



INCENTIVE ZONING FACTS

About the Proposed Whole Foods Plaza

FACT: The Brighton Town Code permits something known as “Incentive Zoning,” by which the Town Board can, in its discretion, waive the normal zoning limits and rules for a developer (these waivers for the developer are called “incentives”).ⁱ

FACT: In this case, the “incentives” allow the developer to grossly oversize this Project, thereby getting \$17 million in extra rent revenues.

FACT: In return for the “incentives” a developer must provide the Town with “amenities” such as affordable housing, open space, utilities, road improvements, eldercare, cultural or historic facilities, or cash.ⁱⁱ

FACT: The incentives and amenities should be essentially equal in value to each other, and the proposed arrangement should not violate good zoning principles.

FACT: In this case, even though the incentives the developer is getting are worth at least \$17 million, the amenities the developer is giving to the Town are valued at no more than \$906,780 based on the developer’s own figures.

FACT: In addition to the amenities being worth much less than the incentives, in this case the “amenities” are not amenities at all, but can already be required by the Town under regular zoning to



mitigate the project's negative impacts, so the Town in actuality is getting \$0.ⁱⁱⁱ

FACT: An Incentive Zoning Agreement should never be allowed to create a financial windfall for a developer,^{iv} like is happening here.

FACT: In addition to \$17 million in extra revenues, under this special zoning arrangement the Developer also gets to:

- build a grocery store that is 2.5 times bigger than what the zoning code allows “as of right.”
- put in an extremely high traffic (Starbucks) drive through which is not permitted under our zoning code.
- ignore the “green space” requirements that would otherwise apply.
- dump excessive amounts of traffic on Monroe Avenue and side roads, in excess of what State DOT recommends is appropriate.
- bypass up to 22 permits and approvals otherwise required under our Zoning Code.^v
- encroach by three acres into a residential district, and have a commercial parking lot be built on residentially zoned land.^{vi}

Confused about what's in it for the Town? We are too.

Sources for **INCENTIVE ZONING:**



ⁱ Brighton Town Code Chapter 209 (available at <https://ecode360.com/9442378>)

ⁱⁱ Brighton Town Code § 209-3.

ⁱⁱⁱ See Brighton Grassroots, LLC et al - v. - TOWN OF BRIGHTON et al, Monroe County Supreme Court, J. Doyle Presiding, Index No. E2018002961, Verified Petition and Complaint, ¶2.

^{iv} Asian Americans for Equality v Koch, 72 N.Y.2d 121, 129 (1988)(Holding the cost-benefit balance of incentives and amenities should be such that the incentives induce the developer to provide the uneconomic amenity to the municipality but, sufficiently limited to avoid the developer from gaining a windfall as a result.).

^v See May 15, 2015 “Incentive Zoning” application submission by the Danieles and the August 19, 2015 submission by the Clover/Allens Creek Neighborhood Association, LLC (on file with the Town of Brighton).

^{vi} See May 15, 2015 “Incentive Zoning” application submission by the Danieles (on file with the Town of Brighton).