

MONROE COUNTY CLERK'S OFFICE

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Instrument: ORDER

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Date: 01/13/2021

Time: 3:27:55 PM

Return To:  
Donald Scardino  
99 Exchange Blvd  
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

Total Fees Paid: \$0.00

Employee: CW

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



At an Ex Parte term of the Supreme Court, held in  
and for the County of Monroe at the Monroe  
County Hall of Justice in the City Rochester, New  
York, on the 13 day of January, 2021.

STATE OF NEW YORK  
SUPREME COURT

MONROE COUNTY

BRIGHTON GRASSROOTS, LLC,

Petitioner/ Plaintiff,

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,

Index No.:

Respondents/Defendants.

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**ORDER TO SHOW CAUSE**

Upon the annexed Verified Petition of petitioner Brighton Grassroots LLC sworn  
to December 31, 2020, with the attached exhibits and the Affirmation of Mindy L.  
Zoghlin, Esq. dated January 4, 2021.

Let Respondents Town of Brighton Zoning Board of Appeals, Town of Brighton  
Office of the Building Inspector, Town of Brighton (collectively, the "Town"), M&F, LLC;  
Daniele SPC, LLC; Mucca Mucca LLC; Mardanth Enterprises, Inc.; and Daniele  
Management, LLC; Collectively Doing Business As Daniele Family Companies  
(collectively, the "Developer"), show cause, if any there be, at a Special term of this

Court to be held

*via telephonic / video*

Conferencing, on the 28 day of

January 2021 at 2:30 in the fore/after noon of that day, why an Order

should not be issued:

- 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 in the petition, 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) consolidating this action with the prior, closely-related proceeding captioned *Brighton Grassroots, LLC v. Town of Brighton Planning Board, et al*, Monroe County Index Number E2018007330 (BGR2 / the Prior Action) pursuant to CPLR §602; and
- e) awarding petitioner its attorneys' fees, costs and disbursements, together with such other and further relief as this court deems just and proper.

and it is further

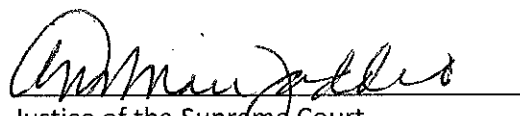
**ORDERED**, that sufficient reason and good cause being shown by Petitioner as the movant herein, that service of a copy of this Order, together with the papers upon which it is granted, be served upon the Town and Developer parties via electronic mail (e-mail) to their counsel of record<sup>1</sup> within two days of this Order being granted, and such service shall be deemed good and sufficient; and it is further

**ORDERED**, that opposition papers, if any, shall be served no later than Jan 22, 2021 at 5:00 p.m., and such opposition papers shall be served via NYSCEF; and it is further

**ORDERED**, that reply papers, if any, shall be served no later than Jan 26, 2021 at 5:00 p.m., and such reply papers shall be served via NYSCEF; and it is further

**ORDERED**, that sur-reply papers are not permitted.

Signed this 13 day of January 2021 in Rochester, New York.

  
Justice of the Supreme Court

ENTER:

Hon. Ann Marie Taddeo, J.S.C.

<sup>1</sup> Counsel for the Town Respondents is John A. Mancuso, Weaver, Mancuso, Brightman PLLC, 95 Allens Creek Road, Building 1, Suite 318, Rochester, New York, 14616, jmancuso@wmbpllc.com. Counsel for the Developer is Warren B. Rosenbaum, Woods Oviatt Gilman LLP, 1900 Bausch & Lomb Place, Rochester, New York 14604, wrosenbaum@woodsoviatt.com. Petitioners shall also serve, by the same method, counsel for Save Monroe Avenue, Inc., 2900 Monroe Ave., LLC, Cliffords Of Pittsford, L.P., Elexco Land Services, Inc., Julia D. Kopp, Mark Boylan, Anne Boylan, And Steven M. Deperrior, Charles W. Malcomb, Hodgson Russ LLP, The Guaranty Building, 140 Pearl Street, Suite 100, Buffalo, New York 14202, CMalcomb@hodgsonruss.com, and Counsel for Clover/Allen's Creek Neighborhood Association, Laurie Styka Bloom, Nixon Peabody LLP, 40 Fountain Plaza, Suite 500, Buffalo, New York 14202-2224, LBloom@nixonpeabody.com.