

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

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AFFINITY ELMWOOD GATEWAY  
PROPERTIES LLC

Index No.: 2011-3883

**AFFIDAVIT**

Plaintiff,

vs.

AJC PROPERTIES LLC, et al.

Defendants.

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Carly Battin, being duly sworn deposes and says:

1. I am over 18 years of age and not a party in the above-entitled action.

2. I am the executive director of the Elmwood Village Association (the "EVA"). The EVA, a not-for-profit organization, was formed to assist in strengthening the economic competitiveness of the neighborhood commercial district and improve the quality of life in the surrounding neighborhoods.

3. The EVA's office is located at 1068 Elmwood Avenue, Buffalo, New York and across from the property owned by the Plaintiff Affinity Elmwood Gateway Properties LLC ("Affinity Elmwood"). This is close to the corner of Elmwood and Bird Avenues.

4. It is my understanding that Affinity Elmwood owns 1121, 1119, 1115, 1113, 1111, 1109, 1105 and 1095/97 Elmwood Ave and 605 and 607 Forest Avenue (collectively the "Property").

5. It is also my understanding that the Property is subject to a restrictive covenant that was created in 1892 and precludes, among other things, commercial businesses from operating on the Property and that any structures must be at least 25 feet from the eastern curb of Elmwood Avenue.

6. The EVA was surprised to learn about this restrictive covenant because commercial businesses have been operating on the Property since the 1970s.

7. It is the EVA's opinion that the ancient 1892 restrictive covenant should be extinguished because Elmwood Avenue, between Forest and Bird Avenues, has long been commercial in nature and the home to several restaurants, bars and other business activity for over 40 years.

8. Affinity Elmwood has informed the EVA that it has plans to construct a 5-story structure with over 160 underground parking spaces. The EVA has been told that that the structure would contain a hotel, condominiums and retail tenants that includes restaurants.

9. Affinity Elmwood has also informed the EVA that it has conducted multiple town hall meetings with the residents of the Elmwood Village to respond to questions and concerns with Affinity Elmwood's current plans for the Property. Aside from the subject litigation, Affinity Elmwood has advised the EVA it is unaware of any other complaints or issues from the residential neighbors.

10. The EVA fully supports Affinity Elmwood's proposed plans outlined in Paragraph 8 above. A hotel, condominiums and retail space would be a significant improvement from what exists on the Property today and would be overwhelmingly beneficial for the commercial strip of Elmwood Avenue.

  
Carly Battin (Hartmans)

Sworn to before me this 5<sup>th</sup>  
of June, 2013

  
Notary Public

Erin L. McCabe  
01MC6055849  
Notary Public, State of New York  
Qualified in Erie County  
My commission expires MARCH 12th, 2015