

**A G E N D A**  
**BOARD OF APPEALS - TOWN OF BRIGHTON**  
**NOVEMBER 4, 2020**

Due to the public gathering restrictions and executive orders in place because of COVID-19, this Zoning Board of Appeals meeting will be conducted remotely. Members of the public will be able to view the meeting via Zoom.

Written comments will be received by Rick DiStefano, Secretary, Brighton Town Hall, 2300 Elmwood Avenue, Rochester, NY 14618 via standard mail and/or via e-mail to [rick.distefano@townofbrighton.org](mailto:rick.distefano@townofbrighton.org), until November 4, 2020 at 12:00 PM.

Applications subject to public hearings are available for review on the town's website.

The public may join the Zoom meeting and share comments with the Board. For Zoom meeting information, please reference the town's website at <https://www.townofbrighton.org> prior to the meeting..

7:00 P.M.

**CHAIRPERSON:** Call the meeting to order.

**SECRETARY:** Call the roll.

**CHAIRPERSON:** Approve the minutes of the September 2, 2020 meeting.  
Approve the minutes of the October 7, 2020 meeting. **To be done at the December 2, 2020 meeting.**

**CHAIRPERSON:** Announce that the public hearings as advertised for the BOARD OF APPEALS in the Brighton Pittsford Post of October 29, 2020 will now be held.

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11A-01-20 Application of John Steiner, contractor, and Jennifer Gorankoff Katz, owner of property located at 141 Chelmsford Road, for Area Variances from Section 205-2 to allow an existing detached garage to be attached to the principle structure with an enclosed addition resulting in a rear setback of 5.7 ft. in lieu of the minimum 40 ft. required by code and a side setback of 6.7 ft. in lieu of the minimum 12 ft. required by code. All as described on application and plans on file.

11A-02-20 Application of the Country Club of Rochester, owner of property located at 2935 East Avenue, for a variance from Section 73-29 (Structures required to have an automatic fire sprinkler system) in accordance with Section 73-34 to allow for the construction of a maintenance building without the installation of an automatic sprinkler system as required by code. All as described on application and plans on file.

11A-03-20 Application of Bridget Carney, Edge Architecture, and Catherine Humphrey and Richard Truesdale, owners of property located at 38 Whitestone Lane, for an Area Variance from Section 205-2 to allow an addition and covered porch to extend 20 ft. into the 60 ft. rear setback required by code. All as described on application and plans on file.

11A-04-20 Application of John Inzinna and Jacylyn Whitney, owners of property located at 325 Antlers Drive, for an Area Variance from Section 207-2A to allow a front yard fence to be 6.5 ft. in height in lieu of the maximum 3.5 ft. allowed by code. All as described on application and plans on file.

CHAIRPERSON: Announce that public hearings are closed.

NEW BUSINESS:

NONE

OLD BUSINESS:

9A-04-20 Application of Save Monroe Ave., Inc. (2900 Monroe Avenue, LLC, Cliffords of Pittsford, L.P. Elexco Land Services, Inc., Julia D. Kopp, Mark Boylan, Ann Boylan and Steven M. Deperrior), appealing the issuance of a building permit (Starbucks Coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods Plaza project located at 2740 / 2750 Monroe Avenue. All as described on application and plans on file.  
**TABLED AT THE OCTOBER 7, 2020 MEETING**

10A-02-20 Application of Brighton Grassroots, LLC, appealing the issuance of a building permit (Starbucks Coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods Plaza project located at 2740 / 2750 Monroe Avenue. All as described on application and plans on file. **TABLED AT THE OCTOBER 7, 2020 MEETING**

PRESENTATIONS:

NONE

COMMUNICATIONS:

Letter from Mindy Zoghlin, Zoghlin Group, dated October 7, 2020, regarding ZBA appeal made by Brighton Grassroots, LLC (10A-02-20).

Letter from Jared C. Lusk, Nixon Peabody, dated October 16, 2020, with opposition to the proposed reuse of the Baptist Temple located at 1075 Clover Street.

Letter from Paul Adams, Monroe Capital, Inc., dated October 18, 2020 with comments regarding the Whole Foods project and easements for the associated Access Management Plan.

Letter, with attachments, from Ramsey Boehner, Town of Brighton Building Inspector, and John A. Mancuso, Esq., dated September 23, 2020, in further opposition to applications 9A-04-20 and 10A-02-20 challenging the issuance of Building Permit No. 20180487 for the Whole Foods project.

Letter from Christopher Roth, Fire Marshal, dated November 4, 2020, with comments regarding application 11A-02-20, 2935 East Avenue.



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585.563.7432 fax  
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***VIA FIRST CLASS MAIL AND E-MAIL ([rick.distefano@townofbrighton.org](mailto:rick.distefano@townofbrighton.org))***

October 7, 2020

Rick DiStefano  
Clerk / Executive Secretary to the Town of Brighton Zoning Board of Appeals  
Town of Brighton, Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618



***RE: ZBA Appeal – Brighton Grassroots, LLC***

Dear Mr. DiStefano:

We represent Appellants Brighton Grassroots, LLC (“BGR” or “Appellants”) in the above-referenced appeal related to the Whole Foods/ Monroe Avenue Plaza Redevelopment project (the “Project”). This letter supplements our Appeal dated August 19, 2020, for which the Town of Zoning Board of Appeals has scheduled a public hearing for October 7, 2020. Please ensure that BGR’s submissions are made part of the record for the appeals related to this Project.

As we argue in our Appeal, the Amenity Agreement and Incentive Zoning Resolution for the Project require the Developer to obtain “all cross access and other easements necessary to implement and construct the AMP.” However, the Cross-access easements over for 2799 Monroe Avenue and 2735 Monroe Avenue are invalid (and therefore the building permit on which they are based is invalid, too,) because, under the terms of the recorded mortgages for those premises, the owner does not have the power to grant easements over the property without the prior written consent of the mortgage holder. In the case of 2735 Monroe Avenue, which is owned by Mamasan’s, that means that Mamasan’s cannot grant the cross-access easement without the prior written consent of the Mortgagee, Monroe Assistance Fund, LLC.

In a September 23, 2020 letter from Ramsey Boehner and John Mancuso to the ZBA, Mr. Boehner alleges that the Town has no role in determining the validity of the cross-access easement because it is a “private agreement.” Mr. Boehner is wrong. The Town Board’s Amenity Agreement and Incentive Zoning Approval expressly require the Developer to submit to the Town all cross access and other easements necessary to implement the AMP and empower the Town to review and approve such easements. The further conditions of approval section of the Incentive Zoning Resolution likewise requires the Developer to provide and file access rights for cross-access and cross-parking easements before a building permit may be

issued. These approvals unequivocally give the Town the power and responsibility to determine whether the easements are valid and whether they “provide access rights for cross-access and cross-parking” prior to issuing a building permit.

Additionally, Boehner’s argument that the Town has no role in evaluating whether the cross-access easements are adequate to construct and operate the AMP is contradicted by the actions of the Town’s own employees, including the Town attorney and Building Inspector. Records produced by the Town reveal that they reviewed and evaluated the sufficiency of other private agreements related to this project, including other cross-access easements. These records include emails between the Developer, the Town Attorney (Mr. Gordon), and even Mr. Boehner, discussing the sufficiency of cross-access agreements between private parties (the Developer and the owners of the AMP properties)!

This completely contradicts the Town’s position that it has no role in evaluating “private agreements.” To the contrary, these emails, produced by the Town pursuant to a Court order as Town document 9869, show that the Town attorney and Mr. Boehner believed that the Town had the power to consider private agreements affecting the Developer’s ability to construct and operate the AMP, and that they in fact did so with respect to the cross-access easements in this case. It would therefore be unfair for the Town to adopt the opposite position now. Indeed, it would be the very definition of arbitrary and capricious for the Town to reach a different legal determination as to its ability to consider the sufficiency of the cross-access easements now when, on the same facts, the Town reached the opposition conclusion earlier on in the same Project.

Accordingly, Boehner had the power and responsibility to examine the Mamasan’s mortgage with Monroe Assistance Fund, LLC to determine whether it deprived Mamasan’s of the power to grant the cross-access easements required for the AMP. His failure to do so, and his failure to determine that the Mamasan’s Mortgage requires the consent of the first mortgage holder, which was not given, renders the Building Permit invalid.

For these reasons, and the reasons set forth in our Appeal and supplemental letters and affidavits, the ZBA must annul the Building Inspector’s issuance of the Building Permit.

Thank you for your patient attention to this matter.

Sincerely,

*Mindy L. Zoglin*  
Mindy L. Zoglin

cc w/encl.:David Dollinger, Town of Brighton Planning Board Attorney (by email to [David@dollingerassociates.com](mailto:David@dollingerassociates.com))

**From:** Goldman, Jerry A. on behalf of Goldman, Jerry A. <jgoldman@woodsoviatt.com>  
**To:** Ken Gordon <kgordon@gordonandschaal.com>  
**Cc:** Michael Guyon <mike.guyon@townofbrighton.org>; Town of Brighton-Ramsey Boehner <ramsey.boehner@townofbrighton.org>; Anthony Daniele <AJD@Danielefamly.com>; Danny Daniele <djd@daniefamly.com>  
**Subject:** FW: Whole Foods Plaza -- AMP easements  
**Date:** Wednesday, June 24, 2020 1:41:02 PM

---

Ken-

As to paragraph 3 of the recorded cross-access agreement, the Declarant has responsibility for all the costs of construction of the easement improvements. The individual owners are responsible for maintenance of the driveway and parking on their properties.

The primary responsibility for the Sakura Home north-south driveway (as well as to the repairs which may be necessary) is the responsibility of that owner. The language as to shared expense for maintenance items is not "unclear at best" as you state; it is specific ("Maintenance shall be deemed as snow removal, sealing, patching striping which shall be performed when needed to keep the foregoing easement area reasonably free of snow, trash and obstructions and in good condition and repair") if done by a third party vendor with any expense over \$1000.00 subject to approval by the other property owners which approval shall not be unreasonably withheld conditioned or delayed. If people do not perform as required under the Agreement(s) there are remedies available to anyone aggrieved including the Town.

Hopefully this clarifies the issue. Your observation is correct that going back to amend the agreement which was approved by the Town before execution and recordation would be challenging if not impossible especially in a reasonable time frame. If you wish to discuss please give me a call.

Are there any other issues on the text of documents?

Thanks and stay safe

Jerry

Jerry A. Goldman, Esq.  
Partner  
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**From:** kgordon@gordonandschaal.com [mailto:kgordon@gordonandschaal.com]  
**Sent:** Wednesday, June 24, 2020 11:08 AM  
**To:** Goldman, Jerry A.  
**Cc:** mike.guyon@townofbrighton.org; 'Ramsey Boehner'  
**Subject:** RE: Whole Foods Plaza -- AMP easements

Jerry

Staff will review the new maps provided for completeness and accuracy. We want to make sure that the courses and distances shown on the maps are the very same as those shown in the easements. I have been told that at least one of the courses for the filed easement is missing but I will await staff's fuller report once the materials you sent over yesterday are reviewed.

Relative to the substance of each cross-access easement agreement for the AMP area I noted that paragraph 3 of each easement contains language that imposes repair and maintenance duties on the declarants. The Town is concerned that the language provided leaves open the possibility of disagreement between the parties over when such maintenance and repair of striping, pavement and the like will occur. The Town is particularly concerned over the language used in paragraph 3 of the easement already filed in the County Clerk's office relating to the maintenance and repair of the driveway area on the Sakura Home property and the sharing of those expenses. The language used is unclear at best as to what will be a shared expense and who decides when maintenance is to be performed. Recognizing the difficulties and delays that would be engendered in requiring the developer to get all parties to re-execute a corrected easement agreement containing language better addressing the repair and maintenance obligations and the shared expense of the driveway are maintenance and repair the Town is looking to you and your client to suggest some mechanism to give the Town some assurance that repairs and maintenance to the AMP area will be timely and properly performed. I will await your suggestions on this issue and then discuss them with staff.

Thank you

Ken

Kenneth W. Gordon, Esq.  
**Attorney to the Town of Brighton**  
1039 Monroe Avenue  
Rochester, New York 14620  
(585) 244-1070  
[kgordon@gordonandschaal.com](mailto:kgordon@gordonandschaal.com)

**From:** Goldman, Jerry A. <jgoldman@woodsoviatt.com>  
**Sent:** Tuesday, June 23, 2020 4:21 PM  
**To:** 'kgordon@gordonandschaal.com' <kgordon@gordonandschaal.com>  
**Cc:** 'mike.guyon@townofbrighton.org' <mike.guyon@townofbrighton.org>; 'William Moehle' <william.moehle@townofbrighton.org>; 'Ramsey Boehner' <ramsey.boehner@townofbrighton.org>; 'Danny Daniele' <AJD@Danielefamly.com> <djd@daniefamly.com>; 'Anthony Daniele (AJD@Danielefamly.com)' <AJD@Danielefamly.com>; Hair, Richard A. <richard.hair@woodsoviatt.com>  
**Subject:** RE: Whole Foods Plaza -- AMP easements

Ken-

The total AMP is comprised of three easements

1. One which is recorded linking the City Mattress parcel, the Motel former Pizza Hut and Dunkin Donuts to the Sakura Home property that will have the traffic light (document #20200623153413 attached).
2. One which provides cross access and parking rights among the City Mattress Motel and former Pizza Hut property (document # 7948724 attached) which was provided for Town review and approval with the original easement package.
3. One which links the Dunkin Donuts property and the recorded easement referenced above with the properties to the east --Maximum Tan Whelpley and Paul Salvatore s/Motel -- (document #8161034 and Cross Access 2 Description attached) more recently provided for Town review and approval.

Also attached is the AMP EASEMENT OVERALL MAP (as requested). The attachment contains four separate maps for reference

**TOWN 009869**

1. A black and white map of the overall AMP with metes and bounds (recorded easement in grey, the second easement referenced above with diagonal lines and the third easement above with cross hatching).  
Please note that the first and third easements above overlap over the Dunkin Donuts property (depicted as N/F Myron Greene) and are grey with cross hatching.
2. A black and white map of the overall AMP without metes and bounds (for clearer reading). The shading, diagonal lines and cross-hatching are the same as map #1.
3. A color map of the overall AMP with metes and bounds (recorded easement in lilac/darker green, the second easement referenced above in salmon and the third easement above in lime green/dark green).  
Please note that the first and third easements above overlap over the Dunkin Donuts property and are the darker green.
4. A color map of the overall AMP without metes and bounds (for clearer reading). The color coding is the same as map #3.

Upon the Town's review and approval of second and third easement above, we will obtain all signatures and be prepared to record.

If you have any questions, please do not hesitate to contact me. As always, thank you very much for your courtesy.

Stay safe

Jerry

Jerry A. Goldman, Esq.  
Partner  
Direct Dial: 585-987-2901  
Direct Fax: 585-362-4802  
Mobile: 585-329-7073  
[goldman@woodsoviatt.com](mailto:goldman@woodsoviatt.com)



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**From:** Goldman, Jerry A.  
**Sent:** Monday, June 22, 2020 4:34 PM  
**To:** [kgordon@gordonandschaal.com](mailto:kgordon@gordonandschaal.com)  
**Cc:** [mike.guyon@townbrighton.org](mailto:mike.guyon@townbrighton.org); 'William Moehle'; 'Ramsey Boehner'; Danny Daniele ([did@danielefamily.com](mailto:did@danielefamily.com)); Anthony Daniele ([AJD@Danielefamily.com](mailto:AJD@Danielefamily.com))  
**Subject:** RE: Whole Foods Plaza

Ken-

Attached please find the Conservation Easement with one change in reference to add Final Approved Utility Plan to Final Site Plan in paragraph 5 ([highlighted](#) in the attachment above). The reason for this change is that there is a storm sewer outlet reflected on the Utility Plan that is not on the site plan. Screen shots of the overall Final Utility Plan and a blow-up of the Conservation Easement Area are attached.

We did work from a Town template (don't recall if it was The Reserve or another Town project). A couple comments for your consideration

1. We are fine with your deletions on paragraphs 3 and 4, the content of which is covered elsewhere in the document.
2. We are okay with your deletions in Paragraph 5, provided that we reference the Final Approved Utility Plan (which will be signed off by the Town).
3. I don't think you had any other changes.

With regard to your request for a comprehensive AMP easement map with all metes and bounds (courses and distances) set forth, I am working with the engineers on that. Of course, we have the main easement, which is already recorded and provides access for adjacent properties to the Sakura Home site (and the traffic light). There is a second easement which provides cross access between City Mattress, the hotel and the former Pizza Hut, which was sent to you in our original easement package (attached for your reference). The third easement is the recently requested and provided easement for the properties to the east.

I hope to get you the comprehensive map showing the three easements comprising the total AMP (with legal descriptions for each easement) shortly. We would appreciate your confirmation that the text of the easements provided are acceptable at your earliest convenience.

As always, thank you very much for your courtesy.

Stay safe

Jerry

Jerry A. Goldman, Esq.  
Partner  
Direct Dial: 585-987-2901  
Direct Fax: 585-362-4802  
Mobile: 585-329-7073  
[goldman@woodsoviatt.com](mailto:goldman@woodsoviatt.com)



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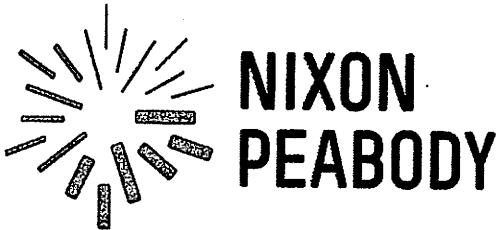
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**TOWN 009870**



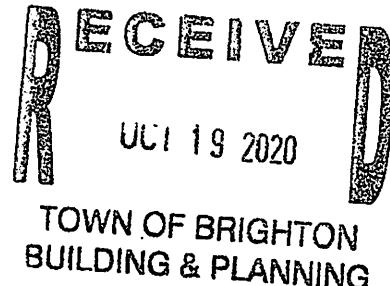
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October 16, 2020

Planning Board &  
Zoning Board of Appeals  
Town of Brighton  
Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618



**Re: Application to convert the Baptist Temple property located at 1075 Clover Street, Town of Brighton, Monroe County, New York from a church use to a high density office use (the "Application")**

Dear Members of the Planning Board and Zoning Board of Appeals:

We represent a number of concerned residents that own property adjacent to, and in the immediate vicinity of, the Baptist Temple located at 1075 Clover Street (the "Property"). It is our understanding that the Application was discussed at the September 16, 2020 Planning Board meeting and was tabled pending the submission of an application for a use variance to the Zoning Board of Appeals<sup>1</sup>. The applicant seeks to convert the existing church property to high density office space (the "Project"). The Property is located in the Town's Residential Low Density zoning district and is completely surrounded by residential property.

On behalf of our clients, we submit this letter in opposition to the Project. If approved, the Project will permanently destroy the character of the picturesque Highland/Clover/East Avenue residential neighborhood by imposing a large office complex within a residential zoning district in violation of the Town of Brighton Zoning Code (the "Code"). Enforcing the Code and preserving the unique character of the Town's various neighborhoods has traditionally been a priority for the Town. The Project is inconsistent with this long-standing priority and seems most inappropriate, particularly when one considers the significant amount of existing office space located within a short distance of the Property that sits vacant and available for rent.

Our clients do not believe the landowner has made a good-faith effort to convert the property into a use permitted under the Code or adequately considered the adverse impacts that a high density office complex would have on their neighborhood and homes. Furthermore, while the landowner has every right to seek a use variance from the Zoning Board of Appeals for the Project, it seems

<sup>1</sup> We understand that the landowner is intending to submit an application for a use variance to the Zoning Board of Appeals soon.

unlikely that the landowner could meet the strict requirements for a use variance set forth in New York Town Law § 267(b)(2)(b), particularly since, to our knowledge, there has never even been a "For Sale" sign placed on the Property offering it for sale. Additionally, we can conceive of no hardship that has not been self-imposed and simultaneously allowed for decades of paying no real estate taxes to the community.

Therefore, our clients respectfully object to both the Application and the Project and ask the Town to consider the potentially significant adverse impacts the Project will have on the surrounding residential neighborhood and, at a minimum, require the applicant to better explore alternative uses for the Property that are permitted under the Code<sup>2</sup>.

Please feel free to contact me should you have any questions regarding this matter. Otherwise, our clients reserve all rights in this matter.

Very truly yours,



Jared C. Lusk

cc: Jerry A. Goldman, Esq. (via email)

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<sup>2</sup> The applicant has offered to meet with concerned neighbors to discuss the Project. Our clients appreciate the offer and look forward to the opportunity to discuss it with the applicant in the coming weeks.

---

## Setting the record straight

1 message

**Gary Cassara** <gary.cassara@monroecap.net>

Fri, Oct 16, 2020 at 11:26 AM

To: "william.moehle@townofbrighton.org" <william.moehle@townofbrighton.org>, "ramsey.boehner@townofbrighton.org" <ramsey.boehner@townofbrighton.org>, "rick.distefano@townofbrighton.org" <rick.distefano@townofbrighton.org>, "kgordon@gordonandschaal.com" <kgordon@gordonandschaal.com>, "david@dollingerassociates.com" <david@dollingerassociates.com>  
Cc: Paul Adams <paul.adams@monroecap.net>

To Whom It May Concern,

It has come to my attention that there was a meeting that Danny Daniele who made certain representations about the Whole Foods project Development.

My Name is Paul Adams. I am a lifelong Brighton resident and through one of my companies, have a first Mortgage on the former Pizza Hut and Dunkin Donuts across the street from the proposed Whole Foods location on Monroe Avenue. The owner of those properties is in default on the Mortgage for nonpayment. The owner B. Walters recorded an easement without authorization that comes behind my mortgage. We have notified the owner and have been contacted by Howie Jacobson and Danny Daniele. Mr. Jacobson wanted to know about the easement and to my understanding got my default letter from the owner of the properties, B Walters. Danny Daniele expressed, "why am I trying to hurt him and why am I against the project and that he will never give up". I know Mr. Jacobson but have no relationship with him other than being in the same Kindergarten class at Brighton. I don't know the Daniele family or Wegman Family other than using their businesses.

The Daniele's stated the following to the Board members:

"I can confirm that they absolutely would love to see this project across the street"

"Uh, they've told me word for word that this was probably the best thing that could have happened to their property"

"the gentlemen that they've spoke to is also uh friends with Howie Jacobson and the Wegmans group"

"uh but his comments directly to me was, uh I don't want to be the one stepping in front of this project, I would love to see it go forward and anything I can do to help, please let me know."

**I just want to state clearly that:**

I wouldn't love to see the project across the street

I believe the best thing that could happen to the property is The Wegman Family Buy it and dedicate as a Park in their Fathers name.

I do understand the tax benefit to the town, but as my experience with other developments I believe the traffic that will be generated will be greater than represented.

I'm not well informed about all the details of the project. Other than the tax benefits to the town, as a person familiar with development, that the additional traffic generated and more product diversity isn't necessary.

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

Paul Adams

Paul Adams

Monroe Capital, Inc.

[www.monroecap.net](http://www.monroecap.net)

3445 Winton Place, Suite 228

585-424-2750



Town of  
**Brighton**

## Building and Planning Department

Commissioner of Public Works - Michael Guyon, P.E.

**Ramsey Boehner**

Town Planner

**R E C E I V E D**  
OCT 21 2020  
**TOWN OF BRIGHTON  
BUILDING & PLANNING**

October 21, 2020

Town of Brighton Zoning Board of Appeals  
2300 Elmwood Avenue  
Rochester, New York 14618

Re: Application 9A-04-20

Application of Save Monroe Ave., Inc., et al., appealing the issuance of a building permit (Starbucks Coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods project located at 2740 / 2750 Monroe Avenue (“SMA Appeal”).

Application 10A-02-20

Application of Brighton Grassroots, LLC appealing the issuance of a building permit (Starbucks Coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods project located at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe Avenue, a portion of 175 Allens Creek Road and a portion of 2259 Clover Street (“BGR Appeal”).

Dear Members of the Zoning Board of Appeals:

As authorized by the Town of Brighton Zoning Board of Appeals (the “ZBA”) during its meeting held on October 7, 2020, I respectfully submit this letter in further opposition to the above-referenced appeals challenging the issuance of Building Permit No. 20180487 (the “Building Permit”) for the Whole Foods Plaza project (the “Project”) proposed by the Daniele Family of Companies (the “Developer” or “Daniele”) located on 10.1+/- acres of land located at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe Avenue, a portion of 175 Allens Creek Road and a portion of 2259 Clover Street (the “Property”). The purpose of this letter is to respond to the following documents submitted by Brighton Grassroots, LLC (“BGR”): (1) Letter from Mindy Zoghlin, dated September 27, 2020; (2) Supplemental Affirmation of Mindy L. Zoghlin, dated September 25, 2020; (3) Letter from Mindy Zoghlin, dated October 7, 2020; and (4) Second Supplemental Affirmation of Mindy L. Zoghlin, dated October 6, 2020.

2300 Elmwood Avenue Rochester, New York 14618 [www.townofbrighton.org](http://www.townofbrighton.org)

[Ramsey.Boehner@townofbrighton.org](mailto:Ramsey.Boehner@townofbrighton.org) 585-784-5229

I have prepared this letter with the assistance of John A. Mancuso, Esq., of the law firm of Weaver Mancuso Brightman PLLC, special counsel to the Building Inspector with respect to the SMA Appeal and BGR Appeal. For the reasons discussed below and in my prior submission, the Town issued the Building Permit in accordance with applicable law and regulations, including the requirements of the Town of Brighton Comprehensive Development Regulations, and all approvals issued by the Town Board of the Town of Brighton (the “Town Board”) and the Town of Brighton Planning Board (the “Planning Board”). Accordingly, the above-referenced appeals should be denied and the Building Permit upheld.

I have enclosed an updated spreadsheet containing an outline of the arguments raised in both appeals and my response that incorporates reference to BGR’s additional submissions (highlighted in red). Because BGR also requested that its arguments be incorporated by reference into the record of the SMA Appeal, I respectfully request that this submission with enclosures also be incorporated into the record of the SMA Appeal in its entirety.

**B. The Appeals Should Be Denied In All Respects.**

**1. BGR has withdrawn portions of the BGR Appeal.**

BGR has withdrawn the following paragraphs of the BGR Appeal: ¶¶11(A)-11(B) and ¶¶71-73 (regarding Irrevocable Letters of Credit for the Access Management Plan, landscaping, stormwater mitigation, infrastructure and erosion control); and ¶¶59-68 (regarding PSC approval) (*see* 9/25/2020 Zoglin Aff. ¶31). During the public hearing, SMA also essentially conceded that the Town obtained all necessary Irrevocable Letters of Credit for the Project (*see* ZBA000004-9). Thus, both the BGR Appeal and SMA Appeal should be denied on these grounds.

**2. The Project is being constructed in a single phase consistent with the Incentive Zoning Resolution and Site Plan Approval.**

In its supplemental submissions, BGR adopts SMA’s argument that the Building Permit authorizes phased construction in violation of the terms and conditions of the Incentive Zoning Resolution and Findings Statement adopted by the Town Board pursuant to the New York State Environmental Quality Review Act (“SEQRA”) (*see* BGR Appeal [9/25/20 Zoglin Affm. ¶¶6(A), 17-21; 10/6/20 Zoglin Affm. ¶¶10-17; 9/25/20 Ltr.]). BGR’s supplemental submission on this point substantively tracks the same argument contained in SMA’s August 2020 submissions (*compare* SMA Appeal [8/26/20 Saykin Ltr.] *and* BGR Appeal [9/25/20 Zoglin Ltr.]; *compare* SMA Appeal [Saykin Aff. ¶¶6-19] *and* BGR Appeal [10/6/20 Zoglin Affm. 10-17]). For the reasons set forth in the Building Inspector’s prior submission, BGR’s argument confuses the concept of phased construction for purposes of evaluating potential environmental impacts under SEQRA with the sequencing of the site work necessary to develop the Project. The Building Permit was issued consistent with the requirements of the Incentive Zoning Resolution and the Town Board’s SEQRA review (*see* 9/23/20 Boehner Ltr. at Point C.6).

BGR incorrectly contends that the Building Permit allows the Developer to “relocate temporary fencing from the Pedestrian Easement to the replacement trail area, thereby threatening the safety of the public, and illegally interfering with the public’s use of the Pedestrian Easement” (BGR Appeal [9/25/20 Zoglin Affm. ¶21]). Nothing in the Building Permit allows this activity (*see* ZBA000001-2). Moreover, the Developer has committed to ensuring that the pedestrian pathway will not be closed during or after construction. When the new pathway is constructed, it will provide two options for pedestrians coming through the area.<sup>1</sup>

3. The Cross-Access Easements are valid.

In its supplemental submissions, BGR repeats its allegation that the three cross-access easements (collectively, the “Cross-Access Easements”) (ZBA000143-184) for the Project’s Access Management Plan (“AMP”) are invalid because the Developer allegedly failed to obtain the signature and approval from the first mortgage holders for certain affected properties (*see* BGR Appeal [9/25/20 Zoglin Affm. ¶¶6(B), 22-28; 10/6/20 Zoglin Affm. ¶¶ 25-34; 10/7/20 Zoglin Ltr.]). BGR further contends that if the mortgage holder commences a foreclosure action, it will cut off the Cross-Access Easements (*see* BGR Appeal [9/25/20 Zoglin Affm. ¶28]). For the reasons set forth in the Building Inspector’s prior submission, absent a judgment extinguishing the Cross-Access Easements, the Cross-Access Easements as filed are valid and were properly relied upon by the Town (*see* 9/23/20 Boehner Ltr. at Point C.3).

BGR’s claim that the property owners “negotiated away” their power to grant the Cross-Access Easements or that the Cross-Access Easements are invalid on the ground that they do not contain the consent of the mortgage holders (*see* BGR Appeal [10/6/20 Zoglin Affm. ¶¶25, 28, 32]) is a misstatement of New York law and a mischaracterization of the terms of the mortgage. The provision BGR cites states as follows:

[N]either the Property, nor any part thereof or interest therein, shall be sold, conveyed, disposed of, alienated, hypothecated, leased . . . , assigned, pledged, mortgaged, further encumbered or otherwise transferred, nor Mortgagor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily . . . in each case without the prior written consent of Mortgagee being first obtained . . . .

This provision is a covenant that is not self-executing so as to render a conveyance void. There are also no words of conveyance — such as “transfer, sell, release, grant, assign or convey” (*Spirit v Spirit*, 209 AD2d 688 [2d Dept 1994]) — indicating that the property owner relinquished

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<sup>1</sup> BGR relies on a construction timeline obtained from the Developer (*see* BGR Appeal [10/6/20 Zoglin Affm. ¶¶12-15]). This document was never submitted to the Town and was not relied upon by the Building Inspector in issuing the Building Permit. The document is irrelevant to the issuance of the Building Permit and the sequencing of the site work necessary to develop the Project as approved by the Town.

the ability to transfer an interest in the property. To suggest otherwise would constitute an “effective *prohibition* against transferability itself,” which is void as an unreasonable restraint on alienation (*see Metropolitan Transp. Auth. v Bruken Realty Corp.*, 67 NY2d 156 [1986]).

Contrary to BGR’s contention (*see* BGR Appeal [10/6/20 Zoglin Affm. ¶¶33-34; 10/7/20 Zoglin Ltr.]), the Town is not arguing that it did not consider whether the Cross-Access Easements were adequate to construct and operate the AMP. Under paragraph 2(b) of the Amenity Agreement, “[t]he easements shall be prepared and submitted to the Town for review and approval. Upon satisfactory completion and execution of the documents, the easements shall be filed . . . with the Town being provided copies of each easement with the liber and pages of filing” (ZBA000111). Notably, neither BGR nor SMA raise any arguments challenging the substance of the Cross-Access Easements as insufficient to construct and operate the AMP. The Town reviewed the Cross-Access Easements, and determined they were satisfactory to substantively implement and construct the AMP (*see* 9/23/20 Boehner Ltr. at Point C.2).

The Town, however, is not obligated to enforce private mortgages, and it is patently unreasonable to expect a municipality to evaluate every private contractual agreement that may pertain to a property subject to a land use application. BGR has cited no authority for such a proposition. As set forth in the Building Inspector’s prior submission, in issuing a zoning approval, “a municipality determines only that the application complies with a municipality’s standards and conditions contained in the zoning ordinance” (*Chambers v Old Stone Hill Rd. Assoc.*, 1 NY3d 424, 432 [2004]). Prior to the issuance of the Building Permit, the Cross-Access Easements were completed to the Town’s satisfaction in accordance with the requirements of the Amenity Agreement and Incentive Zoning Resolution (ZBA000088).

4. Certifying the site plans is not a requirement for issuing a building permit.

In its supplemental submissions, BGR repeats its allegation that the Building Inspector did not certify on the site plan that it meets the requirements of all Comprehensive Development Regulations (BGR Appeal [9/25/20 Zoglin Affm. ¶6(D); 10/6/20 Zoglin Affm. ¶¶18-21]). This argument fails for the reasons set forth in the Building Inspector’s prior submission, including that Section 217-12(A)(3) of the Comprehensive Development Regulations concerns site plan approval, not the issuance of a building permit (*see* 9/23/20 Boehner Ltr. at Point C.8).

BGR’s assertion that the Commissioner of Public Works is not the Building Inspector and, as a result, cannot certify whether the plans meet the requirements of the Comprehensive Development Regulations (10/6/20 Zoglin Affm. ¶¶20-21) is incorrect and contrary to the Town Code. Pursuant to Section 73-5(A)(1) of the Town Code, the Building Inspector may be, among other individuals, the Commissioner of Public Works. By resolution dated January 2, 2020, the Town Board designated the Commissioner of Public Works, the Associate Planner, the Planner, the Town Engineer, the Town Architect, and the Fire Marshal of the Town “to carry out the functions of the office of Building Inspector, as laid out in the Comprehensive Development Regulations” (*see* ZBA010544-551). The Commissioner of Public Works has also designated

the Associate Planner as the Code Enforcement Officer/Building Inspector. Simply put, the Town Engineer and Associate Planner, under the direction of the Commissioner of Public Works, are each lawfully designated as the Building Inspector in the Town of Brighton.

BGR's claim that the Town's "approval" is not the same as a "certification" erroneously attempts to put form over substance, and completely ignores the Town's process and its thorough review of the Project prior to the issuance of the Building Permit. Tellingly, neither BGR nor SMA actually demonstrate how the Project does not comply with the Comprehensive Development Regulations. The Commissioner of Public Works and Associate Planner carefully reviewed and confirmed that all of the requirements needed to approve the plans have been satisfied prior to endorsing the final drawings. The signature title on the plans indicates that the endorsement by the Commissioner of Public Works constitutes an approval, *i.e.*, the certification that the plans meet the requirements of the Comprehensive Development Regulations. There is nothing in the Town Code requiring a "certification" to take a particular form. The Building Inspector has "confirm[ed] and certif[ied] that the plans meet the requirements of the Comprehensive Development Regulations" (9/23/20 Boehner Ltr. at Point C.8).

5. The Town obtained all necessary County and State approvals prior to issuing the Building Permit.

In its supplemental submissions, BGR alleges that the Developer did not provide certain State and County approvals (see BGR Appeal [9/25/20 Zoghlin Affm. ¶6©, 29-30]). Condition #41 of the Site Plan Approval states that "prior to the issuance of building permits for the project, State and County necessary approvals shall be obtained" (ZBA000103). Necessary applications were made to the New York State Department of Transportation ("NYSDOT"), New York State Department of Environmental Conservation ("NYSDEC"), Monroe County Department of Health ("MCDOH"), Monroe County Pure Waters ("MCPW") and Monroe County Water Authority. With respect to certain approvals, such as sprinkler, kitchen fire suppression, kitchen ventilation, and backflow prevention, the designs are completed, submitted, and approved by the jurisdictional agencies separate from the building permit process and, therefore, does not constitute a "necessary" approval for the issuance of a building permit. In the case of the Building Permit, it included the construction of the Starbucks foundation and building shell only. The design and approval of the interior building plumbing, sprinklers, and kitchen follows a separate path and is generally subsequent to the issuance of the Building Permit.

The approvals BGR alleges were not provided and the Building Inspector's response is set forth in the chart below:

Approval	Town Response
NYSDOT Highway Non-Utility Work Permit	The Town obtained all applicable NYSDOT permits as discussed in the Building Inspector's prior submission (see 9/23/20 Boehner Ltr. at Point C.4; ZBA000103, 116, 120, 124-136, 150).

NYSDOT Highway Work Permits	The Town obtained all applicable NYSDOT permits as discussed in the Building Inspector's prior submission ( <i>see</i> 9/23/20 Boehner Ltr. at Point C.4; ZBA000103, 116, 120, 124-136, 150).
NYSDEC Sanitary Sewer Extension	A NYSDEC permit is not issued for sanitary sewer. MCPW and MCDOH review and approve sanitary sewer improvements. The plans were signed on July 8, 2020 by the MCDOH regarding the sanitary sewer extension ( <i>see</i> ZBA000215).
MCDOH Pure Waters Approval	The plans were signed by MCPW on January 1, 2020 indicating that the plan conforms to the MCPW Master Plan ( <i>see</i> ZBA000215).
MCDOH Cross-Contamination Control Approval	This approval process is separate from the Building Permit process and does not constitute a "necessary" approval for issuance of the Building Permit. Nevertheless, MCDOH approved the applicable backflow prevention devices on July 14, 2020 (ZBA010573-578). Because the Project includes multiple buildings each requiring a Reduced Pressure Zone Device, <sup>2</sup> additional backflow prevention approvals will also be obtained.
MCDOH Grease Interceptor	This approval process is separate from the Building Permit process and does not constitute a "necessary" approval for issuance of the Building Permit. The location and size of the plumbing piping and fixtures must be determined prior to designing the grease trap interceptor.
MCDOH Realty Subdivision Approval	Article III Realty Subdivisions of the Monroe County Code define a subdivision as "[a]ny tract of land which is divided into five or more parcels, after August 1, 1977, . . . for sale or for rent as residential lots or residential building plots, regardless of whether the lots or plots to be sold or offered for sale or leased for any period of time are described by metes and bounds or by reference to a map or survey of the property or by any other means of description and regardless of whether the lots or plots are contiguous" ( <i>see</i> Monroe County Code § 569-27). The Project does not include the subdivisions of five or more lots nor is the property residential. Thus, approval from the MCDOH Realty Subdivision is not required. All required subdivision documents have been filed in the Monroe County Clerk's Office in accordance with all required regulations.

<sup>2</sup> A Reduced Pressure Zone Device is a type of backflow prevention device used to protect water supplies from contamination.

Monroe County Department of Transportation	Because Monroe Avenue is not a County highway, a permit from the Monroe County Department of Transportation is not required for the Project.
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6. The Town was not required to obtain a final easement from RG&E prior to the issuance of the Building Permit.

In its supplemental submission, BGR alleges the Building Inspector illegally issued the Building Permit before the Developer obtained a valid easement to operate the trail amenity (*see* BGR Appeal [10/6/20 Zoghlin Affm. ¶¶22-24]). BGR's claim fails for the reasons set forth in the Building Inspector's prior submission because obtaining the necessary easements from RG&E for the trail amenity is not a condition of Site Plan approval issued by the Planning Board on September 17, 2018 ("Site Plan Approval") (ZBA000100-107). The Site Plan Approval does not govern the construction of the trail amenity outside the Project site, *i.e.*, within the easement area to be granted by RG&E to the Town running between Allens Creek Road and Highland Avenue (*see* 9/23/20 Boehner Ltr. at Point C.5).

The Amenity Agreement governs the timing and requirements for construction of the trail amenity, as follows:

- Paragraph 1(a) of the Amenity Agreement provides that the Developer "shall complete construction of the trail within three hundred sixty five (365) calendar days of the date on which the Town issues the first building permit for the project" (ZBA000079).
- Paragraph 1(b) of the Amenity Agreement provides that "prior to the issuance of a Town building permit with the exception of the issuance of any permit for demolition for the Project, the Developer shall prepare draft construction drawings for the Trail Amenity" and that the Developer "shall obtain all jurisdictional permits and approvals required to construct the trail" (ZBA000080).
- Paragraph 1(c) of the Amenity Agreement provides that "[w]ithin sixty (60) days of the completion of the trail, Daniele shall provide and file all necessary trail easements" (ZBA000080).

The Findings Statement also provides that "[i]t is anticipated that RG&E will provide a temporary construction easement, temporary license or grading release to allow the construction of improvements to the Trail. After construction of such improvements is complete, a public access easement will be filed with the Monroe County Clerk's Office" (ZBA000013).

In sum, contrary to BGR's contention, there is no requirement under the Amenity Agreement (or any other Town approval), that the Town obtain final easements from RG&E prior to the issuance of the Building Permit for the construction of Starbucks and the Whole Foods Plaza. Once the trail amenity is complete, the Developer will be required to provide and file the necessary trail easements as required under the Amenity Agreement (ZBA000080).

7. State legislative approval is not required because the pedestrians easements are not parkland subject to the Public Trust Doctrine.

In its supplemental submission, BGR alleges that the Town did not obtain State legislative approval with respect to certain pedestrian easements (collectively, the “Easements”) that run through the Property (see BGR Appeal [10/6/20 Zoghlin Affm. ¶¶3-9]). In particular, BGR alleges a New York Appellate Court determined that the Town may need to obtain state legislative approval under the Public Trust Doctrine and/or conduct a permissive referendum.

In support of its claims, BGR has submitted copies of the Easements and two decisions of the Appellate Division, Fourth Department (see BGR Appeal [10/6/20 Zoghlin Affm. Ex. A-F]), which found a question of fact as to whether the Easements are subject to the Public Trust Doctrine. BGR has not provided any competent proof or testimony in support of its claims that the public trust doctrine applies to the Easements, or that the Town is abandoning or conveying the Easements as part of the Project. BGR, as the applicant, has failed to meet its burden in establishing that the Easements are parkland subject to the Public Trust Doctrine. BGR has also failed to meet its burden in establishing that the Easements are being abandoned or conveyed such that a permissive referendum is required under New York Town Law (see *Letourneau v Town of Berne*, 89 AD3d 1202 [3d Dept 2011] [stating that the proponent has the burden at the hearing to demonstrate that the approval was improperly issued]; *Hariri v Keller*, 34 AD3d 583 [2d Dept 2006] [same]).

Until 1978, the Town had no official parkland of its own except, perhaps, for the pocket parks that exist in many residential neighborhoods in the Town (ZBA010579). Presently, the Town manages and maintains almost 500 acres of parkland and open space for the benefit and enjoyment of the Town’s residents and visitors. The Easements are non-exclusive easements granted by various property owners over certain strips of land between Clover Street and Allens Creek Road to allow for pedestrian passage across this area. At the time the Town acquired the Easements, it was not the Town’s intent to have the land subject to the Easements become a park or unequivocally dedicate this land as parkland. Further, both prior to and after the Town acquired the Easements, the owners of the fee interest of the land over which the Easements exist have used portions of the same for parking and/or vehicular access.

The Town has also not designated this area as a park, nor has the Town accepted this area as parkland. This area is not among the hundreds of acres of parkland and open space managed and maintained by the Town Parks Department. This area is not identified on any official Town maps or the Town’s comprehensive plans as a park, and the Town has not done any maintenance work on this land or erected any signage on or adjacent to the Easements which identify the pathway as a park (ZBA010565-572). This is confirmed by the relevant comprehensive plans and other Town plans, which discuss the Auburn Trail as a proposed trail.

The Project will also not substantially interfere with or otherwise obstruct the public’s use of the Easements. As part of the Project, the Developer will be improving and extending the

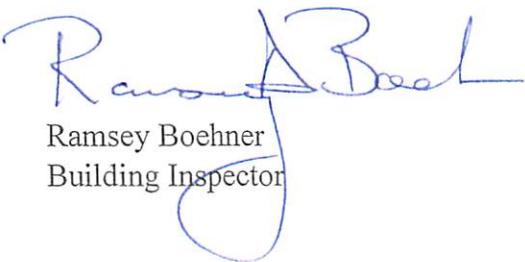
Auburn Trail as a significant amenity in favor of the Town and for the benefit of the public. Thus, the public's rights to access and use the Auburn Trail will be enhanced and improved as a result of implementation of the Project. As part of the Town's review and Site Plan Approval, the Planning Board ensured that the Easements would not be obstructed by parking spaces. Thus, notwithstanding that the Easements have and always will be located through a commercial parking lot, the Project proposes no parking spaces within the lands subject to the Easements. (ZBA000211, 214). The Developer has also committed to ensuring that the pedestrian pathway will not be closed during or after construction. When the new pathway is constructed, it will provide two options for pedestrians coming through the area. As a result, the Project will not alter the status quo concerning any use the public may have previously made or will continue to make of this area in the Town of Brighton (*see* ZBA010565-572).

Contrary to BGR's contention, the Town has not approved the conveyance of real property requiring a permissive referendum. Under Section 62(2) of the New York Town Law, upon adopting a resolution, a town board may "convey or lease real property in the name of the town, which resolution shall be subject to a permissive referendum." A permissive referendum under this section is triggered only in the event of a "conveyance or lease" of real property. The Town Board has not adopted any resolution authorizing the conveyance of the Easements, and BGR has not submitted any proof or competent testimony demonstrating an intent on the part of the Town to abandon the Easements, which must be "unequivocal and must clearly demonstrate the permanent relinquishment of all right to the [Easements]" (*see Spier v Horowitz*, 16 AD3d 400 [2d Dept 2005]). Here, the Easements will remain of record and unmodified as a result of the Project. In addition, as required by the Amenity Agreement, the Developer is providing new easements to facilitate the construction of the trail amenity (ZBA000080). Thus, the Town has not authorized the conveyance or abandonment of the Easements (ZBA010570).

### C. Conclusion

For the reasons set forth above and in the Building Inspector's prior submission, the Town issued the Building Permit in accordance with applicable law and regulations, including the requirements of the Comprehensive Development Regulations, Incentive Zoning Resolution, and Site Plan Approval. Accordingly, the above-referenced appeals should be denied and the Building Permit upheld.

Respectfully submitted,

  
Ramsey Boehner  
Building Inspector

  
John A. Mancuso, Esq.  
Special County to the Building Inspector

MINUTES OF TOWN BOARD ORGANIZATIONAL MEETING  
OF THE TOWN OF BRIGHTON, COUNTY OF  
MONROE, NEW YORK, HELD AT THE  
BRIGHTON TOWN HALL, 2300 ELMWOOD  
AVENUE, ROCHESTER, NEW YORK  
January 2, 2020

Present:

Supervisor William Moehle  
Councilmember Jason DiPonzo  
Councilmember Christopher Werner  
Councilmember Robin Wilt  
Councilmember Christine Corrado

Daniel Aman, Town Clerk  
Kenneth Gordon, Attorney for the Town  
David Catholdi, Chief of Police  
Mike Guyon, Commissioner of Public Works  
Paula Parker, Director of Finance

**MEETING CALLED TO ORDER** 1:15pm

**ROLL CALL**

**APPROVAL OF AGENDA**

Motion by Councilmember Christopher Werner seconded by Councilmember Christine Corrado to approve the agenda

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**ORGANIZATIONAL MEETING BUSINESS**

**MATTER RE:** Ratify the regular meeting schedule of the Brighton Town Board for 2020  
(see *Resolution #1 and schedule*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 1 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Ratify the 2020 Brighton Town Hall holiday schedule (see *Resolution #2 and schedule*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 2 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2020 Public Works Committee meeting schedule (see *Resolution #28 and proposed schedule*).

Motion by Councilmember Christopher Werner seconded by Councilmember Christine Corrado that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 3 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2020 Public Safety Committee meeting schedule (see *Resolution #27 and proposed schedule*).

Motion by Councilmember Christine Corrado seconded by Councilmember Christopher Werner that the Town Board table the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 4 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2020 Finance and Administrative Services Committee (FASC) meeting schedule (see *Resolution #31 and proposed schedule*).

Motion by Councilmember Christine Corrado seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 5 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2020 Community Services Committee meeting schedule (see *Resolution #32 and proposed schedule*).

Motion by Councilmember Christopher Werner seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 6 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Designate the Brighton-Pittsford Post as the official newspaper of the Town of Brighton for the year 2020 (see *Resolution #3*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 7 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Adopt the Scott, Foreman, Robert's Rules of Order, Newly Revised, 11th Edition (2011) as the rules of its procedure for the year 2019 (see *Resolution #4*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 8 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Marc L. Frankel as Constable of the Town of Brighton for a one-year term commencing January 1, 2020 and ending December 31, 2020 (see *Resolution #5 and letter from Marc L. Frankel dated December 9, 2019*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 9 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Michael M. Phillips, CPA, as Constable of the Town of Brighton for a one-year term commencing January 1, 2020 and ending December 31, 2020 (see *Resolution #6 and letter from Michael M. Phillips, CPA dated December 17, 2019*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 10 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Designate Town  

- Building Inspectors
- Environmental Review Liaison Officer
- Code Enforcement Officers; and
- Secretaries to various Town Advisory Boards effective January 1, 2020 through December 31, 2020 (see *Resolution #11 and letter from Michael E. Guyon, P.E., Commissioner of Public Works, dated December 10, 2019*).

Motion by Councilmember Christopher Werner seconded by Councilmember Christine Corrado that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 11 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize agreement to spend highway repair funds in 2020 which are allocated in the 2020 budget (see *Resolution #13 and letter from Michael E. Guyon, P.E., Commissioner of Public Works, dated December 10, 2019*).

Motion by Councilmember Christine Corrado seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 12 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Michael E. Guyon, P.E., as Commissioner of Public Works, Highway Superintendent and Superintendent of Sewer Maintenance, effective January 1, 2020 through December 31, 2020 and;

Timothy Anderson as Deputy Highway Superintendent, effective January 1, 2020 through December 31, 2020 (see *Resolution #14, memorandum from Town Supervisor Moehle dated December 10, 2019 and letter from Michael E. Guyon, P.E., Commissioner of Public Works dated December 10, 2019*).

Motion by Councilmember Christine Corrado seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 13 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Bruce Blackman, James Camiolo and Shana Hagins as Animal Control Officers (part-time) of the Town of Brighton for term of one year, commencing January 1, 2020 and ending December 31, 2020 (see *Resolution #15 and letter dated December 3, 2019 from Police Chief David Catholdi*).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 14 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize Supervisor to execute part-time program and vendor services contracts for 2020 for the Town's Parks and Recreation Department (see *Resolution #24 and letter dated December 9, 2019 from Rebecca Cotter, Recreation Director*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 15 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize Supervisor to execute Letter of Engagement retaining Kenneth W. Gordon, Esq. as Attorney to the Town of Brighton for 2020 (see *Resolution #7*).

Motion by Councilmember Robin Wilt seconded by Councilmember Christine Corrado that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 16 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize Supervisor to execute Letter of Engagement retaining David M. Dollinger, Esq., as Deputy Attorney to the Town of Brighton for 2020 (see *Resolution #8*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 17 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Ratifies and approves all appointments made by Supervisor in 2019 of all seasonal, on-call and temporary staff and authorizes Supervisor to appoint seasonal, on-call and temporary staff for the year 2020 (see *Resolution #16 and 2019 listing*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 18 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Designate authorized depositories and adopt Deposit and Investment Policy for 2020 (see *Resolution #9 and letter dated December 26, 2019 from Paula Parker, Director of Finance and copy of Policy*).

Motion by Councilmember Christopher Werner seconded by Councilmember Christine Corrado that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 19 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize petty cash and change funds for the year 2020 (see *Resolution #10 and memorandum dated December 13, 2019 from Paula Parker, Director of Finance*).

Motion by Councilmember Christine Corrado seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 20 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appointment of Daniel Aman, Town Clerk, as Receiver of Taxes for a two-year term commencing January 1, 2020 and ending December 31, 2021 (see *Resolution #25 and memorandum dated December 16, 2019 from Town Supervisor Moehle*).

Motion by Councilmember Christine Corrado seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 21 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appointment of Brighton Town Supervisor William W. Moehle and Town Clerk Daniel Aman as Marriage Officers for a two-year term commencing January 1, 2020 through December 31, 2021 (see *Resolution #30*)

Motion by Councilmember Christopher Werner seconded by Councilmember Christine Corrado that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 22 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTERS OF THE SUPERVISOR:**

**MATTER RE:** Appointment of MaryJo Lanphear as Town Historian to the Town for a term commencing January 1, 2020 through December 31, 2020 (see *Resolution #17 and letter dated December 10, 2019 from Town Supervisor Moehle*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 23 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appointment of particular Council Members as Chairs and members of the Public Works, Public Safety, Finance & Administrative Services (FASC) and Community Services Committees (see *Resolution #29 and assignment memorandum dated December 10, 2019 from Town Supervisor Moehle*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 24 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTERS OF THE TOWN CLERK:**

**MATTER RE:** Adopt Records Retention Schedule for 2019 (see *Resolution #19 and memorandum from Daniel E. Aman, Town Clerk dated January 2, 2019*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 25 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Presentation of Salary and Payroll Schedule for the period January 1, 2020 to December 31, 2020 (see *Resolution #22 and 2020 schedule*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 26 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**NEW BUSINESS:**

**MATTER RE:** Reading and Approval of Claims

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Supervisor read and approve payment of the claims as set forth in Exhibit No. 27 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:**

Reappointments to the Architectural Review Board, Historic Preservation Commission, Inclusion, Diversity, and Equity Advisory Board, Parks and Recreation Advisory Board, Sustainability Oversight Advisory Committee, and Zoning Board of appeals (see *Resolution #1NB*).

Motion by Councilmember Christine Corrado seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 28 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MEETING ADJOURNED AT 1:42pm**

Motion by Councilmember Christopher Werner seconded by Councilmember Robin Wilt to adjourn at 1:42 PM

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**CERTIFICATION:**

I, Daniel Aman, do hereby certify that the foregoing is a true and accurate record of the proceeding of the Town of Brighton, County of Monroe, State of New York meeting held on the 2nd day of January 2020 and that I recorded said minutes of the aforesaid meeting of the Town Board of the Town of Brighton, New York.

At a Town Board Meeting of the Town of Brighton,  
Monroe County, New York, held at the Brighton  
Town Hall, in said Town of Brighton on the 2<sup>nd</sup> day  
of January 2020.

PRESENT:

WILLIAM W. MOEHLE  
Supervisor  
JASON S. DIPONZIO  
CHRISTOPHER S. WERNER  
ROBIN R. WILT  
CHRISTINE E. CORRADO  
Councilmembers

**RESOLVED**, that the Town Board receive and file a letter dated December 10, 2019 from Michael E. Guyon, P.E., Commissioner of Public Works regarding Designation of Staff; and be it further

**RESOLVED**, that Ramsey Boehner is hereby designated as the Environmental Review Liaison Officer; and be it further

**RESOLVED**, that Ramsey Boehner and Edward Shero are hereby designated as Code Enforcement Officers/Town Building Inspectors for the Comprehensive Development Regulations; and be it further

**RESOLVED**, that the Commissioner of Public Works, the Associate Planner, the Planner, the Town Engineer, the Town Architect and the Fire Marshal of the Town are hereby designated as other officials to carry out the functions of the office of Building Inspector, as laid out in the Comprehensive Development Regulations and those sections of the Town Code relating to Junk Cars, Occupations Requiring Licenses, Unsafe Building and Collapsed Structures and Property Maintenance as well as any other Local Laws, Ordinances or Town Codes designating enforcement to be carried out by the Building Inspector, all as more fully described in the above referenced correspondence; and be it further

**RESOLVED**, that the Associate Planner, Planner and the Planning Technician be designated as Secretaries to various Town Advisory Boards, all as assigned in above referenced correspondence.

Dated: January 2, 2020

WILLIAM W. MOEHLE, SUPERVISOR	Voting	_____
JASON S. DIPONZIO, COUNCILMEMBER	Voting	_____
CHRISTOPHER K. WERNER, COUNCILMEMBER	Voting	_____
ROBIN R. WILT, COUNCILMEMBER	Voting	_____
CHRISTINE E. CORRADO, COUNCILMEMBER	Voting	_____

MINUTES OF TOWN BOARD ORGANIZATIONAL MEETING  
OF THE TOWN OF BRIGHTON, COUNTY OF  
MONROE, NEW YORK, HELD AT THE  
BRIGHTON TOWN HALL, 2300 ELMWOOD  
AVENUE, ROCHESTER, NEW YORK  
January 2, 2019

**Present:**

Supervisor William Moehle  
Councilmember Jason DiPonzo  
Councilmember Christopher Werner  
Councilmember Robin Wilt  
Councilmember Christine Corrado

Daniel Aman, Town Clerk  
Kenneth Gordon, Attorney for the Town  
Mark Henderson, Chief of Police  
Mike Guyon, Commissioner of Public Works  
Paula Parker, Director of Finance

**MEETING CALLED TO ORDER 12:20pm**

**ROLL CALL**

**APPROVAL OF AGENDA**

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt to approve the agenda

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**ORGANIZATIONAL MEETING BUSINESS**

**MATTER RE:** Ratify the regular meeting schedule of the Brighton Town Board for 2019 (see *Resolution #1 and schedule*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 1 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Ratify the 2019 Brighton Town Hall holiday schedule (see *Resolution #2 and schedule*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 2 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2019 Public Works Committee meeting schedule (see *Resolution #28 and proposed schedule*).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 3 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2019 Public Safety Committee meeting schedule (see *Resolution #27 and proposed schedule*).

Motion by Councilmember Christine Corrado seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 4 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2019 Finance and Administrative Services Committee (FASC) meeting schedule (see *Resolution #31 and proposed schedule*).

Motion by Councilmember Christine Corrado seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 5 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2019 Community Services Committee meeting schedule (see *Resolution #32 and proposed schedule*).

Motion by Councilmember Christopher Werner seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 6 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Designate the Brighton-Pittsford Post as the official newspaper of the Town of Brighton for the year 2019 (see *Resolution #3*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 7 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Adopt the Scott, Foreman, Robert's Rules of Order, Newly Revised, 11th Edition (2011) as the rules of its procedure for the year 2019 (see *Resolution #4*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 8 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Marc L. Frankel as Constable of the Town of Brighton for a one-year term commencing January 1, 2019 and ending December 31, 2019 (see *Resolution #5 and letter from Marc L. Frankel dated December 14, 2018*).

Motion by Councilmember Robin Wilt seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 9 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Michael M. Phillips, CPA, as Constable of the Town of Brighton for a one-year term commencing January 1, 2019 and ending December 31, 2019 (see *Resolution #6 and letter from Michael M. Phillips, CPA dated December 27, 2018*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Christine Corrado that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 10 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Designate Town  

- Building Inspectors
- Environmental Review Liaison Officer
- Code Enforcement Officers; and
- Secretaries to various Town Advisory Boards effective January 1, 2018 through December 31, 2018 (see *Resolution #11 and letter from Michael E. Guyon, P.E., Commissioner of Public Works, dated December 19, 2018*).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 11 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize agreement to spend highway repair funds in 2019 which are allocated in the 2019 budget (*see Resolution #13 and letter from Michael E. Guyon, P.E., Commissioner of Public Works, dated December 19, 2018*).

Motion by Councilmember Christine Corrado seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 12 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Michael E. Guyon, P.E., as Commissioner of Public Works, Highway Superintendent and Superintendent of Sewer Maintenance, effective January 1, 2019 through December 31, 2019 and;

Timothy Anderson as Deputy Highway Superintendent, effective January 1, 2019 through December 31, 2019 (*see Resolution #14, memorandum from Town Supervisor Moehle dated December 18, 2018 and letter from Michael E. Guyon, P.E., Commissioner of Public Works dated December 19, 2018*).

Motion by Councilmember Christine Corrado seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 13 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Bruce Blackman, Shana Hagins and James Camiolo as Animal Control Officers (part-time) of the Town of Brighton for term of one year, commencing January 1, 2019 and ending December 31, 2019 (*see Resolution #15 and letter dated November 29, 2018 from Police Chief Mark T. Henderson*).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 14 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize Supervisor to execute part-time program and vendor services contracts for 2018 for the Town's Parks and Recreation Department (*see Resolution #24 and letter dated December 3, 2018 from Rebecca Cotter, Recreation Director*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 15 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize Supervisor to execute Letter of Engagement retaining Kenneth W. Gordon, Esq. as Attorney to the Town of Brighton for 2019 (*see Resolution #7*).

Motion by Councilmember Robin Wilt seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 16 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize Supervisor to execute Letter of Engagement retaining David M. Dollinger, Esq., as Deputy Attorney to the Town of Brighton for 2019 (see *Resolution #8*)

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 17 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Ratifies and approves all appointments made by Supervisor in 2018 of all seasonal, on-call and temporary staff and authorizes Supervisor to appoint seasonal, on-call and temporary staff for the year 2019 (see *Resolution #16 and 2018 listing*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 18 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Designate authorized depositories and adopt Deposit and Investment Policy for 2019 (see *Resolution #9 and letter dated December 26, 2018 from Paula Parker, Director of Finance and copy of Policy*).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 19 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize petty cash and change funds for the year 2019 (see *Resolution #10 and memorandum dated December 26, 2018 from Paula Parker, Director of Finance*).

Motion by Councilmember Christine Corrado seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 20 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Susan Wentworth as the town assessor for six-year term commencing October 1, 2019 and expiring on September 30, 2025 (see *Resolution #26 and memorandum dated December 4, 2018 from Susan Wentworth, Town Assessor*).

Motion by Councilmember Christine Corrado seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 21 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTERS OF THE SUPERVISOR:**

**MATTER RE:** Appointment of MaryJo Lanphear as Town Historian to the Town for a term commencing January 1, 2019 through December 31, 2019 (see *Resolution #17 and letter dated December 18, 2018 from Town Supervisor Moehle*).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 22 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appointment of particular Council Members as Chairs and members of the Public Works, Public Safety, Finance & Administrative Services (FASC) and Community Services Committees (see *Resolution #29 and assignment memorandum dated December 19, 2018 from Town Supervisor Moehle*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 23 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTERS OF THE TOWN CLERK:**

**MATTER RE:** Adopt Records Retention Schedule for 2019 (see *Resolution #19 and memorandum from Daniel E. Aman, Town Clerk dated January 2, 2019*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 24 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Presentation of Salary and Payroll Schedule for the period January 1, 2019 to December 31, 2019 (see *Resolution #22 and 2019 schedule*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 25 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**NEW BUSINESS:**

**MATTER RE:** Reading and Approval of Claims

Motion by Councilmember Jason DiPonzo seconded by Councilmember Christopher Werner that the Supervisor read and approve payment of the claims as set forth in Exhibit No. 26 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Reappointments to the Architectural Review Board, Conservation Board, Parks and Recreation Advisory Board, Sustainability Oversight Advisory Committee, and Zoning Board of appeals (see *Resolution #1NB*).

Motion by Councilmember Christopher Werner seconded by Councilmember Christine Corrado that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 27 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MOTION TO GO INTO EXECUTIVE SESSION**

**ADJOURNED AT 12:52 PM:**

Motion by Councilmember Christopher Werner seconded by Councilmember Robin Wilt to adjourn at 12:52 PM

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**CERTIFICATION:**

I, Daniel Aman, do hereby certify that the foregoing is a true and accurate record of the proceeding of the Town of Brighton, County of Monroe, State of New York meeting held on the 2nd day of January 2019 and that I recorded said minutes of the aforesaid meeting of the Town Board of the Town of Brighton, New York.

# EXHIBIT NO 11

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, in said Town of Brighton on the 2<sup>nd</sup> day of January 2019.

## PRESENT:

WILLIAM W. MOEHLE  
Supervisor  
JASON S. DIPONZIO  
CHRISTOPHER S. WERNER  
ROBIN R. WILT  
CHRISTINE E. CORRADO  
Councilmembers

**RESOLVED**, that the Town Board receive and file a letter dated December 19, 2018 from Michael E. Guyon, P.E., Commissioner of Public Works regarding Designation of Staff; and be it further

**RESOLVED**, that Ramsey Boehner is hereby designated as the Environmental Review Liaison Officer; and be it further

**RESOLVED**, that Ramsey Boehner and Edward Shero are hereby designated as Code Enforcement Officers/Town Building Inspectors for the Comprehensive Development Regulations; and be it further

**RESOLVED**, that the Commissioner of Public Works, the Associate Planner, the Planner, the Town Engineer, the Town Architect and the Fire Marshal of the Town are hereby designated as other officials to carry out the functions of the office of Building Inspector, as laid out in the Comprehensive Development Regulations and those sections of the Town Code relating to Junk Cars, Occupations Requiring Licenses, Unsafe Building and Collapsed Structures and Property Maintenance as well as any other Local Laws, Ordinances or Town Codes designating enforcement to be carried out by the Building Inspector, all as more fully described in the above referenced correspondence; and be it further

**RESOLVED**, that the Associate Planner, Planner and the Planning Technician be designated as Secretaries to various Town Advisory Boards, all as assigned in above referenced correspondence.

Dated: January 2, 2019

WILLIAM W. MOEHLE, SUPERVISOR	Voting	_____
JASON S. DIPONZIO, COUNCILMEMBER	Voting	_____
CHRISTOPHER K. WERNER, COUNCILMEMBER	Voting	_____
ROBIN R. WILT, COUNCILMEMBER	Voting	_____
CHRISTINE E. CORRADO, COUNCILMEMBER	Voting	_____

MINUTES OF TOWN BOARD ORGANIZATIONAL MEETING  
OF THE TOWN OF BRIGHTON, COUNTY OF  
MONROE, NEW YORK, HELD AT THE  
BRIGHTON TOWN HALL, 2300 ELMWOOD  
AVENUE, ROCHESTER, NEW YORK  
January 2, 2018

Present:

Supervisor William Moehle  
Councilmember James Vogel  
Councilmember Jason DiPonzo  
Councilmember Christopher Werner  
Councilmember Robin Wilt

Daniel Aman, Town Clerk  
Kenneth Gordon, Attorney for the Town  
Mark Henderson, Chief of Police  
Tim Keef, Commissioner of Public Works  
Suzanne Zaso, Director of Finance

**MEETING CALLED TO ORDER AT 12:03PM**

**ROLL CALL**

**APPROVAL OF AGENDA**

Motion by Councilmember Robin Wilt seconded by Councilmember James Vogel to add Matter RE: gender neutral language to agenda.

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

Motion by Councilmember Christopher Werner seconded by Councilmember James Vogel to approve the agenda

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**ORGANIZATIONAL MEETING BUSINESS**

**MATTER RE:** Ratify the regular meeting schedule of the Brighton Town Board for 2018 (*see Resolution #1 and schedule*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 1 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Ratify the 2018 Brighton Town Hall holiday schedule (*see Resolution #2 and schedule*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 2 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2018 Public Works Committee meeting schedule (*see Resolution #28 and proposed schedule*).

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 3 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2018 Public Safety Committee meeting schedule (see *Resolution #27 and proposed schedule*).

Motion by Councilmember Christopher Werner seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 4 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2018 Finance and Administrative Services Committee (FASC) meeting schedule (see *Resolution #31 and proposed schedule*).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 5 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize approval of proposed 2018 Community Services Committee meeting schedule (see *Resolution #32 and proposed schedule*).

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 6 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Designate the Brighton-Pittsford Post as the official newspaper of the Town of Brighton for the year 2018 (see *Resolution #3*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 7 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Adopt the Scott, Foreman, Robert's Rules of Order, Newly Revised, 11<sup>th</sup> Edition (2011) as the rules of its procedure for the year 2018 (see *Resolution #4*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 8 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Marc L. Frankel as Constable of the Town of Brighton for a one-year term commencing January 1, 2018 and ending December 31, 2018 (see *Resolution #5 and letter from Marc L. Frankel dated November 22, 2017*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 9 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appoint Michael M. Phillips, CPA, as Constable of the Town of Brighton for a one-year term commencing January 1, 2018 and ending December 31, 2018 (see *Resolution #6 and letter from Michael M. Phillips, CPA dated November 29, 2017*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 10 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:**

Designate Town

- Building Inspectors
- Environmental Review Liaison Officer
- Code Enforcement Officers; and
- Secretaries to various Town Advisory Boards effective January 1, 2018 through December 31, 2018 (see *Resolution #11 and letter from Timothy E. Keef, P.E., Commissioner of Public Works, dated December 13, 2017*).

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 11 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:**

Authorize agreement to spend highway repair funds in 2018 which are allocated in the 2018 budget (see *Resolution #13 and letter from Timothy E. Keef, P.E., Commissioner of Public Works, dated December 13, 2017*).

Motion by Councilmember Christopher Werner seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 12 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:**

Appoint Timothy E. Keef, P.E. as Commissioner of Public Works, Highway Superintendent and Superintendent of Sewer Maintenance, effective January 1, 2018 through December 31, 2018 and;

Timothy Anderson as Deputy Highway Superintendent, effective January 1, 2018 through December 31, 2018 (see *Resolution #14, memorandum from Town Supervisor Moehle dated December 15, 2017 and letter from Timothy Keef P.E. Commissioner of Public Works dated December 13, 2017*).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 13 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:**

Appoint Bruce Blackman, Shana Hagins and James Camiolo as Animal Control Officers (part-time) of the Town of Brighton for term of one year, commencing January 1, 2018 and ending December 31, 2018 (see *Resolution #15 and letter dated December 12, 2017 from Police Chief Mark T. Henderson*).

Motion by Councilmember James Vogel seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 14 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:**

Authorize Supervisor to execute part-time program and vendor services contracts for 2018 for the Town's Parks and Recreation Department (see *Resolution #24 and letter dated December 13, 2017 from Rebecca Cotter, Recreation Director*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 15 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize Supervisor to execute Letter of Engagement retaining Kenneth W. Gordon, Esq. as Attorney to the Town of Brighton for 2018 (see *Resolution #7*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 16 attached

UPON ROLL CALL VOTE the following vote was recorded. 4 Yes, 1 Member No. Supervisor Moehle Yes, Councilmember Vogel Yes, Councilmember Diponzo Yes, Councilmember Werner No, Councilmember Wilt Yes,. Motion Carried

**MATTER RE:** Authorize Supervisor to execute Letter of Engagement retaining David M. Dollinger, Esq., as Deputy Attorney to the Town of Brighton for 2018 (see *Resolution #8*)

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 17 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Ratifies and approves all appointments made by Supervisor in 2017 of all part-time, on-call, temporary and seasonal staff and authorizes Supervisor to appoint part-time, on-call, temporary and seasonal staff for the year 2018 (see *Resolution #16 and 2017 listing*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 18 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Designate authorized depositories and adopt Deposit and Investment Policy for 2018 (see *Resolution #9 and letter dated December 26, 2017 from Suzanne Zaso Director of Finance and copy of Policy*).

Motion by Councilmember James Vogel seconded by Councilmember Robin Wilt that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 19 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Authorize petty cash and change funds for the year 2018 (see *Resolution #10 and memorandum from Suzanne Zaso, Director of Finance, dated December 26, 2017*).

Motion by Councilmember Christopher Werner seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 20 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appointment of Brighton Town Supervisor William W. Moehle and Town Clerk Daniel Aman as Marriage Officers for a two-year term commencing January 1, 2018 through December 31, 2019 (see *Resolution #30*)

Motion by Councilmember Christopher Werner seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 21 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Ratify particular gender neutral language as appropriate in all Town communications and agenda for town meetings.

Motion by Councilmember Christopher Werner seconded by Councilmember James Vogel that the Town Board ratify the language.

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTERS OF THE SUPERVISOR:**

**MATTER RE:** Appointment of MaryJo Lanphear as Town Historian to the Town for a term commencing January 1, 2018 through December 31, 2018 (see *Resolution #17 and letter dated December 15, 2017 from Town Supervisor Moehle*).

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 22 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Appointment of particular Council Members as Chairs and members of the Public Works, Public Safety, Finance & Administrative Services (FASC) and Community Services Committees (see *Resolution #29 and assignment memorandum dated December 30, 2017 from Town Supervisor Moehle*).

Motion by Councilmember Jason DiPonzo seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 23 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTERS OF THE TOWN CLERK:**

**MATTER RE:** Adopt Records Retention Schedule for 2017 (see *Resolution #18 and memorandum from Daniel E. Aman, Town Clerk dated January 1, 2018*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 24 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MATTER RE:** Presentation of Salary and Payroll Schedule for the period January 1, 2018 to December 31, 2018 (see *Resolution #22 and 2018 schedule*).

Motion by Councilmember Robin Wilt seconded by Councilmember Jason DiPonzo that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 25 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**NEW BUSINESS:**

**MATTER RE:** Reading and Approval of Claims

Motion by Councilmember Jason DiPonzo seconded by Councilmember James Vogel that the Supervisor read and approve payment of the claims as set forth in Exhibit No. 26 attached

**MATTER RE:** Reappointment of John Page as a member of the Historic Preservation Committee effective January 1, 2018 through December 31, 2021 (see *Resolution #1NB*)

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 27 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MOTION TO GO INTO EXECUTIVE SESSION AT 1:05 PM:**

Motion by Councilmember Jason DiPonzo seconded by Councilmember Robin Wilt to go into executive session to discuss a matter of collective bargaining.

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**MOTION TO EXIT EXECUTIVE SESSION AT 1:19 PM:**

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner to come out of executive session.

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**ADJOURNED AT 1:20 PM:**

Motion by Councilmember Jason DiPonzo seconded by Councilmember James Vogel to adjourn at 1:20 PM

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

**CERTIFICATION:**

I, Daniel Aman, do hereby certify that the foregoing is a true and accurate record of the proceeding of the Town of Brighton, County of Monroe, State of New York meeting held on the 2<sup>nd</sup> day of January 2018 and that I recorded said minutes of the aforesaid meeting of the Town Board of the Town of Brighton, New York.

## EXHIBIT NO 11

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, in said Town of Brighton on the 2<sup>nd</sup> day of January 2018.

### PRESENT:

WILLIAM W. MOEHLE,  
Supervisor  
JAMES R. VOGEL  
JASON S. DIPONZIO  
CHRISTOPHER S. WERNER  
ROBIN R. WILT  
Councilpersons

**RESOLVED**, that the Town Board receive and file a letter dated December 13, 2017 from Timothy Keef, P.E., Commissioner of Public Works regarding Designation of Building Inspector; and be it further

**RESOLVED**, that Ramsey Boehner is hereby designated as the Code Enforcement Officer/Town Building Inspector for the Comprehensive Development Regulations and Environmental Review Liaison Officer; and be it further

**RESOLVED**, that the Commissioner of Public Works, the Associate Planner, the Planner, the Town Engineer, the Town Architect and the Fire Marshal of the Town are hereby designated as other officials to carry out the functions of the office of Building Inspector, as laid out in the Comprehensive Development Regulations and those sections of the Town Code relating to Junk Cars, Occupations Requiring Licenses, Unsafe Building and Collapsed Structures and Property Maintenance as well as any other Local Laws, Ordinances or Town Codes designating enforcement to be carried out by the Building Inspector, all as more fully described in the above referenced correspondence; and be it further

**RESOLVED**, that the Associate Planner, Planner and the Planning Technician be designated as Secretaries to various Town Advisory Boards, all as assigned in above referenced correspondence.

Dated: January 2, 2018

WILLIAM W. MOEHLE, SUPERVISOR	Voting _____
JAMES R. VOGEL, COUNCILMAN	Voting _____
JASON S. DIPONZIO, COUNCILMAN	Voting _____
CHRISTOPHER K. WERNER, COUNCILMAN	Voting _____
ROBIN R. WILT, COUNCILWOMAN	Voting _____

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF MONROE

In the Matter of the Application of

CLOVER/ALLEN'S CREEK NEIGHBORHOOD  
ASSOCIATION LLC,

Petitioner-Plaintiff,

-against-

M&F, LLC, DANIELE SPC, LLC, MUCCA MUCCA LLC,  
MARDANTH ENTERPRISES, INC., M&F, LLC,  
DANIELE SPC, LLC, MUCCA MUCCA LLC,  
MARDANTH ENTERPRISES, INC., COLLECTIVELY  
DOING BUSINESS AS DANIELE FAMILY  
COMPANIES, TOWN OF BRIGHTON, NEW YORK,  
TOWN BOARD OF THE TOWN OF BRIGHTON, NEW  
YORK, NMS ALLENS CREEK INC., and  
ROCHESTER GAS AND ELECTRIC COMPANY,

and any persons or entities found to have an interest in the  
property subject to this action but not yet named.

For a Judgment Pursuant to New York CPLR Article 78, for  
a Declaratory Judgment pursuant to New York  
CPLR § 3001, and for a judgment to quiet title pursuant to  
Real Property Actions and Proceedings Law Article 15

Respondents-Defendants.

---

STATE OF NEW YORK)  
COUNTY OF MONROE) ss:

MATTHEW BEEMAN, first being duly sworn, deposes and says as follows:

1. I am the Superintendent of Parks for the Town of Brighton (the "Town"). I make  
this affidavit, except as may be otherwise expressly stated, upon my personal knowledge, in  
support of the Respondents-Defendants' motions for summary judgment.

**ZBA 010565**

2. I am the manager of the Town's Parks Department. The Parks Department manages and maintains almost 500 acres of parkland and open space for the benefit and enjoyment of the Town's residents and visitors.

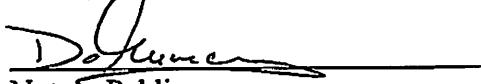
3. I am aware of a pedestrian pathway, which is alleged by Petitioners in these proceedings to be part of what is commonly known as the "Auburn Trail," part of which is located within the Town. It is my understanding that the Town holds non-exclusive easements granted by various property owners over certain strips of land between Clover Street and Allen's Creek Road to allow for this pedestrian pathway across this area.

4. The Town has not designated this pedestrian pathway as a park, and has not accepted this area as parkland. This area is not among the hundreds of acres of parkland and open space managed and maintained by the Town Parks Department. The Town does not maintain this area as a park. This area is not identified on any official Town maps as a park, and the Town has not erected any signs on or near this pathway which identify it as a park.



Matthew Beeman

Sworn to before me this  
23<sup>rd</sup> day of July, 2019.



Notary Public

David Marcus  
Notary Public - State of New York  
Qualified in Monroe County  
No. 01MA6327113  
Commission Expires 6/29/2023

**ZBA 010566**

STATE OF NEW YORK  
SUPREME COURT COUNTY OF MONROE

## In the Matter of the Application of

**CLOVER/ALLEN'S CREEK NEIGHBORHOOD  
ASSOCIATION LLC,**

**Petitioner-Plaintiff,**

**-against-**

M&F, LLC, DANIELE SPC, LLC, MUCCA MUCCA LLC,  
MARDANTH ENTERPRISES, INC., M&F, LLC,  
DANIELE SPC, LLC, MUCCA MUCCA LLC,  
MARDANTH ENTERPRISES, INC., COLLECTIVELY  
DOING BUSINESS AS DANIELE FAMILY  
COMPANIES, TOWN OF BRIGHTON, NEW YORK,  
TOWN BOARD OF THE TOWN OF BRIGHTON, NEW  
YORK, NMS ALLENS CREEK INC., and  
ROCHESTER GAS AND ELECTRIC COMPANY,

**AFFIDAVIT OF RAMSEY  
BOEHNER IN SUPPORT  
OF RESPONDENTS-  
DEFENDANTS' MOTIONS  
FOR SUMMARY  
JUDGMENT**

Index No. :E2018000937

and any persons or entities found to have an interest in the property subject to this action but not yet named.

For a Judgment Pursuant to New York CPLR Article 78, for a Declaratory Judgment pursuant to New York CPLR § 3001, and for a judgment to quiet title pursuant to Real Property Actions and Proceedings Law Article 15

## Respondents-Defendants.

STATE OF NEW YORK)  
COUNTY OF MONROE) ss:

RAMSEY BOEHNER, first being duly sworn, deposes and says as follows:

1. I am the Associate Planner of the Town of Brighton (the "Town") and have held this position since 1990. I make this affidavit, except as may be otherwise expressly stated, upon my personal knowledge, in support of the Respondents-Defendants' motions for summary judgment.

2. As Associate Planner, I supervise and direct the activities of the Town's Building and Planning Department. My job duties include (among other things) implementation and administration of the Town's Comprehensive Plan, Comprehensive Development Ordinance (regulations) and Town Code (the "Code"), and preparation and implementation of Comprehensive Plan updates and Town Code amendments.

3. This affidavit relates to the Whole Foods Plaza development project (the "Project") involving the Daniele Family Companies, which was approved by the Town Board on March 28, 2018 by resolution approving incentive zoning (the "Incentive Zoning Resolution") pursuant to Chapter 209 of the Code. The Town Board also acted as lead agency pursuant to the New York State Environmental Quality Review Act ("SEQRA"). Copies of the Town Board's resolution and Findings Statement, and the Incentive Zoning Resolution are attached hereto as **Exhibit A**

4. A part of the Incentive Zoning Resolution, the Developer has agreed to make significant improvements to portions of a pedestrian pathway, which is alleged by Petitioner-Plaintiff Clover-Allen's Creek Neighborhood Association, LLC to be part of what is commonly known as the "Auburn Trail," from Highland Avenue to the Town of Pittsford line, including but not limited to the portions of the trail running through the parcels at the Project site.

5. Currently, the Town holds non-exclusive easements granted by various property owners over certain strips of land between Clover Street and Allen's Creek Road to allow for a

public pathway across this area (the “Easements”). I understand that true and correct copies of the Easements are attached to the accompanying Affirmation of the Town’s counsel, John A. Mancuso, dated July 23, 2019.

6. The Easements all provide that the Town accepts the Easements subject to any covenants, easements and restrictions of record.

7. The Town has never made any improvement to the land subject to the Easements to allow for its use as a park. Neither has the Town done any maintenance work on this land or erected any signage on or adjacent to this land to state that this area was a park. At the time the Town acquired the Easements, it was not the Town’s intent to have the land subject to the Easements become a park or unequivocally dedicate this land as parkland.

8. That the Town accepted easements for public access does not establish that the Town accepted this area as parkland. The Town has not expressly or implicitly through any action taken dedicated this area as a park. This is confirmed by the relevant comprehensive plans and other Town plans, which discuss the Auburn Trail as a proposed trail. The Town Comprehensive Plan 2000 identifies this area as a “Proposed Multiple Use Trail” that requires public access rights and improvements. The Open Space and Recreation Plan (see p. 38) indicates that this area “should be developed as a trail” and the “[f]ull public access rights are necessary.”<sup>1</sup>

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<sup>1</sup> The Open Space and Recreation Plan may be accessed at <http://www.townofbrighton.org/DocumentCenter/View/597/e-111-Open-Space-Plan-Trails-Plan?/bidId=>.

9. Envision Brighton 2028, adopted by the Town in the fall of 2018 (after the approval of the Incentive Zoning Resolution), specifically identifies this area as only a “proposed” trail: “Proposed. This route was also identified as a potential trail in Bike/Walk Brighton and identified by the [Genesee Transportation Council] as a near term initiative. The right of way is already cleared and graded, which would reduce the cost of trail construction. The trail would extend the established 9 mile Auburn Trail in Monroe and Ontario Counties. It would connect to the business district on Monroe Avenue and two schools, Council Rock Elementary School and the Harley School. The property is currently owned by RG&E and provides maintenance access to overhead utility lines. The Trail is currently planned to be developed, at no cost to the Town, as an amenity approved as part of the Whole Foods zoning project” (see p. 33).<sup>2</sup> While there is potential opportunity to develop a trail, the easement area was not and is not parkland.

10. Further, both prior to and after the Town acquiring the Easements, the owners of the fee interest of the land over which the Easements exist have used portions of the same for parking and/or vehicular access. Subject to the terms and conditions of the Easements, the Town generally has not considered such use to be inconsistent with the recorded rights of the fee owners or the Town.

11. As approved by the Town, the Easements will remain of record without change and will not be abandoned, conveyed, released or otherwise modified. The Project as approved by the Town will not interfere with or otherwise obstruct the public’s use of the existing

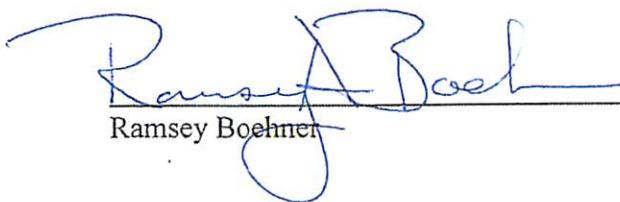
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<sup>2</sup> Envision Brighton 2028 maybe accessed at [http://www.townofbrighton.org/DocumentCenter/View/9701/EnvisionBrighton2028-VOL1\\_ExistingConditions\\_09-26-18](http://www.townofbrighton.org/DocumentCenter/View/9701/EnvisionBrighton2028-VOL1_ExistingConditions_09-26-18).

Easements. The Project proposes no parking spaces within the lands subject to the Easements. In fact, as part of the Town's review of the site plan, the Planning Board ensured that the Auburn Trail would not be obstructed by parking spaces.

12. Rather, as part of the Project approvals, the Developer will be conveying to the Town additional easement rights with respect to the pedestrian trail amenity contemplated in the Amenity Agreement attached to Schedule C to the Incentive Zoning Resolution (see §1[c]). This will not alter the status quo concerning any use the public may have thus far made or will continue to make of the Auburn Trail in the Town of Brighton. Instead, the Developer will improve and extend the Trail as a significant amenity in favor of the Town for the benefit of the public consistent with the Incentive Zoning Resolution and the Town's Comprehensive Plan.

13. The Town's and the public's rights to access and use the Auburn Trail will be enhanced and improved as a result of the implementation of the site plan.



Ramsey Boehmer

Sworn to before me this  
23 day of July, 2019.



\_\_\_\_\_  
Notary Public

DANIEL E. AMAN  
Notary Public - State of New York  
Monroe County - 01AM6303724  
Commission Expires: May 19, 2022

EXHIBIT A TO BOEHNER AFFIDAVIT INTENTIONALLY OMITTED

**ZBA 010572**



# Department of Public Health

Monroe County, New York

Adam J. Bello  
County Executive

Michael D. Mendoza, MD, MPH, MS  
Commissioner of Public Health

July 14, 2020

Daniele Family Companies  
2851 Monroe Avenue  
Rochester, NY 14618

RE: Approval of Plans - Installation of backflow prevention device(s):  
Whole Foods Plaza, 2750 Monroe Avenue  
Town of Brighton (T)

Dear Owner:

The plans and specifications for the above referenced project have been reviewed and approved by this department pursuant to 10NYCRR5 Section 5-1.31 of the New York State Sanitary Code. A *Certificate of Approval for Backflow Prevention Device(s)* (form DOH-1023) is enclosed.

Once the initial installation of the backflow prevention device(s) is complete, a *Report on Test and Maintenance of Backflow Prevention Device* (form DOH-1013) must be filled out for EACH approved and installed device. This document consists of Part A and Part B. Part A provides a place to document the initial test of the device by a New York State Department of Health certified backflow prevention device tester. Part B provides a space for the NYS licensed design professional to give certification that the installation is in accordance with the approved plans.

Both Part A and Part B must be completed and returned to this office within 45 days of installation. Upon receipt of a properly completed device test form(s), the Monroe County Department of Public Health (MCDPH) will issue an *Approval of Completed Works* (form DOH - 1032). The issuance of the Completed Works finalizes the MCDPH's backflow prevention plan approval process. All related documents should be permanently retained with your facility files.

Please feel free to contact Jack Kaltenbach with any questions at (585) 753-5475 or via email at [johnkaltenbach@monroecounty.gov](mailto:johnkaltenbach@monroecounty.gov).

Sincerely,

A handwritten signature in blue ink that reads "John J. Frazer".

John J. Frazer, P.E.  
Senior Public Health Engineer

Enc.: Approval of Plans for Backflow Prevention Devices (form DOH - 1023)  
Xc.: Mr. Tod Ferguson - MCWA  
Mr. Jess Sudol, PE - Passero Associates  
File - MCDPH

111 Westfall Road • Room 910 • Rochester, New York 14620  
(585) 753-5060 • fax: (585) 753-5098 • [www.monroecounty.gov](http://www.monroecounty.gov) • e-mail: [mchealth@monroecounty.gov](mailto:mchealth@monroecounty.gov)

**ZBA 010573**

**NEW YORK STATE DEPARTMENT OF HEALTH  
CERTIFICATE OF APPROVAL  
FOR BACKFLOW PREVENTION DEVICE(S)**

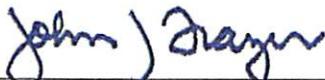
This approval is issued under the provisions of 10NYCRR5, Subpart 5-1, Section 5-1.31:

Facility Name & Address: Whole Foods Plaza 2750 Monroe Avenue	Municipality (C/T/V): Brighton (T)	County: Monroe
Owner's Mailing Address: Daniele Family Companies 2851 Monroe Avenue Rochester, NY 14618		
Physical Location of Backflow Prevention Device(s): Inside mechanical room of building		
Description of Device(s): Combined Service: One (1), Watts LF957 (6") Reduced Pressure Principle Assembly		
Supplier of Water: Monroe County Water Authority	Water Supplier Representative (Name & Title): Mr. Tod Ferguson Technical Support Supervisor	
Supplier's Mailing Address: 475 Norris Drive Rochester, NY 14610		

Conditions of approval:

- A. THAT within **45** days of installation, a **Report on Test and Maintenance of Backflow Prevention Device** (form DOH-1013) will be completed and returned to:
  - 1. The water supplier; and
  - 2. The Monroe County Department of Public Health, 111 Westfall Road – Rm 916, Rochester, New York 14620.
 (A copy of the **Report on Test and Maintenance of Backflow Prevention Device** is available at: <http://www2.monroecounty.gov/files/health/eh/eh-PHEdoh1013.pdf>)
- B. THAT a certified backflow prevention device tester test the above backflow prevention device(s) at least annually and report the results to the water purveyor indicated above.
- C. THAT any connection made prior (upstream) to the backflow prevention device(s) shall render this approval void.
- D. THAT the proposed works shall be constructed in conformance with the plans and specifications approved this day and any amendments thereto.
- E. THAT this **Certificate of Approval for Backflow Prevention Device(s)** (form DOH-1023) is granted with the understanding that the approved plans are subject to review and re-approval after two years from the date of approval, if installation is not completed by that time.

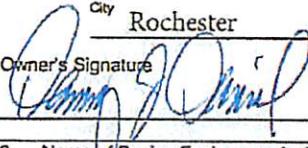
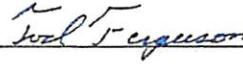
**ISSUED FOR THE STATE  
COMMISSIONER OF HEALTH BY:**



John J. Frazer, PE  
Senior Public Health Engineer  
Date: July 14, 2020

NEW YORK STATE DEPARTMENT OF HEALTH  
Bureau of Public Water Supply Protection

Application for Approval of  
Backflow Prevention Devices

PRINT OR TYPE ALL ENTRIES EXCEPT SIGNATURES Please completed items 1 through 12a + Block and Lot Numbers			Block #	Lot #	FOR DEPARTMENT USE ONLY Log No.
1. Name of Facility Whole Foods Plaza			2. City, Village, Town Brighton		3. County Monroe
4. Location of Facility 2750 Monroe Ave			City Rochester	state NY	zip 14618
4a. Phone Numbers 585-271-1111			5. Contact Person Anthony Daniele		
5. Approx. Location of Device(s) Inside mechanical room of building			6. Mfg. Model # WATTS 957	Size of Device(s) 6"	
# of Fire Services	# of Domestic Services	# of Combined Services 1	Total # of Services 1		Total # of Buildings 4
7. Name of Owner Daniele Family Companies	Title Owner	Phone Number 585-271-1111		8. Nature of works <input checked="" type="checkbox"/> Initial Device Installation <input type="checkbox"/> Replace Existing Device	
Full Mailing Address Address	2851 Monroe Ave		8a. <input checked="" type="checkbox"/> New Service <input type="checkbox"/> Existing Service		
City Rochester	state NY	zip 14618	8b. <input checked="" type="checkbox"/> New Building <input type="checkbox"/> Existing Building <input type="checkbox"/> Major Renovations		
Owner's Signature 	Date 6/22/2020 M D Y				
9. Name of Design Engineer or Architect Passero Associates	Jess D. Sudol		10. NYS License # 092235 <input checked="" type="checkbox"/> PE <input type="checkbox"/> RA <input type="checkbox"/> Other		
 Original ink signature and seal required on all copies			10a. Telephone Number(s) 585-325-1000 Date M D Y		
11. Water System Pressure (psi) at Point of Connection Max 76 Avg 70 Min 64	12. Estimate Installation Cost \$100k		12a. Estimate Design Cost \$10k		
13. Degree of Hazard <input checked="" type="checkbox"/> Hazardous <input type="checkbox"/> Aesthetically Objectionable	List of processes or reasons that lead to degree of hazard checked: MCWA Policy				
14. Public water supply name Monroe County Water Authority Mailing Address 475 Norris Drive street Rochester NY 14610 City state zip Telephone No. ( 585 ) 442-2000	Name of supplier's designate representative Tod A. Ferguson, P.E. Title Technical Support Supervisor Signature  6/23/2020 M D Y				

Note: All applicants must be accompanied by plans, specifications and an engineer's report describing the project in detail. The project must first be submitted to the water supplier, who will forward it to the local public health engineer. This form must be prepared in quadruplicate with four copies of all plans, specifications and descriptive literature.

DOH-347 (5/91)

**ZBA 010575**



## Department of Public Health

Monroe County, New York

Adam J. Bello  
County Executive

Michael D. Mendoza, MD, MPH, MS  
Commissioner of Public Health

July 14, 2020

Daniele Family Companies  
2851 Monroe Avenue  
Rochester, NY 14618

RE: Approval of Plans - Installation of backflow prevention device(s):  
Whole Foods, 2740 Monroe Avenue  
Town of Brighton (T)

Dear Owner:

The plans and specifications for the above referenced project have been reviewed and approved by this department pursuant to 10NYCRR5 Section 5-1.31 of the New York State Sanitary Code. A *Certificate of Approval for Backflow Prevention Device(s)* (form DOH-1023) is enclosed.

Once the initial installation of the backflow prevention device(s) is complete, a *Report on Test and Maintenance of Backflow Prevention Device* (form DOH-1013) must be filled out for EACH approved and installed device. This document consists of Part A and Part B. Part A provides a place to document the initial test of the device by a New York State Department of Health certified backflow prevention device tester. Part B provides a space for the NYS licensed design professional to give certification that the installation is in accordance with the approved plans.

Both Part A and Part B must be completed and returned to this office within 45 days of installation. Upon receipt of a properly completed device test form(s), the Monroe County Department of Public Health (MCDPH) will issue an *Approval of Completed Works* (form DOH - 1032). The issuance of the Completed Works finalizes the MCDPH's backflow prevention plan approval process. All related documents should be permanently retained with your facility files.

Please feel free to contact Jack Kaltenbach with any questions at (585) 753-5475 or via email at johnkaltenbach@monroecounty.gov.

Sincerely,

A handwritten signature in blue ink that reads "John J. Frazer".

John J. Frazer, P.E.  
Senior Public Health Engineer

Enc.: Approval of Plans for Backflow Prevention Devices (form DOH-1023)

Xc.: Mr. Tod Ferguson - MCWA  
Mr. Jess Sudol, PE - Passero Associates  
File - MCDPH

111 Westfall Road • Room 910 • Rochester, New York 14620  
(585) 753-5060 • fax: (585) 753-5098 • [www.monroecounty.gov](http://www.monroecounty.gov) • e-mail: [mchealth@monroecounty.gov](mailto:mchealth@monroecounty.gov)

**ZBA 010576**

**NEW YORK STATE DEPARTMENT OF HEALTH  
CERTIFICATE OF APPROVAL  
FOR BACKFLOW PREVENTION DEVICE(S)**

This approval is issued under the provisions of 10NYCRR5, Subpart 5-1, Section 5-1.31:

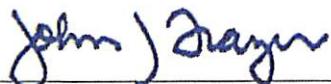
Facility Name & Address: Whole Foods 2740 Monroe Avenue	Municipality (C / T / V): Brighton (T)	County: Monroe
Owner's Mailing Address: Daniele Family Companies 2851 Monroe Avenue Rochester, NY 14618		
Physical Location of Backflow Prevention Device(s): Inside mechanical room of building		
Description of Device(s): Domestic Service: One (1), Watts LF009 (2") Reduced Pressure Principle Assembly Fire Service: One (1), Watts 957 (6") Reduced Pressure Detector Assembly w/ 3/4" bypass		
Supplier of Water: Monroe County Water Authority	Water Supplier Representative (Name & Title): Mr. Tod Ferguson Technical Support Supervisor	
Supplier's Mailing Address: 475 Norris Drive Rochester, NY 14610		

Conditions of approval:

- A. THAT within 45 days of installation, a **Report on Test and Maintenance of Backflow Prevention Device** (form DOH-1013) will be completed and returned to:
  1. The water supplier; and
  2. The Monroe County Department of Public Health, 111 Westfall Road – Rm 916, Rochester, New York 14620.

(A copy of the **Report on Test and Maintenance of Backflow Prevention Device** is available at: <http://www2.monroecounty.gov/files/health/eh/eh-PHEdoh1013.pdf> )
- B. THAT a certified backflow prevention device tester test the above backflow prevention device(s) at least annually and report the results to the water purveyor indicated above.
- C. THAT any connection made prior (upstream) to the backflow prevention device(s) shall render this approval void.
- D. THAT the proposed works shall be constructed in conformance with the plans and specifications approved this day and any amendments thereto.
- E. THAT this **Certificate of Approval for Backflow Prevention Device(s)** (form DOH-1023) is granted with the understanding that the approved plans are subject to review and re-approval after two years from the date of approval, if installation is not completed by that time.

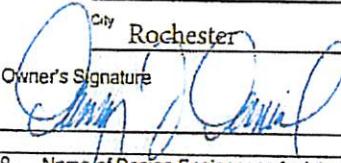
**ISSUED FOR THE STATE  
COMMISSIONER OF HEALTH BY:**



John J. Frazer, PE  
Senior Public Health Engineer  
Date: July 14, 2020

NEW YORK STATE DEPARTMENT OF HEALTH  
Bureau of Public Water Supply Protection

Application for Approval of  
Backflow Prevention Devices

PRINT OR TYPE ALL ENTRIES EXCEPT SIGNATURES Please completed items 1 through 12a + Block and Lot Numbers			Block #	Lot #	FOR DEPARTMENT USE ONLY Log No.
1. Name of Facility Whole Foods			2. City, Village, Town Brighton		3. County Monroe
4. Location of Facility 2740 Monroe Ave			City Rochester	State NY	Zip 14618
4a. Phone Numbers 585-271-1111			5. Contact Person Anthony Daniele		
5. Approx. Location of Device(s) Inside mechanical room of building			Mfg. Model # WATTS LF009 WATTS 957 RPDA	Size of Device(s) 2" 6"	
# of Fire Services 1	# of Domestic Services 1	# of Combined Services	Total # of Services 2		Total # of Buildings 1
7. Name of Owner Daniele Family Companies		Title Owner	Phone Number 585-271-1111		8. Nature of works <input checked="" type="checkbox"/> Initial Device Installation <input type="checkbox"/> Replace Existing Device
Full Mailing Address Address 2851 Monroe Ave		City Rochester	State NY	Zip 14618	8a. <input type="checkbox"/> New Service <input checked="" type="checkbox"/> Existing Service
Owner's Signature 		Date 6/22/2020		M D Y	8b. <input checked="" type="checkbox"/> New Building <input type="checkbox"/> Existing Building <input type="checkbox"/> Major Renovations
9. Name of Design Engineer or Architect Passero Associates			10. NYS License # 092235 <input checked="" type="checkbox"/> PE <input type="checkbox"/> RA <input type="checkbox"/> Other		
 Address 242 W. Main St., S100 City Rochester State NY Zip 14614 Signature Tod Ferguson			10a. Telephone Number(s) 585-325-1000 Date 05/28/20 M D Y		
11. Water System Pressure (psi) at Point of Connection Max 76 Avg 62.5 Min 49		12. Estimate Installation Cost \$100k		12a. Estimate Design Cost \$10k	
13. Degree of Hazard <input checked="" type="checkbox"/> Hazardous <input type="checkbox"/> Aesthetically Objectionable		List of processes or reasons that lead to degree of hazard checked: MCWA Policy			
14. Public water supply name Monroe County Water Authority Mailing Address 475 Norris Drive Street Rochester City NY Zip 14610 Telephone No. ( 585 ) 442-2000			Name of supplier's designate representative Tod Ferguson, P.E. Title Technical Support Supervisor Signature Tod Ferguson 6/26/2020 M D Y		

Note: All applicants must be accompanied by plans, specifications and an engineer's report describing the project in detail. The project must first be submitted to the water supplier, who will forward it to the local public health engineer. This form must be prepared in quadruplicate with four copies of all plans, specifications and descriptive literature.

DOH-347 (5/91)

ZBA 010578

### Town of Brighton Parks

Until 1978, the town of Brighton had no official parkland of its own except, perhaps, for the pocket parks that exist in many residential neighborhoods such as Rose Park in the Rose Lawn subdivision.

In 1977 the State of New York offered the town of Brighton a long-term lease on thirty acres of land on Westfall Road, land that would include a man-made lake created by the excavation of soil used to elevate the nearby Interstate highway under construction. This became **Brighton Town Park**.

At about the same time, New York State was divesting itself of parcels of land intended for the defunct Genesee Expressway that was intended to connect to the city's Inner Loop. Among the parcels was a ten-acre piece along the west side of Clinton Avenue South, south of Highland Avenue. This land eventually became **Persimmon Park**, but not until several years later.

In 1998 the town of Brighton purchased the former Max Gonsenhauser cattle farm on Westfall Road with the intention of building an active recreation area complete with playing fields, tennis courts, and hiking trails. This became **Buckland Park**.

At about the same time, the town of Brighton and the Genesee Land Trust collaborated on the purchase of **Corbett's Glen** for a nature park.

Part of an incentive zoning agreement, the town acquired the twenty-four-acre **Meridian Park** in 2006, connecting the town to the Erie Canal and its multi-use trail.

**Lynch Woods**, on Crittenden Road in west Brighton, was acquired by the town of Brighton in 2010 and is still under development as a nature park.

A recent addition to the town's parkland occurred in 2016 when the town purchased a 72-acre tract of land between Westfall Road and Elmwood Avenue. Once the site of extensive clay fields, the **Sandra L. Frankel Nature Park** contains the Brickyard Trail that passes through woodlands and wetlands in its north-south path.

Mary Jo Lanphear  
Town of Brighton Historian  
23 December 2019

### Auburn Trail timeline

1836      13 May. Auburn & Rochester Railroad Company incorporated by Chapter 349 of laws of New York State. Route constructed between village of Auburn and city of Rochester to include Seneca Falls, Waterloo, Geneva, Phelps, Manchester, Canandaigua, and Victor.

1840-1841      Railroad completed from Rochester to Auburn.

1850      The Auburn & Rochester and the Auburn & Syracuse joined to form the Rochester, Auburn, & Syracuse Railroad.

1853      Ten NY State rail lines, including the Rochester, Auburn, & Syracuse, combined to form the New York Central Railroad.

1940      There were four passenger trains a day on the Auburn branch. About five daily trains handled freight service.

1958      New York Central ended passenger service on the Auburn line.

1960      In April the Auburn line tracks were abandoned between Pittsford and Victor, about eleven miles.

1961      Auburn branch tracks in Brighton were relocated for a six-hundred-foot connection to Interstate 490 in December, becoming the middle layer of the Can of Worms.

1968      New York Central and Pennsylvania Railroads merged to form the Penn Central RR.

1976      Auburn Road was abandoned between Victor and Canandaigua. Conrail formed.

1982      The Auburn Road was abandoned between Brighton and Pittsford.

1999      Conrail became CSX.

Resources:      *Journal of the NY Museum of Transportation*  
                          *The Beginnings of the New York Central Railroad: A History*"  
                          by Frank Walker Stevens, 1926.

"Touring Backwards," by Blake McKelvey, *Rochester History, January 1940.*  
*Interstate Commerce Commission Report No. 28000,*  
7 Sept. 1960  
"Contractor to Sped Final Expressway Link" *Democrat & Chronicle*, 15 December 1961  
*Bike/Walk Brighton: A Comprehensive Pedestrian and Bicycle Master Plan for the Town of Brighton NY*  
edr Companies, December 2012  
*Wikipedia*

Mary Jo Lanphear  
Town of Brighton Historian  
5 January 2020

Whole Foods Plaza Project  
Save Monroe Avenue and Brighton Grassroots Appeals to Zoning Board of Appeals

	Allegation	SMA Appeal	BGR Appeal	Response	Building Inspector Letter	Record
1	The Developer allegedly failed to provide the required letter of credit for the Access Management Plan.	8/26/20 Ltr; Sakin Aff. ¶¶20-22	Appeal ¶¶11(a), 71(a)	Prior to the issuance of the Building Permit, the Developer furnished Irrevocable Standby Letter of Credit No. 1108061370, dated July 20, 2020, in the amount of \$867,785.98 naming the Town of Brighton as beneficiary for the construction of Access Management Plan improvements. <b>**Withdrawn by BGR (9/25/20 Zoglin Affm. ¶31)**</b>	Point C.1. <u><a href="#">[9/23/20 Ltr.];</a></u> <u><a href="#">Point B.1 [10/21/20 Ltr.]</a></u>	4-9, 101, 111
2	The Developer allegedly failed to provide the required letter of credit for landscaping, stormwater mitigation, infrastructure, and erosion control.		Appeal ¶¶11(b), 71(b)	Prior to the issuance of the Building Permit, the Developer furnished Irrevocable Standby Letter of Credit No. 1108061388, dated July 20, 2020, in the amount of \$295,205.00 naming the Town of Brighton as beneficiary for the construction of the Project as shown on the approved site plans, which includes landscaping, stormwater mitigation, infrastructure, and erosion control. <b>**Withdrawn by BGR (9/25/20 Zoglin Affm. ¶31)**</b>	Point C.1. <u><a href="#">[9/23/20 Ltr.];</a></u> <u><a href="#">Point B.1 [10/21/20 Ltr.]</a></u>	4-9, 101, 111
3	The Town allegedly is not in compliance with all applicable provisions, rules and regulations of the Town of Brighton Comprehensive Development Regulations because the Developer has allegedly not received all necessary cross-access easements for the Project's Access Management Plan.	Appeal ¶¶ 3, 41, 53-56, 79	Appeal ¶¶11(c)	Prior to the issuance of the Building Permit, the Developer provided to the Town the three cross-access and other easements necessary for the Access Management Plan, which have been recorded in the Monroe County Clerk's Office.	Point C.2. <u><a href="#">[9/23/20 Ltr.]</a></u>	88, 111, 143-184
4	The developer allegedly failed to obtain the signature and approval for two cross-access easements from the recorded first-mortgage holder on two properties owned by Mamasan's Monroe, LLC and S&A Hospitality, LLC (2729 Monroe Avenue and 2735 Monroe Avenue).	Appeal ¶¶3, 55, 80; 8/26/20 Ltr; Sakin Aff. ¶24	Appeal ¶77; <b><u>9/25/20 Zoglin Affm. ¶¶6(B), 22-28; 10/6/20 Zoglin Affm. ¶¶25-34; 10/7/20 Ltr.</u></b>	The Cross-Access Easements are valid and were properly relied upon by the Town in issuing the Building Permit. The rights and remedies of the mortgage holders is irrelevant with respect to whether Town may issue the Building Permit under the Comprehensive Development Regulations. The Cross-Access Easements are sufficient to implement and construct the Access Management Plan.	Point C.3. <u><a href="#">[9/23/20 Ltr.];</a></u> <u><a href="#">Point B.3 [10/21/20 Ltr.]</a></u>	88, 111, 143-184
5	The Town allegedly is not in compliance with the Comprehensive Development Regulations and Site Plan Approval because the developer allegedly failed to obtain NYSDOT highway work permit and/or use permit prior to the Town issuing a building permit.	Appeal ¶¶4, 57, 58, 73-77		Prior to the issuance of the Building Permit, the Town obtained satisfactory documentation from the New York State Department of Transportation evidencing the necessary approvals as required by the conditions of Site Plan Approval. All NYSDOT permits have been subsequently received and the issue is moot.	Point C.4. <u><a href="#">[9/23/20 Ltr.]</a></u>	103, 116, 120, 124-136, 150

Whole Foods Plaza Project  
Save Monroe Avenue and Brighton Grassroots Appeals to Zoning Board of Appeals

	Allegation	SMA Appeal	BGR Appeal	Response	Building Inspector Letter	Record
6	The developer allegedly did not obtain all necessary state and county approvals for the trail amenity because RG&E did not validly obtain the Public Service Commission's written approval.		Appeal ¶¶11(c), 60, 67, 68	RG&E is permitted under Public Service Law 70(1) to grant an easement to the Town of Brighton, and BGR's argument is based on a misinterpretation of the relevant statute. there is no requirement under the Amenity Agreement (or any other Town approval), that the Town obtain final easements from RG&E prior to the issuance of the Building Permit. <b>**Withdrawn by BGR (9/25/20 Zoglin Affm. ¶31) **</b>	Point C.5. <a href="#">[9/23/20 Ltr.]</a>	13, 79, 80, 100, 137
7	The developer allegedly did not comply with the Comprehensive Development Regulations because it obtained a permit allegedly allowing for phased construction in violation of the terms and conditions of the Incentive Zoning approval and SEQRA findings.	8/26/20 Ltr; Sakin Aff. ¶¶ 6-19	<a href="#">9/25/20 Zoglin Affm. ¶¶6(A), 17-21; 10/6/20 Zoglin Affm. ¶¶10-17; 9/25/20 Ltr.</a>	The Project was approved for construction in a single phase, but with construction proceeding in sequences, <i>i.e.</i> , to construct one building while other buildings are waiting to begin the building permit process. Consistent with Town approvals, the Town required the developer to prepare a plan for construction defining the maximum disturbed area per construction sequence in connection with the Stormwater Pollution Prevention Plan and to ensure adequate erosion control practices. Nothing in any Town approval prohibits site work or construction of buildings in one phase with separate sequencing as determined by the Town to mitigate disturbance of the Project site, and regulate stormwater management and erosion control during construction.	Point C.6. <a href="#">[9/23/20 Ltr.]</a> ; <a href="#">Point B.2. [10/21/20 Ltr.]</a>	10-68, 88-89, 102, 105, 218
8	The developer allegedly is not undertaking all traffic improvements required by the Access Management Plan during the first phase of construction in violation of the Comprehensive Development Regulations.	Sakin Aff. ¶23		Neither the Incentive Zoning Resolution nor the Amenity Agreement requires that the Access Management Plan improvements be installed concurrently with the site work and construction of the Starbucks building.	Point C.7. <a href="#">[9/23/20 Ltr.]</a>	81
9	The Building Inspector allegedly did not certify on the site plan that it meets the requirements of all Comprehensive Development Regulations		Appeal ¶¶11(d), 78-80, 93; <a href="#">9/25/20 Zoglin Affm. ¶6(D); 10/6/20 Zoglin Affm. ¶¶18-21</a>	Prior to the issuance of the Building Permit, the Building Inspector confirmed that the requirements of all Comprehensive Development Regulations were met.	Point C.8. <a href="#">[9/23/20 Ltr.]</a> ; <a href="#">Point B.4. [10/21/20 Ltr.]</a>	1, 215

Whole Foods Plaza Project  
Save Monroe Avenue and Brighton Grassroots Appeals to Zoning Board of Appeals

	Allegation	SMA Appeal	BGR Appeal	Response	Building Inspector Letter	Record
10	The Building Inspector allegedly cannot legally certify that the site plan meets the requirements of the Comprehensive Development Regulations because the primary tenant intends to place Amazon Lockers in the 50,000 square foot grocery store.		Appeal ¶83	Condition #40 of Site Plan Approval provides that "[i]f and when Amazon Lockers are proposed, further Town review and approval may be necessary." No Amazon Lockers are proposed or permitted as part of the Project. If and when they are proposed, the Project would be subject to further Town review and approval.	Point C.9. <a href="#">[9/23/20 Ltr.]</a>	103
11	The Building Inspector allegedly cannot legally certify that the site plan meets the requirements of the Comprehensive Development Regulations because the placement of stormwater management structures supporting commercial uses in RLA district is not permitted without use variance		Appeal ¶81	The Incentive Zoning Resolution approved by the Town Board renders the Project's uses, density, and bulk requirements permissible without the need for a variance, and the stormwater management structures were included as part of the overall approval of incentive zoning for the Project.	Point C.10. <a href="#">[9/23/20 Ltr.]</a>	90, 92
12	The Building Inspector allegedly cannot legally certify that the site plan meets the requirements of the Comprehensive Development Regulations because the placement of commercial parking areas supporting commercial uses in RLA district is not permitted without use variance		Appeal ¶82	The Incentive Zoning Resolution approved by the Town Board renders the Project's uses, density, and bulk requirements permissible without the need for a variance, and the commercial parking areas were included as part of the overall approval of incentive zoning for the Project.	Point C.10. <a href="#">[9/23/20 Ltr.]</a>	90, 92
13	<u><a href="#">The Developer allegedly failed to provide the Town with all State and local approvals</a></u>		<u><a href="#">9/25/20 Zoglin Affm. ¶¶6(C), 29-30</a></u>	<u><a href="#">The Town obtained all necessary County and State approvals prior to issuing the Building Permit</a></u>	<u><a href="#">Point B.5. [10/21/20 Ltr.]</a></u>	<u><a href="#">103, 116, 120, 124-36, 150, 215, 10573-78</a></u>
14	<u><a href="#">The Building Inspector allegedly issued the Building Permit before the Developer obtained valid easements to construct the trail amenity</a></u>		<u><a href="#">10/6/20 Zoglin Affm. ¶¶22-24</a></u>	<u><a href="#">Neither the Incentive Zoning Resolution nor the Amenity Agreement requires that the Town obtain a final easement from RG&amp;E prior to issuance of the Building Permit.</a></u>	<u><a href="#">Point B.6. [10/21/20 Ltr.]</a></u>	<u><a href="#">13, 79-80, 100-107</a></u>
15	<u><a href="#">The Town allegedly did not satisfy all conditions related to state and local approvals on the grounds that the Town did not obtain state legislative approval with respect to the pedestrian easements</a></u>		<u><a href="#">10/6/20 Zoglin Affm. ¶¶3-9</a></u>	<u><a href="#">State legislative approval is not required because the pedestrian easements are not parkland subject to the Public Trust Doctrine. The Town has not approved the conveyance of real property requiring a permissive referendum.</a></u>	<u><a href="#">Point B.7. [10/21/20 Ltr.]</a></u>	<u><a href="#">80, 211, 214, 10565-72, 10579</a></u>



November 4, 2020

Town of Brighton Planning Board  
2300 Elmwood Avenue  
Rochester, New York 14618

2695 East Avenue - Fire Sprinkler Variance Package

Dear Chairperson:

The applicant has expressed an interest in replacing an existing older maintenance facility with a new metal and masonry maintenance building without installation of an automatic fire sprinkler system.

I have reviewed the variance application and associated material with respect to the proposed cost for installation of an automatic fire sprinkler system and have the following comment based on that review.

1. I hereby, support the Town of Brighton Fire Sprinkler Law as written and fully adopted by the Town Board to have an automatic fire sprinkler system installed in building or structures which undergo an alteration of more than 50 percent of the replacement value of the building as on file with the Town of Brighton Assessor office.

It is difficult to support the suggested use of any alternate fire suppression systems as a substitute for an automatic fire sprinkler system since the maintenance building includes human occupancy alongside lawn maintenance equipment and the storage of hazardous materials. There are multiple construction variables that would need to be considered for compliance with the minimum fire and life safety features for this use..

If you have any further questions or wish to discuss this matter in greater detail, please feel free to contact me directly.



Christopher A. Roth  
Chief Fire Marshal

**DRAFT**

At a meeting of the Zoning Board of Appeals of the Town of Brighton, held at the Brighton Town Hall, 2300 Elmwood Avenue, Brighton, N.Y. on the 4th day of November, 2020, at approximately 7:00 p.m.

**PRESENT:**

Dennis Mietz, Chairperson

Kathleen Schmitt  
Andrea Tompkins Wright  
Judy Schwartz  
Jeanne Dale  
Jennifer Watson  
Zoning Board of Appeals Members

Rick DiStefano, Secretary  
David Dollinger, Deputy Town Attorney

WHEREAS, on August 4, 2020, Save Monroe Ave, Inc. (2900 Monroe Avenue, LLC, Cliffords of Pittsford, L.P., Elexco Land Services, Inc., Julia D. Kopp, Mark Boylan, Ann Boylan and Steven M. Deperrior) (collectively, "SMA") filed Application 9A-04-20 (the "Appeal") with the Town of Brighton Zoning Board of Appeals (the "ZBA") appealing the Town of Brighton Building Inspector's issuance of Building Permit No. 20180487 (the "Building Permit") to the Daniele Family Companies (the "Developer") for the Whole Foods Plaza project located at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe Avenue, a portion of 175 Allens Creek Road and a portion of 2259 Clover Street (the "Project"); and

WHEREAS, the Appeal requests that the ZBA: (i) annul and reverse the issuance of the Building Permit; (ii) determine that the Developer has failed to confirm that it has met all of the required conditions set forth in the Brighton Town Code and in the Incentive Zoning and Site Plan approvals necessary for the issuance of the Building Permit; and (iii) award SMA all costs and fees associated with the Appeal; and

WHEREAS, ON September 2, 2020, the ZBA held a regular meeting, which was duly noticed and public as required by law; and

WHEREAS, on October 7, 2020, the ZBA held a regular meeting, which was duly noticed and published as required by law; and

WHEREAS, on September 2, 2020 and continued on October 7, 2020, the ZBA held a properly noticed public hearing with respect to the Appeal, and during the public hearing all persons desiring to speak on

# DRAFT

the Appeal were heard, and such persons also submitted documents and other correspondence for consideration by the ZBA, and all those materials were considered by the ZBA as part of the record for the Appeal; and

WHEREAS, on October 7, 2020, the ZBA closed the public hearing, tabled the Appeal, and allowed the Building Inspector two weeks to respond to new information submitted in connection with the Appeal.

NOW, THEREFORE, on Motion of \_\_\_\_\_, Seconded by \_\_\_\_\_, it is hereby

RESOLVED, each of the Whereas Clauses in this Resolution are incorporated by reference as specific findings of this Resolution and shall have the same effect as the other findings herein, and be it further

RESOLVED, that the ZBA in all respects accepts, approves, adopts, and confirms the Findings set forth as Attachment A, which Findings are incorporated herein in their entirety; and

RESOLVED, in accordance with the records, proceedings, and Findings set forth as Attachment A, the ZBA affirms the issuance of the Building Permit; and be it further

RESOLVED, in accordance with the records, proceedings, and Findings set forth as Attachment A, the Appeal is denied.

UPON ROLL CALL VOTE, the vote was as follows:

Dennis Mietz, Chairperson	Voting	_____
Kathleen Schmitt, Board Member	Voting	_____
Andrea Tompkins Wright, Board Member	Voting	_____
Judy Schwartz, Board Member	Voting	_____
Jeanne Dale, Board Member	Voting	_____
Jennifer Watson, Board Member	Voting	_____

This Resolution was thereupon declared adopted.

Dated: November 4, 2020

**ATTACHMENT A**

**DRAFT**

**FINDINGS**

**TOWN OF BRIGHTON ZONING BOARD OF APPEALS**  
**APPLICATION 9A-04-20**

Application of Save Monroe Ave., Inc., et al., appealing the issuance of a building permit (Starbucks Coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods project located at 2740 / 2750 Monroe Avenue.

**BACKGROUND**

1. On February 25, 2015, the Daniele Family Companies (the "Developer" or "Daniele") submitted an application to the Town of Brighton Town Board ("Town Board") for Incentive Zoning for a proposal now known as the Whole Foods Plaza (the "Project").

2. The Project is located on certain property consisting of approximately 10.1 +/- acres of land located at 2740 and 2750 Monroe Avenue in the Town of Brighton (the "Project Site").

3. Following receipt of the Developer's application for Incentive Zoning and pursuant to the New York State Environmental Quality Review Act ("SEQRA"), the Town Board identified the Project as a Type I action, declared itself lead agency for the environmental review of the Project, and directed a coordinated review with potential involved agencies and interested agencies.

4. The Town Board completed its review of the potential impacts of the Project in accordance with the requirements of SEQRA and by Resolution dated March 28, 2018 adopted its Findings Statement. On March 28, 2018, the Town Board approved the Incentive Zoning application subject to conditions and the amenities set forth in the application (the "Incentive Zoning Approval").

5. Subsequently, the Developer submitted to the Town of Brighton Planning Board (the "Planning Board") applications for the following Project approvals: (i) Preliminary and Final Site Plan Approval to construct a five (5) building retail plaza totaling 83,700 sf, which includes a 50,000 sf Whole Food Store and a 2,000 sf drive-thru coffee shop on properties located at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe Avenue, a portion of 175 Allens Creek Road and a portion of 2259 Clover Street, as set forth in more detail in applicable application materials and plans on file (the "Site Plan Approval"); (ii) Site Plan modification to construct shared parking and access, known as the Access Management Plan ("AMP"), on and across 2835 Monroe Avenue, 2815 Monroe Avenue, 2799 Monroe Avenue, 2787 Monroe Avenue, 2775 Monroe Avenue, 2735 Monroe Avenue, 2729 Monroe Avenue and 2717 Monroe Avenue, as set forth in applicable application materials and plans on file (referred to as "AMP Approval"); (iii) Demolition Review and Approval to raze a vacant 10,800 +/- sf restaurant building and a vacant 44,600 +/- sf bowling alley on



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property located at 2740 Monroe Avenue and 2750 Monroe Avenue as set forth in applicable application and plans on file; (iv) Demolition Review and Approval to raze a restaurant building on property located at 2800 Monroe Avenue as set forth in applicable application materials and plans on file ([iii] and [iv] are collectively "the Demolition plan Approval"); (v) Preliminary and Final Subdivision/Resubdivision Approval to combine and reconfigure several lots into two on properties located at 2740, 2750 and 2800 Monroe Avenue, 2259 Clover Street and 175 Allens Creek Road as set forth in applicable application and plans on file; (vi) Preliminary and Final Subdivision Approval to create two lots from one on property located at 175 Allens Creek Road, as set forth in applicable application materials and plans on file ([v] and [vi] are collectively, the "Subdivision Approval") (each of the forgoing applications may be referred to collectively as "the Planning Board Approvals").

6. The Planning Board was identified as an Involved Agency under SEQRA due to its authority to make discretionary decisions with respect to the Planning Board Approvals. The Planning Board completed its review of the potential impacts of the Project in accordance with the requirements of SEQRA and by Resolution dated August 15, 2018 adopted its Findings Statement.

7. On August 15, 2018, the Planning Board approved, with conditions, the Demolition Plan Approval.

8. On September 17, 2018, the Planning Board approved, with conditions, the AMP Approval, the Subdivision Approval, and the Site Plan Approval.

9. On January 9, 2019, the Developer and the Town entered into the Amenity Agreement for the Project, which contains the parties' agreement relative to the amenities being offered to the Town by the Developer in exchange for the incentives to be granted to the Developer by the Town in connection with the Incentive Zoning Approval.

10. On July 20, 2020, the Town of Brighton Building Inspector (the "Building Inspector") issued Building Permit No. 20180487 (the "Building Permit") for the Project. The Building Permit is for "site work & construction of a building shell for a 1996sf building to include future retail tenants (Star Bucks)."

11. On August 4, 2020, Save Monroe Ave, Inc. (2900 Monroe Avenue, LLC, Cliffords of Pittsford, L.P., Elexco Land Services, Inc., Julia D. Kopp, Mark Boylan, Ann Boylan and Steven M. Deperrior) (collectively, "SMA") filed an application with the Town of Brighton Zoning Board of Appeals (the "ZBA") appealing the Building Inspector's issuance of the Building Permit for the Project (the "Appeal").

12. SMA submitted the following documents in support of the Appeal: (i) Town of Brighton Zoning Board of Appeals Application,



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dated August 3, 2020; and (ii) Appeal/Notice of Appeal, dated August 3, 2020, with Exhibits A-G.

13. SMA submitted a letter to the ZBA, dated August 26, 2020, together with the Affidavit of Aaron M. Saykin, sworn to August 26, 2020, with Exhibits 1-5.

14. On September 2, 2020, the ZBA conducted the public hearing. The ZBA tabled the application and continued the public hearing in order to receive and file SMA's August 26, 2020 materials and granted the Building Inspector until September 23, 2020 to submit his response to the Appeal.

15. On September 23, 2020, in accordance with Town Law 267-a(5)(b), the Building Inspector filed with the ZBA the administrative record with bates numbers ZBA000001-ZBA010543. The Building Inspector also submitted to the ZBA a letter, dated September 23, 2020, in opposition to the Appeal and a spreadsheet containing an outline of the arguments raised in the Appeal, the Building Inspector's response, and references to the administrative record.

16. On September 23, 2020, the Developer submitted a letter with enclosures to the ZBA.

17. On October 5, 2020, the Developer submitted a letter to the ZBA.

18. On October 7, 2020, the ZBA continued the public hearing. The ZBA closed the public hearing on October 7, 2020, but granted the Building Inspector permission until October 21, 2020 to submit a response to supplemental submissions made by Brighton Grassroots, LLC ("BGR") in related appeal 10A-02-20.

19. On October 21, 2020, the Building Inspector submitted to the ZBA a letter, and an updated spreadsheet containing an outline of the arguments raised in the Appeal and the Building Inspector's response that incorporates reference to BGR's additional submissions. The Building Inspector also filed with the ZBA additional documents with bates numbers ZBA010544-010581.

## DOCUMENTS CONSIDERED BY THE ZBA

20. The ZBA has considered the following documents in connection with the Appeal: (1) Town of Brighton Zoning Board of Appeals Application, dated August 3, 2020; (2) Appeal/Notice of Appeal, dated August 3, 2020, with Exhibits A-G; (3) SMA letter to the ZBA, dated August 26, 2020; (4) Affidavit of Aaron M. Saykin, sworn to August 26, 2020, with Exhibits 1-5; (5) Administrative record with bates numbers ZBA000001-ZBA010543; (6) Letter from Building Inspector, dated September 23, 2020, and spreadsheet; (7) Letter from Warren Rosenbaum, Developer's Counsel, dated September 23, 2020; (8) Letter from Warren Rosenbaum, Developer's Counsel, dated October 5, 2020,

# **DRAFT**

with enclosures; (9) Letter from Building Inspector, dated October 21, 2020, and updated spreadsheet; (10) Additional documents submitted by the Building Inspector with bates number ZBA010544-010581; (11) Email from Howie Jacobson, dated September 2, 2020; and (12) Email from Paul Adams, dated October 16, 2020.

## **JURISDICTION AND STANDARD OF REVIEW**

21. The ZBA is authorized to hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by an administrative official to decide the "meaning of any portion of the text of Comprehensive Development Regulations or of any condition or requirement specified or made under the provisions of the Comprehensive Development Regulations." Brighton Town Code 219-2(A)(1); see also Town Law 267-a(4).

22. In accordance with Town Law 267-b(1), the ZBA's standard of review with respect to the Appeal is *de novo*, such that the ZBA "may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken."

## **FINDINGS OF FACT AND DETERMINATIONS**

After considering all the proof and evidence before it, the ZBA: (i) affirms the Building Inspector's issuance of the Building Permit; (ii) denies the Appeal; and (iii) makes the following determinations, findings, and interpretations:

### **I. Irrevocable Letters of Credit**

23. The Town has received the three necessary irrevocable letters of credit for the Project. (ZBA000004-9).

24. This portion of the Appeal is denied.

### **II. Cross-Access Easements for the Access Management Plan**

25. Paragraph 2(b) of the Amenity Agreement provides that "[p]rior to the issuance of any Town building permits with the exception of the issuance of any permit for demolition of the buildings currently located on the Property, Daniele shall provide all cross access and other easements necessary to implement and construct the AMP. . . . The easements shall be prepared and submitted to the Town for review and approval. Upon satisfactory completion and execution of the documents, the easements shall be filed by Daniele at

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the Monroe County Clerk's Office with the Town being provided copies of each easement with the liber and pages of filing."

26. Paragraph 8 of Schedule E-2 of the Incentive Zoning Approval provides that "prior to the issuance of any Town permits for the Project with the exception of the issuance of any permit for demolition of the buildings currently located on the Property, the [Developer] shall provide and file access rights for cross-access and cross-parking easements between proposed Lot 1 and Lot 2."

27. As established by the administrative record, prior to the issuance of the Building Permit for the Project, the Developer provided to the Town the cross-access and other easements necessary to implement and construct the AMP. (ZBA000143-184). The Building Inspector has confirmed that the cross-access easements were completed to the Town's satisfaction, and executed and filed in the Monroe County Clerk's Office with copies provided to the Town.

28. The ZBA finds that the Developer was not required to obtain approval for the cross-access easements from the recorded first-mortgage holders on two affected properties located at 2729 and 2735 Monroe Avenue prior to the issuance of the Building Permit for the Project. A valid easement can be granted by a property owner who has title to the servient estate. As established by the administrative record, the owners of the affected properties executed the cross-access easements through their members before a notary public and the cross-access easements contained the required formalities. (ZBA000143-184).

29. The ZBA finds that a mortgage recorded against the servient estate does not render the cross-access easements invalid or unenforceable.

30. SMA has not submitted any evidence that the owners of 2729 and 2735 Monroe Avenue lack authority to convey the cross-access and other easements necessary to implement and construct the AMP.

31. Paragraph 1.11(a) of the mortgage over 2735 Monroe Avenue states that "neither the Property, nor any part thereof or interest therein, shall be sold, conveyed, disposed of, alienated, hypothecated, leased . . ., assigned, pledged, mortgaged, further encumbered or otherwise transferred, nor Mortgagor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily . . . in each case without the prior written consent of Mortgagee being first obtained." Nothing in this paragraph renders the conveyance of an easement void.

32. Board Member Wright, who is an experienced real estate attorney, stated during the public hearing on October 7, 2020 that Paragraph 1.11(a) of the mortgage is contained in the covenant section of the mortgage, and is not a bargain and sale of rights such that it takes away the property owner's right to convey an interest in the

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property. The ZBA agrees, and finds that the cross-access easements, as recorded, are enforceable.

33. SMA has not submitted any evidence to the ZBA that a foreclosure action has been commenced or that a court has entered a judgment extinguishing the cross-access easements. Whether this occurs in the future is speculative. SMA has not submitted any evidence that the cross-access easements are insufficient to implement and construct the AMP as required by the Amenity Agreement.

34. As the party seeking to annul the Building Permit, SMA has the burden of showing that the Building Permit was improperly issued. See *Hariri v. Keller*, 34 AD3d 583 (2d Dep't 2006). The ZBA finds that SMA has not met its burden of showing that the cross-access easements are void because they were not approved by the mortgage holder.

35. It is not the obligation of the Town to enforce private mortgages. See *Vandoros v. Hatzimichalis*, 131 A.D.2d 752 (2d Dep't 1987) (stating that it "is not the obligation of the Department of Buildings to enforce private easements"). In issuing a zoning approval, "a municipality determines only that the application complies with the municipality's standards and conditions contained in the zoning ordinance." See *Chambers v. Old Stone Hill Rd. Assoc.*, 1 N.Y.3d 414 (2004). The ZBA finds that, in determining whether to issue the Building Permit, the rights and remedies of a private mortgage holder are not relevant under the Comprehensive Development Regulations.

36. As Board Member Wright stated during the public hearing on October 7, 2020, "whether or not a deed or an easement is voidable is an incredibly intricate process that we simply cannot require Towns in New York to read every single word of every single recorded document to confirm that it's not potentially voidable or it's not potentially a default under a mortgage or someone doesn't have authority based on a, based from a third party to grant it. Towns have to be held to some sort of reasonable standard of review." The ZBA agrees, and finds that it is unreasonable to expect the Town to evaluate private contractual agreements that may pertain to properties that are involved in zoning applications.

37. This portion of the Appeal is denied.

## III. State and County Approvals

38. Condition #41 of Site Plan Approval states that "prior to the issuance of building permits for the project, State and County necessary approvals shall be obtained." (ZBA000103).

### A. New York State Department of Transportation

39. On August 23, 2019, the New York State Department of Transportation ("NYSDOT") completed its review of the potential

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impacts of the Project in accordance with the requirements of SEQRA and adopted its Findings Statement. (ZBA000124-136). NYSDOT found that the "mitigating measures will be the responsibility of the [Developer] and will be a condition to NYSDOT's approval of the Highway Work Permit for the Project." The NYSDOT found, among other things, that "[c]onsistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided through implementation of the mitigation measures identified herein" and "[c]onsistent with social, economic, and other essential considerations, from among the reasonable alternatives thereto, the action to be undertaken is an alternative which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the environmental impact statement."

40. The Building Inspector has interpreted the issuance of a positive Finding Statement and certification to approve the Project, as evidencing the ability of the Developer to obtain the necessary Highway Work Permits for the Project. As supported by the administrative record, the ZBA finds that the NYSDOT's issuance of a positive Findings Statement under SEQRA and certification to approve the Project as evidence that the Developer obtained the necessary State approvals for the Project.

41. On November 14, 2019, the NYSDOT issued a Highway Work Permit to allow construction of utilities. (ZBA000116-119).

42. On August 3, 2020, the NYSDOT issued a second Highway Work Permit for the installation of parking lot entrances and modification of existing curbs, and installation of two signalized intersections and pedestrian cross walks. (ZBA000120-123).

## B. Other State and County Approvals

43. Although not raised in the Appeal, during the public hearing on October 7, 2020, BGR stated that the Project did not obtain all State and local approvals, and requested that its comments be incorporated into the record of the Appeal.

44. The Building Inspector has confirmed that a NYSDEC permit is not issued for sanitary sewer. The ZBA agrees, and finds that no NYSDEC permit exists or is required for sanitary sewer.

45. There is not proof before the ZBA or any cited NYSDEC regulation indicating a requirement to obtain a NYSDEC permit for sanitary sewer.

46. On July 8, 2020, Monroe County Pure Waters ("MCPW") and Monroe County Department of Health ("MCDOH") signed the Utility Plan approving the sanitary sewer extension for the Project. (ZBA000215).

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47. On January 1, 2020, MCPW signed the Unity Plan indicating that the plan conforms to the MCPW Master Plan. (ZBA000215).

48. The Project requires certain backflow prevention approvals from the MCDOH. These are known as a "Reduce Pressure Zone Device," which is a type of backflow prevention device used to protect water supplies from contamination. The Project may also require certain grease interceptor approvals from the MCDOH.

49. The Building Inspector has confirmed that these approvals are separate from the Building Permit process. Consistent with the language of Condition #41 of the Site Plan Approval and as supported by the administrative record, the ZBA finds that MCDOH backflow prevention and greased interceptor approvals are not "necessary approvals" for the issuance of the Building Permit.

50. On July 14, 2020, the MCDOH approved the applicable backflow prevention devices. (ZBA010573-578).

51. The Project does not include the subdivision of five or more lots and is not residential. The administrative record does not contain any proof or cite any Monroe County law or regulation indicating a requirement to obtain MCDOH Realty Subdivision approval. The ZBA finds that the Project does not require MCDOH Realty Subdivision approval.

52. The Project Site is located along Monroe Avenue (New York State Route 31) in the Town of Brighton. Monroe Avenue is not a County Highway. The administrative record does not contain any proof or cite to any Monroe County law or regulation indicating a requirement to obtain Monroe County Department of Transportation ("MCDOT") approval. The ZBA finds that the Project does not require the approval of the MCDOT.

53. As established by the administrative record, prior to the Issuance of the Building Permit, the ZBA finds the Town obtained all necessary State and County approvals as required by Condition #41 of Site Plan Approval.

54. This portion of the Appeal is denied.

## **IV. Construction Sequencing**

55. The Incentive Zoning Approval approved the construction of the Project in a single phase (ZBA000088). This single construction phase is projected to last 18 months. (ZBA000064).

56. The Building Permit approved "site work & construction of a building shell for a 1996sf building to include future retail tenants (Star Bucks)." The ZBA finds that the Building Permit authorizes the site work for the entire Project and is in accordance with the approval of the construction of the Project in a single phase.

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57. During the public hearing on October 7, 2020, the Developer testified that the site work will take approximately 6-7 months and is the most difficult part of the Project. Once complete, construction of buildings takes less than 90 days. The Developer hopes to have the entire Project complete by the summer of next year.

58. SMA has not submitted any evidence to the ZBA that the Building Permit authorizes construction, or that the Project is currently being constructed, in multiple phases.

59. The Amenity Agreement states that the Developer "shall complete construction of the trail within three hundred sixty five (365) calendar days of the date on which the Town issues the first building permit for the project." (ZBA000079). The Building Inspector interprets this language as evidencing that the Town Board anticipated the issuance of multiple building permits for the Project. Consistent with the language of the Incentive Zoning Approval and as supported by the administrative record, the ZBA interprets and finds that the Project approvals contemplate the issuance of multiple building permits.

60. Schedule E-2 of the Incentive Zoning Approval states that "the site plan for the development of the [Project Site] shall be approved by the Planning Board .... The Planning Board has the authority to modify the proposed plan for the Project to address ... adequacy and arrangement of buildings, parking areas, pedestrian traffic access and circulation, including separation for pedestrians from vehicular traffic, sidewalks, linkages, pedestrian convenience, stormwater management and utilities." (ZBA000088).

61. The Site Plan Approval is subject to condition that "[a]ll comments and concerns of the Town Engineer as contained in the attached memo dated September 16, 2018 from Michael Guyon, Town Engineer, to Ramsey Boehner, shall be addressed." (ZBA000102). The Town Engineer stated that the Developer provide a "phasing plan demonstrating that the total earth disturbance will not exceed 5 acres." (ZBA0000105). The Developer provided the requested plan in accordance with the condition of Site Plan Approval. (ZBA000218).

62. The Building Inspector has confirmed that it is "common for commercial projects with multiple buildings to have construction proceed in sequences, i.e. to construct one building while other buildings are waiting to begin the building permit process." Pursuant to the New York Department of Environmental Conservation ("NYSDEC") State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity, the Town required the Developer to prepare a plan for construction defining the maximum disturbed area per construction sequence.

63. The Building Inspector has confirmed that the New York State Stormwater Management Design Manual recommends "projects avoid

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mass grading of a site and suggests that the project area be divided into smaller areas for phased grading.” The New York State Standards and Specifications for Erosion and Sediment Control similarly recommend that a “properly designed erosion and sediment control plan for a commercial site will typically involve several phases, and that good construction and site management includes site phasing and construction sequencing measures.”

64. The Town Building and Planning Department is comprised of, among others, the Building Inspector, Town Engineer, and Commissioner of Public Works, who are certified planners, licensed engineers and/or professionals with decades of experience in land use planning and construction. The ZBA finds that the issuance of the Building Permit and approved construction is consistent with the SPDES permit and NYSDEC guidance, and supported by the Incentive Zoning Resolution, Site Plan Approval, and administrative record. SMA has not submitted any evidence that the issuance of the Building Permit or the construction sequencing implemented as part of the Project is contrary to NYSDEC regulation or guidance.

65. As established by the administrative record, the ZBA finds that: (i) the Building Permit authorizes site work for the entire Project Site; (ii) construction is occurring in a single phase in accordance with the Incentive Zoning Approval and Site Plan Approval; and (iii) the Town reasonably and rationally required construction to proceed in sequences to mitigate overall disturbance of the Project Site, and to manage stormwater and control erosion.

66. During the public hearing on October 7, 2020, BGR stated that the Developer is pulling permits piecemeal and has not shown any indication they have applied for or pulled, or are prepared to pull, any other permits. The ZBA has verified with the Town Building and Planning Department that, in fact, the Developer (i) on September 16, 2020 applied for a building permit to construct the internal build-out for new tenant Starbucks Coffee, and (ii) on October 13, 2020 applied for a building permit to construct a building shell for the 22,380 square foot building approved as part of the Project.

67. Paragraph 2(c) of the Amenity Agreement states that “[p]rior to the issuance of a Temporary or Final Certificate of Occupancy for the Project, the Access Management Plan improvements shall be installed and operational.” (ZBA000081). Consistent with the language of the Amenity Agreement, the ZBA finds that the AMP improvements must be installed and operational prior to the issuance of a Temporary or Final Certificate of Occupancy for the Project, not prior to the issuance of the Building Permit.

68. The ZBA finds that SMA has not met its burden of showing that the Building Permit authorizes construction in multiple phases in violation of either the Findings Statement adopted by the Town Board, or the Incentive Zoning Approval. The ZBA finds that the Project is being constructed in a single phase.

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69. This portion of the Appeal is denied.

## **V. Other Issues Raised During Public Hearing**

70. Although not raised in the Appeal, during the public hearing on October 7, 2020, BGR stated that: (i) the Building Inspector failed to certify on the site plans that the Project meets the requirements of the Comprehensive Development Regulations; and (ii) the Developer failed to obtain State and local approvals in the form of State legislative approval under public trust doctrine and local resident approval in form of a permissive referendum. BGR requested that its comments be incorporated into the record of this Appeal.

### **A. Building Inspector Certification on Site Plan**

71. Section 217-12(A)(3) of the Comprehensive Development Regulations provides that the "Building Inspector shall certify on each site plan or amendment whether or not the plan meets the requirements of all Comprehensive Development Regulations other than those of this article regarding site plan approval."

72. Section 217-12(A)(3) is contained in Article III of the Comprehensive Development Regulations. Article III of the Comprehensive Development Regulations applies to the "Approval of Site Plans" by the Planning Board. The Planning Board Approvals, including the Site Plan Approval, are not before the ZBA in connection with the Appeal, which involves the issuance of the Building Permit. The ZBA is without jurisdiction or authority to review the Site Plan Approval.

73. Chapter 73 of the Code of the Town of Brighton (the "Brighton Town Code") and Sections 225-1 and 225-2 of the Comprehensive Development Regulations govern the issuance of building permits. These provisions do not impose a requirement that the Building Inspector certify a site plan as a condition of issuing a building permit.

74. Section 73-5 of the Brighton Town Code establishes the office of the Building Inspector. Section 73-5(A)(1) of the Brighton Town Code states that the office "shall be headed by the Associate Planner and shall employ an official or officials designated as the 'Building Inspector.' The Building Inspector(s) shall be appointed by the Town Board, upon recommendation of the Commissioner of Public Works, and may be either the Commissioner of Public Works, the Associate Planner or other Town employee(s)...."

75. By resolution, the Town Board has lawfully designated the Commissioner of Public Works, the Associate Planner, the Town Engineer, the Town Architect, and the Fire Marshall to "carry out the functions of the office of Building Inspector, as laid out in the Comprehensive Development Regulations." (ZBA010544-551).

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76. The Commissioner of Public Works relies on the Associate Planner to review building permit applications and site plans for compliance with the Comprehensive Development Regulations. As established by the administrative record, the Town reviewed the Developer's application for the Building Permit as follows: (i) if required, use and area variances have been obtained; (ii) the Planning Board has granted final site plan approval; (iii) the Town Engineer confirms that all technical issues have been resolved; (iv) all easements have been executed and filed in the Monroe County Clerk's office, with the liber and page must be recorded on the plans; (v) the Associate Planner confirms that all of the conditions of Planning Board approval have been met; (vi) the Associate Planner confirms that the requirements of SEQRA, including any conditions contained in a SEQRA findings statement have been met; (vii) in the case of an incentive zoning project, the Associate Planner confirms that the conditions of the incentive zoning and amenity agreements have been met; (viii) the Associate Planner confirms that any other requirements of the Comprehensive Development Regulations have been met; and (ix) the plans have been signed by the jurisdictional agencies.

77. Although Section 217-12(A)(3) of the Comprehensive Development Regulations provides that the Building Inspector "certify" on the site plan that it meets the requirements of the Comprehensive Development Regulations, the Comprehensive Development Regulations do not define a specific or particular form of the certification.

78. On July 16, 2020, the Commissioner of Public Works and Town Engineer signed the Utility Plan contained in the final site development plan package. (ZBA000215). Based on the submissions and evidence contained in the administrative record, the ZBA finds that the custom and practice of the Town is for the Town Engineer and Commissioner of Public Works to sign and approve the Utility Plan to "certify" that the plans meet the requirements of the Comprehensive Development Regulations. The Commissioner of Public Works and Associate Planner, both of whom are lawfully designated as the Town Building Inspector, confirmed that all the requirements needed to approve the plans were satisfied prior to endorsing the final drawings.

79. The ZBA interprets the requirement in Section 217-12(A)(3) that the Building Inspector "certify on each site plan or amendment whether or not the plan meets the requirements of all Comprehensive Development Regulations" as being satisfied in this case when the Commissioner of Public Works and Town Engineer signed and approved the Utility Plan for the Project. (ZBA000215).

80. In his submission to the ZBA, the Building Inspector has also "confirm[ed] and certif[ied] that the plans meet the requirements of the Comprehensive Development Regulations."

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81. Based on the administrative record, the ZBA finds that the comments made during the public hearing are insufficient for SMA to meet its burden of showing that the plans do not meet the requirements of the Comprehensive Development Regulations. As established by the administrative record, the ZBA finds that the Building Inspector properly certified that the site plans for the Project meet the requirements of all Comprehensive Development Regulations.

## B. The Pedestrian Easements

82. Condition #41 of Site Plan Approval states that "prior to the issuance of building permits for the project, State and County necessary approvals shall be obtained." (ZBA000103).

83. The Project Site is subject to certain easements granted to the Town of Brighton that run through a portion of the Project Site (collectively, the "Pedestrian Easements"). The ZBA has been provided with copies of four Pedestrian Easements, which were granted to the Town of Brighton between 1997 and 2003 by various property owners for the purpose of pedestrian use by the Town of Brighton, "its licensees, and the public, together with the right, privilege and authority of the Town of Brighton to install, construct, reconstruct, extend, operate, inspect, maintain, repair, replace, and at its pleasure, to install a pedestrian pathway which the [Town] shall require for public use...."

84. The land containing the Pedestrian Easements was formerly owned by RG&E. The Pedestrian Easements run through the back of various properties between Allens Creek Road and Clover Street in the Town. The Pedestrian Easements do not run continuously from Allens Creek Road to Clover Street. The Pedestrian Easement granted by Executive Square Office Park, LLC to the Town of Brighton runs southerly from Allens Creek Road to the boundary of the Project Site. The administrative record does not contain any evidence of a Pedestrian Easement from Mario & Flora Danielle to the Town of Brighton for the northerly portion of the Project Site between the Executive Square Office Park and the former Clover Lanes property. The Pedestrian Easement granted by Clover Lanes, Inc. and Mamasan's Monroe, LLC runs through the back of the southerly portion of the Project Site to the adjoining property.

85. At the time the easements were granted, the various properties contained an office park, bowling alley, and other commercial buildings. As reflected by the maps attached to the Pedestrian Easements, at the time, and presently, they run over pavement, including a parking lot. As stated by Board Member Schmitt during the public hearing on October 7, 2020, who has utilized the Pedestrian Easements, the easement area is "a parking lot and has

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always been a parking lot. And you kind of skirt behind what used to be the bowling alley."

86. The Appellate Division, Fourth Department, found issues of fact as to "whether there was an express or implied dedication of the [Pedestrian Easements] subject to the public trust doctrine." *Clover/Allen's Creek Neighborhood Association LLC v M&F, LLC*, 173 A.D.3d 1828 (4th Dep't 2019). The Fourth Department stated: "To establish that property has been dedicated as a park or for public use, formal dedication by the legislature is not required. Rather, a parcel of property may become a park by express provisions in a deed ... or by implied acts, such as continued use [by the municipality] of the parcel as a park .... A party seeking to establish ... an implied dedication and thereby successfully challenge the alienation of the land must show that (1) [t]he acts and declarations of the land owner indicating the intent to dedicate his [or her] land to the public use [are] unmistakable in their purpose and decisive in their character to have the effect of a dedication and (2) that the public has accepted the land as dedicated to a public use." *Id.* (internal citations and quotations omitted).

87. The administrative record does not contain any evidence demonstrating an express or implied dedication of parkland. The administrative record does not contain any evidence of acts or declarations by the landowners indicating an intent to dedicate land to the public use. The administrative record does not contain any evidence that the Town has accepted the land as dedicated to a public use. Based on the administrative record, the ZBA finds that the comments made during the public hearing are insufficient for SMA to meet its burden of showing that the Pedestrian Easements were dedicated as parkland and are subject to the Public Trust Doctrine based on the standards articulated by the Fourth Department.

88. As established by the administrative record, until 1978, the Town "had no official parkland of its own except, perhaps, for the pocket parks that exist in many residential neighborhoods such as Rose Park in the Rose Lawn subdivision." Between 1978 and present, the Town has formally recognized several parks, such as Brighton Town Park, Persimmon Park, Buckland Park, Meridian Park, Lynch Woods, and Sandra L. Frankel Nature Park." (ZBA018803). None of these parks are related to or otherwise involve the Pedestrian Easements.

89. According to the Town Superintendent of Parks, the Town currently manages almost 500 acres of parkland and open space for the benefit and enjoyment of the Town's residents and visitors. The Town Superintendent states that the Town "has not designated this pedestrian pathway as a park, and has not accepted this area as parkland. This area is not among the hundreds of acres of parkland and open space managed by the Town Parks Department. The Town does not maintain this area as a park. This area is not identified on any official Town maps as a park, and the Town has not erected any signs on or near this pathway which identify it as a park." (ZBA010566).

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90. According to the Town Associate Planner, who supervises and directs the activities of the Town's Building and Planning Department, and has held that position since 1990 (during the time the Town acquired the Pedestrian Easements), the Town has "never made any improvement to the lands subject to the [Pedestrian] Easements to allow for its use as a park. Neither has the Town done any maintenance work on this land or erected any signage on or adjacent to this land to state that this area is a park. At the time the Town acquired the [Pedestrian] Easements, it was not the Town's intent to have the land subject to the Easements become a park or unequivocally dedicate this land as parkland." The Town Associate Planner further states that the Town "has not expressly or implicitly through any action taken dedicated this area as a park." (ZBA010569).

91. The relevant portions of the Town Comprehensive Plan 2000 and Envision Brighton 2028 (adopted after the Town Board approved the Incentive Zoning Approval), identifies the area subject to the Pedestrian Easements as a proposed trail. In fact, Envision Brighton 2028 states that this area "is currently planned to be developed, at no cost to the Town, as an amenity approved as part of the Whole Foods zoning project." (ZBA010570). The ZBA finds that the Town Comprehensive Plans evidence a future opportunity to develop a trail in this area. The ZBA further finds that the Town did not intend to accept the Pedestrian Easements as parkland at the time they were granted.

92. During the public hearing, a member of the ZBA asked BGR to explain how the Building Permit interferes with the use and enjoyment of the Auburn Trail. BGR only responded that the Project as approved allows the Town to interfere with the Pedestrian Easements, but did not provide any evidence as to the alleged interference. However, according to the Town Associate Planner, the Project "as approved by the Town will not interfere with or otherwise obstruct the public's use of the existing [Pedestrian Easements]. The Project proposes no parking spaces within the lands subject to the Easements. In fact, as part of the Town's review of the site plan, the Planning Board ensured that the Auburn Trail would not be obstructed by parking spaces." (ZBA010570-571). SMA also stated during the public hearing that the portion of the Project relating to the Building Permit "is probably the furthest from the Auburn Trail on the site."

93. Based on the final plans contained in the administrative record, the Project proposes no parking spaces within the Pedestrian Easement area. (ZBA000211, 214). The ZBA finds that the Pedestrian Easements on the Project Site have always been located on a parking lot, and that will continue to be the case after the Project is constructed. The ZBA further finds that the Pedestrian Easements will not be obstructed by parking spaces as reflected on the final plans.

94. During the public hearing, BGR stated that the ZBA should look at whether tractor trailer turnarounds are consistent with a

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public pedestrian pathway. The loading dock and tractor trailer turnarounds for the Whole Foods building are located in the rear of the proposed building, in the northwest corner of the Project Site. (ZBA000214). However, nothing in the administrative record indicates that the northerly portion of the Project Site (the former site of the Mario's Restaurant between the Executive Square Office Park property and the former Clover Lanes property) is subject to the Pedestrian Easements. In the absence of a documented easement, the ZBA finds that that the comments made during the public hearing are insufficient for SMA to meet its burden of showing that the loading dock or tractor trailer turnarounds are inconsistent with the Pedestrian Easements.

95. The Building Inspector has confirmed that the Pedestrian Easements will not be closed during or after construction. The ZBA has confirmed, based on a visual inspection of the Project Site, that the Pedestrian Easements are protected from obstruction by construction fencing. As part of the Incentive Zoning Approval, the Developer will be improving and extending the Auburn Trail for the benefit of the public. The ZBA finds that the public's right to access and use the Auburn Trail will be enhanced and improved as a result of the Project. The ZBA finds the Project will not substantially interfere with the Pedestrian Easements.

96. The Pedestrian Easements contain language stating that "[u]pon completion of any construction, installation, maintenance or repair of any improvement over the Easement Premises as required by the [Town], [Town] agrees to restore the Easements Premises to park like condition ...." The ZBA interprets this language in the Pedestrian Easements as requiring the Town to restore the Pedestrian Easements to "park like" condition only after a pedestrian pathway is constructed. Based on administrative record and testimony before the ZBA, the ZBA finds that the Town has not constructed or maintained a pedestrian pathway within the Pedestrian Easements.

97. The administrative record does not contain any evidence indicating that the Town has constructed a pedestrian pathway within the Pedestrian Easements. The ZBA finds that this language in the Pedestrian Easements does not evidence an express or implied dedication of the Pedestrian Easements subject to the Public Trust Doctrine.

98. Based on the administrative record and evidence before the ZBA, the ZBA finds that the Pedestrian Easements are not parkland for purposes of the Public Trust Doctrine. The ZBA finds that the issuance of the Building Permit complies with Condition #41 of the Site Plan Approval because no State legislative approval is required.

99. Under Town Law 62(2), upon adopting a resolution, the Town Board may "convey or lease real property in the name of the town, which resolution shall be subject to a permissive referendum."

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100. According to the Associate Planner, as approved by the Town, the Pedestrian Easements "will remain of record without change and will not be abandoned, conveyed, released or otherwise modified." (ZBA010570). Nothing in the administrative record indicates that the Town Board has adopted a resolution authorizing the conveyance or abandonment of the Pedestrian Easements. The Pedestrian Easements are reflected on the final site plan. (ZBA000214).

101. The administrative record does not contain any evidence that the Town is conveying or abandoning the Pedestrian Easements. The ZBA finds that the comments made during the public hearing are insufficient for SMA to meet its burden of showing that the Town is conveying or abandoning the Pedestrian Easements. Based on the administrative record and evidence before the ZBA, the ZBA finds that the Town is not conveying or abandoning the Pedestrians Easements. The ZBA finds that the Town is not required to conduct a permissive referendum.

102. This portion of the Appeal is denied.

## CONCLUSION

103. In accordance with the records, proceedings, and above Findings, the ZBA finds that: (i) the Building Inspector properly issued the Building Permit in accordance with the requirements of the Brighton Town Code, Comprehensive Development Regulations, Incentive Zoning Approval, Site Plan Approval, and other applicable conditions of approval; (ii) the Building Permit meets all of the required conditions for the issuance of a building permit as set forth in the Brighton Town Code, Comprehensive Development Regulations, Incentive Zoning Approval, and Site Plan Approval; and (iii) the Developer satisfied all required conditions before the Building Inspector issued the Building Permit.

104. The ZBA denies SMA's request for costs and fees associated with the Appeal.

105. The Building Inspector's issuance of the Building Permit is affirmed, and Appeal is denied in its entirety.

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At a meeting of the Zoning Board of Appeals of the Town of Brighton, held at the Brighton Town Hall, 2300 Elmwood Avenue, Brighton, N.Y. on the 4th day of November, 2020, at approximately 7:00 p.m.

**PRESENT:**

Dennis Mietz, Chairperson

Kathleen Schmitt

Andrea Tompkins Wright

Judy Schwartz

Jeanne Dale

Jennifer Watson

Zoning Board of Appeals Members

Rick DiStefano, Secretary

David Dollinger, Deputy Town Attorney

WHEREAS, on August 20, 2020, Brighton Grassroots, LLC ("BGR") filed Application 10A-02-20 (the "Appeal") with the Town of Brighton Zoning Board of Appeals (the "ZBA") appealing the Town of Brighton Building Inspector's issuance of Building Permit No. 20180487 (the "Building Permit") to the Daniele Family Companies (the "Developer") for the Whole Foods Plaza project located at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe Avenue, a portion of 175 Allens Creek Road, and a portion of 2259 Clover Street (the "Project"); and

WHEREAS, the Appeal requests that the ZBA: (i) reverse the decision of the Town of Brighton Building Inspector to issue the Building Permit; (ii) annul the Building Permit; (iii) determine that the Developer has failed to establish, with documentary evidence, that it has met all of the required preconditions/requirements for issuance of the Building Permit as set forth in the Brighton Town Code, Incentive Zoning Resolution, and Site Plan Approval Resolution; and (iv) identify which outstanding preconditions/requirements the Developer must satisfy before a building permit can be issued; and

WHEREAS, on October 7, 2020, the ZBA held a regular meeting, which was duly noticed and published as required by law; and

WHEREAS, on October 7, 2020, the ZBA held a properly noticed public hearing with respect to the Appeal, and during the public hearing all persons desiring to speak on the Appeal were heard, and such persons also submitted documents and other correspondence for consideration by the ZBA, and all those materials were considered by the ZBA as part of the record for the Appeal; and



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WHEREAS, on October 7, 2020, the ZBA closed the public hearing, tabled the Appeal, and allowed the Building Inspector two weeks to respond to new information submitted by BGR.

NOW, THEREFORE, on Motion of \_\_\_\_\_, Seconded by \_\_\_\_\_, it is hereby

RESOLVED, each of the Whereas Clauses in this Resolution are incorporated by reference as specific findings of this Resolution and shall have the same effect as the other findings herein, and be it further

RESOLVED, that the ZBA in all respects accepts, approves, adopts, and confirms the Findings set forth as Attachment A, which Findings are incorporated herein in their entirety; and

RESOLVED, in accordance with the records, proceedings, and Findings set forth as Attachment A, the ZBA affirms the issuance of the Building Permit; and be it further

RESOLVED, in accordance with the records, proceedings, and Findings set forth as Attachment A, the Appeal is denied.

UPON ROLL CALL VOTE, the vote was as follows:

Dennis Mietz, Chairperson	Voting	_____
Kathleen Schmitt, Board Member	Voting	_____
Andrea Tompkins Wright, Board Member	Voting	_____
Judy Schwartz, Board Member	Voting	_____
Jeanne Dale, Board Member	Voting	_____
Jennifer Watson, Board Member	Voting	_____

This Resolution was thereupon declared adopted.

Dated: November 4, 2020

**ATTACHMENT A**

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## FINDINGS

### TOWN OF BRIGHTON ZONING BOARD OF APPEALS APPLICATION 10A-02-20

Application of Brighton Grassroots, LLC appealing the issuance of a building permit (Starbucks Coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods project located at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe Avenue, a portion of 175 Allens Creek Road, and a portion of 2259 Clover Street.

#### BACKGROUND

1. On February 25, 2015, the Daniele Family Companies (the "Developer" or "Daniele") submitted an application to the Town of Brighton Town Board ("Town Board") for Incentive Zoning for a proposal now known as the Whole Foods Plaza (the "Project").

2. The Project is located on certain property consisting of approximately 10.1 +/- acres of land located at 2740 and 2750 Monroe Avenue in the Town of Brighton (the "Project Site").

3. Following receipt of the Developer's application for Incentive Zoning and pursuant to the New York State Environmental Quality Review Act ("SEQRA"), the Town Board identified the Project as a Type I action, declared itself lead agency for the environmental review of the Project, and directed a coordinated review with potential involved agencies and interested agencies.

4. The Town Board completed its review of the potential impacts of the Project in accordance with the requirements of SEQRA and by Resolution dated March 28, 2018 adopted its Findings Statement. On March 28, 2018, the Town Board approved the Incentive Zoning application subject to conditions and the amenities set forth in the application (the "Incentive Zoning Approval").

5. Subsequently, the Developer submitted to the Town of Brighton Planning Board (the "Planning Board") applications for the following Project approvals: (i) Preliminary and Final Site Plan Approval to construct a five (5) building retail plaza totaling 83,700 sf, which includes a 50,000 sf Whole Food Store and a 2,000 sf drive-thru coffee shop on properties located at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe Avenue, a portion of 175 Allens Creek Road and a portion of 2259 Clover Street, as set forth in more detail in applicable application materials and plans on file (the "Site Plan Approval"); (ii) Site Plan modification to construct shared parking and access, known as the Access Management Plan ("AMP"), on and across 2835 Monroe Avenue, 2815 Monroe Avenue, 2799 Monroe Avenue, 2787 Monroe Avenue, 2775 Monroe Avenue, 2735 Monroe Avenue, 2729 Monroe Avenue and 2717 Monroe Avenue, as set forth in applicable application materials and plans on file (referred to as "AMP Approval"); (iii) Demolition Review and Approval to raze a vacant 10,800 +/- sf

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restaurant building and a vacant 44,600 +/- sf bowling alley on property located at 2740 Monroe Avenue and 2750 Monroe Avenue as set forth in applicable application and plans on file; (iv) Demolition Review and Approval to raze a restaurant building on property located at 2800 Monroe Avenue as set forth in applicable application materials and plans on file ([iii] and [iv] are collectively "the Demolition plan Approval"); (v) Preliminary and Final Subdivision/Resubdivision Approval to combine and reconfigure several lots into two on properties located at 2740, 2750 and 2800 Monroe Avenue, 2259 Clover Street and 175 Allens Creek Road as set forth in applicable application and plans on file; (vi) Preliminary and Final Subdivision Approval to create two lots from one on property located at 175 Allens Creek Road, as set forth in applicable application materials and plans on file ([v] and [vi] are collectively, the "Subdivision Approval") (each of the forgoing applications may be referred to collectively as "the Planning Board Approvals").

6. The Planning Board was identified as an Involved Agency under SEQRA due to its authority to make discretionary decisions with respect to the Planning Board Approvals. The Planning Board completed its review of the potential impacts of the Project in accordance with the requirements of SEQRA and by Resolution dated August 15, 2018 adopted its Findings Statement.

7. On August 15, 2018, the Planning Board approved, with conditions, the Demolition Plan Approval.

8. On September 17, 2018, the Planning Board approved, with conditions, the AMP Approval, the Subdivision Approval, and the Site Plan Approval.

9. On January 9, 2019, the Developer and the Town entered into the Amenity Agreement for the Project, which contains the parties' agreement relative to the amenities being offered to the Town by the Developer in exchange for the incentives to be granted to the Developer by the Town in connection with the Incentive Zoning Approval.

10. On July 20, 2020, the Town of Brighton Building Inspector (the "Building Inspector") issued Building Permit No. 20180487 (the "Building Permit") for the Project. The Building Permit is for "site work & construction of a building shell for a 1996sf building to include future retail tenants (Star Bucks)."

11. On August 20, 2020, Brighton Grassroots, LLC ("BGR") filed an application with the Town of Brighton Zoning Board of Appeals (the "ZBA") appealing the Building Inspector's issuance of the Building Permit for the Project (the "Appeal").

12. BGR submitted the following documents in support of the Appeal: (i) Town of Brighton Zoning Board of Appeals Application, dated August 19, 2020; (ii) BGR Notice of Appeal, dated August 19,

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2020; and (iii) BGR Appeal to ZBA, dated August 20, 2020, with Exhibits A-E.

13. On September 23, 2020, in accordance with Town Law 267-a(5)(b), the Building Inspector filed with the ZBA the administrative record with bates numbers ZBA000001-ZBA010543. The Building Inspector also submitted to the ZBA a letter, dated September 23, 2020, in opposition to the Appeal and a spreadsheet containing an outline of the arguments raised in the Appeal, the Building Inspector's response, and references to the administrative record.

14. On September 23, 2020, the Developer submitted a letter with enclosures to the ZBA.

15. BGR submitted a letter to the ZBA, dated September 25, 2020, together with the Supplemental Affirmation of Mindy L. Zoghlin, dated September 25, 2020, with Exhibits A-J, which was received by the ZBA on September 30, 2020.

16. On October 5, 2020, the Developer submitted a letter to the ZBA.

17. On October 7, 2020, BGR submitted a letter to the ZBA, together with the Second Supplemental Affirmation of Mindy L. Zoghlin, dated October 6, 2020, with Exhibits A-H.

18. On October 7, 2020, the ZBA conducted the public hearing. The ZBA closed the public hearing on October 7, 2020, but granted the Building Inspector permission until October 21, 2020 to submit a response to the supplemental submissions made by BGR on September 30, 2020 and October 6, 2020.

19. On October 21, 2020, the Building Inspector submitted to the ZBA a letter, and an updated spreadsheet containing an outline of the arguments raised in the Appeal and the Building Inspector's response that incorporates reference to BGR's additional submissions. The Building Inspector also filed with the ZBA additional documents with bates numbers ZBA010544-010581.

## DOCUMENTS CONSIDERED BY THE ZBA

20. The ZBA has considered the following documents in connection with the Appeal: (1) Town of Brighton Zoning Board of Appeals Application, dated August 19, 2020; (2) BGR Notice of Appeal, dated August 19, 2020; (3) BGR Appeal to ZBA, dated August 20, 2020, with Exhibit A-E; (4) Administrative record with bates numbers ZBA000001-ZBA010543; (5) Letter from Building Inspector, dated September 23, 2020, and spreadsheet; (6) Letter from Warren Rosenbaum, Developer's Counsel, dated September 23, 2020; (7) Letter from BGR, dated September 25, 2020; (8) Supplemental Affirmation of Mindy L. Zoghlin, dated September 25, 2020, with Exhibits A-J; (9) Letter from Warren Rosenbaum, Developer's Counsel, dated October 5, 2020, with

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enclosures; (10) Letter from BGR, dated October 7, 2020; (11) Second Supplemental Affirmation of Mindy L. Zoghlin, dated October 6, 2020, with Exhibits A-H; (12) Letter from BGR, dated October 7, 2020; (13) Letter from Building Inspector, dated October 21, 2020, and updated spreadsheet; (14) Additional documents submitted by the Building Inspector with bates number ZBA010544-010581; (15) Email from Howie Jacobson, dated September 2, 2020; and (16) Email from Paul Adams, dated October 16, 2020.

## JURISDICTION AND STANDARD OF REVIEW

21. The ZBA is authorized to hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by an administrative official to decide the "meaning of any portion of the text of Comprehensive Development Regulations or of any condition or requirement specified or made under the provisions of the Comprehensive Development Regulations." Brighton Town Code 219-2(A)(1); see also Town Law 267-a(4).

22. In accordance with Town Law 267-b(1), the ZBA's standard of review with respect to the Appeal is *de novo*, such that the ZBA "may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken."

## FINDINGS OF FACT AND DETERMINATIONS

After considering all the proof and evidence before it, the ZBA: (i) affirms the Building Inspector's issuance of the Building Permit; (ii) denies the Appeal; and (iii) makes the following determinations, findings, and interpretations:

### **I. Irrevocable Letters of Credit**

23. BGR has withdrawn this argument.

24. The Town has received the three necessary irrevocable letters of credit for the Project. (ZBA000004-9).

25. This portion of the Appeal is denied.

### **II. Public Service Commission Approval**

26. BGR has withdrawn this argument.

27. Rochester Gas & Electric ("RG&E") notified the Public Service Commission on April 30, 2019 of its intent to grant an

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easement to the Town of Brighton. The record does not contain any evidence that the Public Service Commission made a determination under Public Service Law 70(1) that the public interest requires its review and written consent. Accordingly, RG&E is permitted under the statute to grant an easement to the Town of Brighton for the trail amenity.

28. This portion of the Appeal is denied.

### **III. Building Inspector Certification on Site Plan**

29. Section 217-12(A)(3) of the Comprehensive Development Regulations provides that the "Building Inspector shall certify on each site plan or amendment whether or not the plan meets the requirements of all Comprehensive Development Regulations other than those of this article regarding site plan approval."

30. Section 217-12(A)(3) is contained in Article III of the Comprehensive Development Regulations. Article III of the Comprehensive Development Regulations applies to the "Approval of Site Plans" by the Planning Board. The Planning Board Approvals, including the Site Plan Approval, are not before the ZBA in connection with the Appeal, which involves the issuance of the Building Permit. The ZBA is without jurisdiction or authority to review the Site Plan Approval.

31. Chapter 73 of the Code of the Town of Brighton (the "Brighton Town Code") and Sections 225-1 and 225-2 of the Comprehensive Development Regulations govern the issuance of building permits. These provisions do not impose a requirement that the Building Inspector certify a site plan as a condition of issuing a building permit.

32. Section 73-5 of the Brighton Town Code establishes the office of the Building Inspector. Section 73-5(A)(1) of the Brighton Town Code states that the office "shall be headed by the Associate Planner and shall employ an official or officials designated as the 'Building Inspector.' The Building Inspector(s) shall be appointed by the Town Board, upon recommendation of the Commissioner of Public Works, and may be either the Commissioner of Public Works, the Associate Planner or other Town employee(s)...."

33. By resolution, the Town Board has lawfully designated the Commissioner of Public Works, the Associate Planner, the Town Engineer, the Town Architect, and the Fire Marshall to "carry out the functions of the office of Building Inspector, as laid out in the Comprehensive Development Regulations." (ZBA010544-551).

34. The Commissioner of Public Works relies on the Associate Planner to review building permit applications and site plans for compliance with the Comprehensive Development Regulations. As established by the administrative record, the Town reviewed the Developer's application for the Building Permit as follows: (i) if required, use and area variances have been obtained; (ii) the Planning

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Board has granted final site plan approval; (iii) the Town Engineer confirms that all technical issues have been resolved; (iv) all easements have been executed and filed in the Monroe County Clerk's office, with the liber and page must be recorded on the plans; (v) the Associate Planner confirms that all of the conditions of Planning Board approval have been met; (vi) the Associate Planner confirms that the requirements of SEQRA, including any conditions contained in a SEQRA findings statement have been met; (vii) in the case of an incentive zoning project, the Associate Planner confirms that the conditions of the incentive zoning and amenity agreements have been met; (viii) the Associate Planner confirms that any other requirements of the Comprehensive Development Regulations have been met; and (ix) the plans have been signed by the jurisdictional agencies.

35. Although Section 217-12(A) (3) of the Comprehensive Development Regulations provides that the Building Inspector "certify" on the site plan that it meets the requirements of the Comprehensive Development Regulations, the Comprehensive Development Regulations do not define a specific or particular form of the certification.

36. On July 16, 2020, the Commissioner of Public Works and Town Engineer signed the Utility Plan contained in the final site development plan package. (ZBA000215). Based on the submissions and evidence contained in the administrative record, the ZBA finds that the custom and practice of the Town is for the Town Engineer and Commissioner of Public Works to sign and approve the Utility Plan to "certify" that the plans meet the requirements of the Comprehensive Development Regulations. The Commissioner of Public Works and Associate Planner, both of whom are lawfully designated as the Town Building Inspector, confirmed that all the requirements needed to approve the plans were satisfied prior to endorsing the final drawings.

37. The ZBA interprets the requirement in Section 217-12(A) (3) that the Building Inspector "certify on each site plan or amendment whether or not the plan meets the requirements of all Comprehensive Development Regulations" as being satisfied in this case when the Commissioner of Public Works and Town Engineer signed and approved the Utility Plan for the Project. (ZBA000215).

38. In his submission to the ZBA, the Building Inspector has also "confirm[ed] and certifi[ed] that the plans meet the requirements of the Comprehensive Development Regulations."

39. As the party seeking to annul the Building Permit, BGR has the burden of showing that the Building Permit was improperly issued. See *Hariri v. Keller*, 34 AD3d 583 (2d Dep't 2006). The ZBA finds that BGR has not met its burden of showing that the plans do not meet the requirements of the Comprehensive Development Regulations. As established by the administrative record, the ZBA finds that the Building Inspector properly certified that the site plans for the

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Project meet the requirements of all Comprehensive Development Regulations.

40. This portion of the Appeal is denied.

## IV. Cross-Access Easements for the Access Management Plan

41. Paragraph 2(b) of the Amenity Agreement provides that “[p]rior to the issuance of any Town building permits with the exception of the issuance of any permit for demolition of the buildings currently located on the Property, Daniele shall provide all cross access and other easements necessary to implement and construct the AMP. . . . The easements shall be prepared and submitted to the Town for review and approval. Upon satisfactory completion and execution of the documents, the easements shall be filed by Daniele at the Monroe County Clerk’s Office with the Town being provided copies of each easement with the liber and pages of filing.”

42. Paragraph 8 of Schedule E-2 of the Incentive Zoning Approval provides that “prior to the issuance of any Town permits for the Project with the exception of the issuance of any permit for demolition of the buildings currently located on the Property, the [Developer] shall provide and file access rights for cross-access and cross-parking easements between proposed Lot 1 and Lot 2.”

43. As established by the administrative record, prior to the issuance of the Building Permit for the Project, the Developer provided to the Town the cross-access and other easements necessary to implement and construct the AMP. (ZBA000143-184). The Building Inspector has confirmed that the cross-access easements were completed to the Town’s satisfaction, and executed and filed in the Monroe County Clerk’s Office with copies provided to the Town.

44. The ZBA finds that the Developer was not required to obtain approval for the cross-access easements from the recorded first-mortgage holders on two affected properties located at 2729 and 2735 Monroe Avenue prior to the issuance of the Building Permit for the Project. A valid easement can be granted by a property owner who has title to the servient estate. As established by the administrative record, the owners of the affected properties executed the cross-access easements through their members before a notary public and the cross-access easements contained the required formalities. (ZBA000143-184).

45. The ZBA finds that a mortgage recorded against the servient estate does not render the cross-access easements invalid or unenforceable.

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46. BGR has not submitted any evidence that the owners of 2729 and 2735 Monroe Avenue lack authority to convey the cross-access and other easements necessary to implement and construct the AMP.

47. Paragraph 1.11(a) of the mortgage over 2735 Monroe Avenue states that "neither the Property, nor any part thereof or interest therein, shall be sold, conveyed, disposed of, alienated, hypothecated, leased . . ., assigned, pledged, mortgaged, further encumbered or otherwise transferred, nor Mortgagor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily . . . in each case without the prior written consent of Mortgagee being first obtained." Nothing in this paragraph renders the conveyance of an easement void.

48. Board Member Wright, who is an experienced real estate attorney, stated during the public hearing on October 7, 2020 that Paragraph 1.11(a) of the mortgage is contained in the covenant section of the mortgage, and is not a bargain and sale of rights such that it takes away the property owner's right to convey an interest in the property. The ZBA agrees, and finds that the cross-access easements, as recorded, are enforceable.

49. BGR states that "[i]f the Lender for the Mamasan's and/or S&A parcels is successful in any foreclosure actions on its mortgages, it will cut off the after-acquired cross-access easements..." In making this statement, BGR admits the cross-access easements are valid as delivered to the Town and recorded in the Monroe County Clerk's Office, and would need to be "cut off" in a foreclosure action.

50. BGR, however, has not submitted any evidence to the ZBA that a foreclosure action has been commenced or that a court has entered a judgment extinguishing the cross-access easements. Whether this occurs in the future is speculative. BGR has not submitted any evidence that the cross-access easements are insufficient to implement and construct the AMP as required by the Amenity Agreement.

51. The ZBA finds that BGR has not met its burden of showing that the cross-access easements are void because they were not approved by the mortgage holder.

52. It is not the obligation of the Town to enforce private mortgages. See *Vandoros v. Hatzimichalis*, 131 A.D.2d 752 (2d Dep't 1987) (stating that it "is not the obligation of the Department of Buildings to enforce private easements"). In issuing a zoning approval, "a municipality determines only that the application complies with the municipality's standards and conditions contained in the zoning ordinance." See *Chambers v. Old Stone Hill Rd. Assoc.*, 1 N.Y.3d 414 (2004). The ZBA finds that, in determining whether to issue the Building Permit, the rights and remedies of a private mortgage holder are not relevant under the Comprehensive Development Regulations.

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53. As Board Member Wright stated during the public hearing on October 7, 2020, "whether or not a deed or an easement is voidable is an incredibly intricate process that we simply cannot require Towns in New York to read every single word of every single recorded document to confirm that it's not potentially voidable or it's not potentially a default under a mortgage or someone doesn't have authority based on a, based from a third party to grant it. Towns have to be held to some sort of reasonable standard of review." The ZBA agrees, and finds that it is unreasonable to expect the Town to evaluate private contractual agreements that may pertain to properties that are involved in zoning applications.

54. This portion of the Appeal is denied.

## **V. Construction Sequencing**

55. The Incentive Zoning Approval approved the construction of the Project in a single phase (ZBA000088). This single construction phase is projected to last 18 months. (ZBA000064).

56. The Building Permit approved "site work & construction of a building shell for a 1996sf building to include future retail tenants (Star Bucks)." The ZBA finds that the Building Permit authorizes the site work for the entire Project and is in accordance with the approval of the construction of the Project in a single phase.

57. During the public hearing on October 7, 2020, the Developer testified that the site work will take approximately 6-7 months and is the most difficult part of the Project. Once complete, construction of buildings takes less than 90 days. The Developer hopes to have the entire Project complete by the summer of next year.

58. BGR has not submitted any evidence to the ZBA that the Building Permit authorizes construction, or that the Project is currently being constructed, in multiple phases.

59. The Amenity Agreement states that the Developer "shall complete construction of the trail within three hundred sixty five (365) calendar days of the date on which the Town issues the first building permit for the project." (ZBA000079). The Building Inspector interprets this language as evidencing that the Town Board anticipated the issuance of multiple building permits for the Project. Consistent with the language of the Incentive Zoning Approval and as supported by the administrative record, the ZBA interprets and finds that the Project approvals contemplate the issuance of multiple building permits.

60. Schedule E-2 of the Incentive Zoning Approval states that "the site plan for the development of the [Project Site] shall be approved by the Planning Board .... The Planning Board has the authority to modify the proposed plan for the Project to address ... adequacy and arrangement of buildings, parking areas, pedestrian

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traffic access and circulation, including separation for pedestrians from vehicular traffic, sidewalks, linkages, pedestrian convenience, stormwater management and utilities." (ZBA000088).

61. The Site Plan Approval is subject to condition that "[a]ll comments and concerns of the Town Engineer as contained in the attached memo dated September 16, 2018 from Michael Guyon, Town Engineer, to Ramsey Boehner, shall be addressed." (ZBA000102). The Town Engineer stated that the Developer provide a "phasing plan demonstrating that the total earth disturbance will not exceed 5 acres." (ZBA0000105). The Developer provided the requested plan in accordance with the condition of Site Plan Approval. (ZBA000218).

62. The Building Inspector has confirmed that it is "common for commercial projects with multiple buildings to have construction proceed in sequences, i.e. to construct one building while other buildings are waiting to begin the building permit process." Pursuant to the New York Department of Environmental Conservation ("NYSDEC") State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity, the Town required the Developer to prepare a plan for construction defining the maximum disturbed area per construction sequence.

63. The Building Inspector has confirmed that the New York State Stormwater Management Design Manual recommends "projects avoid mass grading of a site and suggests that the project area be divided into smaller areas for phased grading." The New York State Standards and Specifications for Erosion and Sediment Control similarly recommend that a "properly designed erosion and sediment control plan for a commercial site will typically involve several phases, and that good construction and site management includes site phasing and construction sequencing measures."

64. The Town Building and Planning Department is comprised of, among others, the Building Inspector, Town Engineer, and Commissioner of Public Works, who are certified planners, licensed engineers and/or professionals with decades of experience in land use planning and construction. The ZBA finds that the issuance of the Building Permit and approved construction is consistent with the SPDES permit and NYSDEC guidance, and supported by the Incentive Zoning Resolution, Site Plan Approval, and administrative record. BGR has not submitted any evidence that the issuance of the Building Permit or the construction sequencing implemented as part of the Project is contrary to NYSDEC regulation or guidance.

65. As established by the administrative record, the ZBA finds that: (i) the Building Permit authorizes site work for the entire Project Site; (ii) construction is occurring in a single phase in accordance with the Incentive Zoning Approval and Site Plan Approval; and (iii) the Town reasonably and rationally required construction to proceed in sequences to mitigate overall disturbance of the Project Site, and to manage stormwater and control erosion.

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66. During the public hearing on October 7, 2020, BGR stated that the Developer is pulling permits piecemeal and has not shown any indication they have applied for or pulled, or are prepared to pull, any other permits. The ZBA has verified with the Town Building and Planning Department that, in fact, the Developer (i) on September 16, 2020 applied for a building permit to construct the internal build-out for new tenant Starbucks Coffee, and (ii) on October 13, 2020 applied for a building permit to construct a building shell for the 22,380 square foot building approved as part of the Project.

67. The ZBA finds that BGR has not met its burden of showing that the Building Permit authorizes construction in multiple phases in violation of either the Findings Statement adopted by the Town Board, or the Incentive Zoning Approval. The ZBA finds that the Project is being constructed in a single phase.

68. This portion of the Appeal is denied.

## VI. Compliance with Zoning

69. Section 209-2 of the Comprehensive Development Regulations provides that all zoning districts in the Town of Brighton are eligible for zoning incentives.

70. Section 209-4 of the Comprehensive Development regulations provides that the Town Board may grant certain incentives to an application with respect to a specific site, including changes in use; increases in lot coverage, changes in setbacks, and “[a]ny other changes in the Comprehensive Development Regulations provisions.”

71. The Appellate Division, Fourth Department, has determined that the Town's Incentive Zoning Law is consistent with New York State law and valid. *See Brighton Grassroots, LLC v. Town of Brighton*, 179 A.D.3d 1500 (4th Dep't 2020).

72. Schedule F, Exhibit 1, of the Incentive Zoning Approval grants the incentives for the Project. (ZBA000091-97). The incentives include the following contained in paragraph 1.a.: “Section 201-9.A. The granted incentive allows the regulations of the less restrictive zoning district to apply 108' (measured to edge of parking lot/ turnaround pavement) beyond the 30' zone.” (ZBA000092).

73. The foregoing incentive grants the Project relief from Section 201-9(A)(3) of the Comprehensive Development Regulations, which states: “In all cases where a district boundary divides a lot in one ownership, and more than 50% of the area of such lot lies in the less restricted district, the regulations prescribed by these regulations for the less restricted district shall apply to such portion of the more restricted portion of the said lot which lies within 30 feet of such district boundary. For purposes of this section, the more restricted district shall be deemed that district

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subject to regulations which prohibit the use intended to be made of said lot, or which require higher standards with respect to coverage, yards, screening and similar requirements."

74. The Incentive Zoning Approval is not before the ZBA in connection with the Appeal, which involves the issuance of the Building Permit. The ZBA is without jurisdiction or authority to review the Incentive Zoning Approval, including the incentives that the Town Board granted to the Project.

75. The majority of the Project Site (fronting on Monroe Avenue) is located in the BF-2 General Commercial Zoning District. A small portion of the rear of the Project Site is located in the RLA Residential Low Density District.

76. The Building Inspector has interpreted the incentive granted in paragraph 1.a. of Schedule F, Exhibit 1, of the Incentive Zoning Approval as allowing the stormwater management structures and commercial parking areas, which are allowed in the less restrictive BF-2 General Commercial Zoning District, to extend beyond the 30' zone into the RLA Residential Low Density District. Consistent with the Incentive Zoning Approval and as supported by the administrative record, the ZBA interprets and finds that the incentive granted by 1.a. of Schedule F, Exhibit 1, of the Incentive Zoning Resolution allows the stormwater management structures and commercial parking areas to apply 108' (measured to edge of parking lot/ turnaround pavement) and extend beyond the 30' zone.

77. Condition #15 of the Incentive Zoning Approval provides that "any deviation from the incentives granted in Exhibit 1 of this Resolution or any other applicable provisions under the Town Code shall require an area variance or a use variance, as applicable, from the Town Zoning Board of Appeals..." (ZBA000090).

78. All stormwater management structures and commercial parking areas are compliant with the Incentive Zoning Approval and do not extend beyond the 108' buffer authorized by paragraph 1.a. of Schedule F, Exhibit 1, of the Incentive Zoning Approval. (ZBA000214). As a result, the Project does not require a variance.

79. Condition #40 of the Site Plan Approval provides that "[i]f and when Amazon Lockers are proposed, further Town review and approval may be necessary." (ZBA000103).

80. The administrative record does not contain any proof that Amazon Lockers are proposed or permitted as part of the Project. As established by the administrative record, the ZBA finds that no Amazon Lockers are proposed or permitted as part of the Project, and to the extent they are proposed in the future, the Project would be subject to further Town review and approval.

81. This portion of the Appeal is denied.

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## VII. The Pedestrian Easements

82. Condition #41 of Site Plan Approval states that "prior to the issuance of building permits for the project, State and County necessary approvals shall be obtained." (ZBA000103).

83. The Project Site is subject to certain easements granted to the Town of Brighton that run through a portion of the Project Site (collectively, the "Pedestrian Easements"). BGR has submitted copies of four Pedestrian Easements, which were granted to the Town of Brighton between 1997 and 2003 by various property owners for the purpose of pedestrian use by the Town of Brighton, "its licensees, and the public, together with the right, privilege and authority of the Town of Brighton to install, construct, reconstruct, extend, operate, inspect, maintain, repair, replace, and at its pleasure, to install a pedestrian pathway which the [Town] shall require for public use...."

84. The land containing the Pedestrian Easements was formerly owned by RG&E. The Pedestrian Easements run through the back of various properties between Allens Creek Road and Clover Street in the Town. The Pedestrian Easements do not run continuously from Allens Creek Road to Clover Street. The Pedestrian Easement granted by Executive Square Office Park, LLC to the Town of Brighton runs southerly from Allens Creek Road to the boundary of the Project Site. The administrative record does not contain any evidence of a Pedestrian Easement from Mario & Flora Danielle to the Town of Brighton for the northerly portion of the Project Site between the Executive Square Office Park and the former Clover Lanes property. The Pedestrian Easement granted by Clover Lanes, Inc. and Mamasan's Monroe, LLC runs through the back of the southerly portion of the Project Site to the adjoining property.

85. At the time the easements were granted, the various properties contained an office park, bowling alley, and other commercial buildings. As reflected by the maps attached to the Pedestrian Easements, at the time, and presently, they run over pavement, including a parking lot. As stated by Board Member Schmitt during the public hearing on October 7, 2020, who has utilized the Pedestrian Easements, the easement area is "a parking lot and has always been a parking lot. And you kind of skirt behind what used to be the bowling alley."

86. The Appellate Division, Fourth Department, found issues of fact as to "whether there was an express or implied dedication of the [Pedestrian Easements] subject to the public trust doctrine." *Clover/Allen's Creek Neighborhood Association LLC v M&F, LLC*, 173 A.D.3d 1828 (4th Dep't 2019). The Fourth Department stated: "To establish that property has been dedicated as a park or for public use, formal dedication by the legislature is not required. Rather, a parcel of property may become a park by express provisions in a deed ... or by implied acts, such as continued use [by the municipality] of

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the parcel as a park .... A party seeking to establish ... an implied dedication and thereby successfully challenge the alienation of the land must show that (1) [t]he acts and declarations of the land owner indicating the intent to dedicate his [or her] land to the public use [are] unmistakable in their purpose and decisive in their character to have the effect of a dedication and (2) that the public has accepted the land as dedicated to a public use." *Id.* (internal citations and quotations omitted).

87. BGR's submissions are limited to the Pedestrian Easements and two court decisions. BGR has not submitted any evidence demonstrating an express or implied dedication of parkland. BGR has not submitted any evidence of acts or declarations by the landowners indicating an intent to dedicate land to the public use. BGR has not submitted any evidence that the Town has accepted the land as dedicated to a public use. Based on the administrative record, the ZBA finds that BGR has not met its burden of showing that the Pedestrian Easements were dedicated as parkland and are subject to the Public Trust Doctrine based on the standards articulated by the Fourth Department.

88. As established by the administrative record, until 1978, the Town "had no official parkland of its own except, perhaps, for the pocket parks that exist in many residential neighborhoods such as Rose Park in the Rose Lawn subdivision." Between 1978 and present, the Town has formally recognized several parks, such as Brighton Town Park, Persimmon Park, Buckland Park, Meridian Park, Lynch Woods, and Sandra L. Frankel Nature Park." (ZBA018803). None of these parks are related to or otherwise involve the Pedestrian Easements.

89. According to the Town Superintendent of Parks, the Town currently manages almost 500 acres of parkland and open space for the benefit and enjoyment of the Town's residents and visitors. The Town Superintendent states that the Town "has not designated this pedestrian pathway as a park, and has not accepted this area as parkland. This area is not among the hundreds of acres of parkland and open space managed by the Town Parks Department. The Town does not maintain this area as a park. This area is not identified on any official Town maps as a park, and the Town has not erected any signs on or near this pathway which identify it as a park." (ZBA010566).

90. According to the Town Associate Planner, who supervises and directs the activities of the Town's Building and Planning Department, and has held that position since 1990 (during the time the Town acquired the Pedestrian Easements), the Town has "never made any improvement to the lands subject to the [Pedestrian] Easements to allow for its use as a park. Neither has the Town done any maintenance work on this land or erected any signage on or adjacent to this land to state that this area is a park. At the time the Town acquired the [Pedestrian] Easements, it was not the Town's intent to have the land subject to the Easements become a park or unequivocally dedicate this land as parkland." The Town Associate Planner further

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states that the Town "has not expressly or implicitly through any action taken dedicated this area as a park." (ZBA010569).

91. The relevant portions of the Town Comprehensive Plan 2000 and Envision Brighton 2028 (adopted after the Town Board approved the Incentive Zoning Approval), identifies the area subject to the Pedestrian Easements as a proposed trail. In fact, Envision Brighton 2028 states that this area "is currently planned to be developed, at no cost to the Town, as an amenity approved as part of the Whole Foods zoning project." (ZBA010570). The ZBA finds that the Town Comprehensive Plans evidence a future opportunity to develop a trail in this area. The ZBA further finds that the Town did not intend to accept the Pedestrian Easements as parkland at the time they were granted.

92. During the public hearing, a member of the ZBA asked BGR to explain how the Building Permit interferes with the use and enjoyment of the Auburn Trail. BGR only responded that the Project as approved allows the Town to interfere with the Pedestrian Easements, but did not provide any evidence as to the alleged interference. However, according to the Town Associate Planner, the Project "as approved by the Town will not interfere with or otherwise obstruct the public's use of the existing [Pedestrian Easements]. The Project proposes no parking spaces within the lands subject to the Easements. In fact, as part of the Town's review of the site plan, the Planning Board ensured that the Auburn Trail would not be obstructed by parking spaces." (ZBA010570-571).

93. Based on the final plans contained in the administrative record, the Project proposes no parking spaces within the Pedestrian Easement area. (ZBA000211, 214). The ZBA finds that the Pedestrian Easements on the Project Site have always been located on a parking lot, and that will continue to be the case after the Project is constructed. The ZBA further finds that the Pedestrian Easements will not be obstructed by parking spaces as reflected on the final plans.

94. During the public hearing, BGR stated that the ZBA should look at whether tractor trailer turnarounds are consistent with a public pedestrian pathway. The loading dock and tractor trailer turnarounds for the Whole Foods building are located in the rear of the proposed building, in the northwest corner of the Project Site. (ZBA000214). However, nothing in the administrative record indicates that the northerly portion of the Project Site (the former site of the Mario's Restaurant between the Executive Square Office Park property and the former Clover Lanes property) is subject to the Pedestrian Easements. In the absence of a documented easement, the ZBA finds that BGR has not met its burden of showing that the loading dock or tractor trailer turnarounds are inconsistent with the Pedestrian Easements.

95. The Building Inspector has confirmed that the Pedestrian Easements will not be closed during or after construction. The ZBA

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has confirmed, based on a visual inspection of the Project Site, that the Pedestrian Easements are protected from obstruction by construction fencing. As part of the Incentive Zoning Approval, the Developer will be improving and extending the Auburn Trail for the benefit of the public. The ZBA finds that the public's right to access and use the Auburn Trail will be enhanced and improved as a result of the Project. The ZBA finds the Project will not substantially interfere with the Pedestrian Easements.

96. The Pedestrian Easements contain language stating that "[u]pon completion of any construction, installation, maintenance or repair of any improvement over the Easement Premises as required by the [Town], [Town] agrees to restore the Easements Premises to park like condition ...." The ZBA interprets this language in the Pedestrian Easements as requiring the Town to restore the Pedestrian Easements to "park like" condition only after a pedestrian pathway is constructed. Based on the administrative record and testimony before the ZBA, the ZBA finds that the Town has not constructed or maintained a pedestrian pathway within the Pedestrian Easements.

97. BGR has not submitted any evidence to the ZBA indicating that the Town has constructed a pedestrian pathway within the Pedestrian Easements. The ZBA finds that this language in the Pedestrian Easements does not evidence an express or implied dedication of the Pedestrian Easements subject to the Public Trust Doctrine.

98. Based on the administrative record and evidence before the ZBA, the ZBA finds that the Pedestrian Easements are not parkland for purposes of the Public Trust Doctrine. The ZBA finds that the issuance of the Building Permit complies with Condition #41 of the Site Plan Approval because no State legislative approval is required.

99. Under Town Law 62(2), upon adopting a resolution, the Town Board may "convey or lease real property in the name of the town, which resolution shall be subject to a permissive referendum."

100. According to the Associate Planner, as approved by the Town, the Pedestrian Easements "will remain of record without change and will not be abandoned, conveyed, released or otherwise modified." (ZBA010570). Nothing in the administrative record indicates that the Town Board has adopted a resolution authorizing the conveyance or abandonment of the Pedestrian Easements. The Pedestrian Easements are reflected on the final site plan. (ZBA000214).

101. BGR has not submitted any evidence that the Town is conveying or abandoning the Pedestrian Easements. The ZBA finds that BGR has not met its burden of showing that the Town is conveying or abandoning the Pedestrian Easements. Based on the administrative record and evidence before the ZBA, the ZBA finds that the Town is not conveying or abandoning the Pedestrian Easements. The ZBA finds that the Town is not required to conduct a permissive referendum.

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102. This portion of the Appeal is denied.

## **VIII. Trail Amenity**

103. The Site Plan Approval approved the construction of a "five (5) building retail plaza totaling 83,700 sf, which includes a 50,000 sf Whole Food Store and a 2,000 sf drive-thru coffee shop on properties located at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe Avenue, a portion of 175 Allens Creek Road and a portion of 2259 Clover Street." (ZBA000100). Condition #41 of the Site Plan Approval states that "prior to the issuance of building permits for the project, State and County necessary approvals shall be obtained." (ZBA000103).

104. The Building Inspector has interpreted the Site Plan Approval and Condition #41 as relating only to those approvals necessary to construct the Project within the Project Site, and not the construction of the trail amenity outside the Project Site within the easement area to be granted by RG&E to the Town running between Allens Creek Road and Highland Avenue. Consistent with the language of Condition #41 of the Site Plan Approval and as supported by administrative record, the ZBA finds that the Town must obtain "State and County necessary approvals" prior to issuing a building permit for the Project.

105. The construction of the trail amenity is governed by Paragraph 1 of the Amenity Agreement, which requires the Developer to provide and file all necessary trail easements within sixty (60) days of the completion of the trail. The Amenity Agreement requires the Developer to complete the trail within three hundred sixty five (365) calendar days of the date on which the Town issues the first building permit for the Project. (ZBA000079-80).

106. The Building Inspector issued the first building permit on July 20, 2020. Thus, the Developer has until July 20, 2021 to complete the trail, and an additional 60 days to provide and file all necessary trail easements.

107. The Developer has obtained a license agreement from RG&E in order to complete the necessary trail work (ZBA000137).

108. This portion of the Appeal is denied.

## **IX. State and County Approvals**

109. Condition #41 of Site Plan Approval states that "prior to the issuance of building permits for the project, State and County necessary approvals shall be obtained." (ZBA000103).

### **A. New York State Department of Transportation**

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110. On August 23, 2019, the New York State Department of Transportation ("NYSDOT") completed its review of the potential impacts of the Project in accordance with the requirements of SEQRA and adopted its Findings Statement. (ZBA000124-136). NYSDOT found that the "mitigating measures will be the responsibility of the [Developer] and will be a condition to NYSDOT's approval of the Highway Work Permit for the Project." The NYSDOT found, among other things, that "[c]onsistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided through implementation of the mitigation measures identified herein" and "[c]onsistent with social, economic, and other essential considerations, from among the reasonable alternatives thereto, the action to be undertaken is an alternative which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the environmental impact statement."

111. The Building Inspector has interpreted the issuance of a positive Finding Statement and certification to approve the Project, as evidencing the ability of the Developer to obtain the necessary Highway Work Permits for the Project. As supported by the administrative record, the ZBA finds that the NYSDOT's issuance of a positive Findings Statement under SEQRA and certification to approve the Project as evidence that the Developer obtained the necessary State approvals for the Project.

112. On November 14, 2019, the NYSDOT issued a Highway Work Permit to allow construction of utilities. (ZBA000116-119).

113. On August 3, 2020, the NYSDOT issued a second Highway Work Permit for the installation of parking lot entrances and modification of existing curbs, and installation of two signalized intersections and pedestrian cross walks. (ZBA000120-123).

## B. New York State Department of Environmental Conservation

114. The Building Inspector has confirmed that a NYSDEC permit is not issued for sanitary sewer. The ZBA agrees, and finds that no NYSDEC permit exists or is required for sanitary sewer.

115. BGR has not submitted any proof or cited any NYSDEC regulation indicating a requirement to obtain a NYSDEC permit for sanitary sewer.

116. On July 8, 2020, Monroe County Pure Waters ("MCPW") and Monroe County Department of Health ("MCDOH") signed the Utility Plan approving the sanitary sewer extension for the Project. (ZBA000215).

## C. Monroe County Pure Waters

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117. On January 1, 2020, MCPW signed the Unity Plan indicating that the plan conforms to the MCPW Master Plan. (ZBA000215).

## **D. Monroe County Department of Health**

118. The Project requires certain backflow prevention approvals from the MCDOH. These are known as a "Reduce Pressure Zone Device," which is a type of backflow prevention device used to protect water supplies from contamination. The Project may also require certain grease interceptor approvals from the MCDOH.

119. The Building Inspector has confirmed that these approvals are separate from the Building Permit process. Consistent with the language of Condition #41 of the Site Plan Approval and as supported by the administrative record, the ZBA finds that MCDOH backflow prevention and greased interceptor approvals are not "necessary approvals" for the issuance of the Building Permit.

120. On July 14, 2020, the MCDOH approved the applicable backflow prevention devices. (ZBA010573-578).

121. The Project does not include the subdivision of five or more lots and is not residential. BGR has not submitted any proof or cited any Monroe County law or regulation indicating a requirement to obtain MCDOH Realty Subdivision approval. The ZBA finds that the Project does not require MCDOH Realty Subdivision approval.

## **F. Monroe County Department of Transportation**

122. The Project Site is located along Monroe Avenue (New York State Route 31) in the Town of Brighton. Monroe Avenue is not a County Highway. BGR has not submitted any proof or cited any Monroe County law or regulation indicating a requirement to obtain Monroe County Department of Transportation ("MCDOT") approval. The ZBA finds that the Project does not require the approval of the MCDOT.

123. As established by the administrative record, prior to the Issuance of the Building Permit, the ZBA finds the Town obtained all necessary State and County approvals as required by Condition #41 of Site Plan Approval.

124. This portion of the Appeal is denied.

## **CONCLUSION**

125. In accordance with the records, proceedings, and above Findings, the ZBA finds that: (i) the Building Inspector properly issued the Building Permit in accordance with the requirements of the Brighton Town Code, Comprehensive Development Regulations, Incentive Zoning Approval, Site Plan Approval, and other applicable conditions of approval; (ii) the Building Permit meets all of the required preconditions/requirements for the issuance of a building permit as

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set forth in the Brighton Town Code, Comprehensive Development Regulations, Incentive Zoning Approval, and Site Plan Approval; and (iii) the Developer satisfied all preconditions/requirements before the Building Inspector issued the Building Permit.

126. The Building Inspector's issuance of the Building Permit is affirmed, and Appeal is denied in its entirety.

Proposed resolutions affirming the appeal:

**1. The Building Inspector did not expressly certify the site Plan**

Prior to issuance of the Building permit the Building Inspector must ensure that all requirements of the Comprehensive Plan has been adequately met.

Section 217-12(A)(3) of the Comprehensive Development Regulations provides that the Building Inspector “certify” on the site plan that it meets the requirements of the Comprehensive Development Regulations.

There is no evidence that the Building Inspector Expressly certified the site plan and there for the Comprehensive Plan considerations were not met.

**2. That required State and County Permits Approvals were not obtained prior to issuance of Building Permit**

The Planning Board approval and the Comprehensive regulations require that all required State and County approvals be obtained prior to issuance of the Building Permit. Given pending litigation it is not clear that the relocation of the trail requires approval by the State of New York or its legislature and therefore all required permits and approvals have not been obtained.

**3. Cross-Access Easements are subject to forfeiture and therefore not compliant with the conditions of the Incentive Zoning.**

Paragraph 8 of Schedule E-2 of the Incentive Zoning Approval expressly requires that prior to the issuance of any Building Permits for the project the developer needs to provide cross access Easements to implement the AMP. There was sufficient proof provided that the Easements are subject to possible forfeiture through a mortgage foreclosure which would likely detrimentally impact the function of the AMP.