

STATE OF SOUTH DAKOTA)  
:SS  
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

GRANT PARK CAPITAL, LLC,

Petitioner/Plaintiff,

vs.

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,

Respondents/Defendants.

49CIV22-002968

49CIV22-002973

**ORDER AND JUDGMENT OF  
DISMISSAL**

The Respondents/Defendants above-named, filed a Motion to Dismiss the Verified Petition for Writ of Certiorari (“Verified Petition”) pursuant to SDCL § 15-6-12(b)(1) and (5) and SDCL §§ 11-4-19 and 11-4-20 in 49CIV22-2968, and a Motion to Dismiss the Complaint pursuant to SDCL § 15-6-12(b)(1)-(5) and SDCL Ch. 11-4 in 49CIV22-2973, on various grounds including that the Court lacks subject matter jurisdiction and for failure to state a claim upon which relief can be granted pursuant to SDCL § 15-6-12(b)(1) and (5), and for failure to exhaust administrative remedies pursuant to SDCL Chp. 11-4, as to both actions. A hearing on both Motions was held at 2:30 p.m. on February 14, 2023, at the Minnehaha County Courthouse, with the Petitioner/Plaintiff represented by Alex T. Mastellar, Rinke Noonan, St. Cloud,

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Minnesota, and Anna Limoges and Andrew Grocott, Goosmann Law Firm, PLC, Sioux Falls, South Dakota, and the Respondents/Defendants represented by John R. Hughes, Hughes Law Office, Sioux Falls, South Dakota, and William C. Garry and Melissa R. Jelen, Cadwell, Sanford, Deibert & Garry, LLP, Sioux Falls, South Dakota. Further hearing was held at 2:00 p.m. on March 7, 2023, at the Minnehaha County Courthouse, at which time the Court announced its decision to the parties with respect to both Motions. The Court has reviewed all of the filings of the parties including the pleadings, motions, briefs, affidavits, exhibits and attachments, the authorities cited by the parties, and the arguments of the parties, and being fully advised and for the reasons set forth in the Court's oral decision which is incorporated herein, it is hereby

**ORDERED, ADJUDGED AND DECREED**, that the Respondents/Defendants' Motion to Dismiss the Verified Petition for lack of subject matter jurisdiction pursuant to SDCL § 15-6-12(b)(1) is GRANTED; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Respondents/Defendants' Motion to Dismiss the Complaint for lack of subject matter jurisdiction pursuant to SDCL § 15-6-12(b)(1) is GRANTED; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Respondents/Defendants' Motion to Dismiss the Verified Petition for failure to state a claim upon which relief can be granted pursuant to SDCL § 15-6-12(b)(5) is GRANTED; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Respondents/Defendants' Motion to Dismiss the Complaint for failure to state a claim upon which relief can be granted pursuant to SDCL § 15-6-12(b)(5) is GRANTED; and it is further

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**ORDERED, ADJUDGED AND DECREED**, that the Verified Petition was filed on November 23, 2022, in violation of SDCL § § 11-4-19 and 11-4-20, as all other judicial proceedings, appeals, or other matters were stayed on November 10, 2022, by the Petitioner/Plaintiff having filed a Notice of Appeal on November 10, 2022, to the Baltic Board of Adjustment, which filed its written decision on January 9, 2023; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Complaint was filed on November 23, 2022, in violation of SDCL § § 11-4-19 and 11-4-20, as all other judicial proceedings, appeals, or other matters were stayed on November 10, 2022, by the Petitioner/Plaintiff having filed a Notice of Appeal on November 10, 2022, to the Baltic Board of Adjustment, which filed its written decision on January 9, 2023; and it is further

**ORDERED, ADJUDGED AND DECREED**, that in order for the Petitioner/Plaintiff to obtain review of the decision of the Planning and Zoning Commission to suspend the issuance of building permits in the Grant Park Addition and Phillips Crossing developments, the Petitioner/Plaintiff was required to file an appeal to the Board of Adjustment within twenty-one (21) days of July 27, 2022, which the Petitioner/Plaintiff failed to do; and it is further

**ORDERED, ADJUDGED AND DECREED**, that an appeal to the Board of Adjustment is properly made from a decision of the Planning and Zoning Commission pursuant to SDCL §§ 11-4-17 and 11-4-19; and it is further

**ORDERED, ADJUDGED AND DECREED**, that there is no right of appeal from the administrative decision of a municipal board or commission to Circuit Court unless the right of appeal is provided by statute, and there is no statute that authorizes the filing by the

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Petitioner/Plaintiff of either the Verified Petition or the Complaint in Circuit Court; and it is further

**ORDERED, ADJUDGED AND DECREED**, that no extraordinary facts or circumstances on the part of the Respondents/Defendants have been alleged, shown, or demonstrated by the Petitioner/Plaintiff that warrant judicial review; and it is further

**ORDERED, ADJUDGED AND DECREED**, that nothing in the Grant Park Addition plat, the Phillips Crossing plat, or SDCL § 11-3-12 and SDCL § 11-6-33, precludes the City from imposing additional requirements on the Plaintiff/Respondent in order to fulfill the statutory duties of the City and the Planning and Zoning Commission to promote the health, safety, and general welfare of the City in accordance with SDCL § § 11-4-1, 11-4-7, 11-4-11, 11-6-1(1), and 11-6-2; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Verified Petition and the Complaint are improper attempts to appeal a decision of the Planning and Zoning Commission directly to the Circuit Court pursuant to SDCL § 11-4-25, when only the decision of a board of adjustment may be appealed to the Circuit Court by filing a petition for writ of certiorari after first having exhausted the administrative appeal process provided by SDCL § § 11-4-19 to 11-4-23; and it is further

**ORDERED, ADJUDGED AND DECREED**, that Petitioner/Plaintiff failed to exhaust its administrative remedies prior to filing the Verified Petition and the Complaint on November 23, 2022; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Court finds that service of process was sufficient in 49CIV22-2973 as provided by SDCL § 15-6-4(d)(2)(ii), and the Motion

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to Dismiss the Complaint of the Petitioner/Plaintiff pursuant to SDCL § 15-6-12(b)(2)-(4) for lack of personal jurisdiction, insufficiency of process and insufficiency of service of process is DENIED; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Motion for Temporary Restraining Order Without Notice, Preliminary Injunction, and Permanent Injunction of Petitioner/Plaintiff in 49CIV22-2973 is dismissed as moot as the Court lacks subject matter jurisdiction over the underlying action; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Court's findings and conclusions contained in the Official Transcript of the hearing on March 7, 2023, a true copy of which is attached hereto as **Exhibit A**, are incorporated by reference into this Order and made a part hereof; and it is further

**ORDERED, ADJUDGED AND DECREED** that the Verified Petition is dismissed, without prejudice; and it is further

**ORDERED, ADJUDGED AND DECREED** that the Complaint is dismissed, without prejudice; and it is further

**ORDERED, ADJUDGED AND DECREED**, that Respondents/Defendants' are entitled to recover their costs and disbursements as provided by law and may submit an application for the same.

Dated at Sioux Falls, South Dakota, on this \_\_\_\_\_ day of March, 2023.

**BY THE COURT:**

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Douglas P. Barnett – Circuit Court Judge