**Court Grants Partial Injunction against Brighton Whole Foods Project, Ruling That Opponents Have a “Likelihood of Success” and Warning Developer of “Risk” if it Proceeds with Construction**

A State Supreme Court judge this week granted a preliminary injunction to opponents of the Brighton Whole Foods project, prohibiting the developer from encroaching on the Auburn Trail, which is part of the project site. In doing so, the judge determined that the opponents have “a likelihood of success” on the merits of their legal claims involving the project. The judge also reiterated a warning to the developer that, if it proceeds with any construction on the site, it does so “at its own risk.”

“This is a huge victory for the neighboring community,” said Howie Jacobson, president of the group Brighton Grassroots, which requested the injunction. “The judge ruled that we’re likely to succeed on our claim to stop the Danieles from building over the Auburn Trail because the Town violated the law by allowing them to do so. We hope this ruling will help us reduce the size of the project, which will protect the adjacent neighborhood and reduce the traffic problems it will cause.”

The injunction protects the Auburn Trail, which runs directly through the project site, and is a popular public trail utilized by runners and pedestrians through the area. In early 2018, the Town of Brighton voted to give the developer permission to build portions of the project on top of the trail, so long as it rerouted those portions of it eastward, into an adjacent residential neighborhood. The Town Board’s decision angered many in the community, serving as evidence to them that the project is too large if the developer has to build over the trail and put a third of the project into the residential district.

But that was hardly the only problem with the Town Board’s decision. Several community groups joined a lawsuit against the Town, pointing out that the Town lacked the authority to give the developer permission to build over the Auburn Trail, because it is considered public park land. Under New York law, before a Town can transfer an interest in public park land, it must (1) obtain approval from the state legislature and (2) hold a public referendum on the issue. This is known as the “public trust doctrine.” The Town took neither step here. And the community groups sued. This case is likely headed to trial in 2021 or soon afterward. The community groups also sued over the alleged “special deal” the Town gave the developer to build an oversized project under an “incentive zoning” loophole, ignoring the size limits in its own zoning code.

On February 4, in a significant blow to the project as currently proposed, the court granted a partial injunction to protect the Auburn Trail. In doing so, the judge concluded that Brighton Grassroots has a “likelihood of success” in the case. The judge denied the remaining portion because he thought it was improper to prohibit the Town from issuing permits since opponents can instead challenge a permit after it is issued. (Brighton Grassroots and another community group, Save Monroe Ave., have already filed a lawsuit challenging the issuance of the building permit for a Starbucks at the site). At the end of his decision, the judge expressly warned the developer that, if it intends to start any construction on site, it **“proceeds with the project at its own risk.”**

“Who, in their right mind, would start construction on the project after a ruling like this,” Jacobson asked. “If the Danieles lose any of these lawsuits, they might have to tear down anything they’ve already built. They’d be a lot better off if they just re-applied to the Town with a properly sized project that complies with the limits of our zoning code.”

*A copy of the court’s decision is attached to this release.*