

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

**209.2**

**CA 08-01967**

PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ.

---

IN THE MATTER OF MARGARET M. POTTER, JOHN S.  
HUGHES, JOHN LYONS, NATALIE LYONS, PATRICK F.  
MCDONNELL, AND ARTHUR J. GIACALONE,  
PETITIONERS/PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

TOWN BOARD OF TOWN OF AURORA, AND 300 GLEED  
AVENUE, LLC, RESPONDENTS/DEFENDANTS-RESPONDENTS.  
(APPEAL NO. 2.)

---

ARTHUR J. GIACALONE, EAST AURORA, FOR PETITIONERS/PLAINTIFFS-  
APPELLANTS.

BENNETT, DIFILIPPO & KURTZHALTS, LLP, HOLLAND (RONALD P. BENNETT OF  
COUNSEL), FOR RESPONDENT/DEFENDANT-RESPONDENT TOWN BOARD OF TOWN OF  
AURORA.

---

Appeal from a judgment (denominated order and judgment) of the  
Supreme Court, Erie County (Diane Y. Devlin, J.), entered September  
16, 2008 in a proceeding pursuant to CPLR article 78. The judgment,  
among other things, dismissed the petition/complaint.

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

Same Memorandum as in *Matter of Potter v Town Bd. of Town of  
Aurora* ([appeal No. 1] \_\_\_\_ AD3d \_\_\_\_ [Mar. 20, 2009]).

Entered: March 20, 2009

JoAnn M. Wahl  
Clerk of the Court