

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

SHENANDOAH HILLS WIND PROJECT, LLC,	)	Case No. 1:23-cv-00005-SMR-SBJ
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
PAGE COUNTY IOWA, PAGE COUNTY	)	ORDER ON DEFENDANTS’ MOTION
BOARD OF SUPERVISORS, PAGE	)	TO DISMISS
COUNTY BOARD OF ADJUSTMENT,	)	
JAMES D. KING, in his official capacity as	)	
Page County Zoning Administrator, JACOB	)	
HOLMES, in his official capacity as Page	)	
County Supervisor, TODD MAHER, in his	)	
official capacity as Page County Supervisor,	)	
JUDY CLARK, in her official capacity as	)	
Page County Supervisor, JAMES O’HARA,	)	
in his official capacity as a Member of the	)	
Page County Board of Adjustment,	)	
MICHAEL BARR, in his official capacity as	)	
a Member of the Page County Board of	)	
Adjustment, KALEN FULK, in his official	)	
capacity as a Member of the Page County	)	
Board of Adjustment, MERRILL KRUSE, in	)	
his official capacity as a Member of the Page	)	
County Board of Adjustment, and LINDSEY	)	
PIRTLE, in her official capacity as a	)	
Member of the Page County Board of	)	
Adjustment,	)	
	)	
Defendants.	)	

Plaintiff Shenandoah Hills Wind Project, LLC (“SHW”) would like to build a wind project across Page County and Fremont County in southwestern Iowa. The company has spent more than \$10 million and several years developing the project including consulting with local officials, submitting permit applications, and consummating collateral agreements with both counties. The

project has not been welcomed by everyone in the area, evidenced by the fact that it has been the subject of multiple lawsuits in state and federal court.

Opponents of the project have not been successful in obtaining judicial relief. Shortly after a federal court ruling rejecting a challenge to the project, SHW received a letter from the Page County Zoning Administrator stating that the previously-approved permit application was now void because of purported changes to the original application. After an unsuccessful appeal to the Page County Board of Adjustment, SHW brought this lawsuit against Page County, the Page County Board of Supervisors, the Page County Board of Adjustment, and various county officials (collectively, “Defendants”) alleging violations of the United States and Iowa Constitutions as well as violations of state law.¹ Defendants move to dismiss the complaint.

I. BACKGROUND

A. *Factual Background*²

SHW is a developer of renewable energy projects in the United States and throughout the world, including fourteen wind projects located in Iowa that are currently in operation. Development of the project at issue in this case began in the fall of 2019. SHW tells the Court that the project is a state-of-the-art commercial wind energy conversion system (“WECS”).³ The

¹ The individual Defendants, sued in their official capacity, are: James D. King, Page County Zoning Administrator; Jacob Holmes, Todd Maher, and Judy Clark, all Page County Supervisors; and James O’Hara, Michael Barr, Kalen Fulk, Merrill Kruse, and Lindsey Pirtle, all members of the Page County Board of Adjustment.

² The factual background is drawn from SHW’s amended complaint. [ECF No. 4]. All the factual allegations are accepted as true and construed in the light most favorable to SHW. See *Smithrud v. City of St. Paul*, 746 F.3d 391, 397 (8th Cir. 2014).

³ “WECS are windmill-like structures that include ‘all necessary devices that together convert wind energy into electricity, including Wind Turbines, electrical components, transformers, feeder lines, substation and meteorological towers.’” *Hunter v. Page Cnty.*, 653 F. Supp. 3d 600, 607 (S.D. Iowa 2023) (cleaned up).

WECS project, according to SHW, is “anticipated to bring millions of dollars in payments to landowners, millions of dollars in new tax revenue, and temporary and permanent jobs to Page County.” [ECF No. 4 ¶ 25]. Additionally, the company claims that the project aligns with state and federal policy goals to “provide clean, renewable energy to the electrical grid in southwest Iowa.” *Id.* ¶ 26.

According to the Amended Complaint, SHW notified county officials of its interest in developing and constructing a WECS in Page County around September 2019. In October 2019, the Board of Supervisors enacted a wind ordinance (the “Ordinance”).

1. Ordinance

The Ordinance states that its purpose is to promote the public health, safety, comfort, and general welfare; facilitate economic opportunities for rural residents; promote increased renewable energy production; and establish guidelines for the siting, construction, and operation of WECS. [ECF No. 1-2 at 2]. The Ordinance governs not only construction of a WECS after its effective date, but also requires that any modification or alteration of an existing WECS comply with its terms. *Id.*

The Ordinance sets forth a variety of detailed requirements for an application for a permit. An applicant must provide: a site layout detailing the location of all proposed wind turbines and whether a setback is applicable; the total height and rotor diameter of the proposed turbines; documentation of landownership or legal control of the property for the proposed sites; affirmation that the maximum sound levels of the turbines would not exceed 55 decibels measured at non-participating residences; affirmations that required applications have been filed with the Federal Communications Commission (“FCC”) and Federal Aviation Administration (“FAA”); and affirmation that an environmental review has been completed. *Id.* at 4–5. Other application

requirements include specifications about the color, finish, configuration, lighting, and signage of the WECS. Mitigation efforts regarding interference with microwave paths and electromagnetic communications (radio, telephone, and television) must be described. Permit applicants must also include information about compliance with minimum setback standards from inhabited structures, property lines, public rights-of-way, radio communication pathways, and other public property.

The permitting process begins with submission of an application to the Page County Zoning Administrator who is charged with determining whether the requirements of the Ordinance are satisfied. After that, the WECS application and supporting documentation is submitted to the Page County Board of Supervisors for approval. If the application is approved by the Board of Supervisors, the Ordinance directs the Zoning Administrator to supply the necessary building permits for each wind turbine. The Ordinance also provides:

[i]f there are any material changes to the information provided as part of the application in Section 3 that occur from the time of the application until the construction of the WECS, the applicant shall submit a new application (along with an application fee per Wind Turbine with changed information) together with the updated information for each Wind Turbine (with changes to the information required to be provided in Section 3) and any such change shall be in compliance with this Ordinance.

[ECF No. 1-2 at 5].⁴ This provision is known as the “Material Change Provision.” Construction on a WECS project cannot begin until the permit holder has entered into a road use agreement and a decommissioning agreement with the County. A road use agreement requires the permit holder to restore the roads used during the construction of a WECS back to their prior condition.

⁴ When ruling on a motion to dismiss under Rule 12(b)(6), a court may consider materials attached to the complaint. *Abels v. Farmers Commodities Corp.*, 259 F.3d 910, 921 (8th Cir. 2001).

The decommissioning agreement ensures that the costs of decommissioning and removing a WECS is borne by the permit holder and not the County. It protects the County from unforeseen costs associated with the decommission and removal of WECS components at the conclusion of a project's life. The provisions of the decommissioning agreement here requires that all wind turbines be dismantled and removed within 180 days after the cessation of their use and identifies the financial resources that will be available to pay for the decommission and removal.

2. Permit Application Process

SHW avers that it consulted with Page County Zoning Administrator James King on several occasions during the application process to ensure its permit application was in full compliance with the Ordinance. Regarding the Material Change Provision of the Ordinance, the company contends that King told SHW that a new permit application would be required if (1) it wished to construct additional turbines not identified in the original application or (2) the construction of a turbine would be more than 300 feet from the proposed location identified in the application. [ECF No. 4 ¶ 49]. SHW alleges that King did not say that eliminating a proposed turbine location would constitute a “material change” to the application as defined in the Ordinance. *Id.* ¶ 50.

SHW submitted its permit application to King on March 7, 2022. *Id.* ¶ 51. The permit application identified the location of 31 proposed turbine sites in Page County. It also included a report analyzing potential interference with local radio stations along with a recommended exclusion distance from Station KYFR. [ECF No. 1-3 at 15, 32–39]. The permit application expressly stated the final layout of the turbines was uncertain because the number had not yet been determined. [ECF Nos. 1-3 at 4–5; 4 ¶ 55]. SHW also requested flexibility of up to 300 feet in siting the turbines due to unforeseen circumstances. *Id.* The application stated that the specific

turbine models to be constructed were still under consideration, but the company affirmed that the choice would comply with the requirements of the Ordinance. [ECF Nos. 1-3 at 7; 4 ¶ 62]. The Amended Complaint identifies supply chain issues and market volatility as reasons why SHW could not “predict the future availability, cost, or procurement timelines for specific turbine models under consideration for the Project when it submitted its permit application.” [ECF No. 4 ¶ 68].

Pursuant to the Ordinance’s requirement that a WEC minimize and mitigate interference with radio, telephone, and television signals, the permit application noted that the construction of five of the turbine sites was expressly conditioned on SHW reaching an agreement with Station KYFR to discuss mitigation options. [ECF Nos. 1-3 at 10; 4 ¶¶ 65, 66]. According to the permit application, a minimum separation distance of three kilometers was necessary to avoid potential interference with the radio station. [ECF Nos. 1-3 at 38; 4 ¶¶ 65, 67].

The Amended Complaint alleges that SHW was “careful to explain” that these uncertainties at the time the application was submitted meant that the layout for the project was not finalized. [ECF No. 4 ¶ 69]. The company maintains that these contingencies were made clear in the written permit application and through statements by company representatives during public meetings. *Id.*

3. Permit Approval

King’s review of the permit application took approximately two months. *Id.* ¶ 70. During that time, King clarified several matters with SHW, but the Amended Complaint alleges that he never asked for the specific number of turbines to be constructed, or their precise location, if the application was approved by the County. *Id.* ¶ 71. Soon after submitting the permit application, SHW learned that a landowner had incorrectly executed an easement agreement associated with three of the proposed locations in Page County, necessitating withdrawal of those proposed

locations. *Id.* ¶ 72. In response, SHW submitted an addendum to the permit application, which the Amended Complaint avers was accepted by King. *See* [ECF No. 1-4].

King determined that the permit application complied with the Ordinance on May 31, 2022. [ECF No. 4 ¶ 77]. He then submitted the entire application and its addendum to the Board of Supervisors for consideration. *Id.* Several public meetings were held over the next two months where the Board of Supervisors discussed the application. The Board of Supervisors also retained outside counsel to assist with the review of the permit application and addressing questions from members of the public during these meetings. [ECF No. 1-5 at 15] (minutes from July 5, 2022 meeting of the Page County Board of Supervisors approving the hire of Ahlers & Cooney “for legal advice regarding pending questions” on SHW’s application).

SHW has attached to the Amended Complaint copies of the official minutes of the Board of Supervisors meetings between April 26, 2022 to September 6, 2022. *See id.* The Amended Complaint alleges that the Board of Supervisors was aware that only 28 of the potential turbine locations in the permit application were intended for construction and that an agreement between SHW and KYFR over potential radio interference was still pending for some of the sites. [ECF Nos. 1-5 at 9, 18; 4 ¶ 82]. The permit application was approved by a 2-1 vote by the Board of Supervisors on August 2, 2022. [ECF No. 4 ¶ 95]. The Board of Supervisors determined that the permit application met all of the requirements set forth in the Ordinance, consistent with the recommendation from King and legal counsel. [ECF No. 1-5 at 20–21].

Supervisors Alan Armstrong and Chuck Morris were the two supervisors who voted in favor of approving the permit application. *Id.* at 20. Voting against the permit application was Supervisor Jacob Holmes. *Id.* The Amended Complaint alleges that during the August 2 meeting, Holmes was dissatisfied with several issues related to the permit application, specifically the

interpretation of “material change” put forth by the Page County Attorney. [ECF Nos. 1-5 at 20; 4 ¶ 94]. Holmes said, in his view, a material change had occurred because not all the proposed turbines contained in the application were going to be constructed. [ECF Nos. 1-5 at 21; 4 ¶ 94]. Immediately after the vote approving the permit application, Holmes expressed his belief that approval should be conditioned on “the radio station.”⁵ *Id.* ¶ 93. The record does not reflect that any express conditions on the approval were placed by the Board of Supervisors. [ECF Nos. 1-5 at 21; 4 ¶ 95].

4. Litigation History

As mentioned earlier, SHW’s proposed project has already been the subject of litigation. First, in September 2022, a group of individuals opposed to the project sued Page County in Iowa state district court seeking to void the Ordinance and the approval of the permit application. That case was soon removed to federal court. *See Hunter v. Page Cnty.*, Case No. 1:22-cv-00017-RP-HCA (S.D. Iowa Oct. 18, 2022), ECF No. 1.⁶

During the pendency of the *Hunter* case, Morris negotiated the decommissioning agreement with SHW while Armstrong negotiated the road use agreement. [ECF No. 4 ¶ 99]. Neither agreement has ever been placed on the agenda of the Board of Supervisors for approval. *Id.* ¶ 100. In January 2023, the composition of the Board of Supervisors changed when Armstrong was replaced by Supervisor Todd Maher. *Id.* ¶ 101. Holmes became the Chairperson of the newly

⁵ This statement is not quoted in the meeting minutes, but video of the meeting is posted to the Page County YouTube page. *See 8/2/2022 Page County Iowa BOS Meeting -- Shenandoah Hills Wind Project Vote*, YouTube, <https://www.youtube.com/watch?v=t9C0PM9cjcg> (last visited Mar. 15, 2024).

⁶ Then-Senior United States District Judge Robert Pratt, now retired, presided over the *Hunter* case. The Court will cite to both the docket in the *Hunter* case and Judge Pratt’s order published on January 31, 2023.

constituted Board of Supervisors, replacing Morris who resigned his position after the January 3, 2023 meeting because he no longer met the residency requirements. *Id.* ¶ 103.

The Board of Supervisors then met on January 4, 2023 and January 5, 2023. *Id.* ¶ 104. After each meeting, Supervisors Holmes and Maher voted to go into closed session to consult with legal counsel. [ECF Nos. 1-5 at 41; 4 ¶ 104]. Soon after the closed session on January 4, 2023, Page County withdrew its resistance to the motion to remand in the *Hunter* case and filed a notice of consent to remand. *Hunter*, ECF No. 76. After holding a hearing on the motion to remand as well as the pending motion to dismiss in *Hunter*, Judge Pratt denied the motion to remand and granted the motions to dismiss filed by the County and SHW, who had intervened under Federal Rule of Civil Procedure 24. *Hunter*, 653 F. Supp. 3d at 620.

Shortly before Judge Pratt's ruling in *Hunter*, a different group of individuals opposing the project filed suit in Iowa state court against Fremont County and the Fremont County Board of Supervisors. *Jennings v. Fremont Cnty.*, Case No. EQCV025651 (Iowa Dist. Ct. Jan. 25, 2023). About half of the proposed WECS are to be sited in Fremont County. The *Jennings* case sought to halt development by invalidating a very similar wind ordinance adopted by the Fremont County Board of Supervisors and the WECS permit granted to SHW in July 2022.

On February 3, 2023, three days after Judge Pratt dismissed the *Hunter* case, King issued a decision declaring that SHW's permit application was void. King provided the following reasoning:

The Page County Attorney has informed me of a letter of record from Family Stations, Inc. (FSI) addressed to the Page County Board of Supervisors stating that an agreement has been reached between FSI and the Shenandoah Hills Wind Project (SHWP), LLC. The SHWP has agreed to eliminate three wind turbines, and with this change the radio station's signal will not be affected.

This reduction of three wind turbines, combined with the previous reduction of three wind turbines by addendum dated March 21, 2022, is a decrease of six (6) turbines from the SHWP's initial application of March 7, 2022. This reduction in the number of wind turbines constitutes a material change. Therefore, according to the fourth sentence of the last paragraph of Section 3 of Page County Ordinance 2019-2, a new application must be submitted to reflect these changes in the SHWP, and the current application is void.

As you know, a moratorium on receiving new applications is currently in effect. However, it has an ending date of March 23, 2023. I look forward to the submittal of a new application for the Shenandoah Hills Wind Project.

[ECF No. 1-1 at 1] (the "Decision"). The Decision references a "letter of record" which was a correspondence received by the Page County Attorney in early January 2023 from the owner of Station KYFR. [ECF No. 1-6]. The letter states that Station KYFR had withdrawn its objection to the project because it had reached an agreement with SHW. *Id.* at 1. As part of the agreement, SHW agreed it would not construct turbines at three locations identified in the permit application due to potential interference with the radio station's broadcast signal. *Id.* at 1, 3.

The Decision noted a "moratorium on receiving new applications is currently in effect," which is a reference to a resolution by the Board of Supervisors prohibiting applications for WECS permits for 180 days. The moratorium was itself an extension of a previous 180-day moratorium that was first instituted on March 23, 2022. [ECF No. 4 ¶ 119].

The Amended Complaint alleges that King was personally aware of several facts at the time he issued the Decision: (1) SHW had informed the County that it would not build three turbine sites that were listed in the application; (2) the Board of Supervisors had approved the permit application with full knowledge that turbines would not be built at those three locations; (3) the permit application had expressly conditioned construction of up to five other turbines on an agreement with Station KYFR; and (4) the Board of Supervisors had approved the application

knowing that SHW would not build at the proposed locations without an agreement with Station KYFR, which had not been reached at the time of the approval. [ECF No. 4 ¶¶ 120–123]. In light of the Board of Supervisors’ knowledge about these matters, SHW alleges that there was no “contingency” to the approval of the permit application—as Supervisor Holmes had urged at the meeting approving the application—so King had no basis to “void” the permit application. *Id.* ¶ 124.

On February 14, 2023, SHW appealed the Decision to the Page County Board of Adjustment. [ECF Nos. 1-7; 4 ¶ 127]. The stated grounds for the appeal were: (1) there was no change to relevant information provided to the Board of Supervisors; (2) no material change occurred from the application; (3) the supervisors who approved the application knew the relevant information and approved the application; and (4) the revocation of the permit unlawfully violated SHW’s rights. [ECF No. 1-7 at 8–12].

A public hearing on the appeal was held on March 3, 2023.⁷ [ECF No. 1-8]. SHW alleges that during the hearing, the County acknowledged that “material”—as it relates to the Material Change Provision—indicates “having to do with matter as distinguished from form” and “so substantial and important as to influence” a decision. [ECF No. 4 ¶ 140]. Prior to its vote, the Board of Adjustment discussed the presentations given by SHW and the County. Board Member Kalen Fulk allegedly told other members of the Board of Adjustment that SHW had not complied with FCC regulations regarding the location of the turbines. *Id.* ¶ 143. The Amended Complaint states that the FCC does not have jurisdiction over the siting or permitting of wind turbines and the Decision does not state that failure to follow FCC regulations was a basis for voiding the permit

⁷ One day prior to the hearing on SHW’s appeal, the Board of Supervisors again voted to extend the “moratorium on receiving new applications” for another 180 days. [ECF No. 1 -9].

anyway. *Id.* ¶ 144. Other members of the Board of Adjustment, Member Merrill Kruse and Member James O’Hara questioned why the appeal was before the Board of Adjustment. *Id.* ¶ 146. In the end, the Board of Adjustment voted 3-0 to deny SHW’s appeal and affirm the Decision. *Id.* ¶ 147. Members Kruse and O’Hara both abstained from the vote. *Id.*

On June 13, 2023, the Iowa state district court granted SHW’s motion to dismiss in the *Jennings* case. [ECF No. 14-2]. The state district court judge dismissed all 21 counts brought by the plaintiffs in that case. *Id.* at 1–7.

B. Procedural History

SHW asserts five claims against Defendants in the Amended Complaint. Count I alleges a takings claim in violation of the United States and Iowa Constitutions. The Amended Complaint asserts that the Decision is a regulatory taking which denies SHW all economically beneficial use in its property without just compensation. Count II alleges the Decision was a violation of SHW’s procedural due process rights protected by the Due Process Clause of the United States Constitution by failing to provide the company with sufficient notice and a meaningful opportunity to be heard before depriving it of its protected property interest. Count III is a state law claim for violation of SHW’s “vested rights.” SHW alleges that it made substantial expenditures in the development of the project before the Decision, thus vesting its rights to complete the project. Counts IV and V seek a writ of certiorari under Iowa law ordering the Decision to be vacated.

Defendants move to dismiss the Amended Complaint in its entirety. [ECF No. 9]. They argue that Count I and Count II must be dismissed pursuant to the exclusive remedy doctrine because the relief sought by SHW can only be obtained through a writ of certiorari. Defendants contend that Counts III, IV, and V should be dismissed for a lack of subject matter jurisdiction due to the absence of a substantial federal question.

SHW resists the Motion to Dismiss. [ECF No. 10]. It maintains that the exclusive remedy doctrine does not bar the first three counts of the Amended Complaint. Furthermore, SHW contends that it would be error to dismiss for a lack of subject-matter jurisdiction because federal questions are present on the face of four counts. Finally, it argues that the Amended Complaint meets the standard for certiorari under Iowa law as well.

After the state court dismissed the complaint in *Jennings*, SHW filed a motion informing the Court that this lawsuit “is now the primary hurdle to SHW resuming development of the Project.” [ECF No. 14-1 at 3–4].

II. DISCUSSION

Defendants assert that in Counts I, II, and III, the only relief sought by SHW is a declaration that the Decision violated the law. They argue that Counts I and II contravene the exclusive remedy doctrine because they were brought as declaratory judgment claims, not as writs of certiorari. Defendants insist that simply because SHW raises federal constitutional issues does not change the fact the company seeks a determination that the Decision was illegal. Defendants characterize Count III as alleging a different version of the claim that the Decision was invalid, but it too violates the exclusive remedy doctrine because it was not pled as a writ of certiorari.

Defendants take the position that if Counts I and II are dismissed based on the exclusive remedy doctrine, subject-matter jurisdiction over this case no longer exists. They maintain that the claim for vested rights in Count III and the writs of certiorari under state law in Counts IV and V are insufficient to support federal question jurisdiction. The remaining issue contained in the pleadings—whether the interpretation of a local zoning ordinance by a Page County zoning administrator—is not a substantial federal question, according to Defendants.

A. Motion to Dismiss Standard

The Federal Rules of Civil Procedure provide, “[a] pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Rule 12 directs that a complaint must be dismissed if it fails “to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a challenge for failure to state a claim, a complaint “must contain sufficient factual matter . . . to ‘state a claim to relief that is plausible on its face.’” *Rydholm v. Equifax Info. Servs. LLC*, 44 F.4th 1105, 1108 (8th Cir. 2022) (citation omitted). Detailed allegations are not required to survive a Rule 12(b)(6) motion to dismiss, but a complaint must contain sufficient factual matter, accepted as true, “to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

“A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” Fed. R. Civ. P. 10(c). Relatedly, a court may also consider “documents necessarily embraced by the complaint,” including “documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleadings.” *Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017) (quoting *Ashanti v. City of Golden Valley*, 666 F.3d 1148, 1151 (8th Cir. 2012)). It is permissible for a court take to judicial notice of “materials that are part of the public record or do not contradict the complaint.” *Greenman v. Jessen*, 787 F.3d 882, 887 (8th Cir. 2015) (citation omitted).

B. Exclusive Remedy Doctrine

Defendants liken the Amended Complaint to a “web” that unnecessarily complicates this case by segregating legal issues arising from the Decision into three different counts—Counts I, II, and III—which they maintain are all improperly brought as declaratory judgment claims. They assert that these three claims cannot be brought in a declaratory judgment action because a writ of

certiorari is the exclusive remedy under state law. They argue that certiorari is the exclusive vehicle because SHW does not seek a remedy beyond a declaration that the Decision was illegal. SHW rejects Defendants' position that certiorari is the exclusive remedy for the Decision. According to SHW, Defendants offer an unsupported and flawed version of the exclusive remedy doctrine. The company insists that Counts I, II, and III are not barred because the Iowa Supreme Court has determined that a declaratory judgment claim is permissible as a concurrent or alternate claim with a certiorari petition. [ECF No. 10 at 4]. SHW argues that further analysis is necessary under Iowa law before a court can hold that certiorari is the exclusive vehicle for challenging an action such as the Decision.

1. Legal Standard

Iowa law provides that a person who wishes to challenge a decision by a board of adjustment on the grounds that it was unlawful may seek relief through the filing of a petition for a writ of certiorari. Iowa Code § 414.15. A writ of certiorari permits a party to challenge a decision when “an inferior tribunal, board, or officer, exercising judicial functions, or a judicial magistrate exceed proper jurisdiction or otherwise acted illegally.” Iowa R. Civ. P. 1.1401. It is an extraordinary writ that “shall not be denied or annulled because plaintiff has another plain, speedy or adequate remedy.” Iowa R. Civ. P. 1.1403. Review under a writ of certiorari is also narrow, confined “to questions of jurisdiction or the legality of the challenged acts, unless otherwise provided by statute.” *Id.*

The limited scope of the writ of certiorari illustrates the “purpose for allowing the writ in the first place—to provide litigants a remedy for an illegal quasi-judicial decision where none would otherwise exist.” *Hunter*, 653 F. Supp. 3d at 619. This means that “[w]hen a tribunal acts in a quasi-judicial manner, certiorari is a proper vehicle to challenge the tribunal’s action.” *Lewis*

Invs., Inc. v. City of Iowa City, 703 N.W.2d 180, 185 (Iowa 2005) (citing *Petersen v. Harrison Cnty. Bd. of Sups.*, 580 N.W.2d 790, 793 (Iowa 1998)). An action is considered quasi-judicial under two scenarios: (1) the proceedings require notice and an opportunity to be heard; or (2) a party's rights are determined in a manner that "requires the exercise of discretion in finding facts and applying the law thereto." *Buechele v. Ray*, 219 N.W.2d 679, 681 (Iowa 1974).

Not only is a writ of certiorari the proper vehicle to challenge a quasi-judicial act—like a decision by a board of adjustment—generally a party must do so exclusively through a writ of certiorari. *City of Johnston v. Christenson*, 718 N.W.2d 290, 296 (Iowa 2006) (observing that "a party who has a statutory right of appeal from a decision of an administrative agency . . . may not, instead of appealing, bring an independent action to test the very issue which the appeal was designed to test") (citation omitted).

The Iowa Supreme Court has recognized that an action for declaratory judgment may be permitted as a claim for relief along with a writ of certiorari if two conditions are met. First, the statutory remedy must not "afford complete relief" to the plaintiff. *Id.* (citing *Fox v. Polk Cnty. Bd. of Sups.*, 569 N.W.2d 503, 508 (Iowa 1997)). Second, it must be shown that the Iowa legislature "did not intend certiorari to be the exclusive remedy." *Id.*

For example, if an action for declaratory judgment seeks to test "the constitutionality of a zoning ordinance, or some other issue outside the action of the board of adjustment," it may be pursued as a remedy with a petition for writ of certiorari. *Id.* If not, the Iowa Supreme Court has made clear that "a declaratory judgment may not be used as a remedy from a decision by the board of adjustment." *Id.*

2. Analysis

SHW argues that the exclusive remedy doctrine does not bar its claims in Counts I, II, and III merely because it alleges that violations of its constitutional rights arose from the application of the ordinance and the denial of its permit. The company argues that the Iowa Supreme Court has held that the exclusive remedy doctrine will not bar a declaratory judgment action when the plaintiff alleges that an ordinance was unlawfully applied to a particular property owner. *See Sutton v. Dubuque City Council*, 729 N.W.2d 796, 799–800 (Iowa 2006) (recognizing that a takings claim may proceed in declaratory judgment when the claims involved “an unlawful application of the ordinance to a particular property owner and not an illegal act in connection with the enacting of the ordinance.”) (citing *Bormann v. Kossuth Cnty. Bd. of Sups.*, 584 N.W.2d 309, 313 (Iowa 1998)). SHW argues that the relief sought in the Amended Complaint seeks a declaration about the obligations of the County and judicial guidance regarding the future conduct between the parties—matters which the company urges cannot be addressed solely through a writ of certiorari.

The company points to its prayer in the Amended Complaint to demonstrate that it is requesting relief beyond a determination that the Decision was invalid. [ECF No. 4 ¶ 236] (requesting “other relief as the Court deems just and appropriate, including any relief it deems necessary to protect SHW from further violation of its rights.”). SHW urges that Iowa law requires that a prayer for relief “be liberally construed and will often justify a grant of relief in addition to that contained in the specific prayer, provided it fairly conforms to the case made by pleadings and proof.” *Anderson v. Yearous*, 249 N.W.2d 855, 859–60 (Iowa 1977). The company points to federal law as similarly broad in construing a prayer for “just and appropriate relief” as encompassing all forms of relief which may be available in a particular context. *See Sossamon v.*

Texas, 563 U.S. 277, 286 (2011) (referring to “appropriate relief” as “open-ended and ambiguous about what types of relief it includes” and also “inherently context dependent”); *Van Wyhe v. Reisch*, 581 F.3d 639, 653 (8th Cir. 2009) (holding that a prayer for “appropriate relief” is “broad enough to include both injunctive relief and compensatory damages”).

In this case, SHW argues that its claims for takings, procedural due process, and vested rights violations could include relief such as just compensation, compensatory damages, nominal damages, and injunctive relief. The company asks the Court to broadly construe its prayer. Defendants reject this interpretation by SHW, arguing that the Amended Complaint only seeks to challenge the Decision and does not allege that any legislative act should be invalidated. They maintain that the exceptions to the general rule of the exclusive remedy doctrine does not apply to the Amended Complaint, which only seeks a reversal of a quasi-judicial determination to denial an appeal of the Decision.

The Court agrees with Defendants that the exclusive remedy doctrine is the sole vehicle for the relief pled in the Amended Complaint. The pleadings cannot be fairly construed as seeking any relief beyond a determination that the Decision was invalid and unlawful. The case law relied upon by SHW does not support its arguments and are factually distinguishable.

In *Christenson v. City of Johnston*, a landowner received a special exception and variance from a board of adjustment to allow him to exceed a maximum area and height limitation under a city ordinance. 718 N.W.2d at 294. After the board of adjustment granted the exception, the city council asked the board to reconsider its decision, taking the position that the intended use was prohibited under multiple city ordinances. *Id.* at 295. The board confirmed its prior decision by vote. *Id.*

The city then filed a petition for a writ of certiorari with the state district court to challenge the decision. The landowner soon filed a site plan for approval by the city council and the planning and zoning commission. *Id.* The city declined to act on the proposed site plan and filed a petition with the district court seeking a declaration that it was not required to approve the site plan because the plan violated multiple ordinances which the board of adjustment failed to consider in granting the special exception and variance. *Id.* The writ of certiorari was stayed by the district court, but the court held that the proposed structured violated two ordinances. *Id.* These ordinances were not considered by the board of adjustment. *Id.* The landowner appealed the district court's ruling, asserting that the city's only remedy in the case was a writ of certiorari. *Id.* at 296.

On appeal, the Iowa Supreme Court noted that the grounds presented by the city to the board of adjustment to support denial of the application for a variance were essentially the same grounds advanced by the city to justify the denial of the site plan in the declaratory judgment action. *Id.* at 297. The *Christenson* court acknowledged that this typically meant that relief was only available to the city in a certiorari action. *Id.* However, the Iowa Supreme Court concluded that the exclusive remedy doctrine did not apply in *Christenson* because the city did not only seek to remedy the decision by the board of adjustment in the declaratory judgment action, but it also sought to “determine its separate obligation to exercise its site-plan authority in response to Christenson’s request for approval.” *Id.* Thus, even though the issues in the action before the board of adjustment and the district court were identical, one action aimed “to remedy an alleged wrong” whereas “the other [sought] guidance in performing a separate function.” *Id.*

SHW also relies on the Iowa Supreme Court’s decision in *Sutton v. Dubuque City Council*. In that case, the Dubuque City Council passed an ordinance reclassifying certain property to a planned unit development when it had previously been zoned as a commercial recreation district.

Sutton, 729 N.W.2d at 797. The ordinance passed by a 4-3 vote with the mayor voting with the majority. *Id.* Two objectors to the zoning changes brought a writ of certiorari in the state district court challenging the rezoning decision on the basis that the mayor had a conflict of interest. *Id.* The writ of certiorari was dismissed as untimely because it was not filed within 30 days of the challenged decision, as required by Iowa law. *Id.*

The objectors then filed a declaratory judgment action seeking to reverse the zoning decision based on multiple grounds. *Id.* The city argued that the declaratory judgment action was barred because certiorari was the exclusive remedy, but the state district court rejected the argument and ruled for the objectors following a trial on the conflict of interest issue. *Id.*

The Iowa Supreme Court reversed the decision of the district court, holding that the rezoning decision was a quasi-judicial action that was subject to review through a writ of certiorari. *Id.* at 799. Therefore, certiorari was the exclusive remedy and the challenge could not also be asserted in a declaratory judgment action. *Id.* The *Sutton* court recognized that, “[a]lthough municipal zoning ordinarily involves the enactment of an ordinance, an action that on first blush appears to be legislative in nature, rezoning often takes on a quasi-judicial character by reason of the process by which it is carried out.” *Id.* at 798.

The facts set forth in the Amended Complaint in this case describe a quasi-judicial action by the Page County Board of Adjustment. The Iowa Supreme Court has repeatedly recognized that a decision by a board of adjustment is a quasi-judicial function. *See Montgomery v. Bremer Cnty. Bd. of Sups.*, 299 N.W.2d 687, 692 (Iowa 1980) (noting that “certiorari is the appropriate means to review” an amendment to a zoning ordinance by a board of supervisors); *Smith v. City of Fort Dodge*, 160 N.W.2d 492, 495 (Iowa 1968) (considering a writ of certiorari challenging a rezoning decision by a zoning and planning commission); *see also Curtis v. Bd. of Sups.*,

270 N.W.2d 447, 449 (Iowa 1978) (rejecting a writ of certiorari when the placement of a freeway was the decision of the department of transportation, not the board of supervisors, even if the department of transportation “will defer” to the decision by the local board of supervisors).

SHW argues that its allegations are more aptly compared to *Fox* and *Bormann* where the Iowa Supreme Court concluded that claims for declaratory judgment were not barred by the exclusive remedy doctrine. *Bormann* involved a challenge by adjacent landowners to the approval of an “agricultural area” by the Kossuth County Board of Supervisors. 584 N.W.2d at 311. The challengers filed a petition for writ of certiorari and declaratory judgment action in state district court alleging due process and takings violations, among other non-constitutional claims. The Iowa Supreme Court reversed the holding of the district court after it determined that an Iowa statute that provided for immunity against nuisances was unconstitutional. *Id.* at 321–22. The *Bormann* court did not discuss the exclusive remedy doctrine in the opinion.

In *Fox*, the Polk County Board of Supervisors granted an application by the City of Des Moines to rezone an area to allow for the construction of a softball complex. 569 N.W.2d at 506. After approval of the application, objectors to the plan filed a petition for writ of certiorari along with a claim for declaratory judgment. *Id.* The state district court dismissed the declaratory judgment claim because the objectors had an adequate remedy through the certiorari action. The district court later denied the petition for certiorari. *Id.* at 507.

On appeal, the Iowa Supreme Court agreed with the objectors that—because the declaratory judgment action raised the issue of a taking without just compensation—the district court “should have allowed evidence on the taking issue before dismissing or ruling on the declaratory judgment petition.” *Id.* at 508.

The Iowa Court of Appeals summarized *Fox*, along with similar actions for declaratory relief, as involving “challenges to the validity of ordinances or challenges to the legislative authority of a body to implement or change ordinances.” *Oehl v. Amana Colonies Land Use Dist. Bd. of Trs.*, 847 N.W.2d 237 (Table), 2014 WL 1234216, at *4 (Iowa Ct. App. Mar. 26, 2014); (citing *Geisler v. City Council*, 769 N.W.2d 162 (Iowa 2009); *Anderson v. City of Cedar Rapids*, 168 N.W.2d 739 (Iowa 1969); *Keller v. City of Council Bluffs*, 66 N.W.2d 113 (1954)). However, in *Oehl*, the challengers only disputed “the determination of whether the [approval] was issued in compliance with existing ordinances. Where the validity of the ordinances is at issue, declaratory relief is allowed; where only the grant or denial of a particular application is at issue, declaratory relief is disallowed.” *Id.* at *4 (citing *Christenson*, 718 N.W.2d at 296–97). *Bormann* involved a similar decision where the board of supervisors had approved an “agricultural area” to which the plaintiffs in that case brought a facial challenge at the same time as an as-applied challenge. *Bormann*, 584 N.W.2d at 313.

In this case, SHW does not challenge the validity of the Ordinance or the authority in adopting the Ordinance. Rather, the company seeks relief to determine whether the Decision, which constitutes the “denial of a particular application” which necessarily requires a “determination whether [the Decision] was issued in compliance with existing ordinances.” *Oehl*, 2014 WL 1234216, at *4. The Amended Complaint asks the Court to “[e]nter an order declaring that the Decision is invalid” on the takings claim, due process claim, and vested rights claim. [ECF No. 4 ¶¶ 230–32]. SHW brings a petition for a writ of certiorari in Counts IV and V, but the relief sought in those claims seek a vacation of the Decision. *Id.* ¶¶ 233–34. The Court does not credit the eleventh hour assertion by SHW, in the resistance to the motion to dismiss, that its boilerplate

prayer “for other such relief” is sufficient to establish that the company is seeking any determination other than the Decision was illegal.

It is also not apparent from the Amended Complaint what the declaratory judgment claims in Counts I and II seek regarding “a determination of the related obligations of the County and guidance with respect to its future conduct towards SHW” which the company insists cannot be addressed through a writ of certiorari.⁸ [ECF No. 10 at 7].

To summarize, the claims pled in Counts I and II are barred on the basis of the exclusive remedy doctrine. Because SHW seeks a declaration that the Decision was invalid, the relief sought in those counts may only be obtained through a petition for a writ of certiorari pursuant to Iowa law.

C. Remaining Counts

Defendants next argue that if Counts I and II are dismissed, the Court no longer has subject matter jurisdiction over this case. *Great Lakes Gas Transmission Ltd. P’ship v. Essar Steel Minn. LLC*, 843 F.3d 325, 334 (8th Cir. 2016) (recognizing that the existence of subject matter jurisdiction can be raised at any time). The remaining three claims in the Amended Complaint are a state law claim for vested rights in Count III and two writs of certiorari in Counts IV and V.

Federal question jurisdiction is not limited only to causes of action created by federal law, but more broadly extends to claims that “aris[e] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331; *see also Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 808 (1986) (observing that “the vast majority of cases brought under the general federal-question jurisdiction of the federal courts are those in which federal law creates the cause of action.”). There are, however, a “special and small category” of claims that are not brought pursuant to a federally-

⁸ Count III asserts a claim for vested rights which the Court will address later in this Order.

created cause of action but still “arise” under federal law for purposes of federal question jurisdiction because federal law is “a necessary element of the claim for relief.” *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 699 (2006).

The Supreme Court has recognized four factors that must be satisfied before a federal court may exercise subject-matter jurisdiction over a state law claim on the contention that it arises under federal law. The federal issue must be (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in a federal forum without disturbing the balance between federal and state judicial responsibilities as approved by Congress. *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005). The dispute here concerns whether the federal issue is “substantial.”

Defendants urge that simply because a claim, such as a petition for a writ of certiorari, includes federal issues is not sufficient to confer federal question jurisdiction. SHW resists Defendants’ argument. The company insists that subject-matter jurisdiction is present for the remaining three claims because federal questions appear on the face of the Amended Complaint. The company further urges the Court to exercise supplemental jurisdiction over the remaining state law claims even if the Court concludes that the federal issue contained in Counts III, IV, and V is not substantial.

The supplemental jurisdiction statute provides that in any case where the district court has original jurisdiction, it “shall have supplemental jurisdiction over all other claims that are so related to claims in the action . . . that they form part of the same case or controversy.” 28 U.S.C. § 1367(a). Supplemental jurisdiction is not mandatory if the court has “dismissed all claims over which it has original jurisdiction.” *Id.* § 1367(c)(3); *see also Quinn v. Ocwen Fed. Bank FSB*, 470 F.3d 1240, 1249 (8th Cir. 2006) (“It is within the district court’s discretion to exercise

supplemental jurisdiction after dismissal of the federal claim.”) (citation omitted). SHW adds that the case has an unusual history based on the circumstances surrounding the revocation of the permit just days after Judge Pratt’s ruling in *Hunter*. [ECF No. 10 at 11]. Accordingly, it insists that considerations of judicial economy, convenience, fairness, and comity weigh strongly in favor of the exercise of supplemental jurisdiction. *See Thomas v. United Steelworkers Local 1938*, 743 F.3d 1134, 1141 (8th Cir. 2014) (finding no error by the district court in exercising supplementation jurisdiction over a state law defamation claim because of “the substantial amount of time and judicial resources expended in this case and the well-settled principles of state law concerning defamation.”).

The Court rejects SHW’s position that Counts III, IV, and V “arise” under federal law for purposes of federal question jurisdiction. Reference to federal law is not sufficient to confer federal question subject-matter jurisdiction over a claim. As the Supreme Court has made clear, the federal question must be “substantial” in the sense that the issue is important “to the federal system as a whole.” *Gunn v. Minton*, 568 U.S. 251, 260 (2013). It is not enough that the federal issue is significant to the parties litigating the case because “that will always be true when the state claim ‘necessarily raises’ a disputed federal issue.” *Id.* (cleaned up) (emphasis omitted). It is clear that the federal issues implicated by Counts III, IV, and V are not substantial for purposes of federal question jurisdiction. The Court is also not inclined to exercise of supplemental jurisdiction in the absence of the federal question claims.

In its resistance to the motion to dismiss, SHW requested for leave to amend the complaint if the Court determined that Counts I and II were barred. [ECF No. 10 at 7 n.2]. Defendants do not resist the request. However, SHW submitted this request in a footnote to a brief and its request does not comply with the local rules. *See* LR 15 (requiring a party seeking to amend a pleading to

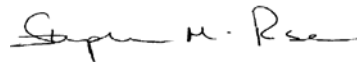
submit a motion describing the changes sought and attach the proposed amended pleading to the motion to amend). Accordingly, the Court will allow SHW to file a motion to amend the complaint within 14 days of this Order. If SHW chooses to file a motion to amend, Defendants will have 21 days after its filing to respond. If SHW does not file a motion to amend within that time, the Court will direct the Clerk of Court to enter judgment and dismiss the case.

III. CONCLUSION

For the foregoing reasons, the Court has concluded that the Amended Complaint fails to state a claim. Defendants' Motion to Dismiss is GRANTED. [ECF No. 9]. SHW shall have 14 days from the date of this Order to file a motion to amend the complaint. If no motion to amend is filed within that time, the case will be dismissed.

IT IS SO ORDERED.

Dated this 18th day of March, 2024.



STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT