

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

GRANT PARK CAPITAL, LLC,

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,

Defendants.

49CIV22-002973

**BRIEF IN SUPPORT OF
MOTION TO
DISMISS PURSUANT TO
SDCL § 15-6-12(b)(1) - (5) and
SDCL Ch. 11-4**

Defendants submit the following as their Brief in Support of Motion to Dismiss pursuant to SDCL § 15-6-12(b)(1)-(5) and SDCL Ch. 11-4.

INTRODUCTION

The Complaint must be dismissed, with prejudice. Under well-established South Dakota case law and statutes, Plaintiff's sole and exclusive remedy to challenge the City of Baltic Planning and Zoning Commission's decisions related to the denial of a permit is to appeal to the Board of Adjustment under SDCL 11-4-19, and if the Plaintiff is aggrieved by the appeal decision of the Board of Adjustment, Plaintiff's sole and exclusive judicial remedy is to seek review of the Board of Adjustment's decision by filing a petition for writ of certiorari under



been served with a copy of the Summons and Complaint. Accordingly, the Complaint must also be dismissed for lack of personal jurisdiction over the Defendants, insufficiency of process and insufficiency of service of process pursuant to SDCL 15-6-12(b)(2)-(4).

III. THE COMPLAINT COULD ALSO BE DISMISSED UNDER SDCL 15-6-12(b)(5) BECAUSE ALL OF PLAINTIFF'S CLAIMS AGAINST THE CITY ARE BASED ON AN ARGUMENT THAT LACKS MERIT AS A MATTER OF LAW.

Boiled down, Plaintiff's entire Complaint is premised on the baseless assertion that approval of the plats by the City Council and Planning and Zoning Commission somehow operates, as a matter of law, to have somehow "contracted away" the duties and responsibilities of the City and City Officials to enforce the Subdivision Regulations or to protect the public health, safety and welfare by ensuring an adequate water supply to the Development property. *See* Complaint. The relief sought by Plaintiff in this declaratory judgment action ostensibly claims that plat approval of the subdivisions requires the City to accept the development property "as is" and that Grant Park is completely relieved from having to comply with the City's Subdivision Regulations, thereby prohibiting the City from exercising its statutory authority to perform all of the duties and exercise all of the powers prescribed in SDCL Chapter 11-4 (Municipal Planning and Zoning) through a board of adjustment exercising the powers prescribed in SDCL § 11-4-17. Grant Park's arguments are absolutely baseless.

The Complaint cites SDCL § 11-3-6 as authority for its position on the significance of the City having approved a final plat on each subdivision. However, SDCL § 11-3-12 addresses and rejects this specific claim by Grant Park:

When the plat or map shall have been made out, certified, acknowledged, and recorded as provided in this chapter, every donation or grant to the public . . . marked or noted as such on such plat or map, shall be deemed a sufficient conveyance to vest the fee simple title of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes a general warranty against the donor, his heirs, and representatives, to the donee or grantee, his heirs and representatives, for the uses and purposes therein expressed and intended, and no other use or purpose whatsoever. **The land intended to be**

used for the streets, alleys, commons, or other public uses shall be held in trust to and for the uses and purposes expressed or intended. No governing body shall be required to open, improve, or maintain any such dedicated streets, alleys, ways, commons or other public ground solely by virtue of having approved a plat or having partially accepted any such dedication, donation, or grant. (Emphasis added).

(emphasis added). Grant Park also neglects to cite SDCL § 11-6-33 which provides, in pertinent part:

The approval of a plat by the council shall not be deemed to constitute or effect an acceptance by the municipality or public of the dedication of any street or other ground shown on the plat. (Emphasis added).

Plaintiff also fails to recognize that Article VII, Section 2, of the Subdivision Regulations, stating that Approval of the Final Plat of the Development by the Planning and Zoning Commission occurs when signed by the presiding officer, also expressly states that, “**Such signature shall be conditional upon the developer completing, in accordance with the Planning Commission and City Council directives and standards, all street, sanitary, water, and other improvements as required by these regulations” and which regulations include, without limitation, Article VI, Section 5 (Drainage and Storm Sewer), Section 6 (Water Facilities), Section 7 (Sewerage Facilities), and Section 11 (Construction Standards).** (emphasis added). Article VII, Section 1, of the Subdivision Regulations, also specifically requires the City Council to provide for the inspection of the required improvements during construction in order to insure their satisfactory completion before public dedication.

More importantly, the Owner’s Certificate for the Grant Park plat signed by Brian Hefty on November 5, 2021, on behalf of Grant Park Capital, LLC, states the following:

WE, GRANT PARK CAPITAL, LLC, DO . . . ALSO CERTIFY THAT WE ARE THE OWNERS OF ALL LAND INCLUDED IN THE ABOVE PLAT AND THAT SAID PLAT HAS BEEN MADE AT OUR REQUEST AND IN ACCORDANCE WITH OUR INSTRUCTIONS FOR THE PURPOSE OF PLATTING, AND THAT THE DEVELOPMENT OF THE LAND SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION AND EROSION AND SEDIMENT

CONTROL REGULATIONS . . . ANY LAND SHOWN IN THE ABOVE PLAT AND DESIGNATED AS A STREET OR ALLEY IS HEREBY DEDICATED TO PUBLIC USE AS SUCH FOREVER, BUT SUCH DEDICATION SHALL NOT BE CONSTRUED AS A DONATION OF THE FEE OF SUCH LAND. (JRH Affidavit, Ex. N (Grant Park), page 4. (Emphasis added).

The City Council Resolution references the document as simply as “THIS PLAT.” *Id.* With the exception of the location of future streets, no public improvements are shown on the plat.

The Owner’s Certificate for the Phillips Crossing plat signed by Brian Hefty on September 28, 2021, on behalf of Grant Park Capital, LLC, similarly states the following:

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF ALL LAND INCLUDED IN THE ABOVE PLAT AND THAT SAID PLAT HAS BEEN MADE AT OUR REQUEST AND IN ACCORDANCE WITH OUR INSTRUCTIONS FOR THE PURPOSE OF PLATTING, AND THAT THE DEVELOPMENT OF THE LAND SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION AND EROSION AND SEDIMENT CONTROL REGULATIONS. (JRH Affidavit, Ex. O (Phillips Crossing), page 2. (Emphasis added).

Again, the City Council Resolution references the document as simply “THIS PLAT”, and with the exception of the location of future streets, no public improvements are shown on the plat. *Id.* Of note, neither of the subdivision plats for Grant Park states that it is a “final plat.” (JRH Affidavit, Ex. N (Grant Park) and Ex. O (Phillips Crossing)).

Simply put, contrary to Plaintiff’s entire premise in this lawsuit, the City’s approval of the plats does not create a “fixed agreement” between the municipality and the developer as contended by Grant Park, after which the municipality can no longer enforce the provisions of the Subdivision Regulations, zoning ordinances, and erosion and sediment control regulations governing land use. Plaintiff’s contention in the Complaint that the City’s actions in denying permits are somehow improper because the City had previously approved the Plat, and as a result, can take no further action to require compliance with the applicable Subdivision Regulations, zoning regulations, subdivision and erosion and sediment control regulations, is wholly without merit.

Grant Park is engaging in a contorted and mutually exclusive series of attempts to shirk the administrative appeal process required by South Dakota statutes and the municipal ordinances of Baltic in a baseless attempt to finagle its way out of compliance with the well-established statutory and regulatory duties and responsibilities of the developer of a residential subdivision. Grant Park's apparent objective is to externalize the financial impact of Grant Park's own obstinate misconduct onto the citizens and taxpayers of Baltic. A far more expedient (and presumably far less costly approach) would be to take responsibility for compliance with the Subdivision Regulations and to implement proper controls and measures to minimize soil erosion and the uncontrolled flooding of stormwater through the development property and onto the land of adjacent property owners, including the waters of the state located within the municipal limits of Baltic. The actions taken by the City and the Planning and Zoning Commission to enforce this compliance are well within the powers granted to municipalities under SDCL 11-4. SDCL § 11-4-7 specifically authorizes "the proper local authorities" of a municipality to, in addition to other remedies, institute "any appropriate proceedings" to "restrain, correct, or abate" any use of land in violation of the regulatory powers of a municipality as provided in accordance with SDCL § 11-4-1. SDCL §11-4-7 further provides, in pertinent part, that:

In case any . . . land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful . . . use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent the illegal act, conduct, business or use in or about such premises. (Emphasis added).

Plaintiff's claims against the City, as plead in this action, lack merit a matter of law for these additional reasons and must be dismissed for failure to state a claim.

CONCLUSION

For the above reasons, Defendants request that the Complaint be dismissed, with prejudice, and that Defendants recover their costs, disbursements, and attorney's fees to the extent allowed by law.

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

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