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SC Court of Appeals

EXHIBIT-A

**Notice of Appeal
Case No. 2025-CP-46-04007**

Dennis Floyd Bivens vs. York County by and through
Joshua Edwards, York County Manager, Josh Reinhardt,
York County Development Services Manager, and
Jonathan Buono, York County Planning and Development
Services Director

(24) Pages

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Dennis Floyd Bivins,

Plaintiff,

vs.

York County by and through Joshua Edwards, York County Manager, Josh Reinhardt, York County Development Services Manager, and Jonathan Buono, York County Planning and Development Services Director,

Defendants.

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT

) C/A NO.: 2025-CP-46-04007

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

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THIS MATTER COMES before the Court on the November 17, 2025 motion of Defendants York County, Joshua Edwards, Josh Reinhardt, and Jonathan Buono (collectively, the County), pursuant to Rule 12(b), of the South Carolina Rules of Civil Procedure (SCRCP), to dismiss the Complaint of Plaintiff Dennis Floyd Bivins. The Court heard argument on the County's motion on December 16, 2025. Present at the hearing were Cameron J. Halford, Esquire, of the Halford Law Firm, representing Plaintiff, and Chad N. Johnston, Esquire, and Samantha J. Dorward, Esquire, both of Burr & Forman, LLP, and Austin T. Reed, Esquire, of Smith Robinson LLC, representing the County. In reaching this decision, the Court has fully considered the arguments of the parties at the hearing, the respective filings of the parties, including the submitted memoranda of law and exhibits,¹ the relevant case law, and the applicable rules and standard of

¹ See *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (holding that a Court may consider documents incorporated by reference in the complaint to prevent plaintiffs "from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based" without converting the motion into one for summary judgment); see also *Ballard v. Admiral Ins. Co.*, 442 S.C. 22, 33, 897 S.E.2d 183, 188 (Ct. App. 2023) (same).

review. For the reasons set forth herein, and in accordance with Rule 12(b), SCRC, the Court GRANTS IN PART and DENIES IN PART the County's motion and dismisses the complaint with prejudice.

STATEMENT OF THE FACTS²

I. Zoning Compliance Verification

In late 2022, Silfab Solar, Inc. (Silfab) sought zoning compliance approval under subchapter E, part 13 of the York County Zoning Code (§§ 155.1120 *et seq.*) for proposed solar panel manufacturing operations on a parcel located at 7149 Logistics Lane, Fort Mill, South Carolina (Parcel). The Parcel is located in a multi-county industrial park developed by York and Chester Counties under South Carolina Code section 4-1-170 and is zoned Light Industrial. On December 27, 2022, the County's zoning office, a division of the County's Planning and Development Services Department, issued a letter to Silfab verifying that Silfab's proposed operations were compatible and compliant with the Parcel's Light Industrial zoning district (Zoning Compliance Verification).³ No challenge or appeal of the Zoning Compliance Verification was instituted.

II. Fee in Lieu of Tax and Incentive Agreement

During that same period, Silfab and the County began negotiating a fee in lieu of tax

² The Court has considered the factual allegations set forth in the complaint, and has accepted all well-pled allegations as true. *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013). In ruling on this motion to dismiss, the Court finds the following facts.

³ The County's Zoning Division staff is tasked with assisting the public with requests or information associated with the use and development of property within the County. Among the staff's responsibilities is to "[r]eview and approve subdivision plats and non-residential site plans for compliance with York County development regulations." <https://www.yorkcountygov.com/377/Zoning>; *see also* Zoning Code § 155.957 (Table 155.957-1).

(FILOT) and incentive agreement to induce Silfab to locate its operations in the County. A proposed inducement and incentive ordinance (Inducement Ordinance) that would authorize the execution of the FILOT agreement was introduced and given first reading by County Council on March 6, 2023. Second reading, along with a public hearing, occurred on August 21, 2023. On September 18, 2023, County Council held a third reading of the Inducement Ordinance and enacted the same. The Inducement Ordinance authorized and directed County representatives to execute the FILOT agreement. It further provided that “[a]ll ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.”

In accordance with the Inducement Ordinance, also on September 18, 2023, the County and Silfab executed the FILOT agreement, thereby creating a binding agreement between the County and Silfab to pursue development of the Silfab project at the Parcel. Among other terms, the FILOT agreement specifically identifies the Parcel for development of the Silfab project. FILOT agreement at 5 (defining “land” as “the land upon which the Project will be located, as described in Exhibit A”); at A-1, FILOT agreement Exhibit A (providing the legal description for the Parcel). Recital 5 of the FILOT agreement further provides that:

The County has determined that it is in the best interests of the County to enter into this Agreement with [Silfab], subject to the terms and conditions set forth herein, and, by Ordinance No. [6623] enacted by the Council on September 18, 2023 ... approved the form, terms and conditions of this Agreement *and ratified all prior actions taken with respect to the Project.*

(Emphasis added). Thus, the County, through formal legislative action of its County Council, approved and specifically induced Silfab to locate in the County at the Parcel. Further, based on the FILOT agreement’s finding that “all prior actions taken with respect to the Project” were ratified, as authorized by official action taken by the County Council in the Inducement Ordinance, the Zoning Compliance Verification issued by the County’s zoning office specific to both Silfab and the Parcel was legislatively approved.

Thereafter, Silfab began undertaking steps to develop the identified Parcel, including seeking relevant permits and authorizations from the County and other relevant regulatory entities, site work, and construction on the site.

III. Related Actions and Litigation

A. Zoning Interpretation and Subsequent Appeal

On February 1, 2024, a Fort Mill resident requested a zoning interpretation (Zoning Interpretation Request) from the County Planning and Development Services Department under Subchapter E, Part 11 of the York County Zoning Code (§§ 155.1090 *et seq.*). The Zoning Interpretation Request submitted seven questions directed specifically at the approval of Silfab's development of the Parcel, despite Zoning Code section 155.1090's stated purpose of a zoning interpretation: "to clarify ambiguities in the Zoning Code and to resolve any ambiguities in future amendments."

On February 16, 2024, the County Zoning and Development Standards Administrator provided a response to the Zoning Interpretation Request (Zoning Interpretation). Therein, the County declined to address the requests, consistent with its authority under Zoning Code section 155.1093(B), but did provide certain "clarifications" as to other tangentially-related issues. Thereafter, on March 14, 2024, certain of the submitted zoning interpretation requests were appealed to the County Board of Zoning Appeals (BZA), (BZA Appeal).

On May 9, 2024, the BZA held a hearing on the BZA Appeal, following which it voted 5-0 to reverse the Zoning Interpretation and thereafter issued a final decision setting forth a written record of its decision and findings (BZA Order).⁴ The BZA Order contained the following

⁴ Although neither question proposed by the BZA Order were presented in the Zoning Interpretation Request, the BZA Order characterized the questions presented in the appeal as: (1)

conclusions:

- i. The Zoning Administrator erred in determining that Solar Panel Manufacturing is a Use under Computer and Electronic Products Manufacturing permitted in Light Industrial; and
- ii. Solar Panel Manufacturing is not listed as a Use applicable for the Light Industrial Zoning District and is therefore prohibited pursuant to section 155.270(G), York County Code of Ordinances.

The BZA Order did not mention Silfab, its specific project, or the Parcel, nor does section 155.1090 of the Zoning Code authorize zoning interpretations to evaluate specific, ongoing developments.

Thereafter, Silfab and its landlord, Exeter 7149 Logistics, L.P. (Landlord), appealed the BZA Order to the York County circuit court. *See Silfab Solar, Inc., et al. v. York County Board of Zoning Appeals*, 2024-CP-46-02641. As a result of the appeal, the BZA Order is stayed.⁵ Consistent with South Carolina Code section 6-29-820(B)(2), Silfab requested pre-litigation mediation of the BZA Appeal, and on April 21, 2025, the parties unsuccessfully mediated the case. The matter is ongoing.

B. Stayed Circuit Court Action

On September 5, 2024, Citizens Alliance for Government Integrity, Inc. (CAGI), a South Carolina non-profit, filed a complaint in the York County circuit court against Silfab, Landlord, and the County. *See Citizens Alliance for Government Integrity, Inc., a South Carolina Non-Profit v. Silfab Solar, Inc., Exeter 7149 Logistics, L.P., and York County by and through its Planning and Development Services and Zoning Administrator, a body politic and political subdivision of York County and the State of South Carolina*, 2024-CP-46-03532 (CAGI Action). In that lawsuit,

whether “Solar Panel Manufacturing is a Permitted Use within the Light Industrial Zoning District”; and (2) whether “Solar Panel Manufacturing [is] considered a Heavy Industrial use.”

⁵ *See* York County Zoning Code § 155.982(C) (“**Effect on Other Proceedings.** An appeal [of an administrative decision] stays all legal proceedings by the County relating to the action appealed from, unless the Zoning Administrator certifies to the Board of Zoning Appeals, after the appeal application has been filed, that a stay would cause an imminent peril to life and property.” (emphasis in original)).

CAGI seeks declaratory and injunctive relief, arguing that the subsequently-issued BZA Order controls over the prior, specific Zoning Compliance Verification issued to Silfab for the Parcel. The defendants there, including the County, moved to dismiss the action on a number of grounds. While the motions to dismiss were pending, CAGI sought a preliminary injunction to stay or revoke all permits issued by the County to Silfab. On December 18, 2024, The Honorable Martha M. Rivers held a hearing on the pending motions and, on January 29, 2025, issued a Form-4 Order declining to rule on CAGI's motion to stay or revoke all permits and instead stayed the entire lawsuit pending final resolution of the BZA Appeal.

C. Related Appellate Litigation

On July 2, 2025, a Fort Mill resident, petitioned the Supreme Court to invoke its original jurisdiction to issue writs of mandamus and prohibition, requesting that the court require the County to revoke permits issued to Silfab and ultimately halt its project. *See* Appellate Case No. 2025-001325. On July 21, 2025, the Supreme Court declined to entertain the matter in its original jurisdiction.

Then, on October 28, 2025, CAGI similarly petitioned the Supreme Court in its original jurisdiction, pursuing writs of mandamus and prohibition on the same bases as those in the initial petition and in this case. *See* Appellate Case No. 2025-002174. On December 16, 2025, the Supreme Court declined to entertain the matter in its original jurisdiction.

DISCUSSION

In this action, Plaintiff seeks relief against both the County and non-party Silfab, pursuing claims for temporary and permanent injunctive relief, declaratory relief, and writs of mandamus and prohibition, including issuance of stop work orders and revocation of permits, to prevent Silfab from continuing its development. For the reasons set forth herein, that relief is DENIED.

I. **Justiciability**

The County first asserts that the Court is without jurisdiction, pursuant to Rule 12(b)(1), SCRCF, for lack of standing, depriving the Court of a justiciable controversy. *See Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (“A motion to dismiss for lack of standing challenges the court’s subject matter jurisdiction.”); *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998) (“A threshold inquiry for any court is a determination of justiciability, *i.e.*, whether the litigation presents an active case or controversy.”); *Jackson v. State*, 331 S.C. 486, 490 n. 2, 489 S.E.2d 915, 917 n. 2 (1997) (stating the concept of justiciability encompasses the doctrines of ripeness, mootness, and standing). The Court agrees. In South Carolina, standing can be established in three ways: (1) by statute, (2) by constitutional standing, and (3) under the public importance exception. *Bodman v. State*, 403 S.C. 60, 66–67, 742 S.E.2d 363, 366 (2013). The complaint appears to seek to establish standing alternatively by statute or under the traditional three-part test for constitutional standing.⁶ The Court finds that the complaint fails to meet its burden under either method, and accordingly, the Court lacks jurisdiction.

A. **Statutory Standing**

Plaintiff contends that section 6-29-950 of the South Carolina Code provides him statutory standing to maintain this lawsuit. While section 6-29-950 provides an avenue for a neighboring or adjacent property owner to challenge a zoning action, the Court finds the complaint fails to plead the necessary and required facts to maintain such an action.

The Supreme Court has stated that “[s]tatutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an

⁶ Plaintiff does not plead or argue the public importance exception to standing.

exercise in statutory interpretation.” *Youngblood v. S.C. Dep’t of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) (citing *Freemantle v. Preston*, 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012)). Relevant here, South Carolina Code section 6-29-950(A) provides,

In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, . . . an adjacent or neighboring property owner who would be *specially damaged by the violation* may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land.

(Emphasis added). Thus, there are two mandatory requirements for an adjacent or neighboring property owner, such as Plaintiff, to meet in order to advance a claim under section 6-29-950(A): (1) first, the adjacent or neighboring property owner must be “specially damaged”; and (2) such special damage must flow from the use—or proposed use—of the property in violation of an ordinance.

The County asserts that Plaintiff fails to meet either criterion. As to the first, the complaint fails to plead facts that would support a claim that Plaintiff has been specially damaged by the development. The Supreme Court has equated the special damages requirement under section 6-29-950(A) to the particularized injury-in-fact requirement of traditional constitutional standing analysis. *See Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014) (equating the “special damage” requirement specified in section 6-29-950(A) to the particularized-injury requirement under constitutional standing). Pertinent here, an “injury in fact” has been defined as “an invasion of a legally protected interest” which is “concrete and particularized” and “actual or imminent,” not “conjectural or hypothetical.” *Commander Health Care Facilities, Inc. v. S.C. Dep’t of Health & Env’t Control*, 370 S.C. 296, 301, 634 S.E.2d 664, 666 (Ct. App. 2006) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Moreover, “[p]rospective concern falls far short of the standard of ‘concrete and particularized and

... actual or imminent' harm ...” *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 303, 551 S.E.2d 588, 590 (Ct. App. 2001). For the injury to be particularized, it must affect the plaintiff in a personal and individual way and must be different than the general impact to the public. *Sea Pines Ass’n for the Prot. of Wildlife v. South Carolina Dep’t of Natural Res. & Cmty. Servs. Assocs., Inc.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

As to harm or injury, Plaintiff offers only a conjectural and generalized grievance concerning future public health and welfare concerns. Plaintiff does not allege any individualized harm that he has suffered as an adjacent property owner or neighbor that is distinct from what he contends the public might suffer at large. *See Commander*, 370 S.C. at 301, 634 S.E.2d at 666 (“The injury must be of a personal nature to the party bringing the action, *not merely of a general nature that is common to all members of the public.*” (emphasis added) (citing *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 34, 530 S.E.2d 369, 371 (2000))); *see also Carnival Corp.*, 407 S.C. at 75, 753 S.E.2d at 850 (“[A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not’ possess standing.” (quoting *Lujan*, 504 U.S. at 573–74)). Moreover, even if Plaintiff had alleged or could claim some personal stake distinct from that of the public at large, the alleged injury here is merely speculative rather than actual or imminent, as Silfab is not yet fully operating on the Parcel, and none of the injuries Plaintiff alleges as certain to befall him and the community have occurred. As a result, these allegations are not concrete or particularized, but rather conjectural and hypothetical.

Beyond those future speculative health concerns resulting from presumed conduct and conjectural injuries, Plaintiff alleges injuries resulting from “spot zoning” or “site specific zoning.”

However, the issue is not that the Parcel has been rezoned; it has not. Rather, Plaintiff disagrees with the County's determination that Silfab's proposed use of the site is consistent with the Parcel's Light Industrial zoning designation. While Plaintiff disagrees with that determination, made by the County in the Zoning Compliance Verification, that determination was not appealed and was later ratified by the action of County Council through the Inducement Ordinance and FILOT agreement adopted specific to Silfab and the Parcel. Further, the complaint pleads no facts that would support an allegation that he has been—or would be—specially damaged by spot or site specific zoning.

Because the complaint fails to meet the pleading standard as to special damages under section 6-29-950(A), Plaintiff has not satisfied that condition precedent to assert standing under the statute.⁷

B. Constitutional Standing

The Court also finds Plaintiff has failed to establish standing by pleading the “irreducible constitutional minimum of standing,” which consists of three elements: (1) an injury in fact; (2) that the injury and the conduct complained of must be causally connected; and (3) that it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (citing *Lujan*, 504 U.S. 555); *see id.* (“The party seeking to establish standing carries the burden of demonstrating each of the three elements.”).

1. Injury in Fact

As set forth above, the complaint fails to plead facts that could satisfy Plaintiff's burden of

⁷ In light of the disposition of the special damages criterion, the Court need not address the second criterion of whether Silfab's use—or proposed use—is in violation of an ordinance. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (“In light of our disposition of the case, it is not necessary to address [the movant's] remaining issues.”).

showing a concrete and particularized injury that is neither contingent nor hypothetical, and that is different than would be suffered by the public generally. *See Carnival Corp.*

2. Causation

Having failed to identify a viable injury in fact, attempting to trace or evaluate the cause of such a hypothetical injury is futile. Nevertheless, Plaintiff's allegations of future public health and welfare concerns also fail the second element of constitutional standing, as those harms, should they ever come to pass one day, would be attributable to Silfab's operations on the parcel, rather than any action—or inaction—by the County. Where the causal link between the complained-of activity and the alleged injuries is superseded by a third party, the alleged injuries are not traceable to the government action. Courts, including the United States Supreme Court, have found the causal link between a challenged governmental action and alleged injuries to be broken where the action itself does not cause the alleged injuries, but rather independent actions of third parties who are not before the Court do. *See Town of Arcadia Lakes v. South Carolina Department of Health and Environmental Control and Roper Pond, LLC*, 404 S.C. 515, 532, 745 S.E.2d 385, 394 (Ct. App. 2013) (noting an inability to establish a causal link where alleged injuries would result from potential future violation of permits, rather than the issuance of the permits themselves); *Beaufort Realty Co.*, 346 S.C. at 301, 551 S.E.2d at 589 (finding that the acceptance of filed plats was not causally connected to allegations of future injury); *see also Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976); *Allen v. Wright*, 468 U.S. 737 (1984).

The import of those and similar cases is clear: government's role, including local governments like the County, is to set policy and provide infrastructure and related service to be used by its citizens in a lawful way. The collateral effects of companies who locate in the County are not attributable to the County for confirming a use as appropriate for a given site and issuing

permits for its operations.

3. Redressability

Finally, even if this Court were to presume a viable injury and causation, Plaintiff has not alleged sufficient facts to demonstrate that his purported injuries could or would be redressed by a favorable decision of the Court. *See Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (providing that it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision); *see also Vt. Agency of Natural Res.*, 529 U.S. at 771 (stating that there must be “a ‘substantial likelihood’ that the requested relief will remedy the alleged injury in fact” (emphasis added) (internal citations omitted)). Redressability is necessarily tied to the relief sought by the Plaintiff. Here, Plaintiff seeks declaratory relief and stop work orders or permit revocations through writs of mandamus and prohibition. As discussed below, the requested relief is alternatively inappropriate or non-cognizable under the presented circumstances. Accordingly, Plaintiff’s alleged injuries are not redressable by this Court either.⁸

II. Failure to State Claims

In addition to its jurisdictional arguments, the County also moves to dismiss the complaint under Rule 12(b)(6), SCRCP, for failure to state facts sufficient to constitute causes of action for Declaratory Judgment, Injunction, and Writs of Mandamus and Prohibition. The Court agrees that dismissal under Rule 12(b)(6) is also appropriate. *See Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003) (explaining a motion to dismiss under Rule 12(b)(6) should be granted if facts alleged and inferences reasonably deducible therefrom would not entitle the plaintiff to relief on any theory of the case).

⁸ The County also moved to dismiss the case for lack of justiciability based on its contention that the claims are not ripe. In light of the determination that Plaintiff lacks standing, the Court respectfully denies the County’s alternative ripeness ground for dismissal.

To survive a motion to dismiss for failure to state a claim, a complaint must contain facts sufficient “to raise a right to relief above the speculative level” and to satisfy the court that the claim is “plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555, 570 (2007); *see also Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019) (citing *Twombly* with approval). A claim is plausible only “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged”—a standard that requires more than facts “that are ‘merely consistent with’ a defendant’s liability.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556–57); *see also Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995) (affirming a motion to dismiss where the reasonable inferences derived from the pleaded facts did not support the cause of action).

A. **Declaratory Judgment**

The County first contends that Plaintiff has failed to sufficiently plead a claim for declaratory relief. First, the Court finds no justiciable controversy. *See Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 228 n.7, 467 S.E.2d 913, 918 n.7 (1996) (“Declaratory judgment actions must involve an actual, justiciable controversy that is ripe for determination.”); *see also Rhodes*, 405 S.C. at 595, 748 S.E.2d at 787 (“[T]he Act does not require the courts to give purely advisory opinions as to the issues sought to be raised.”); *id.* (“[A]n issue that is contingent, hypothetical, or abstract is not ripe for judicial review.” (quoting *Colleton Cnty. Taxpayers Ass’n*, 371 S.C. at 242, 638 S.E.2d at 694)); *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970) (“A cause of action under the Declaratory Judgment Act is established by showing the existence of a justiciable controversy, defined as “a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a

contingent, hypothetical or abstract character.”).

Here, the premise of Plaintiff’s declaratory judgment cause of action is that the permits issued to Silfab were without the consent or “written” approval of the Zoning Administrator. However, Plaintiff has failed to plead any facts that would support or give rise to that conclusion regarding consent or approval, generally, and the plain language of section 6-29-950 and Zoning Code section 155.1121, both cited as the authority for Plaintiff’s claims and requested declarations, bely the assertion of a “written” approval or signature requirement. The complaint seeks only a general declaration that “[a]ny permit lacking the zoning administrator’s approval violates law and zoning code”; however, such a request does not establish a justiciable controversy that is both supported by well-pled facts or that rises above an assertion that is contingent, hypothetical or abstract in nature. *See Waters*, 321 S.C. at 228 n.7, 467 S.E.2d at 918 n.7; *Rhodes*, 405 S.C. at 595, 748 S.E.2d at 787.

Moreover, Plaintiff has not pled facts to support his claims that actions were taken without County approval, the premise underlying his claim for declaratory relief. Nevertheless, the authority cited by Plaintiff actually dispels Plaintiff’s claim that every County determination or permit must bear specifically the Zoning Administrator’s written approval or signature. Table 155.957-1 in the Zoning Code, consisting of the “Summary of Procedures” for general approvals and permits, specifies that “Staff” is “Decision-Making Body” for zoning compliance verifications, further undercutting Plaintiff’s assertion that the Zoning Compliance Verification is invalid because it was not signed by the Zoning Administrator but by a member of the Zoning Administrator’s staff. Plaintiff’s assertions to the contrary cannot be sustained as a matter of law. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010) (explaining that on a Rule 12 motion, “the court is required to presume well pled *facts*, not

propositions of law, to be true” (emphasis in original)).

Finally, a collateral action in the courts seeking a declaration as to the invalidity or revocation of permits is inappropriate where a valid administrative remedy is available and has not been sought. In particular, Part 3 of Subchapter E of the Zoning Code sets forth the exclusive appeal procedures available for any “person aggrieved by an order, requirement, decision, or determination made by the Zoning Administrator or any other administrative official in the enforcement of this Chapter or by any officer, department, board, or bureau of the County.” Zoning Code § 155.982(A). The Zoning Compliance Verification, as well as all other permits and approvals issued subsequently by the County to Silfab, are decisions or determinations which fall under the appeals procedures of Part 3. An appeal must be initiated “within 30 days of the written decision or other action that is the subject of the appeal.” Zoning Code § 155.982(B).

The doctrine of exhaustion of administrative remedies generally requires a party seeking relief from the action of an administrative agency to pursue all available remedies *before* seeking such relief from the courts. *See Stanton v. Town of Pawleys Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992) (holding a plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts, and dismissal for failure to do so is in the sound discretion of the trial judge); *see also Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (stating a party is “clearly [] required to exhaust its administrative remedies prior to bringing suit” challenging denial of a permit); *id.* (“The doctrine of exhaustion of administrative remedies *only* comes into play when a litigant attempts to invoke the original jurisdiction of a circuit court to adjudicate a claim based on a statutory violation for which the [governing body] has provided an administrative remedy.” (quoting *Med. Mut. Liab. Ins. Soc. of Md. v. B. Dixon Evander & Assocs.*, 92 Md.App. 551, 609 A.2d 353 (1992))). Exhaustion is

required so that the administrative agency “may function efficiently and so that it may have the opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.” *Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000).

Neither Plaintiff nor any other party initiated an appeal of the Zoning Compliance Verification issued to Silfab, timely or otherwise. Nor has any permit or approval issued to Silfab been challenged or appealed. Because there is a specific procedure to challenge an administrative agency decision, compliance with such procedure is a condition precedent for judicial review. *Meredith v. Elliott*, 247 S.C. 335, 346-47, 147 S.E.2d 244, 249 (1966) (“Having failed to follow the administrative remedy created by the statute for the correction of errors in the valuation of their property, [taxpayers] are precluded from resorting to the courts for relief.”); *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964) (“It was incumbent upon [the challenging party]... to appeal to the Zoning Board of Adjustment from the decision of the Building Inspector if [she]... considered his decision erroneous.... Not having done so, she cannot now attack the validity of his decision.”). As such, Plaintiff has failed to exhaust his administrative remedies.

B. Injunctive Relief

The County next contends that Plaintiff has failed to allege facts sufficient to establish any of the required elements to secure an injunction against the County. The Court agrees. To obtain an injunction here, Plaintiff must allege facts sufficient to demonstrate that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009). In addition, because the County is a governmental body, Plaintiff must also allege facts sufficient to demonstrate that the County acted in an arbitrary,

capricious, or oppressive manner. *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018).

The Court first finds that Plaintiff has failed to advance sufficient facts supporting an assertion of harm, much less irreparable harm, that he would suffer absent an injunction. The Court has already determined that the alleged harm or injury is insufficient to meet the pleading standard for a justiciable controversy. Moreover, as described above, Plaintiff's allegations regarding harm in the complaint directly tie its allegation of "imminent" and "irreparable" harm to "spot zoning" or "site specific zoning." However, Plaintiff pleads no facts that would support an assertion that the Parcel has been rezoned, either through "spot zoning" or "site specific zoning," and the Parcel remains zoned as Light Industrial.⁹ Further, the complaint's assertions of future harm and injury are impermissibly speculative, conjectural, and hypothetical, *cf. Proctor v. Dep't of Health & Env't Control*, 368 S.C. 279, 317, 628 S.E.2d 496, 516 (Ct. App. 2006) ("It is, of course, true that the existence or amount of damages cannot be left to conjecture, guess or speculation."), in addition to being generalized concerns regarding future public health and welfare. Finally, the complaint does not detail how Plaintiff will be *irreparably* harmed absent an injunction, offering only a conclusory legal assertion that "the harm will be irreparable," which is insufficient to meet a burden of good faith persuasion. *See Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593–94 (Ct. App. 2005) (finding an argument advanced through

⁹ Plaintiff's assertion of spot or site specific zoning necessarily presumes other facts which are alternatively incorrect or that this Court is precluded from reaching in light of the Related Litigation: (1) the invalidity of the Zoning Compliance Verification, which was never challenged and was later ratified by the County; (2) the applicability of the Zoning Interpretation and BZA Order to Silfab's development; and (3) the supremacy of the Zoning Interpretation and BZA Order over the prior Zoning Compliance Verification, both of which are (a) stayed, not final, and the subject of an ongoing appeal (BZA Appeal), and (b) the subject of the pending—and also stayed—other action in the circuit court (CAGI Action).

conclusory statements with no argument or supporting authority abandoned).

2. Likelihood of Success on the Merits

The Court similarly finds that Plaintiff has not shown a likelihood of success on the merits. Instead, the complaint merely states, “Plaintiff can further demonstrate likelihood of success on the merits pursuant to state statutory law and local zoning law where defendants have issued numerous construction permits without approval of the zoning administrator for York County, specifically.” However, as discussed, the law does not require a signature of the Zoning Administrator, and Plaintiff has pled no facts supporting his assertions that the Zoning Compliance Verification or subsequent permits issued to Silfab were done without the Zoning Administrator’s approval.¹⁰ Further, in light of this order’s disposition of the complaint’s allegations and causes of action, likelihood of success on the merits has not been demonstrated.

3. Adequate Remedy at Law

The Court also finds that Plaintiff has failed to allege sufficient facts demonstrating he lacks an adequate remedy at law. In fact, the complaint merely recites the applicable injunctive relief element in a conclusory assertion that “Plaintiff is without adequate remedy at law.” This is insufficient to meet a burden of good faith persuasion. *See Mulherin-Howell*, 362 S.C. at 600, 608 S.E.2d at 593–94. What is more, notwithstanding disposition by this order, the complaint sought declaratory relief, which undermines Plaintiff’s claim that an adequate remedy at law did not exist.

4. Arbitrary, Capricious, and Oppressive

Finally, the Court finds the complaint fails to plead, as required, any facts supporting a

¹⁰ To the contrary, the Zoning Interpretation issued by the Zoning Administrator confirmed its interpretation and agreement that solar panel manufacturing could appropriately locate on a parcel zoned Light Industrial, and permits issued to Silfab in the intervening period are evidence contradicting Plaintiff’s assertions.

contention that the County's actions were arbitrary, capricious or oppressive. Thus, for this additional reason, Plaintiff's claim for injunctive relief fails and is dismissed.

C. Writ of Mandamus

The County next contends that Plaintiff is incapable of stating a claim for mandamus against the County because the County has no duty to act under the governing statute and ordinance generally, or specifically in the manner desired by Plaintiff, rendering the request non-ministerial in nature. *See Redmond v. Lexington Cnty. Sch. Dist. No. 4*, 314 S.C. 431, 437, 445 S.E.2d 441, 445 (1994) (explaining that to obtain a writ of mandamus requiring the performance of an act, the applicant must show (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy (citing *Willimon*, 243 S.C. at 86–87, 132 S.E.2d at 170–71)).

Plaintiff pursues mandamus, asking the Court to require the County to issue a stop work order to Silfab, or alternatively revoke its existing permits, because it believes Silfab is operating without a valid permit and is exceeding the scope of the approved use of the property. Even assuming Plaintiff's allegations are true for purposes of this motion, issuing a stop work order is an inherently governmental—not judicial—function that is discretionary. *See* S.C. Code Ann. § 6-29-950(A) (“The governing authorities of municipalities or counties *may* provide for the enforcement of any ordinance ... by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both.” (emphasis added)); Zoning Code § 155.1237(B)(5) (“Stop Work. With or without revoking permits, *the County may issue a stop work order* on any development, building, or structure on any land on which there is an uncorrected violation of a provision of this Chapter or a violation of a condition or qualification of a permit, certificate,

approval, or other authorization previously granted by the County.” (emphasis added)). The use of the word “may” indicates that the action is within the County’s discretion. *See Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352–53, 549 S.E.2d 243, 250 (2001) (“The use of the word ‘may’ signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute.”). Where there is discretion, no duty exists.¹¹

Further, where no duty exists, an action is not ministerial. *See Edwards v. State*, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009) (“A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as *to leave nothing to the exercise of discretion.*” (emphasis added)); *Sanford v. S.C. State Ethics Comm’n*, 385 S.C. 483, 495 n.4, 685 S.E.2d 600, 606 n.4 (2009) (“Discretionary authority, however, is insufficient for mandamus.” (citing *Redmond*, 314 S.C. at 438, 445 S.E.2d at 445 (stating a writ of mandamus is inappropriate for a discretionary authority))).

Third, Plaintiff has pleaded no facts to support a contention that he has a specific legal right to a stop work directive aimed at Silfab. For one thing, by definition, one cannot claim entitlement to a discretionary act. For another, Plaintiff has not cited any case law demonstrating it has a clearly established right to the desired act. *See Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm’n*, 336 S.C. 174, 184, 519 S.E.2d 567, 573 (1999) (finding the school district failed to cite any statute or case demonstrating an established right to force the county election commission to distribute a supplemental ballot handout).

Finally, other remedies were available to Plaintiff in his pursuit of stopping the County-

¹¹ Nor does the County have an obligation to stop Silfab’s project based on the BZA Order, as its applicability is questionable, and it is otherwise stayed, not final, and its appeal pending in the circuit court.

approved development, including the appeal procedures of the Zoning Code, but he did not avail himself of those administrative remedies.

D. Writ of Prohibition

Lastly, the County moves to dismiss the claim for writ of prohibition based on case law holding that a writ of prohibition cannot lie against the County. The Court agrees. (“A writ of prohibition may issue in a proper case to restrain a judicial act; and, on the other hand it will, according to the weight of authority, ordinarily issue only to restrain the exercise or performance of judicial functions or acts, or acts which are quasi-judicial in their character.” *Holladay v. Hodge*, 84 S.C. 91, 95, 65 S.E. 952 (1909); *see also State Bd. of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602 (1938) (stating the writ is primarily used to “prevent the assumption and exercise of jurisdiction by a lower tribunal in cases where wrong, damage, and injustice are liable to follow such action”). The County neither acts as a court, court official, or officer, nor does it exercise any manner of judicial or quasi-judicial powers; therefore, it is not subject to a writ of prohibition.

Moreover, the subject matter of the acts complained of by Plaintiff, namely, approving zoning classifications, issuing zoning compliance verifications, issuing permits, issuing stop work orders, and revoking permits, are inherently legislative functions that reside exclusively within the jurisdiction of the County and its officials. 72A C.J.S. Prohibition § 7 (“In the absence of a statute providing otherwise, prohibition will not lie to prevent legislative acts, or those of a ministerial nature, nor to prevent those of an administrative, prosecutorial, political, governmental, or executive character.”). Therefore, any error in the exercise of the County’s legislative functions is one for which a writ of prohibition cannot lie. *See Berry v. Lindsay*, 256 S.C. 282, 292, 182 S.E.2d 78, 83 (1971) (holding that actions challenged were a quasi-legislative function for which “it is clear that the Writ [of Prohibition] sought here will not lie.”); *see also State v. Price*, 441

S.C. 423, 456, 895 S.E.2d 633, 650 (2023) (“A writ of prohibition will not lie to correct the procedural irregularities in this case, nor will such a writ lie to prevent an erroneous result . . .”).

III. The County’s Remaining Arguments

Because the foregoing issues are dispositive, the Court respectfully denies County’s motion alternatively seeking dismissal pursuant to Rules 12(b)(7) and (8), SCRPC.

CONCLUSION

For the foregoing reasons, Defendants’ Motion to Dismiss Plaintiff’s complaint is GRANTED IN PART and DENIED IN PART.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON FOLLOWING PAGE]

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP4604007

Dennis Floyd Bivens
PLAINTIFF(S)

York County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

See page 2 below.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/30/2025 .

RECEIVED
Jan 23 2026
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Defendants' Motion to Dismiss. Based on a review of the file, pleadings, submissions of the parties, and oral argument, the motion is respectfully granted in part and denied in part.

The Court finds no jurisdiction pursuant to Rule 12(b)(1), SCRCP for lack of justiciability. A claim under S.C. Code Ann. § 6-29-950 requires the property in question be proposed for a use in violation of an ordinance and that the adjacent or neighboring property owner be specially damaged by the violation. The damages asserted by Plaintiff are merely conjectural, with no concrete injury in fact alleged. Further, to have constitutional standing, (1) the plaintiff must have suffered an injury in fact; (2) the injury and the conduct complained of must be causally connected; and (3) it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. *Sea Pines Ass'n for the Prot. of Wildlife v. South Carolina Dep't of Natural Res. & Cmty. Servs. Assocs., Inc.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). The Plaintiff has failed to allege facts showing an injury in fact, causation or redressability.

Further, the Court finds that Plaintiff has failed to state facts sufficient to constitute a cause of action for Declaratory Judgment, Injunction, and Writs of Mandamus and Prohibition. A motion to dismiss under 12(b)(6), SCRCP, should be granted if the facts alleged and inferences reasonably deducible therefrom would not entitle plaintiff any theory on the case. See *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). As to the action for Declaratory Judgment, Plaintiff has not alleged an exhaustion of all remedies and has not alleged facts to support that actions were taken without approval or consent of the Zoning Administrator. The Court finds no justiciable controversy. As to Injunction, Plaintiff has not alleged facts sufficient to show he will suffer irreparable harm, is likely to succeed on the merits, and that there is no adequate remedy at law. Additionally, Plaintiff has not alleged that the County acted in an arbitrary, capricious, or oppressive manner. As to the action for Writ of Mandamus, Plaintiff has not alleged any facts to support a legal right to a stop work directive. Finally, as to Writ of Prohibition, Defendant York County does not exercise judicial or quasi-judicial powers and is therefore not the proper subject for a writ of prohibition.

As to the motions under 12(b)(7) and 12(b)(8), SCRCP, the motions are respectfully denied. Counsel for defendants to prepare a formal order within 10 days.

It Is So Ordered.