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HUGHES LAW OFFICE

December 2, 2022

Via Email Only

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Andy Grocott
Anna Limoges
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2101 West 69th Street, Suite 200
Sioux Falls, South Dakota 57108

Re: Our file no.: 4816-228 / Grant Park Capital v. City of Baltic, et al

Dear Counsel:

On November 10, 2022, you emailed a document to Mayor Deborah McIsaac and Planning and Zoning Commission President Edward Wilson entitled, "NOTICE OF INJURY PURSUANT TO SDCL CHAPTER 3-21 AND NOTICE OF APPEAL PURSUANT TO BALTIC ZONING REGULATIONS CHAPTER 17.03."

That document states, in pertinent part, "[T]his letter serves as an official Notice of Appeal pursuant to Section 17.03 of the 2010 Revised Baltic Zoning Regulations. *Id.* at p. 4. That document further states, in pertinent part, "The injury sustained by our client began on July 27th, 2022." *Id.*

Section 17.01 of the 2010 Revised Baltic Zoning Regulations ("Zoning Regulations") provides that, "A Board of Adjustment is hereby established for the City of Baltic, which shall consist of the members of the Baltic Planning Commission, pursuant to SDCL 11-4-14."

Section 17.03, which you cite in your November 10 communication, specifically cites Section 17.03 of the Zoning Regulations that provides for an appeal to the Board of Adjustment with respect to any decision of the Authorized Official, which in this case would be the entire Planning and Zoning Commission with respect to the suspension of building permits to lot owners in the development at the Planning and Zoning Commission meeting on July 27, 2022, due to your client's violations of the subdivision regulations.



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Chapter 154, § 154.01, of the Ordinances of Baltic, provides that, “The Baltic Subdivision Regulations are hereby adopted by reference and made a part of this code the same as if set forth herein.”

Your client filed a Notice of Appeal to the Board of Adjustment on November 10, 2022. SDCL § 11-4-20 provides that, “An appeal to the board of adjustment stays all proceedings in the action appealed from . . .” (Emphasis added).

Following receipt of the November 10 communication, Anna Limoges and I had several telephone conversations regarding the request for hearing on the Notice of Appeal. Anna told me that your client was demanding a hearing on Monday, November 28, which, as you know, is the Monday after Thanksgiving Day and a long weekend. I responded that SDCL § 11-4-21 requires that notice of the time and place of the hearing on the Notice of Appeal must be published once at least ten (10) days in advance in a legal newspaper of the municipality. I also told her that due to the publication requirement and the upcoming Thanksgiving Day and a long weekend, it was not possible to hold a hearing on November 28, 2022. I told Anna that a hearing could possibly be scheduled as soon as December 13, 2022. I heard nothing further from any of you on whether or not a hearing could be scheduled on that date.

On Wednesday, November 23, 2022, a Verified Petition for Writ of Certiorari was personally served upon Mayor Deborah McIsaac and City Council and Planning and Zoning Commissioner Ryan Sinding at their homes in Baltic. The Verified Petition falsely claims that, “Grant Park has no other adequate remedy by administrative appeal or otherwise.” See Verified Petition, ¶ 46. This claim is contradicted entirely by your client having filed the Notice of Appeal on November 10, 2022. The Verified Petition claims that your client is entitled to a writ of certiorari pursuant to SDCL §§ 11-4-25 to 11-4-29.

On Wednesday, November 23, 2022, in addition to the Verified Petition for Writ of Certiorari, and despite the clear statutory mandate of SDCL § 11-4-20, your client also brought an entirely separate civil action for declaratory judgment that was also personally served upon Mayor Deborah McIsaac and City Council and Planning and Zoning Commissioner Ryan Sinding at their homes in Baltic.

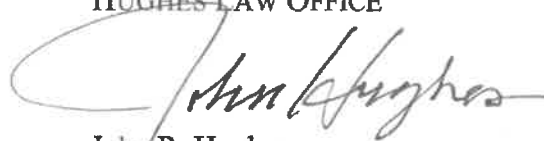
Based upon these judicial filings, we can only conclude that your client has abandoned the Notice of Appeal and has instead elected to pursue the two civil litigation matters filed as Grant Park Capital, LLC v. City of Baltic, et al 49CIV22-002968 and Grant Park Capital, LLC v. City of Baltic, et al 49CIV22-002973. The Court lacks subject matter jurisdiction over these matters and must dismiss these actions as a matter of law.

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Your client failed to exercise the appeal rights to the Board of Adjustment provided by the Zoning Regulations and SDCL § 11-4-19 within twenty-one (21) days of July 27, 2022, when the issuance of building permits was suspended, or at any time thereafter until months later on November 10, 2022. Your client's decision to initiate these confused and duplicative judicial findings will not cure these procedural failures. *See, e.g., Huber v. Hanson Cty. Planning Comm'n*, 2019 S.D. 64, 936 N.W.2d 565.

Attached with this correspondence is a courtesy copy of the Notice of Special Appearance of Council for Respondents in 49CIV22-002968. Subsequent appropriate actions will follow this correspondence.

Very Truly Yours,
HUGHES LAW OFFICE

A handwritten signature in black ink, appearing to read "John R. Hughes", is written over the typed name below.

John R. Hughes

c: Mayor and Council
Planning and Zoning Commission