

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

:ss

COUNTY OF MINNEHAHA)

SECOND JUDICIAL CIRCUIT

GRANT PARK CAPITAL, LLC,

49CIV22-002973

Plaintiff,

vs.

**AFFIDAVIT OF JOHN R. HUGHES**

CITY OF BALTIC, A SOUTH DAKOTA MUNICIPAL CORPORATION; DEBORAH MCISAAC, TRAVIS SCHREURS, NIKKI OIEN, BRIAN MCGREEVY, AND RYAN SINDING, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE BALTIC CITY COUNCIL; CITY OF BALTIC PLANNING AND ZONING COMMISSION; ED WILSON, DEB MURPHY, NATE VRCHOTA, RYAN SINDING, AND TRAVIS SCHREURS, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE CITY OF BALTIC PLANNING AND ZONING COMMISSION,

Defendants.

**JOHN R. HUGHES**, being duly sworn under oath, states and deposes as follows:

1. I am an attorney admitted to practice in the state of South Dakota, with Hughes Law Office, 101 East 38<sup>th</sup> Street, Sioux Falls, South Dakota 57105.
2. I am the duly appointed and acting City Attorney of Defendant City of Baltic.
3. This Affidavit is submitted pursuant to the Notice of Special Appearance of Counsel for Defendants on file herein, for the limited purpose of objecting to subject matter jurisdiction pursuant to SDCL § 15-6-12(b)(1), and for the limited purpose of moving to dismiss this action pursuant to SDCL § 15-6-12(b)(1)-(5) and SDCL Ch. 11-4.
4. A true and correct copy of excerpts from the 2010 Revised Baltic Zoning Regulations is attached hereto as Exhibit A.

5. A true and correct copy of excerpts from the Subdivision Regulations of the City of Baltic, South Dakota, is attached hereto as Exhibit B.

6. A true and correct copy of Plaintiff's Notice of Injury Pursuant to SDCL Chapter 3-21 and Notice of Appeal Pursuant to Baltic Zoning Regulations Chapter 17.03, is attached hereto as Exhibit C.

7. A true and correct copy of the Official Minutes of the Meeting of the City Council on July 12, 2022, is attached hereto as Exhibit D.

8. A true and correct copy of the Official Minutes of the Planning and Zoning Commission Meeting of the City Council on July 27, 2022, is attached hereto as Exhibit E.

9. A true and correct copy of the Official Minutes of Planning and Zoning Commission on September 28, 2022, is attached hereto as Exhibit F.

10. A true and correct copy of the Official Minutes of the Joint Meeting of the Baltic Planning and Zoning Commission and City Council on October 26, 2022, is attached hereto as Exhibit G.

11. A true and correct copy of the Table of Comparison of Plaintiff's Verified Petition for Writ of Certiorari and the Complaint for Declaratory Judgment in this action is attached hereto as Exhibit H.

12. A true and correct copy of the Warning Letter of June 21, 2022, issued to Plaintiff by the South Dakota Department of Agriculture and Natural Resources on the **Grant Park Addition**, Stormwater Permit, Permit No. SDRR10K562, is attached hereto as Exhibit I.

13. A true and correct copy of the complete Warning Letter of June 21, 2022, issued to Plaintiff by the South Dakota Department of Agriculture and Natural Resources on the **Phillips**

**Crossing** subdivision, Park Stormwater Permit, Permit No. SDRR10K637, is attached hereto as Exhibit J

14. A true and correct copy of the Warning Letter of August 15, 2022, issued to Plaintiff by the South Dakota Department of Agriculture and Natural Resources on the **Grant Park Addition**, Stormwater Permit, Permit No. SDRR10K562, is attached hereto as Exhibit K.

15. A true and correct copy of the Warning Letter of August 15, 2022, issued to Plaintiff by the South Dakota Department of Agriculture and Natural Resources on the **Phillips Crossing** subdivision, Park Stormwater Permit, Permit No. SDRR10K637, is attached hereto as Exhibit L.

16. A true and correct copy of the Grant Park Addition and Phillips Crossing Addition Declaration of Reservations and Restrictive Covenants and Conditions, is attached hereto as Exhibit M.

17. A true and correct copy of the Plat of Grant Park Addition, dated November 5, 2021, is attached hereto as Exhibit N.

18. A true and correct copy of the Plat of Phillips Crossing Addition, dated November 5, 2021, dated September 28, 2021, is attached hereto as Exhibit O.

19. Following receipt of the Notice of Appeal dated November 10, 2022, Plaintiff's counsel of record and I had several discussions by telephone in which Plaintiff's counsel demanded that a hearing on the Notice of Appeal be scheduled for Monday, November 28, 2022.

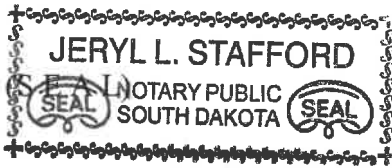
20. I advised Plaintiff's counsel that SDCL § 11-4-21 requires notice of the time and place of the hearing must be published once at least ten (10) days in advance in a legal newspaper of the municipality, and that due to the publication requirement and the upcoming Thanksgiving Day that it was impossible to hold a hearing on November 28, 2022.

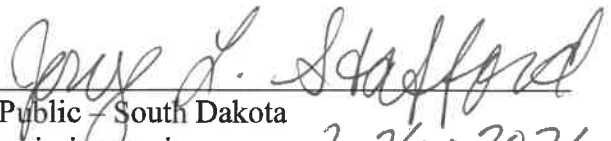
21. I informed Plaintiff's counsel at that time that a hearing could potentially be held as soon as December 13, 2022. Plaintiff's counsel declined.

Dated at Sioux Falls, South Dakota, on this 21st day of December, 2022.

  
John R. Hughes

Subscribed and sworn to before me on this 21st day of December, 2022.



  
Notary Public - South Dakota  
My commission expires: 2-26-2026

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 21<sup>st</sup> day of December, 2022, a true and correct copy of the foregoing was served electronically using the Odyssey File and Serve system which will send notification of such filing to the following:

Anna Limoges  
Andrew Grocott  
Goosmann Law Firm PLC  
2101 West 69<sup>th</sup> Street, Suite 200  
Sioux Falls, South Dakota 57108  
(605) 371-2000  
[LimogesA@GoosmannLaw.com](mailto:LimogesA@GoosmannLaw.com)  
[GrocottA@GoosmannLaw.com](mailto:GrocottA@GoosmannLaw.com)

Alex T. Mastellar  
Rinke Noonan  
US Bank Plaza Building  
1015 W. St. Germain St., Ste. 300  
P.O. Box 14097  
St. Cloud, MN 56302-1497  
(320) 251-6700  
[AMastellar@RinkeNoonan.com](mailto:AMastellar@RinkeNoonan.com)

*Attorneys for Plaintiff*

CADWELL SANFORD DEIBERT & GARRY LLP

By: /s/ William C. Garry  
William C. Garry  
200 E. 10<sup>th</sup> Street, Suite 200  
Sioux Falls, SD 57104