

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

411

CA 08-01637

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ.

---

IN THE MATTER OF CUSTOM TOPSOIL, INC. AND 1070  
SENECA STREET, INC.,  
PETITIONERS/PLAINTIFFS-RESPONDENTS,

V

ORDER

CITY OF BUFFALO AND RICHARD M. TOBE,  
COMMISSIONER, CITY OF BUFFALO DEPARTMENT OF  
ECONOMIC DEVELOPMENT, PERMIT AND INSPECTION  
SERVICES, RESPONDENTS/DEFENDANTS-APPELLANTS.  
(APPEAL NO. 1.)

---

ALISA A. LUKASIEWICZ, CORPORATION COUNSEL, BUFFALO (BRENDAN R. MEHAFFY  
OF COUNSEL), FOR RESPONDENTS/DEFENDANTS-APPELLANTS.

HARTER, SECREST & EMERY LLP, BUFFALO (CRAIG A. SLATER OF COUNSEL), FOR  
PETITIONERS/PLAINTIFFS-RESPONDENTS.

---

Appeal from an order of the Supreme Court, Erie County (Donna M. Siwek, J.), entered January 11, 2008 in a proceeding pursuant to CPLR article 78. The order denied the motion of respondents/defendants to dismiss the petition.

It is hereby ORDERED that said appeal is unanimously dismissed without costs (*see Loafin' Tree Rest. v Pardi* [appeal No. 1], 162 AD2d 985).

Entered: June 5, 2009

Patricia L. Morgan  
Clerk of the Court