



HUGHES LAW OFFICE

December 1, 2023

Via Email Only

joe@schoenbecklaw.com

Mr. Joe Erickson
SCHOENBECK & ERICKSON, PC
1200 Mickelson Dr., STE. 310
Watertown, South Dakota 57201

Re: Our File No. 4816-228 / Grant Park Capital, LLC

Dear Mr. Erickson:

On Friday, November 3, 2023, you sent an email in which you state:

I want to focus on the Detention Pond. Again, we have a contractor ready to go. From what I understand, we could still get the contractor out there next week.

The Detention Pond fits the terms of the [Settlement] Agreement—it includes portions of both School and City property. Thus, ‘part’ of the Detention Pond is on City Property.

GPC is ready to uphold our side of the Settlement Agreement and build this Detention Pond in the location allowed by the terms of the Settlement Agreement. (Emphasis added).

A copy of that email is attached as Exhibit 1 to this letter.

On Monday, October 2, 2023, Pat Carey, P.E., Civil Department Head of Banner Associates, Inc., the engineering firm representing both your client, Grant Park Capital, LLC, and the Baltic School District, states the following, which completely contradicts your email:

We will work to complete the NOI [Notice of Intent] for the site – my understanding is the city will be the applicant as construction will take place on their property. GPC [Grant Park Capital] will provide the form and permit fee for city to sign and submit. (Emphasis added).

A copy of that email is attached as Exhibit 2 to this letter.

The Grant Park Addition- Detention Pond Proposed Detention Pond Layout confirms that the location of the Detention Pond proposed by your client is located entirely on City property. A copy of that document prepared by Banner Associates is attached as Exhibit 3 to this letter.

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The location of the Detention Pond proposed by your client as entirely on City property is further confirmed in the Grant Park Addition Stormwater Detention Pond Overall Grading Plan. A copy of that document also prepared by Banner Associates is attached as Exhibit 4 to this letter.

If these documents prepared by your client's civil engineers are not understandable to you and your client, the attached Mapbox Static Image should drive the point home. A copy of the Mapbox Static Image is attached as Exhibit 5 to this letter.

Article 1, Section 1.01 of the Settlement Agreement only allows the Grant Park Detention Pond on a location in the area to the North of Bulldog Avenue and to the East of Murphy's Pond that is located "in part on City property." Your client's proposed Detention Pond at this location is expressly disallowed by the express terms of the Settlement Agreement.

In addition to violating the express conditions of the Settlement Agreement, Justin Heim, P.E., of ISG, Inc., the City's engineering firm, has reviewed the plans and specifications of this unauthorized location and concludes on the basis of Banner's own hydrologic data and modeling that the plans and specifications are unsound as a matter of generally accepted engineering standards and practices.

For example, by way of illustration and not limitation, the walkway to the football field will be overtopped during a 100-year event. The football field itself will be inundated during a 100-year event, with anticipated inundation of the football field by between two and three inches of standing water.

In addition, Bulldog Avenue, a public street, will be inundated up to six inches or more and even to higher levels due to curb and gutter. And the list goes on.

Moreover, and most importantly, your client is in default under the terms of the Settlement Agreement, as October 28, 2023, is the date 120 days after the Settlement Agreement was approved by the City Council. We are now more than a full month past that date. There is no approved detention pond for either the alternate site or the primary site on the four identified lots in the Grant Park Addition.

In view of your client's failure to comply with the express terms of the Settlement Agreement with respect to the Detention Pond, your client's only option is to proceed with the Detention Pond located on the four identified lots in Grant Park Addition as referenced in Article 1, Section 1.01, Section 1.01 of the Settlement Agreement. Preliminary approval subject to revisions to be approved by the City's engineering firm, was given in the Joint Meeting of the City Council & Planning and Zoning Commission on November 8, 2022. A copy of page one of the Minutes of that meeting is attached as Exhibit 6 to this letter.

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The City continues to await answers from your client to the four questions posed to Grant Park Capital in my detailed email of October 24, 2023. Once again, rather than engage in rational problem-solving, your client pivots again with your letter and enclosures of November 20, 2023, requesting that “the Grant Park and the Phillips Crossing [be] accepted by the City at your next meeting.”

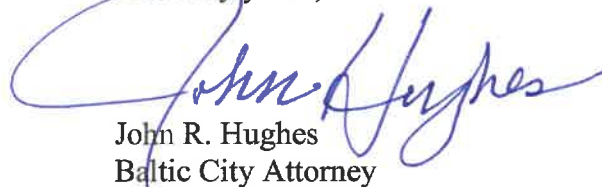
In the meantime, the DANR has assessed an additional \$23,000 in penalties against your client for failing to comply with the stormwater permit requirements and the terms of the settlement agreement between your client and the DANR from June, 2023. These additional penalties are for issues that substantially overlap with your client’s corresponding failure to comply with the Ordinances and Subdivision Regulations of the City of Baltic and the plans and specifications for the developments prepared by Banner Associates. There is an obvious pattern of noncompliance on the part of your client with civil authorities. Perhaps this pattern of behavior is a source of pride for your client, as opposed to following the path of rational problem-solving.

In summary, it is not the obligation of the City’s elected and appointed officials to educate your client on the many aspects of residential subdivision development. The situation your client faces is entirely of his own creation. As the South Dakota Supreme Court ruled more than 35 years ago:

Contractors who do business with public entities do so at their peril. They are charged with the duty to be familiar with the statutory requirements and to adhere to them. Robert L. Carr Co. v. Sioux Falls, 416 N.W.2d 602, 604 (S.D. 1987). (Emphasis added).

Another winter season is fast approaching, and as the developments have not been accepted by the City, your client continues to be responsible for all snow removal and winter maintenance on the streets and public right of ways in Grant Park Addition and Phillips Crossing.

Sincerely yours,



John R. Hughes
Baltic City Attorney

Enclosures

- c: Mayor and City Council w/encs.
- Planning and Zoning Commission w/encs.
- Ryan Fods w/encs.
- Justin Heim, P.E. w/encs.