

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 08-01089

PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ.

IN THE MATTER OF ARNOLD KAHN, INDIVIDUALLY AND
AS PRESIDENT OF PARK LANE CONDOMINIUM,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

PLANNING BOARD OF CITY OF BUFFALO AND UNILAND
DEVELOPMENT COMPANY, RESPONDENTS-RESPONDENTS.

RICHARD J. LIPPES & ASSOCIATES, BUFFALO (RICHARD J. LIPPES OF
COUNSEL), FOR PETITIONER-APPELLANT.

ALISA A. LUKASIEWICZ, CORPORATION COUNSEL, BUFFALO (TIMOTHY A. BALL OF
COUNSEL), FOR RESPONDENT-RESPONDENT PLANNING BOARD OF CITY OF BUFFALO.

MAGAVERN MAGAVERN & GRIMM LLP, BUFFALO (RICHARD A. MOORE OF COUNSEL),
FOR RESPONDENT-RESPONDENT UNILAND DEVELOPMENT COMPANY.

Appeal from a judgment of the Supreme Court, Erie County (Kevin M. Dillon, J.), entered February 21, 2008 in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to annul the determination approving the site plan for the construction of a residential tower by respondent Uniland Development Company. The record establishes that petitioner did not argue to respondent Planning Board of City of Buffalo that it violated article 8 of the Environmental Conservation Law in failing to refer the project to the City of Buffalo Environmental Management Commission, as required by the Code of the City of Buffalo. Thus, that contention was not properly before Supreme Court, nor is it properly before us. “[I]n a CPLR article 78 proceeding, the [c]ourt’s review is limited to the arguments and record adduced before the agency” (*Matter of Kaufman v Incorporated Vil. of Kings Point*, 52 AD3d 604, 607; see also *Matter of O'Donnell v Town of Schoharie*, 291 AD2d 739, 741-742; *Matter of Forjone v Bove*, 280 AD2d 948).

We reject petitioner's remaining contentions and otherwise affirm for reasons stated in the decision at Supreme Court.

Entered: March 27, 2009

JoAnn M. Wahl
Clerk of the Court