit required to place a 14,000 square foot warehouse on the site.

161. Thus, the fact that the desired Project approved is not yet ready to go forward further balances the equity in favor of granting preliminary injunctive relief.

162. Finally, granting the preliminary injunctive relief will preserve the *status quo* until this matter may come to be fully heard.

X. RELIEF REQUESTED

WHEREFORE, it is respectfully submitted that the Petitioners have no adequate remedy at law; and accordingly request this Court to:

1. Issue Preliminary Injunctive Relief staying and preventing:
 - a. The sale and transfer of any portion or the whole of the properties currently operated as a parking ramp at 201 Ellicott St., Buffalo, NY to Ciminelli Real Estate Corporation, or 201 Ellicott, LLC until this matter may come to be fully heard and decided; and

- b. The abandonment of the public parking usage of any portion or the whole of the properties currently operated as a parking ramp at 201 Ellicott St., Buffalo, NY until this matter may come to be fully heard and decided; and
 - c. Staying each and all of the above named Respondents from executing any Deeds, or Instruments conveying title, or control of the premises commonly known as 201 Ellicott Street, until this matter may come to be fully heard and decided.;
2. Direct the City of Buffalo and all its departments, officers, boards, and agencies to fully respond to and comply with the Freedom of Information Law demands served upon the City on May 13 and May 14, 2019 ; and Determine null and *void ab initio* the granting of area variances to Ciminelli Real Estate Corporation on or about May 15, 2019; and
3. Determine null and *void ab initio* the granting of Site Plan Approval to Ciminelli Real Estate Corporation , and/or its related entities on or about May 20, 2019 and further vacating and determining null and *void ab initio* all prior determinations related to the section made by the Planning Board of the City of Buffalo, including but not limited to the SEQRA Negative Declaration voted on by the Planning Board on or about May 6th, 2019;
4. Permanently enjoin the taking of actions in furtherance of this Project and the Permit by any of the Respondents or their agents until the city of Buffalo and its boards and agencies fully comply with the substantive requirements of Article 8 of New York State's Environmental Conservation Law (SEQRA) by assessing the potential significant adverse environmental impact of the project which threatens the displacement of local businesses and persons based upon the adverse impacts of surrounding local businesses and persons use and enjoyment of the premises

- a. Assessing the potential adverse impacts noise pressures generated by the project on the use and enjoyment of surrounding properties; and
 - b. rationally assesses the impact of the removal of existing parking at 201 Ellicott on surrounding land usage after taking into consideration existent daytime parking deficiencies be exacerbated by the loss of parking at 201 Ellicott St. the buildout of the approved developments at the former AMA's Building, and proposed demolition of the Mohawk Ramp;
 - c. rationally assessing potential traffic impacts placement warehouse for the description distribution of food which relies upon trucks backing into Oak Street without limits on their hours of operation
5. Permanently enjoin the taking of actions in furtherance of this Project and the permit by any of the Respondents or their agents until respondents fully comply with the Article 8 of the Environmental Conservation Law (Commonly referred to as the State Environmental Quality Review Act, or SEQRA) and all the implementing regulations found at 6 NYCRR 617 , including but not limited to the undertaking of a properly coordinated environmental review, and Environmental Impact Statement is drafted, and Finding Statements are made all in strict procedural and substantive compliance with the mandates of SEQRA and its implementing regulations. Such Environmental review should include but not be limited to:
- a. A rational assessment and study of noise pressure impacts on the surrounding urban fabric;

- b. A rational assessment of impacts of the Project on surrounding land usage on surrounding businesses and approved land usages which rely on existent day time parking; and
 - c. A rational assessment of impacts of the Project on surrounding structures of determined historic importance in accordance with the United States Secretary of the Interior adopted standards for assessing impacts of new construction on historic structures; and
 - d. the traffic study which is assesses the impact of proposed truck operations on New York State's Oak Street Arterial
- 6. Award reasonable costs to the Petitioners from the Respondent City of Buffalo pursuant to Article 6 of the Public Officers Law, and otherwise; and
 - 7. Grant such other further and different relief to Petitioner as this Court deems just and equitable.

Dated: June 17th, 2019

 /s/ Richard E. Stanton, Esq.

Muscato and Shatkin, PLLC
Richard E. Stanton, Esq.
Appearing of Counsel
415 Franklin Street
Buffalo, NY 14202
(716) 842-0550

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

EDWARD FIBICH, being duly sworn deposes and says that he is one of the Petitioners in the above captioned matter and operates as a d/b/a the DARK HORSE HAIR STUDIO, one of the named Petitioners in afore captioned matter; that he has read the foregoing Petition and knows the contents thereof; and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those allegations he believes them to be true.



EDWARD FIBICH

Sworn to before me this
17 day of June, 2019.



Notary Public

NANCY E CLARK
NOTARY PUBLIC-STATE OF NEW YORK
No 01CL6308963
Qualified in New York County
My Commission Expires 08-04-2022

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

Rocco Termini,, being duly sworn deposes and says that he is the Managing Member of ABL Leasing, LLC, The Buffalo Lafayette Leasing LLC, H@ Lofts, LLC, and Signature Development Buffalo, LLC who are amongst the named Petitioners in afore captioned matter; that he has read the foregoing Petition and knows the contents thereof; and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief. Deponent further says that the reason this verification is made by deponent and not by the ABL Leasing, LLC, The Buffalo Lafayette Leasing LLC, H@ Lofts, LLC, and Signature Development Buffalo, LLC , is because the said entities are Limited Liability Companies, and I am an Officer and the Managing Member of each of the afore referenced entities, the grounds of deponent's belief as to all matters in the said Petition not stated upon his own knowledge, are investigations which deponent has caused to be made concerning the subject matter of this Petition and information acquired by deponent in the course of his duties as a member and/or officer of said corporation and from the books and papers of said corporation.



ROCCO TERMINI

Sworn to before me this
19 day of June, 2019.



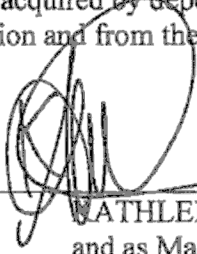
Notary Public

NANCY E CLARK
NOTARY PUBLIC-STATE OF NEW YORK
No 01CL6308963
Qualified in New York County
My Commission Expires 08-04-2022

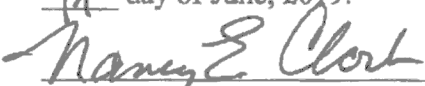
VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

KATHLEEN AMBROSE , being duly sworn deposes and says that she is an individual named Petitioner in this matter, and the Managing Member of Groom Service, LLC, another Petitioner in this matter. She hereby verifies the Petition in her individual capacity, and in her capacity as Managing Member of Groom Service, LLC and states she has read the foregoing Petition and knows the contents thereof; and that the same is true to her own knowledge, except as to the matters therein stated to be alleged upon information and belief. Deponent further says that the reason this verification is made by deponent and not by GROOM SERVICE LLC, NEW YORK is because the said GROOM SERVICE LLC, NEW YORK is a corporation and the grounds of deponent's belief as to all matters in the said Petition not stated upon her own knowledge, are investigations which deponent has caused to be made concerning the subject matter of this Petition and information acquired by deponent in the course of her duties as a member and/or officer of said corporation and from the books and papers of said corporation.


KATHLEEN AMBROSE, Individually
and as Managing Member of Groom Service, LLC

Sworn to before me this
17 day of June, 2019.

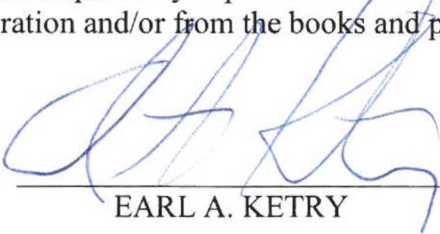

Notary Public

NANCY E CLARK
NOTARY PUBLIC-STATE OF NEW YORK
No 01CL6308983
Qualified in New York County
My Commission Expires 08-04-2022

VERIFICATION

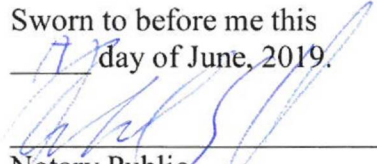
STATE OF NEW YORK)
COUNTY OF ERIE) ss.

Earl Ketry, being duly sworn deposes and says that he is the President of the Tap Room at the Lafayette, Inc., one of the named Petitioners in afore captioned matter; that he has read the foregoing Petition and knows the contents thereof; and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief. Deponent further says that the reason this verification is made by deponent and not by the Tap Room at the Lafayette, Inc is because the Tap Room at the Lafayette, Inc is a corporation and the grounds of deponent's belief as to all matters in the said Petition not stated upon his own knowledge, are investigations which deponent has caused to be made concerning the subject matter of this Petition and information acquired by deponent in the course of his duties as a member and/or officer of said corporation and/or from the books and papers of said corporation.



EARL A. KETRY

Sworn to before me this
17 day of June, 2019.



Notary Public

RICHARD EDMUND STANTON, ESQ.
NOTARY PUBLIC STATE OF NEW YORK
ERIE COUNTY
LIC. #02ST6277461
COMM. EXP. 03/11/2021