

BOARD OF ADJUSTMENT OF THE CITY OF BALTIC, SOUTH DAKOTA
Appeal of Grant Park Capital, LLC
Minutes of Proceeding and Final Decision
January 9, 2023

The Notice of Appeal of Grant Park Capital, LLC (“Developer”), dated November 10, 2022, was brought on for hearing at 5:00 p.m. on Friday, January 6, 2023, at the Baltic American Legion, 210 St. Olaf, Baltic, South Dakota. The Members present were Debbie Murphy, Travis Schreurs, Ed Wilson, and Ryan Sinding. Nate Vrchota was excused.

Ed Wilson, the Chair of the Baltic Planning and Zoning Commission, called the meeting to order and led those in attendance in the Pledge of Allegiance. Ryan Sinding made a motion that Ed Wilson serve as Board Chair for purposes of the hearing, which motion was seconded by Travis Schreurs, and passed unanimously.

Appearing on behalf of Grant Park Capital, LLC, were the following attorneys: Alex T. Mastellar, Rinke Noonan Law Firm, St. Cloud, Minnesota, and Anna Limoges, Barry Sackett, and Andy Grocott, Goosmann Law Firm, Sioux Falls, South Dakota. Baltic City Attorney John R. Hughes appeared on behalf of the Board of Adjustment.

City Attorney Hughes requested that the Affidavit of Kelli Buscher, and Exhibits 1-6, dated January 6, 2023, along with the transmittal letter of Assistant Attorney General for the state of South Dakota Ann F. Mines Bailey, dated January 6, 2023, and the Minutes of the Joint Meeting of the Baltic City Council and the Board of Adjustment, dated October 26, 2022, be made part of the record of the proceedings. Travis Schreurs made a motion to include these materials as part of the record of the proceedings, which motion was seconded by Ryan Sinding, and passed unanimously.

City Attorney Hughes commented that Kelli Buscher is the Program Administrator for the South Dakota Department of Agriculture and Natural Resources (DANR), Surface Water Quality Program, and that as part of her regular duties, she is responsible for directing and managing the Clean Water Act programs for DANR, including the surface water discharge permitting program, the storm water permitting program, and the surface water quality standards. As such, she is personally involved in the administration and supervision of the two Stormwater Discharge Permits issued to Grant Park Capital, LLC, Permit SDR10K637 (Phillips Crossing) and SDR10K562 (Grant Park Addition).

Ed Wilson commented that in view of the DANR materials and the public statements made by the Superintendent of the Baltic School District at the school board meeting on November 14, 2022, that items 1 and 3 of the Joint Motion of October 26, 2022, are moot, and that item 2 calls for a matter of opinion. City Attorney Hughes commented that the Joint Motion has no consequences for the Developer’s failure to comply and that it is undisputed that the Developer failed to comply with any of the requests made in the Joint Motion. Ed Wilson commented that the DANR materials confirm that it is the DANR, and not the City of Baltic, which

is requiring that the Developer stop the flow of stormwater mixed with sediment from washing into the marshy areas and natural drainage systems that extend across the property of the Baltic School District and into Murphy's Pond, and that the natural drainage systems and Murphy's Pond are Waters of the state which DANR is charged by law to protect from pollution.

Ryan Sinding then made a motion finding that the entire Joint Motion is moot and that all parties can move on. Travis Schreurs seconded the motion and it passed unanimously.

The Board heard comments from Attorney Mastellar on behalf of the Developer. The Board heard additional comments from Attorney Limoges on behalf of the Developer. City Attorney Hughes commented that this Appeal falls within the powers of the Board of Adjustment provided in SDCL § 11-4-17(1), and the powers of the City of Baltic as provided in SDCL § 11-4-7, and that review of the Joint Motion by the Board of Adjustment is proper under the South Dakota Supreme Court decision in Lamar Adver. of S.D., L.L.C. v City of Rapid City, 2020 S.D. 30, 944 N.W.2d 793.

Ryan Sinding then made a motion to adjourn. Travis Schreurs seconded the motion and it passed unanimously.

/s/ Ed Wilson
Ed Wilson, Chair

/s/ Ryan Sinding
Ryan Sinding

/s/ Travis Schreurs
Travis Schreurs

/s/ Debbie Murphy
Debbie Murphy