STATE OF NEW YORK
SUPREME COURT MONROE COUNTY

BRIGHTON GRASSROOTS, LLC,
(INCLUDING MEMBERS: HOWARD
R. JACOBSON,
MARGERY HWANG,
ROBERTA KERRY,
DAVID G. GRANT, ANTHONY KINSLOW,
PETER MULBERY, LISA WHITTEMORE,
NORMAN WHITTEMORE, ROBERTA
KERRY-SHARICK, LINDSAY DUELL),

Petitioners/
Plaintiffs,

vs.

TOWN OF BRIGHTON,
TOWN OF BRIGHTON TOWN BOARD,
TOWN OF BRIGHTON PLANNING BOARD,
M&F, LLC; DANIELE SPC, LLC
MUCCA MUCCA LLC;
MARDANTH ENTERPRISES, INC.;
DANIELE MANAGEMENT, LLC;
COLLECTIVELY DOING BUSINESS AS
DANIELE FAMILY COMPANIES, ROCHESTER
GAS AND ELECTRIC CORPORATION,
NMS ALLENS CREEK, INC., THE FIRST
BAPTIST CHURCH OF ROCHESTER;
ATLANTIC HOTEL GROUP, INC.; 2717 MONROE
AVENUE, LLC; MAMASAN'S MONROE, LLC;
2799 MONROE AVENUE, LLC; QING KAI SUN;
HEMISPHERE HOTELS INC.; 2835 MONROE
HOLDINGS LLC; 2875 MONROE CLOVER, LLC;
MONROE OFFICE SUITES, LCC; CLOVERPARK
LIMITED PARTNERSHIP; NEW YORK STATE
DEPARTMENT OF TRANSPORTATION; JOHN DOES
1- 20; AND ABC CORPORATIONS 1-20,

Index No. _____

Respondents/
Defendants.

VERIFIED PETITION AND COMPLAINT

Petitioners/plaintiffs ("Petitioners"), by their attorneys, The Zoghlin Group PLLC, complain of Respondents/Defendants ("Respondents") as follows:

I. INTRODUCTION

1. This is a combined Declaratory Judgment and Article 78 proceeding to challenge the Town of Brighton's (the "Town") decisions granting Incentive Zoning approval and adopting the SEQRA Findings Statement for the Whole Foods Plaza project (the "Action" or "Proposed Development") without complying with, among other things, New York State Town Law § 261(b) (the State Incentive Zoning Law enabling statute); the Town of Brighton Zoning Code/the Town of Brighton Incentive Zoning Law; the New York State Environmental Quality Review Act ("SEQRA"); and the New York State Open Meetings Law.

2. The Action is an illegal use of Incentive Zoning because, among other things, the Town exceeded the scope of its lawful authority by granting benefits to the developer that far exceeded the value of "amenities" granted to the Municipality. In fact, the "amenities" are in actuality mitigation measures that the municipality could have required in the normal zoning and SEQRA review process, and therefore do not legally constitute Incentive Zoning concessions.

3. The Action required, but failed to obtain, state legislative approval for the alienation of public parkland in violation of the public trust doctrine.

4. The Action required, but failed to obtain, conveyance of a Town owned real estate interest subject to a permissive referendum pursuant to NY Town Law § 90 et seq.

5. Petitioners seek an order pursuant to CPLR Article 78 and 3001 et seq.:

a) annulling and vacating the March 28, 2018 Resolution granting Incentive Zoning approval for the Proposed Development (the "Incentive Zoning Resolution");

b) annulling and vacating the March 28, 2018 Resolution adopting the SEQRA Findings Statement (the "SEQRA Resolution");

c) annulling and vacating all related actions;

d) temporarily and permanently enjoining respondents from taking any action regarding approvals for the Proposed Development without first complying with the provisions of the NYS Town Law § 261-6 (Incentive Zoning enabling legislation); and the provisions of the Town of Brighton Town Code;

e) temporarily and permanently enjoining Respondents from taking any action regarding approvals for the Proposed Development without first complying with the provisions of the State Environmental Quality Review Act ("SEQRA"), and

New York Environmental Conservation Law ("ECL"), section 8-0101 et seq.;

f) temporarily and permanently enjoining the Respondents from proceeding with the Proposed Development until the Town has alienated the Recreation Easement, with prior State legislative approval, all in compliance with the Public Trust Doctrine;

g) temporarily and permanently enjoining Respondents from taking any action regarding approvals for the Proposed Development without first conveying the Town owned real estate interest subject to a permissive referendum pursuant to Town Law § 90 et seq., and upon meaningful notice to the public in compliance with the spirit and intent of the Open Meetings Law;

h) temporarily and permanently enjoining the Respondents from conducting any activities/site work with respect to the Proposed Development during the pendency of this action;

i) directing the Town of Brighton to comply with Chapter 13 of the Brighton Town Code by preserving the Recreation Easement and its natural features;

j) directing the Town of Brighton to carry out its duty, as Trustee, to protect the Recreation Easement, as trust corpus, for the benefit of the people of New York State, the Trust

beneficiaries, by enjoining the Town of Brighton from implementing any plan to relocate the Recreation Easement;

k) permanently enjoining the Town of Brighton from alienating the Recreation Easement without prior legislative approval;

l) declaring that the Town's conveyance of the Recreation Easement to the Developer is subject to the public's right to petition for a permissive referendum, and to give the public adequate notice pursuant to the intent and requirements of New York's Open Meetings Law;

m) determining that the Town's conduct with respect to the Action violated New York's Open Meetings Law; and

n) awarding petitioners their attorneys' fees, costs and disbursements, together with such other and further relief as this court deems just and proper.

II. THE PARTIES

6. Brighton Grassroots, LLC ("Brighton Grassroots") 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 February 28, 2018 public hearing to object to the Town approving this Project under Incentive Zoning instead of applying the

standard protections of the zoning code.

7. Brighton Grassroots was formed for the purposes of, among other things, advancing by any legal means the betterment of the community of the Town of Brighton by: encouraging and advocating for open, honest and transparent local government; adherence to local zoning, land use and other laws; and education, litigation and advocacy related thereto.

8. Brighton Grassroots believes that it was unlawful for the Town to circumvent the traditional zoning process by granting Incentive Zoning approvals for the Proposed Development in a manner that misused the Incentive Zoning process established under state and local law.

9. Brighton Grassroots believes that it was unlawful for the Town to circumvent the traditional zoning process by granting Incentive Zoning approvals for the Proposed Development in a manner that provided grossly disproportionate benefits to the Developer as compared to the benefits received by the community.

10. Brighton Grassroots commenced this litigation because, among other reasons,

A. It was unlawful for the Town to use Incentive Zoning (or any zoning) for the purpose of giving this Developer a financial "bailout" to help the Developer correct its poor financial decisions, instead of applying the legal standards that must be applied.

B. The Town Board, as Lead Agency under SEQRA, failed to identify and mitigate potentially significant traffic impacts associated with the Proposed Development.

C. The Town Board's conduct with respect to the Proposed Development violated New York's Open Meetings Law, and the Town representatives' obligations to act in a transparent (and socially responsible) manner in violation of the spirit, intent and language of the Open Meetings Law.

D. The Town Board's decision unlawful misused the Incentive Zoning process to permit oversized private development in violation of standard zoning limits for the primary purpose of increasing this Developer's profits, at the expense of the community, instead of applying the appropriate legal standards.

11. The Town Board's efforts ignored its legal obligations under the public trust doctrine by agreeing to alienate public parkland without prior legislative approvals and by authorizing a conveyance of Town property without a permissive referendum.

12. Brighton Grassroots constituents come from the entire Brighton community (and, increasingly, parts of Pittsford). Many of Brighton Grassroots' members reside in the immediate area that would be directly and adversely affected by the facts and circumstances pleaded herein, and many of its members also regularly use the segment of the recreational trail commonly referred to as the Auburn Trail that runs

between Allens Creek Road and Clover Street in the Town of Brighton, and therefore have an interest different from the public at large.

13. The interests sought to be protected by Brighton Grassroots are germane to its purposes.

14. Howard R. Jacobson is an individual residing at 10 Sandringham, Town of Brighton ("Jacobson"). Jacobson resides approximately 1.2 miles north and east of the Proposed Development. Jacobson bicycles the Auburn Trail in the vicinity of the Proposed Development a couple of times every month, weather permitting. Jacobson is the Managing Member of Brighton Grassroots.

15. Lisa Whittemore ("L. Whittemore") is an individual residing at 2262 Clover Street, Town of Brighton. The Whittemore residence is directly across Clover Street from the Project Site Location. Whittemore is a Member of Brighton Grassroots.

16. Norman Whittemore ("N. Whittemore") is an individual residing at 2262 Clover Street, Town of Brighton. The Whittemore residence is directly across Clover Street from the Project Site Location. N. Whittemore is a Member of Brighton Grassroots.

17. Margery Hwang ("Hwang") is an individual residing at 2230 Clover Street, Town of Brighton. The Hwang residence is directly across the street from the Project Site Location. Hwang is a Member of Brighton Grassroots.

18. Roberta Kerry Sharick ("Sharick") is an individual residing at

10 Schoolhouse Lane, Town of Brighton. The Sharick residence is across Allens Creek Road from the Recreational Trail/Project Site Location. Sharick is a Member of Brighton Grassroots.

19. David Grant ("Grant") is an individual residing at 10 Schoolhouse Lane, Town of Brighton. The Grant residence is across Allens Creek Road from the Recreational Trail/Project Site Location. Grant is a Member of Brighton Grassroots. Grant and his wife Roberta walk on the Auburn Trail in the vicinity of the Proposed Development daily.

20. Anthony Kinslow ("Kinslow") is an individual residing at 265 Allens Creek Road. The Kinslow residence is approximately 950 feet from the Project Site Location. Kinslow is a Member of Brighton Grassroots.

21. Dr. Peter Mulbery ("Mulbery") is an individual residing at 295 Allens Creek Road. The Mulbery residence is approximately 1,000 feet from the Project Site Location. Mulbery is a Member of Brighton Grassroots.

22. Lindsay Duell ("Duell") is an individual residing at 59 Shoreham Drive, Town of Brighton. The Duell residence is across Clover Street from the Project Site Location. Duell jogs the Auburn Trail in the vicinity of the Proposed Development 2-3 times per week unless there is snow on the ground. In addition, during the summer months Duell takes her three young children on family walks on the Auburn Trail in the vicinity of the Proposed Development weekly. Duell is a Member of

Brighton Grassroots.

23. Respondent Town of Brighton is a municipal corporation organized and existing under New York Town Law, with offices at 2300 Elmwood Avenue, Town of Brighton, Monroe County, New York.

24. Respondent Town Board of the Town of Brighton, New York (the "Town" and/or the "Town Board") and is the governing board of the Town of Brighton, New York and maintains an office at 2300 Elmwood Avenue, Rochester, New York 14618.

25. Respondent Town of Brighton Planning Board (the "Planning Board") and is the Planning Board of the Town of Brighton, New York and maintains an office at 2300 Elmwood Avenue, Rochester, New York 14618.

26. 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.

27. 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.

28. Upon information and belief, Respondent-Defendant Mucca

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.

29. 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.

30. 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.

31. Upon information and belief, Respondents-Defendants M&F, Daniele SPC, Mucca 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.

32. Upon information and belief, Respondent-defendant Rochester Gas and Electric Corporation ("RG&E") is a domestic corporation organized and existing under the laws of the State of New

York, with a principal place of business at 89 East Avenue, Rochester, New York. RG&E is named herein solely as a potentially necessary party to these proceedings.

33. Upon information and belief, respondent-defendant NMS Allens Creek, Inc. ("NMS") is a domestic corporation organized and existing under the laws of the State of New York, with a principal place of business at 10 Pine Acres Drive, Rochester, New York. Upon information and belief, NMS owns certain real property commonly known as 95 Allens Creek Road, Town of Brighton and has a property interest in the Recreational Easement at issue herein. NMS is named herein solely as a potentially necessary party to these proceedings.

34. Upon information and belief, First Baptist Church of Rochester (the "Church") owns certain real property at 175 Allens Creek Road, Town of Brighton and has expressed an interest in conveying a 2.2-acre portion of that land to the Daniele Family Corporations in connection with the Proposed Development. The Church is named herein solely as a potentially necessary party to these proceedings.

35. Upon information and belief, Atlantic Hotel Group, Inc., ("Atlantic") is a domestic corporation organized and existing under the laws of the State of New York, with a principal place of business at 2729 Monroe Avenue, Rochester, New York. Upon information and belief, Atlantic owns certain real property commonly known as 2729 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location.

Atlantic is named herein solely as a potentially necessary party to these proceedings.

36. Upon information and belief, 2717 Monroe Avenue, LLC ("2717 Monroe") is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with a principal place of business at 2815 Monroe Avenue, Rochester, New York. Upon information and belief, 2717 Monroe owns certain real property commonly known as 2717 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. 2717 Monroe is named herein solely as a potentially necessary party to these proceedings.

37. Upon information and belief, Mamasan's Monroe, LLC ("Mamsan's") is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with a principal place of business at 2800 Monroe Avenue, Rochester, New York. Upon information and belief, Mamsan's owns certain real properties commonly known as 2735 Monroe Avenue and 2787 Monroe Avenue, Town of Brighton, which are part of the Off-Site Project Location. Mamasan's is also the applicant for zoning approvals with respect to 2735 and /or 2787 Monroe Avenue. Mamasan's is named herein solely as a potentially necessary party to these proceedings.

38. Upon information and belief, Qing Kai Sun ("Sun") is an individual residing and doing business in Monroe County, New York. Upon information and belief, Sun owns certain real property commonly

known as 2775 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. Sun is named herein solely as a potentially necessary party to these proceedings.

39. Upon information and belief, 2799 Monroe Avenue, LLC ("2799 Monroe") is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with a principal place of business at 2799 Monroe Avenue, Rochester, New York. Upon information and belief, 2799 Monroe owns certain real property commonly known as 2799 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. 2799 Monroe is named herein solely as a potentially necessary party to these proceedings.

40. Upon information and belief, Hemisphere Hotels Inc. ("Hemisphere") is a domestic corporation organized and existing under the laws of the State of New York, with a principal place of business at 2815 Monroe Avenue, Rochester, New York. Upon information and belief, Hemisphere is the successor in interest to Apex Hospitality Inc. Hemisphere owns certain real property commonly known as 2815 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. Hemisphere is named herein solely as a potentially necessary party to these proceedings.

41. Upon information and belief, 2835 Monroe Holdings LLC ("2835 Monroe") is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with a

principal place of business at 2835 Monroe Avenue, Rochester, New York. Upon information and belief, 2835 Monroe owns certain real property commonly known as 2835 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. 2835 Monroe is named herein solely as a potentially necessary party to these proceedings.

42. Upon information and belief, 2875 Monroe Clover, LLC ("2875 Monroe") is a domestic limited liability company 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. Upon information and belief, 2875 Monroe owns certain real property commonly known as 2875 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. 2875 Monroe is named herein solely as a potentially necessary party to these proceedings.

43. Upon information and belief, Monroe Office Suites, LLC ("Monroe Office") is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with a principal place of business at 2740 Monroe Avenue, Rochester, New York. Upon information and belief, Monroe Office Suites owns certain real property commonly known as 2851 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. Monroe Office is named herein solely as a potentially necessary party to these proceedings.

44. Upon information and belief, Cloverpark Limited Partnership

("Cloverpark") is a foreign limited partnership organized and existing under the laws of the State of Idaho, with a principal place of business at 2425 Clover Street, Rochester, New York. Upon information and belief, Cloverpark owns certain real property commonly known as 2425 Clover Street, Town of Brighton, which is part of the Off-Site Project Location. Cloverpark is named herein solely as a potentially necessary party to these proceedings.

45. Upon information and belief, New York State Department of Transportation ("NYS DOT") is a department of New York State and has an interest in property that is part of the Off-Site Project Location. NYS DOT is named herein solely as a potentially necessary party to these proceedings.

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

47. 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

48. The Action 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.

49. 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.[1]

50. The Action has been described as having a, "On-Site Project Location" and an "Off-Site Project Location."

(a) The On-Site Project Location

51. 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.

52. The On Site Project Location consists of the following parcels:

Address	Use
2740 Monroe Avenue	Former Mario's Italian Restaurant
2750 Monroe Avenue	Former Clover Lanes bowling parcel
2900 Monroe Avenue	Part of First Baptist

[1] See Final Environmental Impact Statement for the Whole Foods Plaza Project prepared by Passero Associates for the Brighton Town Board on behalf of the Daniele Family Companies dated January 24, 2018 (the "FEIS"), page 20. A copy of the FEIS is attached hereto as Exhibit "A."

Address	Use
	Church of Rochester parcel
Small triangle of land from RG&E	Auburn Trail

53. The On-Site Project Location includes a metes and bounds recreational easement granted to the Town of Brighton and the public for the purpose of "pedestrian use by [the Town] its licensees, and the public and to thereafter construct, reconstruct, extend, operate, inspect, maintain, repair and replace a pedestrian pathway which the [Town] shall require for public use across said land" (the "Recreation Easement").

54. The Recreation Easement is established by:

A. Easement from Monroe Real Estate Limited Liability Company to the Town of Brighton dated February 26, 1997 and recorded in the Monroe County Clerk's Office at on March 14, 1997 at liber 8847 of Deeds, page 175 ("Exhibit A");

B. Easement from Executive Square Office Park, LLC to the Town of Brighton dated October 17, 2001 and recorded in the Monroe County Clerk's Office at on October 24, 2001 at liber 9531 of Deeds, page 433 (Exhibit "B");

C. Easement from Clover Lanes Inc. to the Town of Brighton dated October 28, 2001 and recorded in the Monroe County Clerk's Office at on October 24, 2001 at liber 9531 of Deeds, page 441 (Exhibit "C"); and

D. Easement from Mamasan's Monroe, LLC to the Town of Brighton dated October 1, 2003 and recorded in the Monroe County Clerk's Office at on October 21, 2003 at liber 9865 of Deeds, page 28 (Exhibit "D").

55. The Recreation Easement is approximately 1/3- mile long and ten feet wide and is part of the longer 9.1- mile Auburn Trail linear park that runs from Victor to Farmington.

56. The Applicant proposes to convert the Recreation Easement to a paved parking area of the Proposed Development and relocate the trail elsewhere.

57. According to the New York State Department of Transportation ("NYS DOT"), ". . . the Project, with the introduction of a traffic signal on Route 31 as proposed, will likely have a significant impact on traffic. Increased delays, long queue lengths, and the potential for short periods of gridlock may occur on and approaching Monroe Avenue." A copy of the letter from the NYS DOT Letter dated May 19, 2017 is attached hereto as Exhibit "E."

(b) The Off-Site Project Location

58. 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:

Address	Use
2717 Monroe Avenue	City Mattress
2729 Monroe Avenue	Comfort Inn
2735 Monroe Avenue	Former Pizza Hut
2775 Monroe Avenue	Sakura Home Restaurant
2787 Monroe Avenue	Dunkin Donuts
2799 Monroe Avenue	Maximum Tan
2815 Monroe Avenue	California Closets
2835 Monroe Avenue	Brick Pizza and Country Inn & Suites
2851 Monroe Avenue	Palazzo Jewelers

2875 Monroe Avenue	Royal Carwash
2526 Clover Street	Clover Park Professional Building

59. 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.

60. 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.

61. The AMP would, among other things:

a) Extend the "backage" road connecting 2717-2787 Monroe Avenue across 2799 and 2815 Monroe Avenue;

b) Convert the existing curb cut at City Mattress from full access to right–in and right-out.

c) Eliminate other curb cuts or convert them to right-in, right-out "on a case-by-case basis as each of the lots within the AMP are redeveloped over the course of time." FEIS, p. 25.

62. The Town Planning Board and Zoning Board of Appeals ("ZBA") has been considering applications to relocate the Mamasan's restaurant from the Site Project Location to the Off-Site Project Location (former Pizza Hut) while the Incentive Zoning Application for the Proposed Development has been under consideration by the Town Board.

63. The Mamasan's application for the Off-Site Location includes a drive-through pick-up window. Brighton ZBA Doc. 170.

64. On February 7, 2018 the Town of Brighton ZBA granted Mamasan's Monroe LLC's application for an area variance from lot coverage requirements.

65. The Town Planning Board and Zoning Board of Appeals ("ZBA") considered applications to demolish the former Friendly's restaurant and construct a City Mattress store at 2717 Monroe Avenue (on the Off-Site Project Location) while the Incentive Zoning Application for the Proposed Development has been under consideration by the Town Board.

66. Upon information and belief, the owner of 2717 Monroe Avenue received approvals for the City Mattress Development in late 2016 and/or early 2017.

67. The Town Board failed to consider the cumulative impacts of the Proposed Development together with the redevelopment of the Off-Site Project Location.

68. The Town Board improperly segmented environmental review of the Proposed Development from the redevelopment of the Off-Site Project Location.

IV. THE APPLICATION PROCESS

69. On February 18, 2015, the Developer submitted a request to the Town Board for Incentive Zoning approval for the Whole Foods Plaza,

seeking to avoid the standard zoning process, that would have required the Developer to obtain dozens of permits/approvals. The Developer later amended the application on May 15th, 2015 to include a Traffic Impact Study (TIS), Access Management Plan (AMP), Full Environmental Assessment Form, revised lighting plan and expanded engineers report.

70. The Town Board assumed Lead Agency status and issued a Positive Declaration on July 8, 2015 pursuant to SEQRA.

71. The Town Board conducted a scoping hearing on September 9, 2015 and accepted written comments on the proposed scope through September 11, 2015. The Town Board adopted the Scoping Outline for the Draft Environmental Impact Statement (DEIS) on September 24, 2015.

72. The applicant submitted a DEIS to the Town Board on January 20, 2016.

73. The Town Board determined that the DEIS was not complete and adequate for public review.

74. The applicant submitted a revised DEIS on April 22, 2016 and supplemented it by correspondence on May 6, 2016.

75. The Town Board accepted the revised DEIS as complete for public review on May 25, 2016 beginning the public comment period. The Board conducted public hearings on June 22, 2016 and July 13, 2016, with written comment accepted until August 1, 2016.

76. Because the DEIS was insufficient, the Town Board issued Resolution #11 requiring the preparation of a Supplemental Draft Environmental Impact Statement (SDEIS) on August 24, 2016 due to discrepancies in the DEIS concerning traffic signal timings (among other things) at the intersection of Monroe Avenue and Clover Street. The Town Board required that that the SDEIS "re-analyzes the potential significant adverse traffic impacts of this proposed project and that such SDEIS be based on the transportation sections, together with any other transportation related topics contained in the scope adopted by the Town Board on September 24, 2015". The Town Board further directed the applicant to "prepare a new Traffic Study" and "...provide written responses to all substantive transportation comments received during the Public Hearing and written comment period".

77. The applicant submitted an SDEIS on November 29th, 2016 which the Town Board deemed incomplete.

78. The applicant then submitted a revised SDEIS on February 14th which was supplemented by correspondence on March 14th, 2017. The Town Board determined that the revised SDEIS was complete and adequate and accepted it for public review on April 12, 2017 opening the public comment period.

79. The Town Board conducted a public hearing on the revised SDEIS on May 10th, 2017. The public comment period ended on May 22, 2017.

80. On January 24, 2018 the applicant submitted and the Town Board accepted the Final Environmental Impact Statement ("FEIS"). A copy of the FEIS is attached hereto as Exhibit "F."

81. The Town conducted a public hearing on the Incentive Zoning application on February 28, 2018. The hearing was held at the Council Rock School instead of Town Hall. An estimated 500 Brighton residents attended the public hearing in opposition to this Project proceeding under Incentive Zoning, many of whom were effectively turned away because of lack of adequate space.

82. On March 14, 2018, without any intervening public discussion by the Board, the Town Supervisor held a press conference announcing that the Town Board was going to approve the Proposed Development but would require the Developer to reduce the project size by 6300 SF and enter into a Restrictive Covenant prohibiting vehicular access onto Clover Street and Allens Creek Road.

83. The Developer submitted an amended Letter of Intent on March 21, 2018, in which it agreed to reduce the project size by 6300 SF. A copy of the March 21, 2018 Letter of Intent is attached hereto as Exhibit "G."

84. On March 28, 2018, with only a few hours' notice to the public, despite written requests to the Town for meaningful notice so the public could attend, the Town Board passed a Resolution approving the Incentive Zoning application and SEQRA Findings Statement. The

Incentive Zoning Resolution is attached hereto as Exhibit "H." The SEQRA Findings Statement is attached hereto as Exhibit "I."

85. This Court should enter the relief requested because, for all the reasons set forth herein, the Town of Brighton proceeded contrary to lawful procedure by approving the Incentive Zoning application and SEQRA Findings Statement for the Proposed Development.

86. The Town also violated the spirit, intent and language of New York's Open Meetings Law by failing to give the public adequate advance notice so it could attend the March 28, 2018 meeting, and such advance notice would have been "practicable."

V. THE TOWN'S INCENTIVE ZONING RESOLUTION VIOLATES THE TOWN OF BRIGHTON INCENTIVE ZONING LAW

(a) The Incentive Zoning Law

87. The purpose of Incentive Zoning is "to advance the town's specific physical, cultural and social policies in accordance with [its] comprehensive plan". Town Law §261-b(2); Brighton Code §209-1.

88. Incentive Zoning works by providing "incentives" to developers, in exchange for the developer providing "amenities" to the Town that may not be otherwise required or obtained. *Asian Americans for Equality v Koch*, 72 N.Y.2d 121, 128-129 (1988).

89. Incentives are benefits to the developer that would not ordinarily be permitted under the zoning code offered in exchange amenities to the Town that it could not ordinarily require under traditional zoning. Town Law §261-b(1).

90. Incentive zoning is a "valuable and flexible tool whereby cities may obtain amenities which they may not otherwise demand of private owners and, at the same time, owners may obtain highly desirable economic advantages." *Trinity Place Co. v Fin. Adm'r of City of New York*, 38 N.Y.2d 144, 150 (1975).

91. Amenities do not include work being performed as mitigation or that is required under another regulation. Brighton Code §209-3(B).

92. Similarly, 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 are sufficiently limited to avoid the developer from gaining a windfall as a result. *Asian Americans for Equality v Koch*, 72 N.Y.2d 121, 129 (1988).

(b) Brighton's Incentive Zoning Law is Impermissibly Broad

93. All Brighton zoning districts are eligible for zoning incentives. Brighton Code Article I, section 209-2 (in a manner broader than the State enabling legislation intended).

94. Incentives may be offered to applicants who offer an acceptable amenity to the Town in exchange for the incentive. Brighton Code 209-2 (in a manner broader than the State enabling legislation intended).

95. Incentives may be offered for the following extremely broad list of amenities, either on or off the site of the subject application:

- Affordable housing;

- Passive and active open space and related improvements;
- Parks;
- Child-care or elder-care facilities;
- Utilities;
- Road improvements;
- Health or other human-service facilities;
- Cultural or historic facilities;
- Other facilities or benefits to the residents of the community (emphasis added)
- Any combination of amenities; and/or
- Cash in lieu of any amenity(s).

Brighton Code 209-3(A).

96. The Town's Incentive Zoning Law is impermissibly broad and *ultra vires* because it purports to give the Town Board unlimited discretion to offer any "other facilities or benefits to residents of the community" rather than limiting the incentive to a "specific purpose authorized by the town board" as required by NY Town Law 261-b(1)(c); 261-b(3)(c) and 261-b(3)(e)(i).

97. The Town's Incentive Zoning Law is not tied to the specific goals set forth in the Town's Comprehensive Plan, as required by NY Town Law 261-b.

(c) Brighton's Incentive Zoning Law is Not Consistent with Its Comprehensive Plan

98. New York's Incentive Zoning enabling legislation requires a town incentive zoning law to be consistent with the town's Comprehensive Plan. NY Town Law section 261-b(2).

99. Brighton's Comprehensive Plan states that "incentive zoning proposals should include a percentage set aside for affordable housing units." Comprehensive Plan 2000, Vision, Goals & Recommendations p. 22, para. 6. https://www.townofbrighton.org/365/Comprehensive-Plan-2000

100. These amenities must be in addition to any mandated requirements pursuant to other provisions of the Comprehensive Development Regulations. Brighton Code 209-3(B).

101. The Town's Incentive Zoning Law is impermissibly broad and *ultra vires* because it is not in accordance with the Comprehensive Plan, as required by NY Town Law 261-b(2).

(d) Brighton's Incentive Zoning Law Has Specific Requirements for Single Family Districts

102. The Town's Incentive Zoning Requirements for Single Family Residential Districts are set forth in Article II of the Incentive Zoning Law and are more limited than the general requirements set forth in Article I.

103. When a general and a specific provision in the same law are in direct conflict, the specific provision must control. *Alabi v. Community Bd. No. 2 of Brooklyn*, 17 AD3d 459 (2d Dept. 2005).

104. The Brighton Town Code specifically provides that, incentives may only be offered to applicants who "provide the amenity of preservation of the existing housing stock in Brighton in a single family residential district." Brighton Code 209-7.

105. The only incentive permitted to a developer in a single family residential district is to increase the maximum livable floor area of a single family detached dwelling. Brighton Code 209-10. Notably, there is no provision providing for an incentive allowing the change of use from residential to commercial.

106. All of the criteria and procedures for approving Incentive Zoning for properties in a single family residential zone involve the livable floor area of the existing structure and lot coverage. Brighton Code 209-11(A).

107. The Town Board illegally granted incentives to the Developer that were not specifically authorized by Brighton Town Code Chapter 209, Article II.

(e) The Town Board Granted Incentives to the Developer That Grossly Exceed the Value of Amenities Provided to the Community

108. In Its Incentive Zoning Resolution approving the proposed Development on March 28, 2018, the Town Board granted the following incentives to the Developer:

- Lot 1 Incentives
  - application of the commercial zoning district regulations to 108 feet beyond the 30-foot zone

(measured to the edge of the parking lot/turn around pavement) currently permitted under §201-9;

- waiver of the conditional use requirement for a food market in a General Commercial District under §203-84;
- reduction of the side setback for the grocery store from 25 feet to 10 feet;
- construction of a free-standing monument sign and building mounted signs on sides of the building other than the principal entrance side;
- use of three building mounted signs totaling 400 square feet and one monument sign totaling 100 square feet;
- increase of the allowable paved area on the RLA parcel from 35% to 95%;
- reduction of the front setback from 60 feet to 11.8 feet;
- increase of the maximum lot coverage from 65% to 87%;
- increase of the maximum density from 10,000 square feet per acre to 14,326 square feet per acre, subject to the total overall density of the Property does not exceed 83,700 square feet;
- reduction in the front yard parking setback from 20 feet to 13 feet; and
- reduction of the front yard sidewalk pavement setback to zero feet.

• Lot 2 Incentives

- application of the commercial zoning district regulations to three feet beyond the 30-foot zone of the RLA parcel;
- waiver of the conditional use permit requirement for the grocery store use and coffee shop use;
- reduction of the front yard setback for outdoor dining from 20 feet to 16 feet;

- reduction of the stacking lane setback for the drive-thru from 10 feet to seven feet from the street lot line in the front yard;
- signs for building number three:
  - a two-sided drive-thru sign totaling seven square feet;
  - a clearance sign totaling 3 square feet; and
  - an exit only sign totaling three square feet.
- 14 building mounted signs totaling 1,100 square feet for building number two;
- Two building mounted signs totaling 181 square feet for building four;
- Increase in maximum projection of signs above grade from 20 feet to 27 feet and two inches;
- increase of the allowable paved area from 35% of rear yard to 82%;
- reduction of the front setback from 60 feet to 27 feet for building three;
- reduction of the front setback from 60 feet to 26 feet for building four;
- increase of the maximum lot coverage from 65% to 91%;
- increase of the maximum density from 10,000 square feet per acre to 11,235 square feet per acre, subject to the total overall density of the Property does not exceed 83,700 square feet;
- reduction of front yard parking setback from 20 feet to seven feet;
- reduction of side yard parking setback from 20 feet to five feet;
- reduction of the front yard sidewalk pavement setback to zero feet;
- reduction of the lot line sidewalk pavement setback to zero feet; and

- Planning Board has further authority to waive pavement and building setbacks with adjustments within 10% of the applicable regulation.

- Lot A (2717 Monroe Avenue- City Mattress):
  - increase of the maximum lot coverage from 65% to 70%;
  - reduction of side yard parking setback from 20 feet to zero feet; and
  - relief from waivers for cross-access easement for shared access.

- Lot B (2729 Monroe Avenue- Comfort Suites):
  - increase of the maximum lot coverage from 65% to 90%;
  - reduction of side yard parking setback from 20 feet to zero feet; and
  - relief from waivers for cross-access easement for shared access.

- Lot C (2735 Monroe Avenue- Pizza Hut):
  - increase of the maximum lot coverage from 65% to 72%;
  - reduction of side yard parking setback from 20 feet to five feet; and
  - relief from waivers for cross-access easement for shared access.

- Lot D (2775 Monroe Avenue- Sakura Home):
  - increase of the maximum lot coverage from 65% to 90%;
  - reduction of side yard parking setback from 20 feet to zero feet;
  - relief from waivers for cross-access easement for shared access; and

- 77 parking stalls where 89 were previously granted by variance.

- Lot E (2787 Monroe Avenue- Dunkin Donuts):
  - increase of the maximum lot coverage from 65% to 73%;
  - reduction of side yard parking setback from 20 feet to zero feet; and
  - relief from waivers for cross-access easement for shared access.
- Lot F (2799 Monroe Avenue- TT Nails, Spa & Maximum Tan):
  - increase of the maximum lot coverage from 65% to 87%;
  - reduction of side yard parking setback from 20 feet to zero feet; and
  - relief from waivers for cross-access easement for shared access.
- Lot G (2815 Monroe Avenue- California Closet):
  - increase of the maximum lot coverage from 65% to 95%;
  - reduction of side yard parking setback from 20 feet to zero feet; and
  - relief from waivers for cross-access easement for shared access.
- Lot H (2835 Monroe Avenue- Country Inn & Suites/Brickwood):
  - increase of the maximum lot coverage from 65% to 90%;
  - reduction of side yard parking setback from 20 feet to zero feet; and
  - relief from waivers for cross-access easement for shared access.

Exhibit H, Incentive Zoning Resolution, Schedule F, Exhibit 1.

109. In Its Incentive Zoning Resolution approving the proposed Development, the Town Board required the Developer to provide the following "amenities" to the community:

- pedestrian and bicycle access including improvements to the Auburn Trail (which could have been required without Incentive Zoning);
- implementation of an access management plan to reduce curb cuts and provide stormwater management and common access to properties across the street from the Property (which is a mitigation measure, not an amenity);
- a conservation easement to the Town for one acre of wooded property immediately south of Clover Street (which is a mitigation measure, not an amenity); and
- a commitment not to seek tax abatements (which is a mitigation measure, not an amenity).

Exhibit H, Incentive Zoning Resolution, Schedule C.

110. Nowhere has the Developer provided an analysis or supporting documentation for the values of the incentives and amenities. Nor has the Town Board conducted an evaluation of the same. Instead, the Town Board improperly accepted the Developer's self-serving estimates of the values of the incentives and amenities without requiring the Developer to provide any objective data to substantiate the estimates.

111. The value of the incentives granted from the Town to the Developer over the project life of the Proposed Development is $17,150,000. Letter from Brisbane Consulting Group LLC to the Brighton Town Board dated March 27, 2017 (the "Brisbane Letter"), a copy of which is attached hereto as Exhibit K.

112. The value of amenities the community will derive back from the Proposed Development (which assumed the accuracy of the Developer's numbers) is no more than $906,780. Exhibit K, Brisbane Letter.

113. The resolution approving the Developer's Incentive Zoning application is illegal because the value of the incentives granted to the Developer exceed the value of amenities provided to the community by over $16 million.

(f) **The "Amenities" Are Actually Mitigation Measures**

114. Furthermore, the Resolution approving the Developer's Incentive Zoning application is illegal because the amenities provided to the community are nothing more than mitigation measures the Town could have required under the standard zoning process and/or SEQRA.

- The Trail Amenity

115. The Amenity Agreement, attached as Schedule C to the Incentive Zoning Resolution, requires the Developer to:

> "construct improvements to the Auburn Trail (including, but not limited to bicycle racks, pedestrian gathering areas, signage, crosswalks and benches) from the Pittsford Town line to Highland Avenue (the "Trail Amenity") as described in the Environmental Impact Statement . . ."

Exhibit K, Incentive Zoning Resolution, Schedule C, para. 1(a).

116. The Findings Statement states that "[t]he Trail Improvements" would mitigate the increased density in excess of the current zoning by "enhanc[ing] pedestrian and bicycle access to and

within the Site, by providing bicycle racks, pedestrian gathering areas, wayfinding signage, sidewalks and approximately two miles of improvements to the trail system"; improving walkability; and integrating new pedestrian connections with the adjacent neighborhoods. The SEQRA Findings Statement dated March 28, 2018 (the "Findings Statement") is attached hereto as Exhibit I. See Exhibit I, p. 30, paras. 3, 5-6.

117. The Findings Statement identifies the Auburn Trail improvements on the RLA zoned property as mitigation for impacts to community character and as a mitigation measure for Traffic. Exhibit I, Findings Statement, p. 33, para. 1(a); p. 45, para. 5.

118. For these reasons, the so-called Trail Amenity is nothing more than a SEQRA mitigation measure.

119. Moreover, the so-called Trail Amenity cannot qualify as an Incentive Zoning amenity because the Proposed Development cannot be constructed in a manner that encroaches on the Recreation Easements unless the parties to the Recreation Easement (i.e., the Town) agree to relocate it at the Developer's expense.

120. Because the relocation of the Recreation Easements is required by law at the Applicant's expense, it cannot be considered an amenity to the Town that could not be obtained otherwise for purposes of Incentive Zoning. Moreover, as the owner of an interest in real property, the Town could require the trail improvements as consideration

for any relocation of the Recreation Easement.

121. In any event, the so-called Trail Amenity improperly violates the public trust doctrine because it conveys public parkland without prior legislative approval.

122. The "Trail Amenity" also violates NY's Permissive Referendum requirements by conveying a Town real estate interest without complying with New York Town Law section 90 et seq.

- The Preservation of Open Space Amenity

123. The Amenity Agreement requires the Developer to grant the Town a one-acre conservation easement for the area immediately south of Clover Street. Exhibit H, Incentive Zoning Resolution, Schedule C, para. 3(a).

124. In the Findings Statement, the Town lists "establishment of a wooded buffer area" and preservation of a one-acre wooded area immediately south of Clover Street "to screen future development from existing residences" and "shift[ing] development away from the Clover Street residential neighborhoods" as mitigation measures for allowing density in excess of the current zoning on the parcel. Exhibit I, Findings Statement, p. 30, paras. 1, 2, and 8.

125. Additionally, the one-acre wooded area is included as a buffer area to mitigate potential visual impacts and impacts to community character. Exhibit I, Findings Statement, p. 33, para. 11; p. 34, para. 1(c).

126. Therefore, the "Open Space Amenity" is merely a duplication of the mitigation required in the Findings Statement and is an improper amenity under the Incentive Zoning Law.

127. Where, as here, the Developer proposes to cover the site completely with impervious surfaces, far in excess of what the standard zoning limitations permit, open space is a textbook mitigation measure.

128. Moreover, the one-acre conservation easement is included in the 10.1-acre Project size, and is part of the Project for purposes of density calculations, and cannot therefore also serve as an "amenity."

- The Access Management Plan Amenity

129. The Amenity Agreement requires the Developer to implement and construct the Access Management Plan ("AMP") as set forth in the FEIS. Exhibit H, Incentive Zoning Resolution, Schedule C, para. 2.

130. The AMP includes: curb cut modifications and improvements for 2717 and 2735 Monroe Avenue, a common rear access driveway for 2717 – 2835 Monroe Avenue, stormwater management facilities, and cross-lot access to the properties. Exhibit H, Incentive Zoning Resolution, Schedule C, para. 2.

131. The AMP is the primary means of traffic mitigation in the Findings Statement. Exhibit I, Findings Statement, P. 37-37, para. 11; P. 40, para. 22; P. 42, paras. 32-33; P. 43, paras. 37-39; p. 44, para. 45; p. 45, para. 5.

132. Therefore, the "Access Management Plan Amenity" is merely

a duplication of the mitigation required in the SEQRA Findings Statement and is an improper amenity under the Incentive Zoning Law.

133. Moreover, the AMP is not a true amenity because it benefits the Developer by facilitating the public's access to the Proposed Development. Exhibit I, SEQRA Findings Statement, pages 27-28.

- The Tax Abatement Amenity

134. The Incentive Zoning resolution requires the Developer to agree not to enter any tax abatement agreements for benefits from the County of Monroe Industrial Development Agency ("COMIDA") as an "amenity" in its Incentive Zoning Resolution. Exhibit H, Schedule C, para. 4.

135. Every property owner, including the Applicant, has a duty to pay property taxes unless the property falls within a legal exception.

136. The Applicant has not demonstrated that it would be entitled to any type of tax abatement or exception, and indeed, IDA tax exemptions are specifically prohibited for retail projects such as this because it is not a tourism destination. New York General Municipal Law section 862.

137. Furthermore, the Incentive Zoning Law does not allow the Town Board to consider payment of taxes as an amenity. Brighton Town Law §209-3(A).

138. There are no facts to support any estimated value of the "tax abatement amenity" in the record. See March 21, 2018 letter of Intent, a

copy of which is attached hereto as Exhibit G.

139. Therefore, the "Tax Abatement Amenity" cannot be considered an amenity under the Incentive Zoning Law.

(g) The Residential Parcels

140. The Town Board violated its Incentive Zoning law by granting prohibited incentives for the RLA zoned parcel in exchange for improper amenities.

141. Article II of the Town's Incentive Zoning Law describes the manner in which it may be applied to Single -family residential districts, including RLA (Residential- Low Density District).

142. The specific provisions regarding allowable incentives in single family residential districts (set forth in in Article II) override the general provisions for incentives allowable in all districts (set forth in Article I) of the Brighton Incentive Zoning Law. *Alabi v. Community Bd. No. 2 of Brooklyn*, 17 AD3d 459 (2d Dept. 2005).

143. The purpose of incentive zoning in single family residential districts is to offer incentives to applicants who "provide the amenity of preservation of the existing housing stock in Brighton, thereby assisting the Town to implement specific physical, cultural and social policies in the Comprehensive Plan as supplemented by the local laws and ordinances adopted by the Town Board" (emphasis supplied). Brighton Code §209-7.

144. The only amenity permitted in a single family residential

district is "preservation of an existing single-family detached building," provided that:

1. The certificate of occupancy for the construction of the building, including construction following substantial demolition, was issued, or the Commissioner of Public Works or designee otherwise determines that the building was completed, more than five years prior to the application for the incentive; and

2. The application for the incentive has not been reviewed pursuant to and is not subject to review pursuant to Chapter 73, Article VI, of the Town Code or site plan review by the Planning Board.

Brighton Code §209-9(A).

145. The only incentive permitted in a single family residential district is to increase the maximum livable floor area of a single family detached dwelling. Brighton Code 209-10.

146. All of the criteria and procedures for approving incentive zoning for properties in a single family residential zone involve the livable floor area of the existing structure and lot coverage. Brighton Code §209-11(A).

147. Here, the Proposed Development includes 3.06 acres of land in an RLA district.

148. The Proposed Development does not preserve any single family detached building.

149. The Town Board's Incentive Zoning Resolution allowed the Developer to include 3.06 acres of the Project in the RLA residential zoning district and develop that land for commercial use, including parking, paving, and drive aisles for the Project. Exhibit I, Findings

Statement, page 22, para. 7 and 8.

150. These uses are not permitted in an residential RLA District. Brighton Code §203-2.1.

151. Moreover, the Town improperly granted incentives related to extension of less restrictive zoning areas and increase in paved areas for parking on the RLA zoned parcel even though the only incentive permitted in an RLA district under the Incentive Zoning Law is an increase in the maximum livable floor area of a single family detached dwelling. Exhibit H, Incentive Zoning Resolution, Schedule F, Exhibit 1. Brighton Code §209-11(A).

152. Accordingly, the Town Board granted incentives related to the RLA zoned parcel in violation of the Town's Incentive Zoning Law.

(h) The Town Board Failed to Obtain Planning Board Review and Recommendations on the Incentive Zoning Application

153. The Brighton Town Code requires that the Town Planning Board review the incentive zoning application and report to the Town Board with its evaluation of the adequacy with which the amenities and incentives fit the site and how they relate to adjacent uses and structures. Brighton Town Code section 209-5(C).

154. The Brighton Town Code requires the Town Board to review the Planning Board's report. Brighton Town Code section 209-5(D).

155. There is no evidence in the record that the Town Board referred the final Incentive Zoning application proposal with the modified "amenities" (dated March 21, 2018); that the Planning Board drafted a

report regarding the same, and that the Town Board reviewed the Planning Board's report prior to issuing the March 28, 2018 Resolution.

156. Consequently, the Town Board's approval of the Incentive Zoning application did not comply with Brighton Law.

VI. THE TOWN BOARD AS LEAD AGENCY FAILED TO TAKE A HARD LOOK AT TRAFFIC IMPACTS

157. The stretch of Monroe Avenue in front of the Proposed Development is rated F, the lowest score, for pedestrian service according to the 2012 Town of Brighton Bicycle Master Plan "BikeWalkBrighton," (the "Bicycle Master Plan") (available at https://www.townofbrighton.org/659/BikeWalk-Brighton). See Bicycle Master Plan, p. 34 Existing Conditions Assessment, Pedestrian Level of Service, fig. 8).

158. The stretch of Monroe Avenue in front of the Proposed Development is rated E, the second lowest score, for bicycle service areas eligible for the Safe Route to School program. See the Bicycle Master Plan, p. 35, Existing Conditions Assessment, Bicycle Level of Service: Adjacent to Schools Eligible for the Safe Routes to School Program, fig. 11.

159. The stretch of Monroe Avenue in front of the Proposed Development has "many crashes"/high density of crashes for pedestrians and cyclists over a ten-year history as provided by Genesee Transportation Council data. See the Bicycle Master Plan, p. 35,

Existing Conditions Assessment, Crash Density Analysis: Pedestrian Incidents, fig. 12).

160. Upon information and belief, the Town Board's analysis of the traffic impacts associated with the Proposed Development did not accurately represent the existing traffic operating levels and existing safety levels. As a result, there is no scientific basis for the analysis and conclusions that relied on the incorrect assumptions. The grounds for this belief are the letter from McFarland Johnson dated 7/18/16, a copy of which is attached hereto as Exhibit "J" (the "McFarland Letter").

161. New York State Department of Transportation ("NYS DOT") specifically expressed the same concern, noting that the applicant's Traffic Impact Study understated the actual traffic backups. See Letter from the NYS DOT to the Town Board dated May 19, 2017, a copy of which is attached hereto as Exhibit "E."

162. The FEIS admits that "accurate field observations and documentation of "existing" queuing could not be completed" because the traffic impact study was both begun and completed while Monroe Avenue was under construction. Exhibit "F," FEIS, page 327.

163. The Traffic Impact Study did not consider a true baseline alternative that fully complied with a project that could be developed "as of right" if all Town Zoning Code density and other land use restrictions were complied with, even though the DEIS Scope specifically required the environmental review to do so. See McFarland Letter (Exhibit J) and

FEIS (Exhibit F, pages 327-328).

164. The Traffic Study Capacity analysis demonstrated significant existing failing operations for movements and signal approached in the Project vicinity. See McFarland Letter (Exhibit J) and FEIS (Exhibit F, pages 327-328).

165. It is undisputed that the Town Board did not require the developer to conduct a highway safety analysis, even though the corridor experienced 384 accidents in the last three years and was classified as a Priority Investigation Location and a High Accident Location. See McFarland Letter (Exhibit J) and FEIS (Exhibit F, page 339).

166. The Town Board, as lead agency, failed to consider traffic impacts associated with the redevelopment of the Off-Site Project Location (including, for instance, the relocation of the Mamasan's restaurant with a drive-through pick-up window), and therefore improperly segmented its review.

VII. THE TOWN BOARD AS LEAD AGENCY FAILED TO TAKE A HARD LOOK AT ALTERNATIVES

167. The Final Scope for the Proposed Development required the Applicant to analyze:

- Development of site under the density/other limits "permitted as of right" under the existing zoning designations;
- Alternative land uses allowed under existing zoning including residential, retail and other non-residential uses;
- An investigation of design and layout alternatives, including a reduction in size of either the proposed high traffic generators (grocery store/Starbucks drive thru) and/or plaza square footage;

elimination of some or all of the proposed drive through facilities; and alternative paving surfaces to provide green space at the project site consistent with the requirements of the Town Code;

- Potential allowable future uses of the buildings for other than those intended and disclosed, with a commensurate discussion of the potential greater or lesser impacts associated by such alternative relative to the proposed alternative;

- No action alternative.

The Final Scope adopted by the Town Board on September 25, 2015 (the "Final Scope") is attached hereto as Exhibit L.

168. The Town failed to properly consider the "development as of right" alternative to the Incentive Zoning Application. Exhibit F, FEIS, page 53.

169. The Town Board improperly accepted the Developer's self-serving claim that it would not meet its (self-created) financial and other objectives to develop the Proposed Development if it complied with the Town Zoning Code requirements.

VIII. THE TOWN BOARD FAILED TO MAKE ANOTHER GML 239-M REFERRAL TO COUNTY PLANNING AFTER THE PROJECT CHANGED SUBSTANTIALLY

170. The Developer submitted its original Incentive Zoning application to the Brighton Town Board on February 18, 2015. Exhibit I, Findings Statement, at page 5.

171. On July 8, 2016, the Monroe County Planning and Development Department ("County Planning") responded that it "does not have any comment" and provided comments from the Monroe County

Development Review Committee." *See* Exhibit I, Resolution accepting Findings Statement, at page 6.

172. The Applicant made substantive changes to the application and SEQRA materials after County Planning submitted its comments to the Town Board:

A. The original project included five parcels in the Off-Site Project Location that were incorporated into the AMP: 2717 Monroe Avenue (City Mattress); 2729 Monroe Avenue (Comfort Inn); 2735 Monroe Avenue (Former Pizza Hut); 2775 Monroe Avenue (Sakura Home restaurant); and 2787 Monroe Avenue (Dunkin Donuts). Exhibit F, FEIS, page 23-24.

B. The project as approved by the Town Board included the five original parcels and added another seven parcels to the Off-Site Project Location and AMP: 2799 Monroe Avenue (Maximum Tan); 2815 Monroe Avenue (California Closets); 2835 Monroe Avenue (Brick Pizza and Country Inn & Suites); 2851 Monroe Avenue (Palazzo Jewelers); 2875 Monroe Avenue (Royal Carwash); 2425 Clover Street (Clover Park Professional Building); and NYSDOT owned property south of 2717, 2729 and 2735 Monroe Avenue. Exhibit F, FEIS, page 23-24.

C. Eliminating one of the two left-turn arrows for traffic entering both sides of Monroe Avenue. Exhibit F, FEIS, page 21-22.

D. Relocating and extending the Auburn Trail improvements. Exhibit F, FEIS, page 22-23.

E. Adding 140 linear feet of concrete sidewalk in the north right-of-way of Elmwood Avenue. Exhibit F, FEIS, page 22.

F. Changing the number and location of curb cuts on the south side of Monroe Avenue. Exhibit F, FEIS, pages 25- 26.

G. Reducing the project square footage. Findings Statement page 7, para. 26.

H. Revising the orientation of the proposed coffee shop drive through. Findings Statement page 7, para. 26.

I. Prohibiting vehicular access from the Project to Clover Street and Allens Creek Road. *See* Town Board resolution accepting SEQRA Findings Statement, dated March 28, 2018 at page 7.

173. The Developer made substantial changes to the Incentive Zoning application between the time that County Planning issued its comments on the application on July 8, 2016, and the Town Board granted the Incentive Zoning application on March 28, 2018.

174. The Town failed to resubmit the revised Application to County Planning after substantial changes were made to it, thereby rendering the March 28, 2018 Resolution invalid.

IX. THE TOWN BOARD VIOLATED NEW YORK'S OPEN MEETINGS LAW

The February 28, 2018 Public Hearing

175. The Town Board conducted a public hearing on the incentive Zoning Application on February 28, 2018 (the "February Public Hearing").

176. The February Public Hearing did not have enough space for the public to attend, now overflow rooms with video of the hearing, and as a result, hundreds of members of the public who were interested in the items to be discussed at the February Public Hearing left and were effectively prevented from participating and effectively closed to a large number of the Town's residents who wished to participate.

177. The Town knew (or had reason to know) that the February Public Hearing would draw a large number of people / members of the

public interested in and/or opposed to the development or the incentive zoning process by which it was being reviewed.

178. Upon information and belief, the Town Board failed to make or cause to be made all reasonable efforts to ensure that the February Public Hearing was held in an appropriate facility which can accommodate members of the public who wished to attend.

The March 14, 2018 Press Conference

179. On March 14, 2018, the Town Supervisor gave a press conference (the "Press Conference").

180. At the Press Conference, the Town supervisor stated that the Town Board would approve the Proposed Development but the developer would reduce the project size by 6,300 SF, and a restrictive covenant would be imposed to prevent vehicular access to/from the Project onto Allens Creek Road and Clover Street.

181. Upon information and belief, the Town Board did not discuss reducing the project size by 6300 SF at a public meeting, nor the restrictive covenant.

The March 28, 2018 Public Meeting

182. Members of the public expressly requested, in writing, to be provided with advance notice of any meeting at which the Whole Foods Project would be voted on, so the public could mobilize and be present, including, specifically, the final vote on the Incentive Zoning Resolution.

183. Despite this, the Town Board posted notice of the Incentive

Zoning Resolution mere hours before the March 28, 2018 Town Board meeting (the "March Public Meeting") where the Incentive Zoning Resolution was adopted, thereby effectively preventing public participation that night, in violation of New York's Open Meetings Law.

184. The public did not have a meaningful opportunity to review and comment on the materials considered by the Town Board at the March Public Meeting.

X. PROCEDURAL PREREQUISITES

185. Petitioners have exhausted their administrative remedies.

186. Petitioners have no adequate remedy at law.

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

XI. JURISDICTION AND VENUE

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

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

FIRST CAUSE OF ACTION
THE INCENTIVE ZONING RESOLUTION VIOLATED BRIGHTON TOWN LAW

190. Petitioners repeat and reallege paragraphs 1 – 189 as if set forth herein at length.

191. The Town of Brighton violated its own Incentive Zoning Law by accepting SEQRA mitigation measures as amenities, in violation of

Brighton Town Code section 209-3B.

192. The Town of Brighton violated its own Incentive Zoning Law by offering incentives that are not permitted in Brighton Town Code section 209-3A.

193. The Town of Brighton violated its own Incentive Zoning Law by approving an incentive zoning application that did not include affordable housing units, as required by the Comprehensive Plan 2000 and Brighton Town Code section 209-3B.

194. The Town of Brighton violated its own Incentive Zoning Law by approving an incentive zoning application in a residential district even though it did not provide the amenity of preservation of the existing housing stock, as required by Brighton Town Code sections 209-7 and 209-10.

195. The Town of Brighton violated its own Incentive Zoning Law by approving incentives in a residential district for something other than the livable floor area of the existing structure and lot coverage. Brighton Code section 209-11(A).

196. The Town of Brighton violated its own Incentive Zoning Law by approving incentives without any proof as to the value of the amenities to the public. Brighton Town Code section 209-5(F); New York Town Law section 261-b.

197. The Town of Brighton violated its own Incentive Zoning Law by approving an Incentive Zoning Application where the incentives

granted to the Applicant far outweighed the amenities provided to the Town.

198. By reason of the forgoing, the Incentive Zoning Resolution must be annulled.

SECOND CAUSE OF ACTION
THE TOWN BOARD, AS LEAD AGENCY,
FAILED TO TAKE A HARD LOOK AT ALTERNATIVES

199. Petitioners repeat and reallege paragraphs 1 – 198 as if set forth herein at length.

200. SEQRA requires each Environmental Impact Statement to include a discussion of alternatives to the proposed action. ECL §8-0109(4) (EIS shall discuss "reasonable alternatives to the action"); ECL 8-0109(2)(d) (EIS must include "alternatives to the proposed action"); ECL 8-109(2) (among the purposes of an EIS is to "suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake such action").

201. The description and evaluation of the alternatives "should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed" and must include a "no action" option. 6 NYCRR § 617.9(b)(5)(v). Alternatives should also evaluate the reduction in scale and magnitude of an action.

202. Alternatives Analysis has been referred to as the "heart of SEQRA." *Shawangunk Mountain Environmental Association v. Planning Board of Gardiner*, 157 A.D.2d 273 (3d Dept. 1990). *See also, Akpan v.*

Koch, 75 N.Y.2d 561 (1990).

203. It is improper for the Town Board, as Lead Agency, to accept the Applicant's self-serving statements about alternatives without requiring field studies or expert reports to provide the requisite quantitative and scientific basis for the board's approval. *Brander v. Town of Warren*, 18 Misc. 3d 477 (Sup. Ct. Onondaga Co. 2007). *See also, Town of Dryden v. Tompkins County Board of Representatives*, 78 N.Y.2d 331 (1991).

204. The Town Board, as lead agency, failed to comply with SEQRA's substantive and procedural requirements because it did not require the Applicant to properly evaluate the "build as of right" alternative and a reduced scale alternative.

205. By reason of the forgoing, the resolutions approving the Findings Statement and Incentive Zoning must be set aside.

THIRD CAUSE OF ACTION
THE TOWN BOARD, AS LEAD AGENCY,
FAILED TO TAKE A HARD LOOK AT TRAFFIC IMPACTS

206. Petitioners repeat and reallege paragraphs 1 – 205 as if set forth herein at length.

207. Whenever a proposed agency "action" "may include the potential for at least one significant environmental impact," the environmental impact of the action must be carefully studied through the preparation of an Environmental Impact Statement (an "EIS") 6 NYCRR 617.7(a)(1).

208. An EIS provides a means for agencies, project sponsor and the public to systematically consider significant environmental impacts, alternatives and mitigation. An EIS facilitates the weighing of social, economic and environmental issues early in the planning and decision-making process. 6 NYCRR 617.1(d).

209. When an action may have a significant effect, the agency must minimize adverse environmental impacts to the greatest extent practicable. ECL 8-0103; 6 NYCRR 617.1(c).

210. Compliance with SEQRA is mandatory. "No agency involved in any action shall carry out, fund or approve the action until it has complied with the provisions of SEQRA." 6 NYCRR 617.3(a).

211. The FEIS and Findings Statement failed to address all potential significant adverse traffic environmental impacts associated with the Proposed Development.

212. The Findings Statement must be set aside because the Town:

A. failed to thoroughly identify all potentially significant traffic impacts, as required by 6 NYCRR 617.7(b)(2);

B. failed to thoroughly analyze significant adverse traffic impacts that would result from the Proposed Development, as required by 6 NYCRR 617.7(b)(3);

C. failed to set forth the reasoned elaboration for the basis of its decisions regarding traffic impacts, as required by 6 NYCRR 617.7(b)(4);

213. Since the Town failed to comply with SEQRA, the resolutions approving the Incentive Zoning Application and adopting the Findings

Statement are invalid.

214. By reason of the forgoing, the resolutions approving the Findings Statement and Incentive Zoning must be set aside.

FOURTH CAUSE OF ACTION
THE TOWN BOARD, AS LEAD AGENCY,
FAILED TO MITIGATE POTENTIALLY SIGNIFICANT ADVERSE TRAFFIC IMPACTS TO THE MAXIMUM EXTENT PRACTICABLE

215. Petitioners repeat and reallege paragraphs 1 through 214 as if set forth herein at length.

216. The Town's determination that the adverse impacts associated with the Proposed Development would be mitigated to the maximum extent practicable is not supported by substantial evidence on the record.

217. By reason of the foregoing, the Findings Statement and Incentive Zoning resolution must be set aside.

FIFTH CAUSE OF ACTION
THE TOWN BOARD, AS LEAD AGENCY,
FAILED TO CONSIDER CUMULATIVE IMPACTS

218. Petitioners repeat and reallege paragraphs 1 through 217 as if set forth herein at length.

219. The Town failed to consider the cumulative impacts of the proposed Development together with the redevelopment of the "Off-Site Project Location" properties, including but not limited to the relocation of Mamasan's restaurant from the Project Site Location to 2735 Monroe

Avenue and the demolition of the Friendly's restaurant and development of a City Mattress store at 2717 Monroe Avenue.

220. By reason of the foregoing, the Findings Statement and Incentive Zoning resolution must be set aside.

SIXTH CAUSE OF ACTION
THE TOWN BOARD, AS LEAD AGENCY,
IMPROPERLY SEGMENTED REVIEW OF THE PROJECT SITE LOCATION FROM THE OFF-SITE PROJECT LOCATION

221. Petitioners repeat and reallege paragraphs 1 through 220 as if set forth herein at length.

222. The Town improperly segmented environmental review of the proposed Development's Site Project Location from the redevelopment of the "Off-Site project Location" properties, including but not limited to the relocation of Mamasan's restaurant from the Project Site Location to 2735 Monroe Avenue and the demolition of the Friendly's restaurant and development of a City Mattress store at 2717 Monroe Avenue.

223. By reason of the foregoing, the Findings Statement and Incentive Zoning resolution must be set aside.

SEVENTH CAUSE OF ACTION
THE TOWN BOARD, AS LEAD AGENCY, UNLAWFULLY ACCEPTED AN FEIS THAT DID NOT COMPLY WITH THE FINAL SCOPE

224. Petitioners repeat and reallege paragraphs 1 through 223 as if set forth herein at length.

225. SEQRA states that a lead agency may prepare a final written scope setting forth issues required to be addressed by the applicant in

the DEIS including, but not limited to, the potentially significant adverse environmental impacts of the action, an identification of mitigation measures with respect to those impacts, and reasonable development alternatives. 6 NYCRR 617.8.

226. If a SEQRA scoping document is prepared, the DEIS must address all of the issued identified during the scoping process. 6 NYCRR 617.9(b)(2).

227. On September 23, 2015, the Town Board prepared a DEIS final scope document for the Project (the "Final Scope"). Exhibit L.

228. Final Scope identified a number of potentially significant adverse traffic and transportation impacts associated with the Project.

229. By letter dated May 19, 2017, the NYS DOT recommended studying the inclusion of secondary access points along Clover Street and Allens Creek Road as a potential SEQRA mitigation measure and development alternative to help reduce the negative impacts the traffic of the Project along the already congested Monroe Avenue. See Exhibit E.

230. The DOT recommended that the Project size be significantly reduced if the Proposed Development did not include secondary access from Clover Street and Allens Creek Road.

231. The Final Scope specifically directed the Developer to "evaluate the development alternatives based on access scenarios at Clover Street and Allens Creek. Access scenarios shall include no access, partial access (i.e. right-in/right-out or delivery only) and full

access." Exhibit L, at 8.

232. The FEIS did not analyze impacts associated with the Proposed Development if the Proposed Development did not include secondary access from Clover Street and Allens Creek Road.

233. The Resolution approving the Incentive Zoning Application requires the developer to enter into a 30-year restrictive covenant that precludes vehicular access to the Proposed Development from Clover Street and Allens Creek Road.

234. The SEQRA Resolution must be set aside because the FEIS does not comply with the Final Scope.

EIGHTH CAUSE OF ACTION
THE TOWN FALSELY CERTIFIED THAT SEQRA REQUIREMENT HAD BEEN MET

235. Petitioners repeat and reallege paragraphs 1 through 234 as if set forth herein at length.

236. The Town falsely certified that SEQRA's requirements had been met.

237. By reason of the foregoing, the Findings Statement and Incentive Zoning Resolution must be set aside.

NINTH CAUSE OF ACTION
ALIENATION OF PUBLIC TRUST

238. Petitioners repeat and reallege paragraphs 1 –237 as if set forth herein at length.

239. Park areas in New York are impressed with a public trust.

240. Brighton Town Code Chapter 113 prohibits injury, damage or destruction to any part of a park.

241. The proposed relocation of the Recreation Easement would cause irreparable harm to it and result in the conversion of public parkland to parking lot.

242. The Town of Brighton holds the Recreation Easement in trust for the people of New York State.

243. As trustee, the Town has a fiduciary obligation to preserve and protect the trust corpus (Recreation Easement).

244. By relocating the Recreation Easement, the Town is threatening to breach its fiduciary obligation to the people of New York State to protect and preserve it.

245. Therefore, petitioners are entitled to an order permanently enjoining the Town from unlawfully demolishing, or allowing or causing the demolition of the Recreation Easement, directing the Town to carry out its duty, as Trustee, to protect the Recreation Easement, as trust corpus, for the benefit of the people of New York State, the Trust beneficiaries; and enjoining the Town from taking any action to relocate the Recreation Easement until such time as it obtains approval from the New York State legislature.

TENTH CAUSE OF ACTION
ALIENATION OF PARK PROPERTY WITHOUT LEGISLATIVE APPROVAL

246. Petitioners repeat and reallege paragraphs 1 –245 as if set

forth herein at length.

247. Therefore, petitioners are entitled to an order permanently enjoining the Town from alienating the Recreation Easement without prior legislative approval.

ELEVENTH CAUSE OF ACTION
VIOLATION OF BRIGHTON TOWN CODE CHAPTER 113

248. Petitioners repeat and reallege paragraphs 1 – 247 as if set forth herein at length.

249. Brighton Town Code section 113-7(D) prohibits the injury, defacing, disturbance or befouling any part of a park and further prohibits the removal, injury or destruction of any tree, flower, shrub, rock or other mineral.

250. Respondent's actions were arbitrary, capricious and an abuse of discretion because relocating the Recreation Easement would violate Brighton Town Code section 113-7(D).

251. Therefore, petitioners are entitled to an order directing the Town of Brighton to comply with section 113-7(D) of the Brighton Town Code by preserving the Recreation Easement and its features; permanently enjoining the Town from unlawfully damaging or allowing damage to the Recreation Easement; annulling and vacating the Findings Statement; permanently enjoining respondents from taking any action significantly affecting the condition of the Recreation Easement without first complying with the provisions of SEQRA; directing the Town of Brighton as Trustee, to protect the Recreation Easement, as trust

corpus, for the benefit of the people of the Town of Brighton, the trust beneficiaries; and enjoining the Town of Brighton from taking any action that would result in the alienation of the Recreation Easement.

TWELFTH CAUSE OF ACTION
BRIGHTON INCENTIVE ZONING LAW IS *ULTRA VIRES* BECAUSE IT GRANTS THE TOWN BOARD UNLIMITED DISCRETION TO GRANT INCENTIVES AND ACCEPT AMENITIES

252. Petitioners repeat and reallege paragraphs 1 – 251 as if set forth herein at length.

253. The Brighton Incentive Zoning Law (Town Code Chapter 209) is illegal and *ultra vires* because it purports to grant the Town Board unlimited discretion to grant incentives and accept amenities.

254. Therefore, petitioners are entitled to an order vacating the Incentive Zoning Resolution and the SEQRA Resolution.

THIRTEENTH CAUSE OF ACTION
BRIGHTON INCENTIVE ZONING LAW IS *ULTRA VIRES* BECAUSE IT IS INCONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN

255. Petitioners repeat and reallege paragraphs 1 – 254 as if set forth herein at length.

256. The Brighton Incentive Zoning Law (Town Code Chapter 209) is illegal and *ultra vires* because it is not consistent with the Town's Comprehensive Plan.

257. Therefore, petitioners are entitled to an order vacating the Incentive Zoning Resolution and the SEQRA Resolution.

FOURTEENTH CAUSE OF ACTION
BRIGHTON'S RESOLUTION APPROVING THE INCENTIVE ZONING APPLICATION IS SUBJECT TO PERMISSIVE REFERENDUM

258. Petitioners repeat and reallege paragraphs 1 – 257 as if set forth herein at length.

259. Petitioners are entitled to a Declaratory Judgment that the Town's conveyance of the Recreation Easement to the developer is subject to the public's right to petition for a permissive referendum.

260. Therefore, petitioners are entitled to an order vacating the Incentive Zoning resolution and the SEQRA Resolution.

FIFTEENTH CAUSE OF ACTION
THE TOWN'S DECISION TO ADOPT THE FINDINGS STATEMENT ARBITRARY, CAPRICIOUS AND AN ABUSE OF DISCRETION

261. Petitioners repeat and reallege paragraphs 1 through 260 as if set forth herein at length.

262. The Town's determination that the adverse impacts associated with the Proposed Development would be mitigated to the maximum extent practicable is not supported by substantial evidence on the record.

263. The Town's determination that the Applicant considered alternatives to the Proposed Action is not supported by substantial evidence on the record.

264. By reason of the foregoing, the Town Board's decision to adopt the SEQRA Findings Statement was arbitrary, capricious and an abuse of discretion.

SIXTEENTH CAUSE OF ACTION
THE TOWN'S DECISION TO ADOPT THE SEQRA FINDINGS STATEMENT WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD

265. Petitioners repeat and reallege paragraphs 1 through 264 as if set forth herein at length.

266. By reason of the foregoing, the Town Board's decision to adopt the SEQRA Findings Statement was not supported by substantial evidence on the record.

SEVENTEENTH CAUSE OF ACTION
THE TOWN'S DECISION TO APPROVE THE INCENTIVE ZONING APPLICATION WAS ARBITRARY, CAPRICIOUS AND AN ABUSE OF DISCRETION

267. Petitioners repeat and reallege paragraphs 1 through 266 as if set forth herein at length.

268. By reason of the foregoing, the Town Board's decision to approve the Incentive Zoning Application was arbitrary, capricious and an abuse of discretion.

EIGHTEENTH CAUSE OF ACTION
THE TOWN'S DECISION TO APPROVE THE INCENTIVE ZONING APPLICATION WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD

269. Petitioners repeat and reallege paragraphs 1 through 268 as if set forth herein at length.

270. By reason of the foregoing, the Town Board's decision to approve the Incentive Zoning Application was not supported by substantial evidence on the record.

NINETEENTH CAUSE OF ACTION
OTHER ARBITRARY AND CAPRICIOUS ACTIONS

271. Petitioners repeat and reallege paragraphs 1 – 270 as if set forth herein at length.

272. Upon information and belief, as may be determined on the filing of the Record of Proceeding, other actions taken by the Town of Brighton in connection with the Proposed Development may be in violation of other laws, regulations and procedures, and/or arbitrary and/or capricious, and/or other approvals may be needed.

273. Therefore, the Resolutions approving the Incentive Zoning Application and adopting the Findings Statement were illegal, arbitrary and capricious,

WHEREFORE, petitioners respectfully request that this court enter an order pursuant to CPLR Article 78 and 3001 et seq.:

a) annulling and vacating the March 28, 2018 Resolution granting Incentive Zoning approval for the Proposed Development (the "Incentive Zoning Resolution");

b) annulling and vacating the March 28, 2018 Resolution adopting the SEQRA Findings Statement (the "SEQRA Resolution");

c) annulling and vacating all related actions;

d) temporarily and permanently enjoining respondents from taking any action regarding approvals for the Proposed Development without first complying with the provisions of

the NYS Town Law § 261-b (Incentive Zoning enabling legislation); and the provisions of the Town of Brighton Town Code;

e) temporarily and permanently enjoining Respondents from taking any action regarding approvals for the Proposed Development without first complying with the provisions of the State Environmental Quality Review Act ("SEQRA"), and New York Environmental Conservation Law ("ECL"), section 8-0101 et seq.;

f) temporarily and permanently enjoining the Respondents from proceeding with the Proposed Development until the Town has alienated the Recreation Easement, with prior State legislative approval, all in compliance with the Public Trust Doctrine;

g) temporarily and permanently enjoining Respondents from taking any action regarding approvals for the Proposed Development without first conveying the Town owned real estate interest subject to a permissive referendum pursuant to Town Law § 90 et seq., and upon meaningful notice to the public in compliance with the spirit and intent of the Open Meetings Law;

h) temporarily and permanently enjoining the Respondents from conducting any activities/site work with respect to the Proposed Development during the pendency of this action;

i) directing the Town of Brighton to comply with Chapter 13 of the Brighton Town Code by preserving the Recreation Easement and its natural features;

j) directing the Town of Brighton to carry out its duty, as Trustee, to protect the Recreation Easement, as trust corpus, for the benefit of the people of New York State, the Trust beneficiaries, by enjoining the Town of Brighton from implementing any plan to relocate the Recreation Easement;

k) permanently enjoining the Town of Brighton from alienating the Recreation Easement without prior legislative approval;

l) declaring that the Town's conveyance of the Recreation Easement to the developer is subject to the public's right to petition for a permissive referendum, and to give the public adequate notice pursuant to the spirit, intent and requirements of New York's Open Meetings Law;

m) determining that the Town's conduct with respect to the Action violated New York's Open Meetings Law, and voiding any decisions or actions following a violation of the Open Meetings Law; and

n) awarding petitioners their attorneys' fees, costs and disbursements, together with such other and further relief as this court deems just and proper.

Dated: April 27, 2018
Rochester, New York

The Zoghlin Group PLLC
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Rochester, New York 14614
Tel.: (585) 434-0790

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 it 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 27
Day of April, 2018.

Notary Public

MINDY L. ZOGHLIN
NOTARY PUBLIC, State of New York
Registration #02ZO4986874
Qualified in Monroe County
Commission Expires September 15, 2021