

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

1021

CA 08-01826

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, PINE, AND GORSKI, JJ.

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IN THE MATTER OF THE APPLICATION OF  
ARCELORMITTAL LACKAWANNA LLC, AND  
ARCELORMITTAL TECUMSEH REDEVELOPMENT INC.,  
PETITIONERS-RESPONDENTS,

V

MEMORANDUM AND ORDER

CITY OF LACKAWANNA, RESPONDENT-RESPONDENT,  
AND CITY OF LACKAWANNA SCHOOL DISTRICT,  
INTERVENOR-RESPONDENT-RESPONDENT.

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COUNTY OF ERIE, PROPOSED  
INTERVENOR-RESPONDENT-APPELLANT.

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CHERYL A. GREEN, COUNTY ATTORNEY, BUFFALO (GREGORY P. KAMMER OF  
COUNSEL), FOR PROPOSED INTERVENOR-RESPONDENT-APPELLANT.

PHILLIPS LYTTLE LLP, BUFFALO (JOANNA DICKINSON OF COUNSEL), FOR  
PETITIONERS-RESPONDENTS.

HODGSON RUSS LLP, BUFFALO (DANIEL A. SPITZER OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

CARL W. MORGAN, P.C., LACKAWANNA (CARL W. MORGAN OF COUNSEL), FOR  
INTERVENOR-RESPONDENT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Donna M. Siwek, J.), entered June 9, 2008 in a proceeding pursuant to RPTL article 7. The order, among other things, denied the motion of County of Erie seeking to intervene in the proceeding.

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

Memorandum: Supreme Court properly denied the motion of proposed intervenor, County of Erie (County), seeking to intervene in an RPTL article 7 proceeding in which petitioners challenged the tax assessment for certain commercial property. The motion was untimely, in light of the fact that the County was aware that petitioners had commenced seven prior consolidated RPTL article 7 proceedings and had failed to move to intervene in this proceeding until the trial in the consolidated proceedings had begun and the parties had entered into a court-approved stipulation of settlement (*see Rectory Realty Assoc. v Town of Southampton*, 151 AD2d 737; *Matter of Buffalo Mall v Assessor*

*of Town of Clarence, 101 AD2d 701).*

Entered: October 2, 2009

Patricia L. Morgan  
Clerk of the Court