

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 2589984

Book Page CIVIL

No. Pages: 39

Instrument: EFILING INDEX NUMBER

Control #: 202101040911

Index #: E2021000039

Date: 01/04/2021

Time: 3:16:58 PM

Return To:
MINDY LEE ZOGHLIN
300 State Street, Suite 502
Rochester, NY 14614

Brighton Grassroots, LLC.

Town of Brighton Zoning Board of Appeals
Town of Brighton Office of the Building Inspector
Town of Brighton
M&F LLC
Daniele SPC, LLC

State Fee Index Number	\$165.00	
County Fee Index Number	\$26.00	
State Fee Cultural Education	\$14.25	
State Fee Records Management	\$4.75	Employee: MJ
Total Fees Paid:	\$210.00	

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONROE

BRIGHTON GRASSROOTS, LLC,

Petitioner/
Plaintiff,

Index No.

vs.

TOWN OF BRIGHTON ZONING BOARD OF APPEALS,
TOWN OF BRIGHTON OFFICE OF THE BUILDING INSPECTOR,
TOWN OF BRIGHTON,
M&F, LLC; DANIELE SPC, LLC
MUCCA MUCCA LLC; MARDANTH
ENTERPRISES, INC.; DANIELE
MANAGEMENT, LLC; COLLECTIVELY
DOING BUSINESS AS DANIELE FAMILY
COMPANIES, JOHN DOES 1-20, AND
ABC CORPORATIONS 1-20,

Respondents/Defendants.

SUMMONS

To the above-named defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Monroe County as the place of trial. The basis of venue is that this is the judicial district in which the material events took place and plaintiff resides in Monroe County.

Dated: January 4, 2021



The Zoghlin Group PLLC
Attorneys for Petitioner
Mindy L. Zoghlin, Esq., of counsel
Jacob H. Zoghlin, Esq., of Counsel
Office and Post Office Address
300 State Street, Suite 502
Rochester, New York 14614
Tel.: (585) 434-0790
Fax: (585) 563-7432
E-mail: Mindy@ZogLaw.com

STATE OF NEW YORK
SUPREME COURT

MONROE COUNTY

BRIGHTON GRASSROOTS, LLC,

vs.

Petitioner/
Plaintiff,

TOWN OF BRIGHTON ZONING BOARD OF APPEALS,
TOWN OF BRIGHTON OFFICE OF THE BUILDING INSPECTOR,
TOWN OF BRIGHTON,
M&F, LLC; DANIELE SPC, LLC
MUCCA MUCCA LLC; MARDANTH
ENTERPRISES, INC.; DANIELE
MANAGEMENT, LLC; COLLECTIVELY
DOING BUSINESS AS DANIELE FAMILY
COMPANIES, JOHN DOES 1-20, AND
ABC CORPORATIONS 1-20,

Index No.:

Respondents/Defendants.

VERIFIED PETITION AND COMPLAINT

Petitioner/Plaintiff, Brighton Grassroots, LLC ("BGR") by its attorneys, The Zoghlin Group PLLC, complains of Respondents as follows:

I. INTRODUCTION AND RELATED LITIGATION

1. Over the past five years, the Town of Brighton and its boards have engaged in a pattern of bending the rules and its own Town Code to push forward the Developer¹'s efforts to construct an oversized Whole Foods Plaza and strip mall at the busiest, most accident-prone intersection in the Town of Brighton.

¹ The term "Developer" refers to the Daniele Family Companies and related entities who submitted applications for municipal approvals for the Proposed Development. The term "Developer" is defined in more detail in "The Parties" section of these pleadings.

2. First, the Town granted the Developer lucrative zoning incentives to facilitate the construction of a commercial retail plaza. The incentives worked. The commercial plaza now planned is so large that one third of it spills onto 3 acres of an adjacent residential district and two additional traffic signal lights are needed. Petitioner challenged the Town Board's Incentive Zoning Resolutions and SEQRA Findings in *Brighton Grassroots et al v. Town of Brighton et al*, Monroe County Supreme Court, Index No. E2018002961 ("BGR1").

3. The Town Planning Board followed in lock-step. On August 15, 2018, the Planning Board issued a Findings Statement with respect to the Planning Board Applications and approved demolition permits for buildings in the "On Site Project Location." Brighton Grassroots challenged the Planning Board's SEQRA Findings Statement on September 13, 2018 in an action captioned *Brighton Grassroots et al v. Town of Brighton Planning Board et al*, Monroe County Supreme Court, Index No. E2018007330 ("BGR2").

4. The Planning Board then granted the Developer's Applications for site plan and subdivision approval. Brighton Grassroots challenged these determinations on October 16, 2018 in an action captioned *Brighton Grassroots et al v. Town of Brighton Planning Board et al*, Monroe County Supreme Court, Index No. E2018008343 ("BGR3"). By ordered dated March 29, 2019, upon consent of the parties, the Monroe County Supreme Court (JSC John J. Ark) consolidated BGR 2 and BGR 3 into a single action under the caption *Brighton Grassroots et al v. Town of Brighton Planning Board et al*, Index No. E2018007330 (Monroe County Supreme Court). See E2018007330, Doc. No. 58;

E2018008343, Doc No. 66.

5. The Planning Board approval illegally authorized the placement of commercial stormwater management structures and parking areas in a single-family residential district and left open the possibility that the Developer would be able to further subvert the Zoning Code by placing Amazon lockers at the Project Site². BGR exhausted its administrative remedies by asking the Code Enforcement Officer for a formal determination. He ignored BGR's formal request. BGR then appealed the Code Enforcement Officer's constructive denial to the Zoning Board of Appeals, which then ignored BGR's appeal. In February 2019 BGR challenged the ZBA's failure to hear the appeal in *Brighton Grassroots LLC v. Town of Brighton Zoning Board of Appeals et al*, Index No. E2019000427 ("BGR4").

6. Meanwhile, the New York State Department of Transportation ("NYSDOT") made determinations that were entirely inconsistent with, and contrary to, its prior findings. For over four years, the NYSDOT was adamant that the proposed Whole Foods Plaza Project would cause significant adverse traffic impacts, and that it was necessary to (1) reduce the size and intensity of the Project and (2) open up alternative access points from the Project site to adjacent roadways (including Clover Street and Allens Creek Road) to mitigate those adverse traffic impacts (the "Mitigation Measures"). Despite its nearly four years of insistence that the Mitigations Measures were practicable and advisable,

² Amazon Lockers are fully enclosed storage facilities or warehouses for the storage of merchandise. As such, they are not permitted as of right in a General Commercial (BF-2) District (a "General Commercial District") — the district in which they would be located — under Town Code §203-84.

the NYSDOT's August 7, 2019 Findings Statement did not impose them, did not explain why it reached a different decision that contradicted its prior determinations, and did not cite any support for its new position. The NYSDOT's Findings Statement failed to require any additional measures to mitigate adverse traffic impacts from the Project, and instead merely rubberstamped the Town Board's insufficient 2018 Findings Statement. BGR challenged the NYSDOT determinations in *Brighton Grassroots v. New York State Department of Transportation*, Monroe County Supreme Court, Index No. E2019008518 ("BGR5"); Monroe County Supreme Court, Index No. E2019011722 ("BGR6"); and Monroe County Supreme Court, Index No. E2020009533 ("BGR7").

FACTUAL BACKGROUND

7. In BGR 4, this Court held BGR's application for a Temporary Restraining Order in abeyance and ordered the Developer to limit site activities to demolition and site clearing. BGR 4, NYSCEF Doc. No. 59, a copy of which is attached hereto as **Exhibit A**. The Order further required the Developer to give BGR 7 days' prior written notice before receiving any permit for further activities at the Site. *Id.*

8. The Developer misrepresented to BGR in mid-May 2020 that issuance of a building permit for the Whole Foods plaza development was "imminent." It then spent three months dodging BGR's efforts to discover whether the Developer had met the preconditions to obtain the Building Permit.

9. On or about July 22, 2020, the Town Building Inspector (Ramsey Boehner) secretly issued a Building Permit to the Developer to install utilities and infrastructure on the pedestrian trail, relocate temporary fencing from the pedestrian easement to the

replacement trail area, and build only the Starbucks drive-through coffee shop (the “Building Permit”).

10. After repeated refusals by Town to disclose *public* building permit information to BGR and petitioners in related litigation, Town was ordered to disclose whether a building permit had even been issued, as well as all documents submitted in connection therewith.

11. In the meantime, through Notices to Admit served by Petitioner in BGR2, the Developer was forced to admit that prior to building permit issuance it had not satisfied the mandatory prerequisites for issuance of the building permit as required by the Town Code, SEQR, the Incentive Zoning resolution and site plan approval.

12. BGR appealed the Building Inspector’s issuance of a Building Permit to the ZBA on August 20, 2020 (Exhibit B) and amended the appeal on September 25, 2020 (Exhibit C) and October 6, 2020 (Exhibit D).

13. The Town provided 600 pages of documents upon which the building permit was based in two massive PDFs. The Town stated that there were 5 additional boxes of building permit-related documents that may or may not be duplicative of its electronic document dump. Following review of additional documents produced by the Town pursuant to a Court Order after filing this Appeal, BGR withdrew the following paragraphs of its Appeal: ¶¶11(A)-11(B) and ¶¶71-73 (regarding the Irrevocable Letters of Credit for the AMP, landscaping, stormwater mitigation, infrastructure, and erosion control); and ¶¶59-68 (regarding PSC approval). See Exhibit D (October 6, 2020 affirmation).

14. The ZBA conducted a public hearing to consider BGR's Appeal on October 7, 2020. At the conclusion of the public hearing, the ZBA allowed the Town Building Inspector until October 21, 2020 to respond to new information submitted by BGR, and commenced deliberations. **Exhibit T** [ZBA Minutes from October 7, 2020], pages 175-176.

15. Attorney John A. Mancuso represents the Building Inspector with respect to BGR's appeal to the ZBA. Mr. Mancuso also represents the Town Board in BGR1, the Planning Board in BGR2 and BGR3 and the ZBA in BGR4.

16. Mr. Mancuso provided the ZBA with additional submissions on or about October 21, 2020 (the "*Ex Parte* Submissions" (**Exhibit E**)). Neither Mr. Mancuso nor the ZBA provided BGR or its counsel with the *Ex Parte* Submissions. The ZBA did not give BGR an opportunity to respond to the new evidence contained in the *Ex Parte* Submissions. The *Ex Parte* Submissions include documents with bates numbers ZBA010544-010581

Exhibit E [Findings], para. 19:

- a. Town of Brighton Town Board meeting minutes and resolutions (ZBA 010544- ZBA 010564 **Exhibit E**;
- b. Affidavit of Matthew Beeman sworn to July 23, 2019 in a Clover Allens Creek lawsuit, to which BGR is not a party (ZBA 10565- ZBA 010566) **Exhibit E**;
- c. Affidavit of Ramsey Boehner (without exhibits) sworn to July 23, 2019 in a Clover Allens Creek lawsuit, to which BGR is not a party (ZBA 10567- ZBA 010572) **Exhibit E**;
- d. Letters from the Monroe County Department of Health to Daniele Family Companies dated July 14, 2020 and attachments (ZBA 010573- ZBA 010578) **Exhibit E**, to which BGR was not copied.
- e. An unsigned statement purportedly from the Town of Brighton Historian dated December 23, 2019 (ZBA 010579) **Exhibit E**.
- f. An unsigned statement purportedly from the Town of Brighton Historian dated January 5, 2020 (ZBA 010580- ZBA 010581) **Exhibit E**.

17. The ZBA continued deliberations on November 4, 2020.

18. The ZBA adopted a Resolution setting forth its determinations and Findings on December 2, 2020 (the "Determination"), a copy of which is attached hereto as Exhibit

F.

19. Petitioner did not have any opportunity to review or be heard with respect to the *Ex Parte* Submissions.

20. This Article 78 proceeding ensues.

The Instant Action

21. This is a hybrid Article 78 proceeding and declaratory judgment action to challenge the Town of Brighton Zoning Board of Appeals' (the "ZBA") December 2, 2020 Determination denying Brighton Grassroots, LLC's Application (10A-02-20) (the "Application") appealing the Town of Brighton Building Inspector's issuance of a Building Permit, Number 20170487 (the "Building Permit"), to the Developer for the Whole Foods Plaza Project (the "Project", "Action" or "Proposed Development").

22. The gravamen of this action is three-fold. First, the ZBA Determination must be set aside because the Building Inspector illegally issued a building permit for construction of the Project in multiple phases, even though the approvals all required the Project to be built in a single build phase. Second, the ZBA Determination fails to satisfy the condition that the Developer obtain legally sufficient cross-easements for the construction of the Access Management Plan ("AMP") improvements. And third, the ZBA illegally and improperly made legal findings and determinations regarding the public trust doctrine and permissive referendum law that were entirely outside of its jurisdiction.

23. Petitioner seeks an order pursuant to CPLR Article 78 and CPLR §3001 et seq:

- a) annulling and vacating the Town of Brighton Zoning Board of Appeals' December 2, 2020 Determination on Brighton Grassroots, LLC's Application (10A-02-20) appealing the Town of Brighton Building Inspector's issuance of Building Permit Number 20170487 to the Daniele Family Companies for the Whole Foods Plaza Project;
- b) annulling and vacating the Town of Brighton Building Inspector's issuance of Building Permit No 20170487 to the Daniele Family Companies for the Whole Foods Plaza Project; and
- c) With respect to the Third Cause of Action, either:
 - i. annulling and vacating the ZBA's findings regarding the public trust doctrine and permissive referendum; and
 - ii. striking paragraphs 111-114; 117, 127, 133 and 145 of the Town of Brighton Zoning Board of Appeals' Findings, which was attached as Exhibit A to the ZBA's Resolution/Decision denying Petitioner/Plaintiff's ZBA Appeal; or, in the alternative
 - iii. consolidating the public trust and permissive referendum claims set forth in the Third Cause of Action together with those asserted in BGR 2; or in the alternative
 - iv. staying the Third Cause of action pending a resolution on the merits of the public trust and permissive referendum claims set forth in the Third Cause of Action together with those asserted in BGR 2; and
- d) awarding petitioner its attorneys' fees, costs and disbursements, together with such other and further relief as this court deems just and proper.

II. THE PARTIES

24. Brighton Grassroots, LLC ("BGR") is a domestic limited liability company organized and existing under the laws of the state of New York and is authorized to do business in New York. It is comprised of Town of Brighton residents who share the values

and objectives of the organization, and has broad community support as evidenced by, among other things, the approximately 500 residents who came to the Town Board's February 28, 2018 public hearing to object to the Town Board approving this Project under Incentive Zoning instead of applying the standard protections of the zoning code. BGR was formed to, among other things, advance by any legal means community betterment of the Town of Brighton. It advocates for open, honest and transparent local government and adherence to local zoning, land use and other laws. It engages in education, litigation, and advocacy related thereto.

25. BGR believes that the Building Permit for the Project was granted in violation of law.

26. BGR believes that the ZBA affirmed the Building Permit for the Project in violation of law.

27. Since its inception, BGR has informed the public about issues related to approvals for the Proposed Development; informed the public about municipal conduct that lacked transparency and violated the Open Meetings Law; attended Town Board, Town Planning Board, and Town Zoning Board of Appeals meetings to advance the interests of its members; published articles and comments related to the Proposed Development; and attended community events to engage the public in issues germane to its purpose.

28. As set forth above, BGR is prosecuting other combined Article 78/declaratory judgment actions to challenge the municipal approvals for the Whole Foods Plaza project.

29. BGR constituents come from the entire Brighton community (and, increasingly, parts of Pittsford). Many of BGR's members reside in the immediate area that would be directly and adversely affected by the facts and circumstances pleaded herein, and therefore have an interest different from the public at large. Several of BGR's members reside within 500 feet or less of the Proposed Development.

30. The interests sought to be protected by BGR are germane to its purposes.

31. Howard R. Jacobson ("Jacobson"), Lisa Whittemore ("L. Whittemore"), Norman Whittemore ("N. Whittemore"), Margery Hwang ("Hwang"), Roberta Kerry Sharick ("Sharick"), David Grant ("Grant"), Anthony Kinslow ("Kinslow"), Dr. Peter Mulbery ("Mulbery") and Lindsay Duell ("Duell") are members of BGR.

32. Hwang, Kerry, Grant, Kinslow, Mulbery, L. Whittemore, N. Whittemore and Duell all reside in close proximity to the intersection of Clover Street and Allens Creek Road, and frequently use that intersection to go to and from their homes and work.

33. Jacobson resides at 10 Sandringham, Town of Brighton. Jacobson resides approximately 1.2 miles north and east of the Proposed Development. Jacobson is the Managing Member of BGR.

34. L. Whittemore resides at 2262 Clover Street, Town of Brighton. The Whittemore residence is directly across Clover Street from the Project Site Location. L. Whittemore will suffer adverse visual impacts from the Proposed Development, including development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around L. Whittemore's home and will degrade the character of her neighborhood and her quality of life. L.

Whittemore is a Member of BGR.

35. N. Whittemore resides at 2262 Clover Street, Town of Brighton. The Whittemore residence is directly across Clover Street from the Project Site Location. N. Whittemore will suffer adverse visual impacts from the Proposed Development, including development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around N. Whittemore's home and will degrade the character of his neighborhood and his quality of life. N. Whittemore is a Member of BGR.

36. Hwang resides at 2230 Clover Street, Town of Brighton. The Hwang residence is directly across the street from the Project Site Location. Hwang will suffer adverse visual impacts from the Proposed Development, including the development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around Hwang's home and will degrade the character of her neighborhood and her quality of life. Hwang is a Member of BGR.

37. Sharick resides at 10 Schoolhouse Lane, Town of Brighton. The Sharick residence is across Allens Creek Road from the Project Site Location. Sharick will suffer adverse visual impacts from the Proposed Development, including the development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around Sharick's home and will degrade the character of her neighborhood and her quality of life. Sharick is a Member of BGR.

38. Grant resides at 10 Schoolhouse Lane, Town of Brighton. The Grant residence is across Allens Creek Road from the Project Site Location. Grant will suffer

adverse visual impacts from the Proposed Development, including the development of adjacent vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around Grant's home and will degrade the character of his neighborhood and his quality of life. Grant is a Member of BGR.

39. Mulbery resides at 295 Allens Creek Road. The Mulbery residence is approximately 1,000 feet from the Project Site Location. The Proposed Development will result in increased noise and traffic at and around Mulbery's home and will degrade the character of his neighborhood and his quality of life. Mulbery is a Member of BGR.

40. Duell resides at 59 Shoreham Drive, Town of Brighton. The Duell residence is across Clover Street from the Project Site Location. Duell will suffer adverse visual impacts from the Proposed Development, including the development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around Duell's home and will degrade the character of her neighborhood and her quality of life. Duell is a Member of BGR.

41. Respondent the Town of Brighton is a municipality located in the County of Monroe, State of New York and maintains an office at 2300 Elmwood Avenue, Rochester, New York 14618. The Town is the owner of an interest in real property related to the Project property.

42. The Town has jurisdiction over the Project, specifically with respect to site plan conformance and the issuance of building permits.

43. Respondent the Town of Brighton Office of the Building Inspector (the "Office") is a duly established office within the Town with duties and responsibilities as

set forth in the New York Town Law and the Town Code. The Office maintains an office at 2300 Elmwood Avenue, Rochester, New York 14618.

44. The Office has jurisdiction over the Project, specifically with respect to site plan conformance and the issuance of building permits.

45. Ramsey Boehner ("Mr. Boehner" or the "Building Inspector") is the Town Building Inspector/Code Enforcement Officer and Associate Town Planner for the Town with duties and responsibilities as set forth in the New York Town Law and the Town Code. Mr. Boehner, in said official capacity, maintains an office at 2300 Elmwood Avenue, Rochester, New York 14618.

46. The Town of Brighton Building Inspector is an officer, official or employee of the Town of Brighton, New York.

47. Respondent ZBA is the Zoning Board of Appeals of the Town of Brighton, New York and maintains an office at 2300 Elmwood Avenue, Rochester, New York 14618.

48. Upon information and belief, Respondent-Defendant M&F, LLC ("M&F") is a foreign limited liability company organized and existing under the laws of the State of Nevada, authorized to do business in the state of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

49. Upon information and belief, Respondent-Defendant Daniele SPC, LLC ("Daniele SPC") is a domestic limited liability company organized and existing under the laws of the State of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

50. Upon information and belief, Respondent-Defendant Mucca LLC ("Mucca

Mucca") is a domestic limited liability company organized and existing under the laws of the State of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

51. Upon information and belief, Respondent/Defendant Mardanth Enterprises, Inc. ("Mardanth") is a domestic business corporation organized and existing under the laws of the State of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

52. Upon information and belief, Respondent Daniele Management LLC ("Daniele Management") is a domestic limited liability company organized and existing under the laws of the State of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

53. Upon information and belief, Respondents-Defendants M&F, Daniele SPC, Mucca, Daniele Management, and Mardanth collectively do business as The Daniele Family Companies (the "Developer" or "Applicant") and are all under common ownership and control and, individually and/or collectively are the owners/developers (collectively, the "Developer") of the Proposed Development.

54. John Does are other persons or entities that may be necessary parties to this action that have not yet presently been identified.

55. ABC Corps. are other persons or entities that may be necessary parties to this action that have not yet presently been identified.

III. THE SITE/PROJECT LOCATIONS

56. The Proposed Development involves the construction of 83,700 SF of retail uses, including a 50,000± square foot grocery store, and 33,700± square feet of retail space, including a Starbucks with a drive thru, all on a 10.1- acre parcel of land on Monroe Avenue near the intersection with Clover Street.

57. The 10.1- acre Site Project Location crosses two zoning districts. 7.04 acres is within the BF-2 (commercial) zoning district and 3.06 acres encroaches into the adjacent RLA (low density residential) zoning district abutting Clover Street and the residential homes nearby. The subject zoning districts (and especially the residential zoning district) do not permit the uses and/or sizes contemplated by the Project.

58. The Proposed Development has been described as having an “On-Site Project Location” and an “Off-Site Project Location.”

The On-Site Project Location

59. The “On-Site Project Location” consists of the above-referenced 10.1 acres on the north side of Monroe Avenue approximately 600’ west of Clover Street and 1600’ east of NYS Route 590, and upon which the 83,700 square foot Development would be located.

60. The Incentive Zoning application, Incentive Zoning Approval, Town Board SEQRA Findings Statement, Planning Board Findings Statement and Planning Board site plan approval all required the Developer to construct all 5 buildings in the On-Site Project Location in a single build phase.

The Off-Site Project Location

61. The "Off-Site Project Location" consists of all of the properties south of Monroe Avenue from Route 590 to Clover Street, directly across from the Site Project location.

62. The Off-Site Project Location would be used for off-site traffic improvements that are intended to help mitigate the very significant adverse traffic impacts that the Proposed Development would generate.

63. The off-site traffic improvements are set forth in an "Access Management Plan" (the "AMP") that is intended to channel traffic from the properties located south of Monroe Avenue to the new traffic signal at the eastern exit from the Proposed Development.

64. The AMP is a SEQRA mitigation measure to offset the adverse traffic impacts that the Project will cause.

65. Construction and operation of the AMP traffic improvements requires the Developer to obtain permanent, enforceable cross-access easements among the owners of the properties in the Off-Site Project Location.

66. The Project approvals require the Developer to provide the Town with cross-access easements to construct and operate the AMP before any building permit can be issued. Without permanent cross-easements over the AMP parcels, the traffic mitigation measures required by the Amenity Agreement, AMP, and SEQRA Findings Statement are in real jeopardy.

IV. PROCEDURAL PREREQUISITES

67. Petitioner exhausted its administrative remedies.

68. Petitioner has no adequate remedy at law.

69. No previous application has been made for the relief sought herein.

V. JURISDICTION AND VENUE

70. This Court has jurisdiction over this special proceeding pursuant to CPLR Articles 30 and 78.

71. The Project is proposed to be located in the Town of Brighton, County of Monroe, and State of New York.

72. The Town of Brighton is a municipality located in Monroe County, New York and maintains an office at 2300 Elmwood Avenue, Rochester, New York 14618, which is located in the Town of Brighton, County of Monroe, State of New York.

73. The Building Permit at issue in this litigation relates to a Project on real property in the Town of Brighton, County of Monroe, State of New York.

74. The material events related to this action occurred in Monroe County.

75. The Building Permit was made in Monroe County and impacts Monroe County, and so the Monroe County Supreme Court is an appropriate venue for this action.

76. Venue is proper in Monroe County pursuant to CPLR sections 503, 504, 506(b), 507, and 7804(b).

FIRST CAUSE OF ACTION:

THE BUILDING INSPECTOR ILLEGALLY ISSUED A BUILDING PERMIT FOR ONE-AT-A-TIME BUILDING CONSTRUCTION, BUT THE APPROVALS ALL REQUIRE THE PROJECT TO BE BUILT IN A SINGLE BUILD PHASE.

77. Petitioner repeats and realleges paragraphs 1 – 76 as if fully set forth herein at length.

The Environmental Review for the Project Was Based on Construction of the

Structures in a Single Build Phase, Not One-At-A-Time

78. In its Environmental Assessment Form submitted early in the SEQRA process, the Developer represented that the Project would be constructed in a single build phase:

D. Project Details:

D.1. Proposed and Potential Development	
a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? 90,000 square-feet of retail space comprised of specialty grocer, specialty coffee shop, community bank and other community retail tenants.	
b. a. Total acreage of the site of the proposed action?	10.1 acres
b. Total acreage to be physically disturbed?	7.5 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?	10.1 acres
c. Is the proposed action an expansion of an existing project or use? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____	
d. Is the proposed action a subdivision, or does it include a subdivision? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If Yes,	
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)	
Purpose of the subdivision is to consolidate property ownership and adjust property lines for project financing requirements.	
ii. Is a cluster/conservation layout proposed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
iii. Number of lots proposed? 4	
iv. Minimum and maximum proposed lot sizes? Minimum 1.1 acres+/- Maximum 7.9 acres+/-	
e. Will proposed action be constructed in multiple phases? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
i. If No, anticipated period of construction: 18 months	
ii. If Yes:	
• Total number of phases anticipated _____	
• Anticipated commencement date of phase 1 (including demolition) _____ month _____ year	
• Anticipated completion date of final phase _____ month _____ year	
• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____	

EAF, Question D.1.e; Exhibit G.

79. The Town Board, as lead agency, conducted an environmental review for the Project to be built in a single build phase.

80. Because the Developer represented that the Project would be built in a single build phase, The Town Board and Planning Board never assessed the impacts of constructing the Project in multiple phases.

81. In fact, the FEIS specifically considered, and rejected, the proposal of a

phased approach that would start with the Starbucks and Whole Foods grocery store in “Phase 1,” with additional building being built subsequently. FEIS (**Exhibit H**) at Page 287. The Access Management Plan requires full completion of the AMP in a single phase. See FEIS (**Exhibit I**) at page 262.

82. As a result of the Developer’s commitment to seek approval for a Project that would be built in a single construction phase, the Town required the Project to be built in one construction phase with three staggered phases of business openings:³

13. The Project will be built in one phase with three separate components. In response to comments, the Applicant has proposed to phase opening of the uses as follows:

Phase I: 0-6 months – No more than 30,000 SF of space will be opened in the first 6 months.

Phase II: 6-12 months: Occupancy of the Whole Foods tenant (50,000 sf) will occur at a minimum of 6 months after the first C of O. No additional certificates of occupancy for other buildings in the development will be issued within 30 days of the date that the certificate of occupancy is issued for the Whole Foods store.

Phase III: 12 Months – 24 months – The remaining space will not be opened until at least one year after the first certificate of occupancy.

See **Exhibit J** (Town Board SEQRA Findings Statement), Exhibit F, p. 58 of 71. See also FEIS, p. 54-55, attached hereto as **Exhibit R**, “While the occupancy will be phased, construction

³ The Town Board granted the Developer’s incentive zoning application and adopted its SEQRA Findings Statement for the Project on March 28, 2018 (the “Town Board’ Findings Statement”). A copy of the Town Board’s Incentive Zoning Resolution with SEQRA Findings Statement is attached hereto as **Exhibit K**. The Planning Board’s Finding Statement dated August 15, 2018 explicitly incorporated by reference the Town Board’s Findings Statement. A copy of the Planning Board’s SEQRA Findings Statement is attached hereto as **Exhibit L**. This mitigation requirement was made an express condition of the Incentive Zoning Resolution.

will occur in a single phase," attached hereto as **Exhibit R**.

The Town Approvals Require the Project to be Built in a Single Build Phase, Not One-At-A-Time

83. The Developer applied for and received Incentive Zoning approval to build the Project in a single build phase. See Town Board's Incentive Zoning resolution, a copy of which is attached hereto as **Exhibit K**.

84. The Developer then applied for and received site plan approval to construct the Project in a single build phase. See Planning Board's site plan approval, a copy of which is attached hereto as **Exhibit V**.

85. The Planning Board, as an involved agency, adopted a Findings Statement for the Project to be built in a single build phase. See Planning Board's SEQRA Findings statement, a copy of which is attached hereto as **Exhibit L**.

The Developer Planned to Construct the Project in a Single Build Phase, Not One-At-a-Time

86. The Developer planned to build the Project in a single construction phase by beginning construction of all five buildings within a two-month period. A copy of the Developer's Construction Timeline is attached hereto as **Exhibit S**.

87. The Developer's Construction Timeline (**Exhibit S**) demonstrates that the Developer intended to commence construction of all of the Project structures between January 5, 2020 and March 5, 2020.

88. The Developer's Construction Timeline (**Exhibit S**) demonstrates that the Developer intended to complete construction of all five buildings in a 31-day period of

time between July 1, 2020 and August 1, 2020:

Structure	Construction Start Date	Construction End Date
Starbucks Building	1/5/2020	Completion Deadline 8/1/2020
Whole Foods Building	1/20/2020	Completion Deadline 8/30/2020
Building 3	2/4/2020	Exterior Trim Completed 7/1/2020
Building 4	2/4/2020	Exterior Trim Completed 7/1/2020
Building 5	3/5/2020 ²	Exterior Trim Completed 7/31/2020

The Building Inspector Illegally Issued a Building Permit for the Developer to Construct the Buildings Piecemeal, Not in a Single Build Phase

89. The Town illegally issued a Building Permit to the Developer to construct only one building of a five-building Project, in direct violation of the SEQR and zoning approval conditions. The Building Permit gives the Developer permission to build only the stand-alone Starbucks and install utilities and infrastructure for the rest of the Project (the “Building Permit”).

90. It has been five months since the Town issued the Developer a Building Permit to construct the Standalone Starbucks.

91. The Town has not issued any other building permits for the other four Project buildings.

92. Thus, the Building Permit unlawfully authorizes the Developer to construct the buildings in the project piecemeal, instead of in a single construction phase.

93. Accordingly, the ZBA’s decision should be annulled and the Building Permit should be vacated.

SECOND CAUSE OF ACTION:**THE BUILDING PERMIT MUST BE VACATED BECAUSE THE DEVELOPER DID NOT OBTAIN LEGALLY SUFFICIENT CROSS-ACCESS EASEMENTS FOR THE PROJECT'S ACCESS MANAGEMENT PLAN ("AMP"), IN VIOLATION OF THE CONDITIONS OF PROJECT APPROVAL.**

94. Petitioner repeats and realleges paragraphs 1 through 93 as if set forth herein at length.

95. The Building Permit must be vacated because the Developer does not have a legally sufficient cross-access easements to construct and operate the AMP.

Cross-Access Easements to Construct and Operate the AMP Are a Prerequisite to Issuance of a Building Permit

96. In exchange for the "incentives" granted by the Incentive Zoning Resolution, the Amenity Agreement requires the Developer to implement an Access Management Plan (the "AMP"). The AMP requires the Developer to create a "common rear access drive" behind the plaza across the street from the Project. The intent of the "common rear access drive" was to funnel traffic at the other plaza to a single point that would interfere less with the additional traffic generated by the Project.⁴

97. As part of the Requirement to create the "common rear access drive," the Developer was required to obtain "all cross access and other easements necessary to implement and construct the AMP." See Exhibit J at Amenity Agreement, Schedule C, §2(b); Exhibit A at Further Conditions of Approval, Schedule E-2, ¶8. See also Exhibit V

⁴ This is not a true "amenity" for purposes of incentive zoning because it constitutes SEQRA mitigation of the Project's adverse traffic impacts. It nonetheless remains a Condition for the issuance of a Building Permit for the Project under the Incentive Zoning Resolution. Exhibit A at Amenity Agreement, Schedule C, ¶2(a)

(September 17, 2018 Planning Board Resolutions with Conditions) at condition 28.

98. To ensure compliance with that requirement, the Amenity Agreement expressly requires the Developer to obtain the AMP cross-easements before getting any Building Permit for the Project:

Prior to the issuance of any Town building permits with the exception of the issuance of any permit for demolition of the buildings currently located on the Property, Daniele shall provide all cross access and other easements necessary to implement and construct the AMP. The easement language must address maintenance of the AMP. The easements shall be prepared and submitted to the Town for review and approval. Upon satisfactory completion and execution of the documents, the easements shall be filed by Daniele at the Monroe County Clerk's Office with the Town being provided copies of each easement with the liber and pages of filing.

See **Exhibit J** at Amenity Agreement, Schedule C, §2(b) (emphasis added).

99. The complete construction and implementation of the AMP is critical to the Town's Incentive Zoning Resolution for the Project and was expressly made a Condition for issuance of the Building Permit for the Project.

The Town Had an Obligation to Determine That the Cross-Access Easements Are Legally Sufficient

100. The Town Board's Incentive Zoning Resolution requires implementation of the AMP, SEQRA requires the AMP as mitigation, and the IZ resolution expressly directs the Town staff to review and approve the Cross-Access Easements.

101. The Town Board's Amenity Agreement and Incentive Zoning Approval expressly require the Developer to submit to the Town all cross access and other easements necessary to implement the AMP and empower the Town to review and

approve such easements. E2018007330, ECF Doc No. 423, Amenity Agreement (Schedule C) at ¶12(a).

102. The Amenity Agreement specifies that:

Prior to the issuance of any Town building permits with the exception of the issuance of any permit for demolition of the building currently located on the Property, Daniele shall provide all cross access and other easements necessary to implement and construct the AMP. The easement language must address maintenance of the AMP. The easements shall be prepared and submitted to the Town for review and approval. Upon satisfactory completion and execution of the documents, the easements shall be filed by Daniele at the Monroe County Clerk's Office with the Town being provided copies of each easement with the liber and pages of filing.

E2018007330, ECF Doc No. 423, Amenity Agreement (Schedule C) at ¶12(b).

103. Moreover, the further conditions of approval section of the Incentive Zoning Resolution specifically state that:

any agreements required to be executed under the terms of these conditions, including the Amenity Agreement, **shall be in form and substance as may be approved by the Attorney to the Town.**

ECF Doc No. 423, Schedule E-2 at ¶18.

104. Furthermore, the Town did in fact review, revise, and approve other easements for this Project. See, e.g., **Exhibit M.** (Town 9869)

The Cross-Access Easements Are Not Legally Sufficient Because They Do Not Contain the Lender's Consent

105. The cross-easements the Developer submitted in an attempt to satisfy this condition are legally insufficient because the recorded easements for 2799 Monroe Avenue and 2735 Monroe Avenue do not include the consent of the first-mortgage

holder(s), as required by the underlying mortgages. See, for example, paragraph 1.11(a) of Exhibit N. [Mamasan's mortgage] and paragraph 21 of the Exhibit V [S&A Hospitality mortgage] (the "Mortgages").

106. The Mortgages were recorded before the cross-access easements for the 2799 and 2735 Monroe Avenue. (Index No. E2018007330, ECF Doc No. 430.)

107. In at least two places, the Mortgages require the property owner to obtain the Mortgagee's prior written consent before conveying an easement to the AMP parcel:

[N]either the property, nor any part thereof or interest therein, shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to tenants under leases which are not in violation of section 1.10 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred, nor Mortgagor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntary or involuntary (an of the foregoing, a "Transfer"⁵), in each case without the prior written consent of Mortgagee being first obtained, which consent may be withheld in Mortgagee's sole discretion.

Exhibit N, Section 1.11(a) (page 19).

Mortgagor shall not grant any easement or right-of-way with respect to all or any portion of the Real Estate or the Improvements without the prior written consent of Mortgagee. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Mortgage and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way....

⁵ "For the purposes of Section 1.11, a 'Transfer' shall also include ... (iv) any sale or assignment of any of Mortgagor's rights, title and interest in, to and under any Leases or Rents and Profits, other than to Mortgagee." ECF Doc No. 430 at pg. 19, §1.11(a).

Exhibit N, Section 1.20 (page 22).

108. Two of the cross-access easements for the AMP do not contain the consent of the First mortgage holder on the AMP parcel, as expressly required by the recorded mortgage on the property.

109. Moreover, one of the lenders has notified the AMP property owner that its execution of a cross-access easement without the lender's consent constitutes a default of the mortgage.

110. The lender issued Mamsan's a Notice of Default, **Exhibit O**, ECF Doc No. 432. The Notice of Default further states that the "Lender hereby accelerates the Mortgage Note and declares the entire amount of the outstanding principal balance and all accrued interest and late charges due and payment." ECF Doc No. 432.

111. The Mortgagee Email also unequivocally stated, in bold and underline text:

I am in the process of commencing a foreclosure that would wipe off the Easements. If the owner pays off the mortgage or the successful bidder wants [to] put a new easement on, the easement that is currently in jeopardy could be fixed.

Id.

112. Accordingly, because the Mortgage lenders did not grant prior written consent for the cross-access easements, they are legally insufficient to ensure that the public will always benefit from the Traffic Mitigation Measures required by the AMP.

The ZBA denied this portion of BGR's Appeal because it found that BGR Failed to Meet Its Burden of proof with respect to this Issue.

113. The ZBA Determination found that:

a) "a recorded mortgage against the servient estates does not render the cross-

access easements invalid or unenforceable.” **Exhibit F** [Findings], para. 50. See also para. 52-54

- b) BGR failed to meet its burden of proof that the Building Permit was improperly issued (**Exhibit F** [Findings], para. 51, 55, 56; 57-61.)

114. The ZBA’s Determination was arbitrary, capricious, and abuse of discretion and based on an error of law.

115. For these reasons, the ZBA Determination and Building Permit must be annulled and set aside.

THIRD CAUSE OF ACTION:

THE ZBA’S DETERMINATIONS AND FINDINGS REGARDING THE PUBLIC TRUST DOCTRINE AND PERMISSIVE REFERENDUM ARE *ULTRA VIRES* AND MUST BE STRICKEN

116. Petitioner repeats and realleges paragraphs 1 through 115 as if set forth herein at length.

117. Under New York State Town Law §267-b, Zoning Boards of Appeals may only (1) reverse, affirm, or modify any order, requirement, decision, interpretation, or determination appealed from an administrative official charged with enforcing local zoning ordinances or laws; (2) on appeal therefrom, consider such applications de novo; and, (3) to that end, exercise all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal was taken. Town Law §267-b.

118. Moreover, ZBAs do not have any jurisdiction or authority to make a determination on the validity of an ordinance or legal doctrine.

119. The applicability of the public trust doctrine and permissive referendum requirements of Town Law section 62(2) are being litigated in BGR 2.

120. The Fourth Department held that there are issues of fact as to whether there was an express or implied dedication of the [Pedestrian Easements] subject to the public trust doctrine. *Clover / Allens Creek Neighborhood Association LLC v. M&F, LLC*, 173 AD3d 1828 (4th Dept. 2019), cited in the ZBA Findings at para. 101.

121. In BGR 2, the Fourth Department further held that petitioner's public trust claims could not be resolved at motion to dismiss phase because of factual dispute as to impact of grocery store development on recreational trail within town, which included whether development would require constructive abandonment of existing public use easements for that trail. *Brighton Grassroots, LLC v. Town of Brighton et al*, 1790 AD3d 1500 (4th Dept. 2020).

122. The Hon. Thomas A. Stander (Ret.) has been appointed to manage discovery disputes related to the public trust and permissive referendum claims in BGR2. See **Exhibit P** [stipulation and order].

123. As a result of Respondents' delay tactics, **the Town has still failed to produce any electronically stored information regarding the public trust and permissive referendum claims**, even though they have not been granted a protective order and admit that they have not reviewed the records to determine whether they are responsive or privileged.

124. The Town's failure to comply with its discovery obligations, and its obvious efforts to conceal relevant evidence, were specifically designed to deprive petitioners of evidence relevant to the Public Trust and Permissive Referendum issues in BGR 2.

125. Discovery as to the public trust and permissive referendum claims in BGR

2 has not concluded.

126. Earlier this year, BGR applied for and was granted a Temporary Restraining Order (“TRO”) with respect to activities at the Project Site in the BGR 2 case. The TRO application was triggered by the Town’s issuance of the Building Permit that is the subject of this special proceeding. See BGR 2, Index No. E2018007330, Motion #15, Doc Nos. 416-437. The Town and Developer opposed BGR’s TRO application based, among other things, on the fact that it was triggered by issuance of the **Building Permit which is the subject of this** action. See BGR 2, Index No. E2018007330, Motion #15.

127. This Court granted BGR’s application and issued a TRO against the Town and Developer to protect the members of the public who exercise their rights to use the Pedestrian Trail pursuant to the recorded easements that are the subject of the same public trust and permissive referendum claims as are litigated in this action. See **Exhibit Q (the “TRO”)**. E2018007330, Doc. No. 452. The TRO requires the Developer to (1) maintain the fencing and supervision that protects the public use of the pedestrian easement area and (2) limit crossing of the pedestrian easement area by construction vehicles or project activities to the maximum extent practicable. **Exhibit Q**, page 4. The TRO protects members of the public who wish to used the Pedestrian Trail where and as located.

128. The TRO also enjoins the Town from issuing a temporary or final certificate of occupancy for any building in the Project until (1) all traffic mitigation as described in the approved Project Applications and presented in the Environmental Impact Statement is installed and operational, and (2) the Access Management Plan improvements are

installed and operational. Exhibit Q, page 4. Consequently, the TRO issued in BGR 2 requires the Town to protect public safety by prohibiting issuance of any certificate of occupancy until such time as the AMP Traffic Mitigation measures, including those related to the cross-access easements, are installed and operational.

129. The ZBA's Determination purports to find facts and determine issues related to BGR's Public Trust Doctrine and Permissive Referendum claims, which are presently being litigated in BGR 2. A mere ZBA cannot be allowed to meddle with Supreme Court's determinations (in BGR 2) regarding public trust and permissive referendum issues, including those related to ongoing discovery or the TRO.

130. If the Court declines to strike the portions of the ZBA's Determination related to the public trust and permissive referendum claims, those claims must be litigated together with the identical claims that are already undergoing discovery and litigation in BGR 2.

131. There is no reason to try the public trust and permissive referendum claims twice. Consequently, BGR moves to consolidate this matter with BGR 2 simultaneously with commencing this special proceeding.

132. If the Third Cause of Action is not consolidated with the public trust and permissive referendum claims being litigated in BGR, it must be stayed until discovery in BGR 2 is completed and a trial is conducted pursuant to CPLR 7804(h).

Public Trust

133. The ZBA Determination found that BGR did not meet its burden of proof showing that the Pedestrian Easements were dedicated as parkland and are subject to

the Public Trust Doctrine. **Exhibit F** [Findings], par. 103.

134. Upon making this Determination, all the ZBA was legally entitled to do was deny BGR's appeal with respect to this claim. Instead, the ZBA exceeded its jurisdiction and purported to make factual determinations based on the *Ex Parte* Submissions:

- a. "The ZBA finds that the public's right to access and use the Auburn Trail will be enhanced and improved as a result of the Project. The ZBA finds the Project will not substantially interfere with the Pedestrian Easements." **Exhibit F** [Findings], para. 111; and
- b. "The ZBA finds that the Town has not constructed or maintained a pedestrian pathway within the Pedestrian Easements" (Exhibit F [Findings], para. 112)
- c. "The ZBA finds that this language in the Pedestrian Easements does not evidence an express or implied dedication of the Pedestrian Easements subject to the Public Trust Doctrine. The ZBA finds that the issuance of the Building Permit complies with Condition #41 of the Site Plan Approval because no State legislative approval is required." (Exhibit F [Findings], para. 113)
- d. "[T]he ZBA finds that the Pedestrian Easements are not parkland for purposes of the Public Trust Doctrine" (Exhibit F [Findings], para. 114).

Permissive Referendum

135. The ZBA Determination found that BGR did not meet its burden of showing that the Town is conveying or abandoning the Pedestrian Easements. (**Exhibit F** [Findings], para. 117).

136. Upon making this Determination, all the ZBA was legally entitled to do was deny BGR's petition with respect to this claim. Instead, the ZBA then exceeded its jurisdiction and purported to make factual determinations base on the *Ex Parte* Submissions: "Based on the administrative record, the ZBA finds that the Town is not conveying or abandoning the Pedestrian Easements. The ZBA finds that the Town is not required to conduct a permissive referendum." (**Exhibit F** [Findings], para. 117)

137. The ZBA acted in excess of its jurisdiction by purporting to make factual findings as to issues that are being litigated in BGR 2.

138. Moreover, the ZBA failed to give BGR a reasonable opportunity to be heard with respect to the Public Trust and Permissive Referendum claims.

139. Finally, the ZBA's Findings and determinations with respect to the Public Trust and Permissive Referendum claims are not supported by substantial evidence, lack a rational basis, are arbitrary and capricious, and are an abuse of discretion.

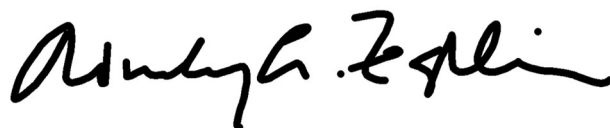
140. By reason of the foregoing, paragraphs 111-114; 117, 127, 133 and 145 of the ZBA Findings must be stricken and set aside.

WHEREFORE, petitioner respectfully requests that this court enter an order pursuant to CPLR Article 78 et seq.:

- e) annulling and vacating the Town of Brighton Zoning Board of Appeals' December 2, 2020 Determination on Brighton Grassroots, LLC's Application (10A-02-20) appealing the Town of Brighton Building Inspector's issuance of Building Permit Number 20170487 to the Daniele Family Companies for the Whole Foods Plaza Project;
- f) annulling and vacating the Town of Brighton Building Inspector's issuance of Building Permit No 20170487 to the Daniele Family Companies for the Whole Foods Plaza Project; and
- g) With respect to the Third Cause of Action, either:
 - v. annulling and vacating the ZBA's findings regarding the public trust doctrine and permissive referendum; and
 - vi. striking paragraphs 111-114; 117, 127, 133 and 145 of the Town of Brighton Zoning Board of Appeals' Findings, which was attached as Exhibit A to the ZBA's Resolution/Decision denying Petitioner/Plaintiff's ZBA Appeal; or, in the alternative
 - vii. consolidating the public trust and permissive referendum claims set forth in the Third Cause of Action together with those asserted in BGR 2; or in the alternative

- viii. staying the Third Cause of action pending a resolution on the merits of the public trust and permissive referendum claims set forth in the Third Cause of Action together with those asserted in BGR 2; and
- h) awarding petitioner its attorneys' fees, costs and disbursements, together with such other and further relief as this court deems just and proper.

Dated: January 4, 2021
Rochester, New York



The Zoghlin Group PLLC
Attorneys for Petitioner
Mindy L. Zoghlin, Esq., of counsel
Jacob H. Zoghlin, Esq., of Counsel
Office and Post Office Address
300 State Street, Suite 502
Rochester, New York 14614
Tel.: (585) 434-0790
Fax: (585) 563-7432
E-mail: Mindy@ZogLaw.com

EXHIBITS ATTACHED:

- A. Temporary Restraining Order, BGR4 NYSCEF Doc. No. 59
- B. BGR Appeal to ZBA dated August 20, 2020
- C. BGR Amended Appeal to ZBA dated September 25, 2020
- D. BGR Amended Appeal to ZBA dated October 6, 2020
- E. ZBA Record Documents ZBA010544-010581
- F. December 2, 2020 ZBA Determination
- G. Developer FEAF
- H. FEIS page 287
- I. FEIS page 262
- J. TB SEQRA Findings Statement
- K. TB Incentive Zoning Resolution
- L. PB SEQRA Findings
- M. Town 9869
- N. Mamasans Mortgage
- O. Notice of Default
- P. Stipulation and Order appointing Referee
- Q. TRO ECF Doc. No. 452
- R. FEIS p. 54-55
- S. Construction timeline
- T. ZBA Minutes from October 7, 2020 (see pages 175-176)
- U. S&A Hospitality Mortgage

V. September 17, 2018 Planning Board Approval Resolutions with Conditions

STATE OF NEW YORK)
COUNTY OF MONROE } SS.:

Howard R. Jacobson, being duly sworn, deposes and says that deponent is Managing Member of Brighton Grassroots LLC and an individual petitioner in the within matter. Deponent has read the within Verified Petition and Complaint and knows the contents thereof; that the same is true to deponent's knowledge except as to matters stated to be alleged on information and belief and that as to such matters deponent believes them to be true.

The grounds for deponent's belief as to such matters are personal inquiry and examination conducted in the course of deponent's investigation into the facts and circumstances of this matter.



Howard R. Jacobson

Sworn before me this 31
Day of December, 2020.


Notary Public

JULIE A MONTANA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MO6357113
Qualified In Monroe County
My Commission Expires 04-10-2021