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January 6, 2017

**Via Email and U.S. First Class Mail**

Hon. Town Supervisor and Members of the  
Town Board of the Town of Brighton  
2300 Elmwood Avenue  
Rochester, New York 14618

Dear Supervisor Moehle and Members of the Board:

Re: Monroe Avenue Plaza Redevelopment

This firm represents Save Monroe Ave., Inc. ("Save Monroe Ave.") in connection with the Monroe Avenue Plaza Redevelopment (the "Project"). I write to address the Town Board's recent determination that the supplemental draft environmental impact statement ("SDEIS") for the Project is not adequate for public review and the direction to the Developer to revise and resubmit it. As a first matter, Save Monroe Ave. applauds the Board for its determination to hold the developer accountable and to reject a patently incomplete submission. However, the resolution rejecting the SDEIS does not address important matters that the Supervisor raised at the December 14, 2016 meeting, at which he reiterated the Town Board's directives on the contents of the SDEIS. At the December 14, 2016 meeting, Supervisor Moehle reiterated, several times, that the Town Board directed the developer to address other DEIS deficiencies, as set forth in the public comments, including those raised in my October 2016 letter. The Developer's attorney, Jerry Goldman, argued with the Supervisor and claimed that only traffic-related deficiencies needed to be addressed. From a review of the SDEIS it is clear that the Developer ignored the Town Board's directive and failed to address the other DEIS deficiencies.

We raise this issue at this point so that the Developer has the opportunity to remedy these deficiencies now, so that we do not face another circumstance where the SDEIS must be rejected again for the Developer's failure to address these important issues. We also provide further comments on the adequacy of the SDEIS, which are enclosed.

It is our hope that the Developer will take these issues seriously, and will submit a proper SDEIS to allow the public to provide meaningful comment, as is required by the SEQRA regulations.

We again thank the Board for its continuing efforts on this Project.

Sincerely,



Daniel A. Spitzer

DAS/say  
Encl.

cc: Kenneth Gordon, Esq. (*via email only*)  
Ramsey Boehner, Associate Planner (*via email only*)  
Save Monroe Ave., Inc. (*via email only*)  
Charles W. Malcomb, Esq. (*via email only*)  
Jerry A. Goldman, Esq. (*via email only*)  
Robert W. Burgdorf, Esq. (*via email only*)  
Robert J. Brenner, Esq. (*via email only*)  
Robert L. Galbraith, Jr., Esq. (*via email only*)  
David Goehring (*via email only*)

# **Whole Foods Plaza Proposal Comments on the Adequacy of the Supplemental Draft Environmental Impact Statement**

## **INTRODUCTION**

Our office represents Save Monroe Avenue, Inc. (“SMA”). SMA is comprised of local residents and businesses living and working around or along the Monroe Avenue corridor in the Town of Brighton (the “Town”), who are concerned with significant traffic problems that currently exist in that area, which will be significantly exacerbated if the Daniele Family of Companies (the “Developer”)’s proposed Whole Foods plaza plan is approved (the “Project”). As required by the State Environmental Quality Review Act (“SEQRA”), the Developer previously submitted a draft environmental impact statement to the Town (the “DEIS”), which purportedly identified and assessed the likely or potential environmental impacts that could result from the implementation of the Project.

As evidenced by the comments submitted by members of the Town Board, Brighton residents, numerous State agencies, and concerned citizens’ groups (including SMA), the DEIS was woefully deficient. Accordingly, on August 24, 2016, the Town Board passed a resolution (the “Resolution”) directing the Developer take additional actions to satisfy its SEQRA obligations. In particular, the Resolution instructed the Developer to: (1) prepare a Supplemental Draft Environmental Impact Statement (“SEIS”) that re-analyzed the potential significant adverse traffic impacts of the Project, and which addressed the traffic-related issues in the Project scope previously adopted by the Town on September 23, 2015 (the “Project Scope”); (2) prepare a new traffic impact study (“TIS”) following any traffic signal modifications or adjustments by the New York State Department of Transportation (“NYSDOT”) in the Project

area; and (3) provide written responses to all substantive transportation comments received during the public hearing and written comment period. The Town Board also directed the Developer to address other DEIS deficiencies, as noted in the public comments (including those comments submitted by members of the Town Board). Later, at a public meeting on December 14, 2016, and over the objections of the Developer’s attorney Jerry Goldman, Town Supervisor William Moehle and the Town Board reiterated numerous times that the Developer was required to address all deficiencies in the DEIS — not just those “substantive” comments pertaining to traffic/transportation.

The Developer did prepare and submit a SDEIS and revised TIS. *See* Whole Foods Plaza SDEIS Volume I (the “SDEIS”); Whole Foods Plaza SDEIS Volume II (“SDEIS Volume II”). However, as further discussed below, the Developer failed to satisfy the Town’s directives in the Resolution, and the verbal directives the Town Board gave the Developer regarding addressing deficiencies identified in the public comment on the DEIS. Therefore, the Town Board should reject both the DEIS and SDEIS as incomplete—and inadequate for review—until the Developer satisfies those obligations by addressing the deficiencies as set forth below.

### **COMMENTS ON THE SDEIS**

Under SEQRA, an environmental impact statement must be prepared for any action that may have a significant effect on the environment. ECL § 8-0109[2]. “The [DEIS] must include, among other things, a description of the proposed action, its environmental impact and mitigation measures proposed to minimize the environmental impact.” *Matter of Bronx Comm. For Toxic Free Schools v. New York City Sch. Constr. Auth.*, 20 N.Y.3d 148, 155 (2012)

(citing ECL § 8-0109[2][a], [b], [f]); *see also* 6 NYCRR § 617.9 (listing elements which must be included within a DEIS)).

Where a DEIS is determined to be deficient, or in cases involving changed circumstances or newly discovered information, the lead agency may require an applicant to prepare a supplemental environmental impact statement, or SDEIS. 6 NYCRR 617.9(a)(7)(i); Environmental Impact Review in New York § 3.13[1] (“The objective of a supplemental EIS is to provide involved agencies and the public with information about potentially significant environmental effects of an action that were omitted from discussion in the earlier EIS.”). In making the fact-intensive determination of whether a SDEIS is required, “the lead agency has the discretion to weigh and evaluate the credibility of the reports and comments submitted to it and must assess environmental concerns in conjunction with other economic and social planning goals.” *Oyster Bay Associates Ltd. Partnership v. Town Bd. of Town of Oyster Bay*, 58 A.D.3d 855 (860 (2d Dep’t 2013)). A SDEIS is subject to the same substantive requirements and procedures as a DEIS. 6 NYCRR 617.9(a)(7)(iii). Where a DEIS/SDEIS is incomplete, the lead agency must notify the applicant of those deficiencies in writing so that they can be rectified. 6 NYCRR 617.9(a)(2)(i).

(I) The DEIS remains incomplete because the Developer ignored the Town’s directive to address all comments on its proposal, not just those pertaining to transportation and/or traffic. In addition, the SDEIS submitted by the Developer is deficient because it fails to address the issue identified in the Resolution which prompted the Town’s requirement that the SDEIS be prepared in the first place. Namely, the SDEIS: (II) fails to address all of the items identified in the Project Scope; and (III) fails to address many of the substantive transportation-

related comments submitted by various parties, including members of the Town Board, during the public hearing comment period.

**I. THE DEVELOPER IGNORED THE TOWN'S DIRECTIVE TO ADDRESS ALL PUBLIC COMMENTS—INCLUDING SMA'S COMMENTS—ON THE MULTIPLE DEFICIENCIES IN THE DEIS.**

In its December 14, 2016 public meeting, Town Supervisor Moehle and the Town Board unequivocally instructed the Developer to address all public comments on the deficiencies in the DEIS, not just those comments pertaining to transportation/traffic.

For example, in its August 1, 2016 submissions, which are incorporated herein by reference, SMA raised numerous issues of concern unrelated to traffic, such as the Developer's failure to propose or consider reasonable project alternatives, failure to consider cumulative project impacts, failure to consider secondary/growth inducing impacts, failure to propose reasonable impact mitigation measures, failure to comply with the final scoping document issued by the Town on September 24, 2015, and failure to consider the effects of the project on community character. Numerous other parties—including the Town Supervisor, each of the remaining Town Board members, State agencies, local planning/development bodies, citizens' groups, businesses, and private residents—also submitted substantive comments raising similar concerns. Rather than abiding by the Town's directive to address those comments, the Developer continued its calculated practice ignoring the Town's instructions that it finds troublesome or inconvenient.

The SDEIS clearly reflects how the Developer expressly ignored the Town's directive. For example, as evidenced in pages 5 through 52 of SDEIS Volume II and the discussion in Section III below, the Developer selectively ignored all comments on the DEIS—

including numerous comments by the Town Board and various local/state agencies—that were not expressly labeled “transportation” or “traffic”. Later in SDEIS Volume II, the Developer acknowledged the existence of the non-transportation related comments but simply ignored them, stating: “Comment is not a substantive transportation comment; therefore, a response is not provided at this time in accordance with the scope of the SDEIS. This comment will be addressed as part of the Final Environmental Impact Statement (FEIS).” *See, e.g.*, SEIS Volume II at 53, 75-85, 89-92, 94-97, 101-131, 139-151, 153-54, 159-61, etc.

As SMA previously noted in its August 1<sup>st</sup>, 2016 comments on the deficient DEIS, and as stated by the New York Court of Appeals, where a DEIS fails to include the items required by SEQRA, “**the omission [ ] cannot be cured simply by including the item in the final EIS.**” *Webster Assocs. v. Webster*, 59 N.Y.2d 220, 228 (1983). This is because the abbreviated waiting period before the approval of a final EIS “is not a substitute for the extended period and comprehensive procedures for public and agency scrutiny of and comment on the draft EIS.” *Id.* Having purportedly reviewed all public comments on the DEIS, including SMA’s submission, the Developer is knowingly requesting permission from the Town to proceed in direct contravention of its statutory responsibilities. While the Developer apparently believes it is entitled to special treatment and hopes to ramrod its proposal through the SEQRA process, the Town should refuse to review the incomplete and inadequate DEIS until the Developer abides by the Town’s instructions and addresses the non-traffic related comments.

## **II. THE DEVELOPER IGNORED THE TOWN’S DIRECTIVE TO ADDRESS ALL OF THE ISSUES IN THE FINAL PROJECT SCOPING DOCUMENT.**

The Project Scope directed the Developer to identify and address numerous issues that were omitted from the DEIS and the Developer’s initial traffic analysis. Project Scope at 8-

10 (directing that “the following items shall also be addressed in a further traffic study”). While the SDEIS appears to have addressed some of those items, many other items were overlooked or ignored. For example, the Developer:

- Failed to provide and evaluate a code compliant, as of right version of the Project as a baseline for review of traffic impacts.
- Failed to explore alternatives for eliminating some of the currently proposed access points. Project Scope at 8.
- Failed to analyze alternatives without the implementation of the access management plan on the south side of Monroe Avenue. *Id.*
- Selectively discussed the proposal’s compliance with the Town of Brighton Monroe Avenue Corridor Community Vision Plan, February 2011 (the “Vision Plan”), while ignoring potentially troublesome portions of the Vision Plan. *Id.* For example, The first and second “community idea” items noted in the Vision Plan for this section of Monroe Avenue were “small town feeling” and “traffic calming” (Vision Plan at 36, <http://www.townofbrighton.org/DocumentCenter/View/1146>), which were not discussed in the SEIS. SEIS at 15-16. This is particularly troubling given the community’s explicitly stated desire to *decrease* (as opposed to mitigate or simply manage) traffic along Monroe Avenue. Vision Plan at 43, 68-69. Elsewhere, the Vision Plan says this about redevelopment in this area: “It is important to plan for the future by creating a plan that supports the type of growth the community desires. Reorganizing parking and traffic flow allows for potential parallel streets to be created and opportunities for new development and redevelopment. This is important to help provide density for the area in order to attain an appropriate scale of development.” *Id.* The “appropriateness” of the size of this development is the primary focus of community opposition to the current proposal. The Developer should be required to adequately address this issue in the SEIS before the environmental review process can continue.
- Failed to conduct an analysis evaluating development alternatives based on access scenarios at Clover Street and Allens Creek, including no access, partial access, and full access scenarios. Project Scope at 8-9. The Developer ignored this directive and simply stated that its proposal can operate without those access points. SEIS at 10. This is easy to say now. However, when the traffic problems in and around the plaza become unbearable the Developer will undoubtedly be back in front of the Town requesting that those access points be created. This is precisely why the Town—as well as the DOT in its July 25, 2015 comment letter—directed that these alternate access points be

evaluated. The Developer's failure to perform this investigation should not be excused.

- Failed to demonstrate that the proposed pedestrian access trail is consistent with the latest AASHTO shared use trail requirements. Project Scope at 9. The Developer's one sentence, conclusory promise to "install multi-use trail compliant with ADA and up to AASHTO standards" does not "demonstrate" anything. SEIS at 17. It is simply providing substance-less lip-service to the Town's directive.
- Failed to evaluate internal traffic circulation. Project Scope at 9. The sole issue examined by the Developer with respect to internal circulation was deliveries to the proposed grocery tenant. SEIS at 11. The Developer's conclusory statement that the Starbucks has been "modified" to improve internal circulation recognizes the existence of a problem but otherwise fails to analyze internal traffic within the plaza, including the potential traffic in and around the other businesses. SEIS at 10. This is particularly inexcusable in light of the Developer's request to "supersize" the developed area of the parcel to 150% of what the Zoning Code typically allows. The functionality of the interior plaza design with respect to traffic circulation could negatively (or positively, if done correctly) affect traffic flow in and out of the plaza, in turn directly affecting the flow of traffic on Monroe Avenue itself. This information should be studied to permit the necessary adjustments, if any, that must be made to optimize traffic flow.
- Failed to address the potential for cut-through traffic *internal to the site* and its impact on the internal site layout, cross access and driveways locations. Project Scope at 9. This information is important for the reasons stated directly above.
- Expressly declined the Town's request to include a discussion on high seasonal traffic volumes between Thanksgiving and Christmas and the potential impacts to internal circulation and access point traffic volume distribution (Project Scope at 9), arguing that such an analysis was unnecessary, and claiming in a conclusory fashion that "the additional trips generated from the newly developed site will have a negligible impact on 'Holiday' traffic." SEIS at 3-4. Whether that impact will or will not be negligible should be shown through data and scientific analysis, not hopeful conjecture. The Developer's conclusory, self-serving statements are not helpful for purposes of SEQRA review.
- Failed to discuss internal circulation challenges resulting from snow storage and removal and the potential extent to which this may effect internal and external traffic ingress/egress. Project Scope at 9-10. Brighton and the other areas surrounding Rochester, New York regularly experience winter snowfalls. In normal developments—i.e. where 90% of the area of a proposed

lot is *not* developed—there is far more room for a property owner to plow/pile up snow during the removal process, such as to not affect the availability of parking, and ingress/egress from the property. However, given the Developer’s insistence on developing the land far in excess of what the Zoning Code normally allows, there is little (if any) room for snow to be moved and piled on site. This will almost certainly create inter-plaza traffic circulation problems, as well as affect the queuing within the plaza, and affect therefore traffic flow out to Monroe Avenue. Problems could also arise if the Developer was forced to pile snow on adjacent, non-owned property. The Developer should be required to analyze this issue as the Town instructed.

If the SDEIS is determined to be inadequate, the lead agency must identify the deficiencies and relay that information to the application. 6 NYCRR 617.9(a)(2)(i). The Town previously determined that the Developer must address each and every issue in the Project Scope document as part of the SEQRA review process. In light of the Developer’s failure to do so, apparent from the deficiencies described above, the Town not accept the SDEIS as adequate until these issues have been resolved.

**III. THE DEVELOPER FAILED TO ADDRESS ALL OF THE SUBSTANTIVE TRANSPORTATION-RELATED COMMENTS SUBMITTED DURING THE PUBLIC COMMENT PERIOD.**

The SDEIS should also be rejected as incomplete because the Developer failed to address numerous substantive transportation comments made during the public hearing comment period. *See generally* SDEIS Volume II. The unaddressed comments are discussed below:

**1. Comments from the New York State Department of Transportation dated April 4, 2016 and July 25, 2016.**

The New York State Department of Transportation (the “DOT”) submitted two comment letters that raised concerns over numerous traffic and transportation issues for the Project. Rather than substantively address those comments, the SDEIS briefly claimed that “NYSDOT comments are addressed in the updated TIS and SEIS. NYSDOT engineers were

consulted several times during the TIS update and along with Standard Engineers and Brighton Town Staff were instrumental in the TIS update and SEIS.” SDEIS Volume II at 38.

The SDEIS is a 72-page document, with 774 pages of appendices. Even if the Developer had addressed all of the DOT’s comments in the SDEIS, which SMA denies, it would be impossible for SMA, the Town, or members of the public to determine whether that actually occurred because the Developer does not provide any reference to where in the SDEIS the agency’s concerns are discussed. To the extent the Developer has addressed these issues, it should be required to provide specific references within the SDEIS.

Several other statements by the Developer require further scrutiny. It is troubling how the SDEIS claims that DOT has approved the Developer’s proposal. SDEIS at 27 (citing to a “NYSDOT Approval Letter”). In fact, the SDEIS is replete with unsupported assertions of the Project having receiving DOT approval, as well as other unverified, undocumented instructions from DOT with respect to the Project and/or traffic mitigation. *See, e.g.* SDEIS Volume II at 6 (“In further discussions with DOT, it is important to note that the coordination of signal timings of the new Whole Foods Plaza Signal and the Monroe Clover Signal will significantly mitigate the adverse impact of the signal while realizing the full benefits of the new signal”); *id.* at 25 (“In the case of the proposed Whole Foods project, the appropriate mitigation measures have been determined by working closely with both the NYSDOT and Town of Brighton”); *id.* at 27 (noting that DOT “does not agree” with Stantec’s comment raising certain safety concerns); *id.* at 51 (“we were specifically instructed by NYSDOT NOT to evaluate corridor safety for this project”).

Particularly with respect to DOT’s alleged “approval,” SMA finds many of the Developer’s statements hard to believe. For one thing, the Developer does not identify the date DOT approval was received, or otherwise provide documentation of this “approval”. It also

seems unlikely that DOT approved the proposal given that the Developer could not be bothered to substantively address the concerns in the DOT's comment letters, questioned DOT's credibility by attacking the agency's analysis of the DEIS and prior traffic impact statement (SEIS Volume II at 6 ("The specific DOT comments that the previous TIS's queue lengths where [sic] underestimated was in fact not true.")), and spent the majority of the SEIS blaming the DOT for the issues with its previous TIS and the traffic problem along Monroe Avenue in general. *See* SEIS Volume II at 5, 16, 18, 20, 23, 24, 39. It seems further unlikely that the DOT would give its unqualified blessing to this proposal after DOT unequivocally stated, in its July 25<sup>th</sup> letter, that "the project, with the introduction of a traffic signal as proposed, will have a significant impact on traffic."

Perhaps most importantly, the Developer ignored the DOT's clear directive concerning traffic mitigation. In its July 25<sup>th</sup> letter DOT noted, "[w]e will look to minimize [traffic] impacts through signal timing and optimization of signal progression along the corridor, **but it should not be viewed as a panacea. Other mitigation measures should also be considered** including providing alternative access and/or **reducing the intensity of the development.**" (emphasis added). The SDEIS comment responses repeatedly underscores how the Developer ignored this advice. SDEIS Volume II at 5, 16, 18, 20, 23, 24, 39. The Developer declined to explore alternative access routes in the SDEIS. Only one alternate/smaller plaza size was considered, but was rejected by the Developer for reasons that are not entirely clear. And other than the planned addition of some pavement markings, the Developer has not proposed any traffic mitigation measures at all. Directly contrary to the DOT's instructions, the Developer has put all of its traffic mitigation eggs in the proverbial signal timing basket, simultaneously claiming that the agency has approved its plans. The Developer should not be permitted to

carelessly ignore technical and comments from the DOT, a State agency with technical knowledge and a wealth of experience in traffic mitigation, while baselessly claiming to have DOT approval. Because the current rendition of the SDEIS does exactly that, the Town should reject it as incomplete, with instructions to address the DOT's well-founded concerns.

## **2. Comments from Town Supervisor William M. Moehle dated 8.1.16.**

Several comments submitted by Town Supervisor Moehle were not addressed by the Developer either. By number, those left unaddressed include comments 1 (question regarding completion of access management plan by parties other than the developer and its effect on traffic), 13 (question requesting clarification on developer's statement that retail shopping center design would improve vehicular access and circulation when existing traffic study showed the opposite), 22 (various questions regarding access management system, particularly with respect to traffic generated from the lot on the southern side of Monroe Avenue), 27 (request for clarification on table discussing seasonality of operational volume of shopping centers), 37 (question concerning impact to Brighton Police Department if one or more officers must be assigned to traffic control for the plaza), 44 (request for clarification on whether transportation alternatives evaluated pedestrian connectivity to the surrounding areas), 48 (request for clarification concerning the need for mitigation on police protection services given previous indication that police presence would be required to control plaza traffic) and 53 (request for clarification on numerous statements including the statement that no traffic signal would be added to Monroe Avenue and COMIDA implications if project were completed in accordance with existing zoning laws). To satisfy the Town's directive in the Resolution, the SDEIS must be revised to address all of these issues raised by Supervisor Moehle.

Several of the Developer's other responses to Supervisor Moehle's comments warrant individual discussion. In response to Supervisor Moehle's comment #3, the Developer repeatedly blames the DOT for its previously submitted (and admittedly erroneous) TIS, simultaneously placing responsibility for mitigating the traffic problems caused by its proposed development on the DOT. SDEIS Volume II at 5. These claims are entirely improper. The Developer is responsible for the effects of its project, not the DOT. Regardless of whether light timings are/were adjusted to accommodate the Developer's proposal, the Developer is solely responsible for submitting accurate traffic study information to the Town, and proposing measures sufficient to mitigate the potentially harmful traffic effects of the planned action.

With respect to Supervisor Moehle's comment #22, the Developer expressly declined to assess the potential traffic impacts of Phase II of the access management plan because there are "currently too many assumptions to formulate a relevant study at this time". SDEIS Volume II at 9. This is an improper attempt to put the cart before the horse. If the Developer's proposed action is too complicated to analyze, it must simplify and/or streamline its proposal so that the potential traffic effects can be measured. How can the Developer expect the Town to approve something that the Developer is not even able to explain?

In comment #25, Supervisor Moehle requested traffic study data supporting the Developer's assertion that the wait times for traffic exiting the plaza was comparable to other local malls or grocery stores. Instead of providing references or supporting data, the Developer replied with vague generalizations. SDEIS Volume II at 9 ("During this time, *it is expected* that the queue within the plaza will clear. During the busiest of times, a motorist *may* have to wait two cycles for the signal.") (emphasis added). If there is no such data, the Developer should say so. If it does exist, the Developer should be required to pony up and provide it.

### 3. Comments from Town Board Member Christopher K. Werner dated 7.28.16.

Town Board member Christopher K. Werner submitted numerous transportation/traffic comments that were not addressed by the Developer. On pages 1-2 of his July 28<sup>th</sup> letter, Mr. Werner commented that “[t]he installation of a traffic signal with pedestrian controls is not an amenity but must be viewed as a mitigation measure necessary to reduce the traffic impact of a project of this density and proposed use. Safe ingress and egress would not seem possible without this signal but might not be necessary for alternate uses of lower density. Moreover, this additional traffic signal potentially creates its own traffic negative taken in combination with other signals in close proximity. . . . the signal itself exacerbates traffic congestion due to the close proximity of other signals.” Though apparently ignored, this comment should be addressed.

Mr. Werner later commented that “[t]he traffic impact posed by this project is of greatest concern as has been expressed from the outset. The developer proposes to build a one-of-a kind upmarket grocery, Starbucks with drive-thru and plaza with high lot density. **The DEIS and its traffic study do not dispel the conclusion that this project poses a significant negative traffic impact – far worse than a project of other uses and density.**” (emphasis added). This comment was also ignored by the Developer, and should also be addressed.

Several other statements made by the Developer in response to Mr. Werner require further discussion. First, the Developer repeatedly insists that prior traffic-related concerns are no longer warranted in light of the traffic light timing adjustments it made in cooperation with DOT. SDEIS Volume II at 20-21. The Developer further claims that it prepared “a detailed visual presentation” for the Town Board for purposes of demonstrating how the signal timing revisions had addressed the multitude of traffic related concerns for the Project,

but that “time did not allow presentation during the Public Hearing on the DEIS.” SDEIS Volume II at 21.

Since that presentation was apparently omitted from the draft SDEIS, SMA requests that the Town require the Developer to present this information at a public meeting prior to the Town commencing its completeness review of the SDEIS, to be evaluated by Stantec and SMA’s traffic engineers. Further, given the technical nature of the revised TIS, a thorough explanation of the traffic mitigation measures taken by the Developer would facilitate a more robust and collaborative public comment period on the SDEIS.

Second, in response to Mr. Werner’s concerns about the likelihood that the Developer would seek potential alternative rear access point at Allens Creek Road and Clover Street, the Developer simply stated that issue was addressed in the revised TIS and SDEIS. SDEIS Volume II at 20. Other than the Developer’s conclusory statement that it can operate without those access to Clover Street and Allens Creek Road, and/or that it does not have legal access to those access points (SEIS at 10), SMA is unaware of this issue being “addressed.” If it is as the Developer says, the Developer should be required to execute a restrictive covenant/negative easement affirming that it will not seek access through these points, regardless of what develops in the future. Otherwise, as discussed above, given the likelihood that the Developer will seek to open these access points in the future, the effects of those access points must be analyzed.

Third, SMA is incredulous with respect to the Developer’s assertion that the “as of right” development alternative would actually result in less traffic to the development than the proposed Whole Foods Plaza. SEIS Volume II at 19. The “as of right” alternative contains nearly identical uses, less a substantial reduction in the specialty retail space, as compared to the

Developer's "preferred" alternative. *Compare* SEIS at 11 (noting "preferred" alternative would contain a 50,000 sf whole foods, a 2,000 sf coffee shop, a 4,000 sf drive in bank, and a 34,000 sf specialty retail use space) *with* SEIS at 12 (noting "as of right" alternative would contain a 50,000 sf whole foods, a 2,000 sf coffee shop, a 4,000 sf drive in bank, 8,000 sf relocated Mario's restaurant, and a 6,400 sf specialty retail use space). How would a smaller, practical carbon copy of the same development result in more traffic? This statement requires a more thorough explanation from the Developer. If it cannot be supported, it should be withdrawn.

#### **4. Comments from Town Board Member Jason S. DiPonzio dated 7.29.16.**

The Developer did not address several traffic-related comments raised by Mr. DiPonzio either, including his comments 1 (questioning whether project size should be reduced because of the removal of the access points at Allens Creek Road and Clover Street), 3 (discussing the potential for subsequent traffic analyses if the project were developed in phases), 4 (noting that many of the proposed "amenities" were in fact nothing more than traffic mitigation measures) and 6 (discussing noise impact caused by the increased traffic within the proposed development itself). Per the Resolution, these issues must be addressed before the SDEIS is considered complete and ready for review.

With respect to the Developer's response to Mr. Diponzio's comment 2, which requested that the Developer provide traffic data from the East Avenue Wegmans or similarly sized Whole Foods stores; SMA notes that the Developer examined traffic data from seven different grocery stores (the East Avenue Wegmans and six existing Whole Foods locations). Incredibly, the Developer unilaterally determined that the data from every single one of these locations was "not appropriate" for review in this proceeding. SDEIS Volume II at 15. Whether

it was actually inappropriate, or in fact harmful to the Developer's belief that the size of the store should not be reduced, is irrelevant. The Town requested the data, it is relevant to assessing the impact of the proposed action, and it is apparent that the Developer is in possession of that data. Therefore, the data should be provided for public review, as it would assist the Town its environmental impact review duties under SEQRA

With respect to the Developer's response to comment 5, SMA again refers to Section II.1 above, which further explains why signal timing adjustment alone is insufficient as a traffic mitigation measure, particularly given the size and scope of the Developer's proposal, and how it is not DOT's responsibility to ensure the accuracy of the Developer's traffic analysis.

**5. Comments from Town Board Member James R. Vogel dated 8.1.16.**

The Developer did not address Town Board Member James R. Vogel's comment that a phased development plan and/or reduced project density could help the Town better assess the potential traffic impacts of the plaza on Monroe Avenue and the adjoining neighborhood. And as noted above, the Developer's decision to blame the DOT for the deficiencies in its traffic analysis, as well as the agency's purported failure to implement traffic mitigation measures for purposes of accommodating the Developer's proposal, is baseless and improper.

**6. Comments from Town Board Member Louise Novros dated 8.1.16.**

Town Board member Louise Novros commented that "the traffic impact created by this proposal on Monroe Avenue, Allen's Creek and Clover Street is very concerning. Consideration should be given to reducing the size and scale of the project as well as the intensity of uses to address this situation." In response, the Developer stated "[m]any of the concerns regarding traffic along the corridor were a result of the dysfunction of the signal light at

Clover Street and Monroe Avenue. . . . The alternatives examined and the density study of other retail centers along Monroe Avenue demonstrate that this development is sized appropriate and less dense than most other developments.” SDEIS Volume II at 17.

SMA is calling the Developer’s bluff. The traffic signal timing issue aside (as it is addressed above), the Developer’s statement concerning density cannot possibly be true. The Developer is seeking to build the plaza out at least 150% of the maximum square footage area allowed under the zoning code. If examples of similarly/higher density projects do exist within the Town, having been achieved by variance or some other method, the Developer should be required to provide proof of what developments it was referring to when it made this claim, and what mitigation measures were used in conjunction with those developments. Otherwise, the Town should not permit the Developer to ignore the density issue by making frivolous, unsupported claims of parity.

Ms. Novros’ comment about re-designing the project to include a smaller Whole Foods and a drive-through and building using phased-in construction to reduce the traffic impact of the project was ignored by the Developer as well. Therefore, the Developer should be required to update the SDEIS to address both of these issues before the document is deemed complete and ready for review.

**7. Comments from the Town Planning Board dated 8.1.16**

The Town of Brighton Planning Board’s transportation comments 3 and 4 were also ignored by the Developer, and must be addressed. Transportation comment #3 stated that that due to the proposed traffic impacts on the project, the Developer’s proposal should include an access management plan (pedestrian and vehicular) from Allens Creek to Clover Street that

addresses cross access and shared parking. Transportation comment \$4 asserted that the proposed traffic light is a mitigation measure, not an amenity.

Several other traffic-related comments raised by the Planning Board were not addressed either. For example, the Developer ignored the Planning Board's request that it provide design alternatives for the proposed plaza to create longer exit queuing to help address the potential backup of internal traffic trying to exit onto Monroe Avenue. Similarly, the Developer ignored the Planning Board's request to provide a design alternative which illustrates a truck only entrance/exist to Whole Foods off Allens Creek road. The Developer should be required to supplement the SEIS to respond to these comments before the Town accepts the SEIS as complete and ready for review.

**8. Comments from Stantec Consulting Services, Inc. dated 8.1.16 and McFarland Johnson dated 7.18.16.**

Dozens of traffic-related comments, including comments specifically analyzing the technical details, assertions and conclusions in the original TIS, were submitted by the Town's traffic engineering consultant (Stantec) and the third-party traffic engineering consultant hired by SMA (McFarland Johnson). At least on a facial level, the Developer appears to have addressed the majority of these comments. *See* SDEIS Volume II at 24-35, 42-52. However, given the technical nature of these comments and the Developer's responses, SMA respectfully requests that both Stantec and McFarland Johnson be given sufficient time to adequately review and analyze these documents prior to the Town's deeming the SDEIS adequate for review.