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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable G. D. Morgan, Jr.
Circuit Court Judge

Appellate Case No. 2026-000199

Dennis Floyd Bivens,.....Appellant,

v.

York County and Joshua Edwards, York County Manager, Josh Reinhardt, York County Development Services Manager, and Jonathan Buono, York County Planning and Development Services Director, each in their official capacities,..... Respondents.

Final Brief of Respondents

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
INTRODUCTION	1
COUNTER STATEMENT OF ISSUES ON APPEAL.....	2
COUNTER STATEMENT OF CASE.....	3
I. December 27, 2022 Verification.....	3
II. Fee in Lieu of Tax and Incentive Agreement.....	4
III. Related Actions and Litigation.....	6
A. Zoning Interpretation and Subsequent Appeal	6
B. Stayed Circuit Court Action	9
C. Related Appellate Litigation	9
STANDARD OF REVIEW	10
ARGUMENT	11
I. APPELLANT’S FAILURE TO APPEAL FROM THE DISPOSITIVE DISMISSAL OF THE COMPLAINT’S CAUSES OF ACTION IS FATAL TO THIS APPEAL.	12
II. THE CIRCUIT COURT CORRECTLY FOUND APPELLANT LACKED STANDING TO MAINTAIN HIS CLAIMS.....	14
A. The circuit court’s ruling as to another adjacent property owner’s right to intervene in the BZA Appeal was not based on standing and is not in conflict with the Order’s determination of Appellant’s lack of standing in this case.....	15
B. Statutory Standing	18
1. Specially Damaged.....	20
i. Allegation of General Health and Safety Hazards	21
ii. “Spot Zoning” or “Site Specific Zoning”	22
iii. Special Damages Conclusion.....	24
2. Proposed Use in Violation of an Ordinance.....	24
C. Constitutional Standing	27
1. Injury-in-Fact	27
2. Causation	27
3. Redressability	29
D. Standing Conclusion.....	29
III. THE CIRCUIT COURT CORRECTLY DETERMINED APPELLANT FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES BEFORE SEEKING DECLARATORY RELIEF.....	30

IV. APPELLANT’S NEW ARGUMENTS REGARDING A LACK OF DUE PROCESS AND THE APPLICABILITY OF DEED RESTRICTIONS ON THE SITE ARE UNPRESERVED AND INCORRECT.	32
A. Due Process	32
B. Deed Restrictions.....	34
V. THE CIRCUIT COURT PROPERLY FOUND THE COMPLAINT FAILED TO STATE FACTS SUFFICIENT TO SUSTAIN ANY CAUSE OF ACTION.	35
A. Declaratory Relief	36
B. Injunctive Relief	38
1. Appellant Has Made No Showing of Harm, Much Less Irreparable Harm	39
2. Appellant Cannot Demonstrate a Likelihood of Success on the Merits	39
3. Appellant Fails to Show He Has No Adequate Remedy at Law	41
4. Appellant Does Not Allege the County’s Actions Were Arbitrary, Capricious, and Oppressive	41
C. Writ of Mandamus.....	42
D. Writ of Prohibition	43
CONCLUSION.....	45

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>AJG Holdings, LLC v. Dunn</i> , 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009).....	38, 40
<i>Allen v. Wright</i> , 468 U.S. 737 (1984).....	28
<i>Anderson v. S.C. Dep’t of Highways & Pub. Transp.</i> , 322 S.C. 417, 472 S.E.2d 253 (1996)	13
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	36
<i>Atl. Coast Builders & Contractors v. Lewis</i> , 398 S.C. 323, 730 S.E.2d 282 (2012)	13, 25
<i>Auto-Owners Ins. Co. v. Rhodes</i> , 405 S.C. 584, 748 S.E.2d 781 (2013)	37
<i>Beaufort Realty Co. v. Beaufort Cnty.</i> , 346 S.C. 298, 551 S.E.2d 588 (Ct. App. 2001).....	21, 30
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 554 (2007).....	36
<i>Berry v. Lindsay</i> , 256 S.C. 282, 182 S.E.2d 78 (1971)	44
<i>Bodman v. State</i> , 403 S.C. 60, 742 S.E.2d 363 (2013)	15
<i>Brazell v. Windsor</i> , 384 S.C. 512, 682 S.E.2d 824 (2009)	10, 11
<i>Builder Mart of Am., Inc. v. First Union Corp.</i> , 349 S.C. 500, 563 S.E.2d 352 (Ct. App. 2002).....	23, 25, 38
<i>Byrd v. Irmo High Sch.</i> , 321 S.C. 426, 468 S.E.2d 861 (1996)	14
<i>Cannon v. Georgia Attorney General’s Office</i> , 397 S.C. 541, 725 S.E.2d 698 (2012)	16

<i>Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n</i> , 407 S.C. 67, 753 S.E.2d 846 (2014)	21, 22, 27
<i>Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm’n</i> , 336 S.C. 174, 519 S.E.2d 567 (1999)	43
<i>Commander Health Care Facilities, Inc. v. S.C. Dep’t of Health & Env’t Control</i> , 370 S.C. 296, 634 S.E.2d 664 (Ct. App. 2006).....	21, 22
<i>Compton v. S.C. Dep’t of Corr.</i> , 392 S.C. 361, 709 S.E.2d 639 (2011)	40
<i>Consignment Sales, LLC v. Tucker Oil Co.</i> , 391 S.C. 266, 705 S.E.2d 73 (Ct. App. 2010).....	36
<i>Doe v. Marion</i> , 373 S.C. 390, 645 S.E.2d 245 (2007)	10
<i>Doe v. Obama</i> , 631 F.3d 157 (4th Cir. 2011)	14, 28
<i>Edwards v. State</i> , 383 S.C. 82, 678 S.E.2d 412 (2009)	42
<i>Elam v. S.C. Dep’t of Transp.</i> , 361 S.C. 9, 602 S.E.2d 772 (2004)	19, 33, 34
<i>Englert, Inc. v. Netherlands Ins. Co.</i> , 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993).....	12
<i>Ex parte Jones</i> , 160 S.C. 63, 158 S.E. 134, 134 (1931)	44
<i>Fla. Audubon Soc’y v. Bentsen</i> , 94 F.3d 658 (D.C. Cir. 1996).....	28
<i>Flateau v. Harrelson</i> , 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003).....	10, 14
<i>Freeman v. McBee</i> , 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984).....	17
<i>Gardner v. Blackwell</i> , 167 S.C. 313, 166 S.E. 338 (1932)	42
<i>Glasscock, Inc. v. U.S. Fid. & Guar. Co.</i> , 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).....	25

<i>Glaze v. Grooms</i> , 324 S.C. 249, 478 S.E.2d 841 (1996)	15
<i>Headdon v. State Highway Dep't</i> , 197 S.C. 118, 14 S.E.2d 586 (1941)	41
<i>Hensley ex. rel. N. Carolina v. Price</i> , 876 F.3d 573, 581 (4th Cir. 2017)	14
<i>Herron v. Century BMW</i> , 395 S.C. 461, 719 S.E.2d 640 (2011)	14
<i>HHHunt Corp. v. Town of Lexington</i> , 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010).....	23, 25, 35, 38
<i>Holladay v. Hodge</i> , 84 S.C. 91, 65 S.E. 952 (1909)	43
<i>I'On, L.L.C. v. Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000)	15, 16
<i>Jackson v. State</i> , 331 S.C. 486, 489 S.E.2d 915 (1997)	15
<i>Jones v. Lott</i> , 387 S.C. 339, 692 S.E.2d 900 (2010)	13
<i>Kennedy v. S.C. Ret. Sys.</i> , 345 S.C. 339, 549 S.E.2d 243 (2001)	40
<i>Lennon v. S.C. Coastal Council</i> , 330 S.C. 414, 498 S.E.2d 906 (Ct. App. 1998).....	14
<i>Lominick v. City of Aiken</i> , 244 S.C. 32, 135 S.E.2d 305 (1964)	32
<i>Masters v. Rodgers Development Group</i> , 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984).....	20
<i>McCall v. Finley</i> , 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987).....	13
<i>McManus v. Bank of Greenwood</i> , 171 S.C. 84, 171 S.E. 473 (1933)	11
<i>Meredith v. Elliott</i> , 247 S.C. 335, 147 S.E.2d 244 (1966)	32

<i>Mulherin-Howell v. Cobb</i> , 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005).....	12, 39, 41
<i>Plyler v. Burns</i> , 373 S.C. 637, 647 S.E.2d 188 (2007)	10
<i>Power v. McNair</i> , 255 S.C. 150, 177 S.E.2d 551 (1970)	36
<i>Redmond v. Lexington Cnty. Sch. Dist. No. 4</i> , 314 S.C. 431, 445 S.E.2d 441 (1994)	42
<i>Richland Cnty. v. S.C. Dep’t of Revenue</i> , 422 S.C. 292, 811 S.E.2d 758 (2018)	38, 41
<i>S.C. State Highway Dep’t v. Meredith</i> , 241 S.C. 306, 128 S.E.2d 179 (1962)	20
<i>Sanford v. S.C. State Ethics Comm’n</i> , 385 S.C. 483, 685 S.E.2d 600 (2009)	43
<i>Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.</i> , 361 S.C. 117, 603 S.E.2d 905 (2004)	38
<i>Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.</i> , 345 S.C. 594, 550 S.E.2d 287 (2001)	21, 24, 27, 29
<i>Sheppard v. Tex. Dep’t of Transp.</i> , 158 F.R.D. 592 (E.D. Tex. 1994).....	11
<i>Simon v. Eastern Ky. Welfare Rights Org.</i> , 426 U.S. 26 (1976).....	27
<i>Skydive Myrtle Beach, Inc. v. Horry Cnty.</i> , 426 S.C. 175, 826 S.E.2d 585 (2019)	36
<i>Spanish Wells Prop. Owners Ass’n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island</i> , 295 S.C. 67, 367 S.E.2d 160 (1988)	45
<i>Stanton v. Town of Pawleys Island</i> , 309 S.C. 126, 420 S.E.2d 502 (1992)	30
<i>State v. Price</i> , 441 S.C. 423, 895 S.E.2d 633 (2023)	44
<i>State v. White</i> , 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007).....	20

<i>Stiles v. Onorato</i> , 318 S.C. 297, 457 S.E.2d 601 (1995)	36
<i>Tellabs, Inc. v. Makor Issues & Rights, Ltd.</i> , 551 U.S. 308 (2007).....	10
<i>Thomas Sand Co. v. Colonial Pipeline Co.</i> , 349 S.C. 402, 563 S.E.2d 109 (Ct. App. 2002).....	30
<i>Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue</i> , 342 S.C. 34, 535 S.E.2d 642 (2000)	31
<i>Vt. Agency of Natural Res. v. U.S. ex rel. Stevens</i> , 529 U.S. 765, 771 (2000).....	29
<i>Waters v. S.C. Land Res. Conservation Comm’n</i> , 321 S.C. 219, 467 S.E.2d 913 (1996)	36, 37
<i>Wilder Corp. v. Wilke</i> , 330 S.C. 71, 497 S.E.2d 731 (1998)	33
<i>Wise v. Wise</i> , 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011).....	20
<i>Youngblood v. S.C. Dep’t of Soc. Servs.</i> , 402 S.C. 311, 741 S.E.2d 515 (2013)	18, 20
<i>Zaman v. S.C. State Bd. of Medical Examiners</i> , 305 S.C. 281, 408 S.E.2d 213 (1991)	34
Statutes	
S.C. Code Ann. § 4-1-170.....	4
S.C. Code Ann. § 6-29-820.....	18
S.C. Code Ann. § 6-29-820(B)(2).....	8
S.C. Code Ann. § 6-29-825(A)	17
S.C. Code Ann. § 6-29-950.....	<i>passim</i>
S.C. Code Ann. § 6-29-950(A)	18, 21, 40
Rules	
Rule 201, SCORE	11, 20
Rule 208(b)(1), SCACR.....	2, 14

Rule 210(c), SCACR	16
Rule 220(c), SCACR	13, 15, 20, 45
Rule 803(8), SCRE	11
Other Authorities	
35 Am. Jur. 2d Federal Tax Enforcement § 1054.....	41
72A C.J.S. Prohibition § 7	44
York County Code of Ordinances § 155.270(G).....	8
York County Code of Ordinances § 155.980.....	31
York County Code of Ordinances § 155.981(B)	31
York County Code of Ordinances § 155.982(A)	31
York County Code of Ordinances § 155.982(B)	32
York County Code of Ordinances § 155.982(C)	8, 9
York County Code of Ordinances §155.1090.....	6
York County Code of Ordinances § 155.1121.....	24, 37, 40
York County Code of Ordinances § 155.1122(B)(2).....	26
York County Code of Ordinances § 155.1123(B)(3).....	27
York County Code of Ordinances § 155.1123(B)(4)(a)	27
York County Code of Ordinances § 155.1237(B)(5).....	40
York County Code of Ordinances § 155.1237(B)(6).....	40
York County Code of Ordinances § 155.1238.....	41
York County Code of Ordinances § 155.1239(A)	40
York County Code of Ordinances § 155.1239(B)	40
York County Public Index, https://publicindex.sc.courts.org/York/PublicIndex/PISearch.aspx	17

INTRODUCTION

The brief of the Appellant presents a litany of misapprehensions, misstatements, rumors, and false assignments of ill-intent and malfeasance.¹ This continues the trend originating in the Complaint and the multitude of filings in the five other legal actions² brought by related parties, all of which seek to discredit the County and force its hand to take action against non-party Silfab Solar, Inc. (Silfab). Appellant presents a bleak picture of the relevant events, and paints the County in a bad light, but does so without regard to the facts or law that govern this case, which stand in stark contrast to that alleged. The issues surrounding the County processes and approvals associated with Silfab, a company specifically—and legislatively—induced, authorized, and incrementally permitted by the County to locate, develop, and ultimately operate within a designated multi-county industrial park in the County, have evoked a significant amount of passion by certain vocal members of the public interested in the type of development that occurs in their community, as well as other elected officials and candidates for upcoming primaries. But a County cannot be governed or persuaded by passion alone, and the fate of many governing decisions is that they often result in a divided state of public opinion. However, a divide in public opinion does

¹ The County does not intend on addressing each of the many mischaracterizations of fact appearing in the Brief of the Appellant regarding the underlying dispute and the merits of the claims tangential to the relief sought herein but currently pending in other cases and venues. In not identifying or rebutting every such occurrence, the County expressly does not admit or acknowledge the truth or accuracy of any such statements, assertions, or arguments by Appellant, and the County specifically denies and contests any assertion or claim not specifically addressed herein.

² Specifically, two of those matters are currently pending in the Court of Common Pleas, Sixteenth Judicial Circuit, York County: (1) 2024-CP-46-02641, *Silfab Solar, Inc., et al. v. York County Board of Zoning Appeals*; and (2) 2024-CP-46-03532, *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* (collectively, Related Litigation). The other cases, which have already been resolved in favor of the County, are introduced and discussed below.

not, alone, warrant extraordinary court intervention. The circuit court appropriately muted the extraneous background noise surrounding Silfab's development and dispassionately assessed the factual allegations and the causes of action advanced in the Complaint. The resulting Order of the circuit court is legally sound and should be affirmed.

Yet, for all the harsh rhetoric against the County, Appellant has failed to challenge the circuit court's primary and dispositive holdings that the Complaint did not plead facts sufficient to support the elements of *any* of the causes of action. This failure creates a gaping procedural deficiency that renders Appellant's articulated challenges to the circuit court's predicate jurisdictional rulings as to standing, as well as certain factual findings and conclusions insufficient; the unappealed issues not before this Court are fatal to this appeal. Thus, even assuming that Appellant has met his burden in demonstrating error as to every issue that is raised in this appeal, which he has not as discussed below, the circuit court's dismissal of all of the causes of action of the Complaint remains fundamentally unchallenged, and the Order must be affirmed.

COUNTER STATEMENT OF ISSUES ON APPEAL³

- I. Does Appellant's failure to challenge the circuit court's dismissal of any of the causes of action require affirmance by this Court?
- II. Did the circuit court correctly find that Appellant had failed to plead sufficient facts to meet his burden of demonstrating either statutory or constitutional standing to advance a justiciable claim?
- III. Did the circuit court correctly determine that Appellant failed to exhaust his administrative remedies prior to bringing this action?
- IV. Are Appellant's arguments regarding due process and the preclusive nature of deed restrictions, made for the first time on appeal, preserved for this Court's review?

³ Contrary to Rule 208(b)(1)(B), SCACR, Appellant's Brief does not provide a statement of the issues on appeal, *see id.* ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); instead, he designates his argument headings as the issues on appeal.

V. Does the Complaint fail to plead sufficient facts to sustain any of the causes of action?

COUNTER STATEMENT OF CASE

Appellant Dennis Bivens filed suit against Respondents York County, Joshua Edwards, Josh Reinhardt, and Jonathan Buono (collectively, the County), on October 13, 2025, seeking relief against both the County and non-party Silfab, pursuing claims for declaratory relief, temporary and permanent injunctive relief, and extraordinary writs of mandamus and prohibition, to the issuance of stop work orders and revocation of permits, with the goal of preventing Silfab from continuing development of a solar panel manufacturing plant.

On November 17, 2025, the County filed a motion to dismiss the Complaint pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure (SCRCP), arguing (1) Appellant's claims were duplicative of those advanced in a related matter pending in the circuit court, (2) Appellant's claims and requested relief were not justiciable, (3) Appellant failed to state any claims for relief, and (4) Appellant failed to name a necessary party. The Honorable G. D. Morgan Jr. heard arguments on the motion on December 16, 2025, and, on January 21, 2026, issued an order granting the County's motion in part, finding Appellant (1) lacked standing to pursue his claims and (2) failed to sufficiently state any claims for relief (Order). The court denied the motion in part as it found the foregoing issues were dispositive.

Appellant timely noticed his appeal of the Order and filed his initial brief on March 18, 2026. This initial brief of the County follows.

STATEMENT OF FACTS

I. December 27, 2022 Verification

In late 2022, a representative of Silfab preliminarily sought a determination from the County's zoning office as to the compatibility of Silfab's 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 S.C. Code Ann. § 4-1-170 and is zoned Light Industrial. On December 27, 2022, the County’s zoning office issued a letter to Silfab verifying that Silfab’s proposed operations were compatible and compliant with the Parcel’s Light Industrial zoning district (Verification).⁴ (**R. pp. 70–71**), Verification. Appellant made no challenge to or appeal from the Verification.

II. Fee in Lieu of Tax and Incentive Agreement

During that same period in 2022, Silfab and the County began negotiating a fee in lieu of tax (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. (**R. pp. 72–77**), Inducement Ordinance. Second reading, along with a well-attended public hearing, occurred on August 21, 2023. *Id.* On September 18, 2023, County Council held a third reading of the Inducement Ordinance and enacted the same. *Id.* The Inducement Ordinance authorized and directed County representatives to execute the FILOT agreement. *Id.* It

⁴ Appellant’s brief makes much of the County’s, and subsequently the circuit court’s, use of the term of art “Zoning Compliance Verification,” for the December 27, 2022, letter. *E.g.*, Appellant’s Br. at 6 (“The term of art argued in court “zoning compliance verification” does not constitute lawful zoning approval. The mere inserting of “compliance” as between “zoning” and “verification” does not equate to legislative action as to zoning or change of land use.”). This issue is a red herring and impermissibly seeks to elevate form over substance. The Order did not rule that the Verification amounted to legislative action as to zoning, constituted a change in zoning, or approved a change in land use for Silfab and the Parcel, as incorrectly argued by Appellant. Appellant’s Br. *passim*. What the circuit court *did* find, however, is that the Verification existed as of the date of County Council’s adoption of an ordinance formally inducing Silfab to locate in the County and authorizing execution of a fee in lieu of tax agreement between the County and Silfab, the latter of which expressly ratified all prior actions taken by the County with respect to the project, which necessarily included the Verification. Regardless, because Appellant takes such issue with the term of art used to reference the Verification, the County will simply refer to the December 27, 2022, letter as the “Verification.”

further provided that “[a]ll ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.” (R. p. 75).

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. (R. pp. 78–113), FILOT. Among other terms, the FILOT agreement specifically identifies the Parcel for development of the Silfab project. (R. p. 87), FILOT (defining “land” as “the land upon which the Project will be located, as described in Exhibit A”); (R. p. 108), FILOT Ex. 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.*

(R. pp. 83–84), FILOT (emphasis supplied). 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 Verification issued by the County’s zoning office specific to both Silfab and the Parcel was thereby legislatively approved. *Id.*

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.⁵

⁵ From the time it began developing to the County’s motion to dismiss, Silfab had two building-related violations at the Parcel. First, during a routine meeting onsite on May 20, 2025, the County discovered that three support buildings within the bulk storage area were partially constructed prior to building permits being issued. As each of these buildings required a separate

III. Related Actions and Litigation

In addition to this lawsuit, two other challenges have been mounted against Silfab's county-approved and -regulated operations, involving substantially similar (or identical) arguments and requesting similar (or identical) requests for relief, both of which are still pending.

A. Zoning Interpretation and Subsequent Appeal

On February 1, 2024, Walter Buchanan, 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.*). **(R. pp. 114–16)**, Zoning Interpretation Request. The Zoning Interpretation Request submitted seven questions directed specifically at the approval of Silfab's development of the Parcel, *see* **(R. p. 116)**, 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."⁶

building permit, three individual stop work orders were issued on May 21, 2025, for construction without building permits. Conditions to rectify the orders included submittal of the appropriate permit documents, licensed contractor information, as well as a letter from an engineer to verify that construction had been completed according to building code requirements. Upon completion of these requirements, the stop work orders were lifted on June 27, 2025.

Second, on June 20, 2025, the County was notified that non-construction employees of Silfab were present at the facilities constructed on the Parcel and conducted a site visit on June 23, 2025. In addition, the County discovered that other violations related to egress, exit lighting, sprinkler systems, and fire alarm systems not being fully operable, liquid fuel equipment being operated within the building, and fuel tanks being stored in an incorrect location. No formal operations were taking place. Because Silfab had not yet received a certificate of occupancy for the facilities for non-construction personnel, in addition to the other noted violations, the County issued a stop work order to Silfab on June 24, 2025. Upon adequate assurances that the non-construction personnel were not and would no longer be present at the site, and correction of the other noted violations, the County lifted the stop work order on June 27, 2025.

⁶ Although not relevant or dispositive for this appeal, it is the County's position that the procedures afforded by the Code of Ordinances for requesting a zoning interpretation may not be used to challenge a specific project or development. *See* York County Zoning Code § 155.1090. That is particularly the case where the project is relying on the unappealed Verification from the County, as well as an unchallenged County County-authorized FILOT agreement, that both

On February 16, 2024, the County Zoning and Development Standards Administrator provided a response to the Zoning Interpretation Request (Zoning Interpretation). (**R. pp. 117–19**), Zoning Interpretation. Therein, the County declined to address the requests, consistent with its authority under Zoning Code section 155.1093(B), as it did not perceive the referenced code sections to be ambiguous, but did provide certain “clarifications” as to other tangentially related issues. *Id.* Thereafter, on March 14, 2024, several (but not all) of the seven questions submitted in the zoning interpretation request were appealed to the County Board of Zoning Appeals (BZA), (BZA Appeal). (**R. pp. 120–25**), 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). (**R. pp. 126–28**), BZA Order. In pertinent part, the BZA Order characterized (or re-wrote) the questions presented in the appeal as: (1) 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.” (**R. p. 127**). However, as appropriately noted by the circuit court, (**R. pp. 237–38**), neither question proposed by the BZA in its order were presented by Mr. Buchanan in his Zoning Interpretation Request. *Compare* (**R. p. 116**), Zoning Interpretation Request, *with* (**R. pp. 127–28**), BZA Order. Nor did the BZA answer the threshold question of whether an appeal of the Zoning Interpretation was cognizable, in light of the fact that the Zoning Administrator declined to answer any of the

predate the zoning interpretation request. Allowing that type of after-the-fact, collateral challenge to a project or an existing business is not only legally unsustainable under the Code of Ordinances but also would wreak havoc on County business, undermine the legislative authority of the County Council, and give voice to a heckler’s veto that would grind development to a halt.

questions posed by the Zoning Interpretation Request. *Id.* Ultimately, the BZA Order contained the following *sua sponte* 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),⁷ York County Code of Ordinances.

(R. p. 128). Critically, the BZA Order did not mention Silfab, its specific project, or the Parcel.

Thereafter, Silfab and its landlord, Exeter 7149 Logistics, L.P. (Landlord) appealed the BZA Order to the circuit court.⁸ *See supra* n.2. As a result of the appeal, the BZA Order is and has been stayed by virtue of subchapter E, part 3 of the York County Zoning Code. *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)).⁹ Consistent with S.C. Code Ann. § 6-29-820(B)(2), Silfab requested pre-litigation mediation of the BZA Appeal, and in April 2025, the parties unsuccessfully mediated the case. As a result, the matter is ongoing and, thus, the BZA’s determination as to the Zoning Interpretation is not final. On information and belief, the BZA Appeal has been calendared for argument before the circuit court on May 26, 2026.

⁷ Section 155.270(G) of the Zoning Code provides: “**Unlisted Uses Prohibited.** Any use not listed for an applicable zoning district in the Use Table is prohibited.” (Emphasis in original).

⁸ The Fort Mill resident, represented by Mr. Halford (Appellant’s counsel), was granted intervention in the pending BZA Appeal circuit court action.

⁹ The Zoning Administrator has not certified that a stay of the Zoning Interpretation is warranted due to imminent peril to life and property; therefore, the BZA Order is stayed.

B. Stayed Circuit Court Action

On September 5, 2024, Citizens Alliance for Government Integrity, Inc. (CAGI), a South Carolina non-profit, filed a complaint against Silfab, Landlord, and the County (CAGI Action). *See supra* n.2. That lawsuit purports to be a putative class action seeking damages and declaratory and injunctive relief, arguing that the BZA Order controls over the Verification issued to Silfab for the Parcel, the Inducement Ordinance, and the FILOT (the Ordinance, which approved the FILOT and its ratification of the Verification, being a legislative action). The defendants there, including the County, moved to dismiss the action on several 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.¹⁰

C. Related Appellate Litigation

In addition to the circuit court matters arising out of the facts presented here, Silfab's project has been challenged via two petitions filed in the Supreme Court.

First, on July 2, 2025, Merlyn Bivens¹¹ filed a petition to invoke the Supreme Court's original jurisdiction to issue writs of mandamus and prohibition (Bivens Petition), requesting that it require the County to revoke permits issued to Silfab and ultimately halt its project. *See Appellate*

¹⁰ Judge Rivers correctly determined that an action seeking a declaratory judgment as to impact of the BZA Order could not be decided where the BZA Order is on appeal and therefore not final, in addition to being administratively stayed. *See York County Zoning Code* § 155.982(C). CAGI has since twice moved for reconsideration of Judge Rivers' order staying the action. Both motions were summarily denied before the defendants could even respond.

¹¹ On information and belief, Merlyn Bivens is Appellant Dennis Bivens' mother, and Mr. Buchanan, who sought the Zoning Interpretation and is a party to BZA Appeal, is Merlyn Bivens' son-in-law.

Case No. 2025-001325. On July 21, 2025, before the undersigned filed its Return on behalf of the County, 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 (CAGI Petition), pursuing writs of mandamus and prohibition on the same bases as those in the Bivens petition and in this case. *See* Appellate Case No. 2025-002174. On December 18, 2025, the Supreme Court again declined to entertain the matter in its original jurisdiction.

STANDARD OF REVIEW

An appellate court conducts a *de novo* review of a grant of dismissal. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (“In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court.”). When deciding a motion to dismiss for failure to state a claim, the “Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003); *see also Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (“The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.”). Appellant misstates this standard.

Ordinarily, in ruling on a motion to dismiss, the Court cannot consider materials outside the complaint. However, under appropriate circumstances which are present here, as correctly found by the circuit court in its discretion, **(R. p. 234)**, Order at 1, n.1, the Court can consider additional information referenced in the complaint without converting the motion into a motion for summary judgment. *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”); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322

(2007) (“[S]ources courts ordinarily examine when ruling on Rule 12(b)(6) motions [include] documents incorporated into the complaint by reference, and matters of which a court may take judicial notice”); *Sheppard v. Tex. Dep’t of Transp.*, 158 F.R.D. 592, 595–96 (E.D. Tex. 1994) (“[D]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff’s complaint and are central to [plaintiff’s] claim.”). Each of the documents attached to the County’s memorandum in support of its motion to dismiss was either explicitly referred to and relied upon in the Complaint, referenced or relied upon by inference, or are public records which the circuit court appropriately considered and of which this Court may take judicial notice.¹² See Rules 201, 803(8), SCRE.

ARGUMENT

Appellant does not present a coherent basis for reversal of the circuit court’s reasoned and thorough analysis granting the County motion to dismiss. Appellant is wrong as to its misguided arguments on appeal, and the County strongly disagrees with and disputes Appellant’s characterization of the County’s conduct, actions, and motives with respect to the Silfab project, as well as the legal import of the actions of its governing body and staff. The Order of the circuit

¹² Despite Appellant’s statements to the contrary, the County *did not* consent to his submission of additional documents—the affidavit of Allison Love and the deed restrictions related to the Parcel—to be considered at the motion to dismiss stage. Those documents are distinct from those submitted by the County in that they are not incorporated by reference in the Complaint. Indeed, that rule is to prevent *plaintiffs* “from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.” *Brazell*, 384 S.C. at 516, 682 S.E.2d at 826. Had Appellant believed those documents and the factual allegations advanced by his counsel deriving therefrom were central to his claims, he should have pleaded facts related to the documents in support of his claims and attached them as exhibits to his Complaint. He did not. (**R. 2–10**), Compl. (containing no reference to deed restrictions or the allegations of former Council-member Love). As such, consideration of those documents is inappropriate at the dismissal stage and on appeal of the dismissal. *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (“This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.”). Regardless, former Council-member Love’s affidavit is irrelevant to the issues of this case, and the deed restrictions are of zero utility to Appellant.

court carefully and thoughtfully considered the arguments of the parties and correctly found a lack of justiciable controversy advanced in the Complaint due to the failure of Appellant to allege facts sufficient to support a determination of standing, either by statutory or traditional constitutional standing, as well as a failure to plead facts sufficient to state a justiciable claim as to any of the asserted causes of action set forth in the Complaint. Appellant's new and unpreserved arguments do not alter that analysis, and his attempts to sway the Court's analysis by overt reference to and reliance on alleged facts outside of the record on appeal and occurring after the entry of Order is both improper and unavailing. The circuit court's analysis is sound, and this Court should affirm the Order.

I. APPELLANT'S FAILURE TO APPEAL FROM THE DISPOSITIVE DISMISSAL OF THE COMPLAINT'S CAUSES OF ACTION IS FATAL TO THIS APPEAL.

Because Appellant fails to challenge the circuit court's core and dispositive findings that the Complaint lacks sufficient facts to satisfy the elements of *any* of the causes of action advanced, this appeal is necessarily an exercise in futility. While the brief recites the causes of action that were pled, and spends a full page (Appellant's Br. at 4–5) discussing the irrelevant question of whether those claims are legal or equitable in nature, Appellant never actually gets around to arguing that the circuit court erred in finding that the pleaded facts fail to support the required elements of those causes action in a manner that could entitle him to relief on those claims.¹³ Instead, Appellant's entire brief focuses exclusively on the circuit court's findings of jurisdictional

¹³ Even if the Court were to construe Appellant's general appeal of the Order and mere recitation to the causes of action of the Complaint as being sufficient to challenge the circuit court's specific findings and holdings as to the Complaint's deficiencies, Appellant's references are so conclusory as to warrant a finding that the issues have been abandoned. *See, e.g., Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005) (finding an argument advanced through conclusory statements with no argument or supporting authority abandoned); *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 304 n.2, 433 S.E.2d 871, 873 n.2 (Ct. App. 1993) (stating a one sentence argument is too conclusory to present to the Court).

shortcomings (lack of standing), challenging the factual findings of the circuit court and alternative grounds for dismissal (exhaustion of remedies), and advancing new arguments for relief (violation of due process and deed restrictions) that were neither alleged in the Complaint nor argued to the circuit court.

But the circuit court's standing ruling on standing, even if reversed, would only allow Appellant in the door, as standing merely permits the court's exercise of its jurisdiction rather than dictates the ultimate result. That inescapable jurisdictional requirement leaves intact the circuit court's unappealed and dispositive holdings as to Appellant's inability to meet the required elements of or state facts sufficient to support the asserted claims. *See Atl. Coast Builders & Contractors v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."); *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("[W]hatever doesn't make any difference, doesn't matter."). Here, Appellant's failure to address dismissal of the underlying causes of action implicates the two-issue rule and requires affirming the circuit court's dismissal of those causes of action. *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."); *see also* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."). Significantly, the two-issue rule "is applicable under []circumstances on appeal [other than general jury verdicts], including affirmance of orders of trial courts . . . if the plaintiff failed to appeal [all] grounds or if one of the grounds required affirmance." *Anderson v. S.C. Dep't of Highways & Pub. Transp.*, 322 S.C. 417, 420, 472 S.E.2d 253, 255 (1996).

Similarly, while the court’s findings and its ruling as to Appellant’s failure to exhaust administrative remedies serve as supporting predicates to and an alternative basis for dismissal, Appellant never actually applies those alleged incorrect factual findings to the causes of action or otherwise demonstrates that the pleaded facts would entitle Appellant to relief. *See Hensley ex. rel. N. Carolina v. Price*, 876 F.3d 573, 581 (4th Cir. 2017) (“Appellate courts ‘are not like pigs, hunting for truffles buried in briefs.’” (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991))); “Similarly, it is not our job ‘to wade through the record and make arguments for either party.’” (quoting *Friedel v. City of Madison*, 832 F.2d 965, 969 (7th Cir. 1987))). In sum, Appellant’s failure to appeal from the Order’s analysis and dismissal of the causes of action is dispositive and requires affirmance of the Order.¹⁴

II. THE CIRCUIT COURT CORRECTLY FOUND APPELLANT LACKED STANDING TO MAINTAIN HIS CLAIMS.

“A threshold inquiry for any court is a determination of justiciability, *i.e.*, whether the litigation presents an active case or controversy.” *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998). “A justiciable controversy is 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.” *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430–31, 468 S.E.2d 861, 864 (1996). The concept of justiciability encompasses the doctrines

¹⁴ While the Court’s standard of review on an appeal from an order granting a Rule 12(b)(6) motion to dismiss requires it to apply “the same standard of review as the trial court,” *see Doe, supra*, construing the complaint “in the light most favorable to the plaintiff,” *see Flateau, supra*, that standard runs actually depends on the appellant properly appealing the issues. *See, generally, Herron v. Century BMW*, 395 S.C. 461, 469, 719 S.E.2d 640, 644 (2011) (declining to address an issue because “Appellants failed to present the issue to us”); *see also* Rule 208(b)(1), SCACR. Thus, Appellant’s failure to specifically challenge the circuit court’s findings and analysis with respect to the Order’s dismissal of each of the pleaded causes of action precludes review of the 12(b)(6) dismissal. However, in the event the Court disagrees, the County will address the circuit court’s accurate analysis of the Complaint as to Appellant’s failure to plead sufficient facts to support any of the asserted causes of action.

of ripeness, mootness, and standing. *Jackson v. State*, 331 S.C. 486, 490 n. 2, 489 S.E.2d 915, 917 n. 2 (1997). As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation. *Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (1996).

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. The circuit court properly found the Complaint failed to meet its burden under either method, thereby depriving the court of a justiciable controversy.¹⁵

A. The circuit court’s ruling as to another adjacent property owner’s right to intervene in the BZA Appeal was not based on standing and is not in conflict with the Order’s determination of Appellant’s lack of standing in this case.

Appellant first asserts that two circuit court judges—one in the BZA Appeal and the circuit court below in this matter—have “now ruled on standing under S.C. Code Ann. § 6-29-950(A) arriving at different legal conclusion.” Appellant’s Br. at 5; *id.* at n.1 (“In case no. 2024-CP-46-

¹⁵ The County also argued below that Appellant’s claims were not ripe for consideration given the Related Litigation. Specifically, the requested relief—and Appellant’s arguments—are premised, in part, on the alleged illegality of permits issued to Silfab stemming from the findings of the BZA Order, despite its lack of finality, lack of reference to Silfab, or any determination regarding its applicability to the Silfab development. Appellant alleged that, because Silfab’s development should be considered “a non-conforming use under the zoning code,” (**R. p. 3**) Compl. ¶ 8 (based implicitly on the BZA Order), this prevents Silfab from continuing its development and thereby requires the revocation of its permits and ultimately ceasing its operations. However, as Judge Rivers similarly (and correctly) found, the import of the BZA Order cannot be decided where it is stayed and is currently on appeal and, therefore, not final. Without that finality, this matter is not ripe and justiciable, and Appellant’s arguments as to the import of the BZA Order are unavailing. As such, the County’s argument as to the ripeness of Appellant’s claims presents an alternative sustaining ground upon which this Court could affirm. *See* Rule 220(c), SCACR; *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) (“[I]t is not always necessary for a respondent—as the winning party in the lower court—to present his issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review.” (citing Rule 220(c), SCACR)).

02641 *Silfab Solar Inc. et al v. York County Board of Zoning Appeals* another neighboring owner to the Silfab site, Walter Buchanan, sought and was granted the right to Intervene as neighboring owner with standing under the 10/22/2024 Order of Judge Marvin H. Dukes, III. This order has stood unchallenged, and specifically cites standing conferred under S.C. Code Ann. 6-29-950(A)).¹⁶

As an initial matter, the intervention order of the circuit court in the BZA Appeal is not a part of the record on appeal and was neither raised to nor ruled upon by the circuit court below in this case. *See* Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”); *I’On, L.L.C.*, 338 S.C. at 422, 526 S.E.2d at 724 (“[T]he losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.”). Thus, Appellant’s argument is unpreserved for review.¹⁷

But beyond that procedural impediment, Appellant’s argument is demonstratively false and misrepresents both the holding of Judge Dukes in the BZA Appeal and statutory citation listed in his order granting intervention. While not a part of the record on appeal, the intervention order is

¹⁶ *See also* Appellant’s Br. at 7 (“Here the circuit courts are ruling differently as to statutory standing in the quagmire of the Silfab cases now on record before all courts, which are cited by memorandums of the parties.”); *id.* at 15–16 (“Other courts sitting in similar statutory standing issues have ruled neighboring property owners have standing. (see, fn.1 p.infra). If one neighboring property owner has standing, all neighboring property owners would have standing if they are neighboring owners with a substantial interest or can evidence they may be specially damaged, and the court of appeals should reverse.”).

¹⁷ As is evident by its date, the intervention order was available to Appellant when the Complaint was filed and for responding to the County’s motion to dismiss, particularly where Appellant and Mr. Buchanan share the same counsel. *See Cannon v. Georgia Attorney General’s Office*, 397 S.C. 541, 546, 725 S.E.2d 698, 701 (2012) (citing *Hurst v. Sumter County*, 189 S.C. 376, 1 S.E.2d 238 (1939) (noting the general rule in civil cases that issues must be raised at the earliest opportunity, or they will be considered waived)).

available to the Court on the York County Public Index site.¹⁸ In its October 22, 2024, Form 4 Order granting intervention in the BZA Appeal to neighboring property owner Walter Buchanan (who requested the Zoning Interpretation), the circuit court states, in full, the following:

This matter came before me on October 7, 2024, on Petitioner’s Motion to Intervene in a zoning appeal. Petitioner is an adjacent landowner to an industrial parcel. The matter in question involves whether or not a solar panel manufacturing facility is a permitted use in York County’s Light Industrial district. SC Code SECTION 6-29-825(A) directs: “... A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals.” (emphasis added)

I find that as an adjacent landowner to a possible manufacturing facility, Petitioner has a substantial interest and should be permitted to intervene. The Petitioner’s motion is GRANTED. This ruling is specific to Petitioner and not granted for those “similarly situated.”

AND IT IS SO ORDERED

Several things are readily apparent from the foregoing. First, contrary to Appellant’s representation, the intervention order does not rule that Mr. Buchanan is a “neighboring owner with standing.” Appellant’s Br. at 5, n.1. In fact, the order does not contain the word “standing” at all. Second, nor does the order “rule[] on standing under S.C. Code Ann. § 6-29-950(A),” Appellant’s Br. at 5, or “specifically cite[] standing conferred under S.C. Code Ann. 6-29-950(A),” *id.* at n.1, as also represented to the Court. In fact, yet again, the order does not reference S.C. Code Ann. § 6-29-950 at all. As is plainly evident, the circuit court in the intervention order relied on a separate statutory section, S.C. Code Ann. § 6-29-825(A), which governs appeals from decisions of boards of zoning appeals and specifically those distinct appeals of adverse decisions brought by the “property owner[s] whose land is the subject of a decision of the board of [zoning] appeals.”

¹⁸ See <https://publicindex.sccourts.org/York/PublicIndex/PISearch.aspx> (searching for 2024-CP-46-02641, October 22, 2024 Form 4 Order); see also *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) (holding that “[a] court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records.”).

C.f. S.C. Code Ann. § 6-29-820. As set forth in the intervention order, section 825(A) provides that, in such circumstance, persons who can demonstrate a “substantial interest” in the appeal “must” be granted intervention by the circuit court upon such a request and demonstration.¹⁹

However, such an inquiry is necessarily fact-specific to the individual seeking intervention, and section 825(A) does not confer concomitant rights of intervention on any unaffiliated or similarly-situated individuals, as incorrectly suggested by Appellant. *See supra* n.16. Indeed, the circuit court’s intervention order states this expressly, holding that “[t]his ruling is specific to Petitioner and not granted for those ‘similarly situated.’” Appellant’s argument to the contrary is thus not only unfounded, but also directly contradicted by the very authority that he categorically misrepresents.

In sum, the intervention order did not rule on standing, did not address or rely on section 6-29-950, and has no application or preclusive effect to this case or appeal, even if the argument has been preserved for this Court’s review.

B. Statutory Standing

“Statutory 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 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)). Pertinent here, S.C. Code Ann. § 6-29-950(A) provides in relevant part:

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

¹⁹ Although not addressed in the intervention order, Mr. Buchanan likely should have been a party to the BZA Appeal as a matter of right, in any event, because the appeal stemmed from the Interpretation Request that he submitted to the County’s zoning office and which he subsequently appealed to the BZA, resulting in the BZA Order. These facts grant even less credence to Appellant’s assertion that the intervention order addressed Mr. Buchanan’s standing.

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

The circuit court correctly held the Complaint failed to meet the pleading standard as to special damages and therefore did not satisfy one of the two conditions precedent to assert standing under section 950(A).²⁰ Specifically, as found by the circuit court, Appellant did not plead that he

²⁰ Appellant once again runs afoul of the preservation rules by arguing that Silfab’s use of the project site is being conducted without zoning approval in violation of the Zoning Code. *See, e.g.,* Appellant’s Br. at 4 (“Appellant respectfully avers the court errors [sic] at law by finding a zoning change or change of use where no zoning approval [exists] ... and the error constitutes reversible error if there was no zoning approval in fact....”). However, the circuit court expressly declined to reach the issue of whether Silfab’s use, or proposed use, is in violation of an ordinance consistent with the second prong of the court’s statutory standing analysis of section 950(A) in light of its disposition of the special damages issue (the first prong). (**R. p. 243**), Order at 10, n.7 (citing *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999)). Because the court did not rule on the issue that the Complaint raised, it was incumbent upon Appellant to first move to reconsider the Order of the circuit court if he wanted to preserve the issue for appeal. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (“A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” (emphasis in original)).

Notwithstanding Appellant’s failure to preserve the issue, the County argued in its motion to dismiss briefing that Silfab’s use of the site was not in violation of an ordinance in light of the formal action taken by the governing body of the County, *see* (**R. p. 40**), Mem. in Supp. at 16 (“Therefore, contrary to Plaintiff’s unsupported assertion that Silfab’s development is being conducted in violation of an ordinance, in fact, it is being developed pursuant to and at the express direction of a specific ordinance adopted by County Council to induce the development at the Parcel.” (emphasis in original)); *see also* (**R. p. 236**), Order at 2 (“Thus, the County, through formal legislative action of its County Council, approved and specifically induced Silfab to locate in the County at the Parcel.”). Therefore, the County’s arguments as to the second prong of the statutory

has been “specially damaged” by Silfab’s development, and did not plead any facts that would support that determination. Furthermore, the County Council’s official action in the Inducement Ordinance nullifies any claim that the development of the Parcel is contrary to Zoning Code.

1. Specially Damaged

Appellant alleges (1) Silfab’s development presents general health and safety hazards to himself and the public, and (2) the FILOT agreement amounts to “spot zoning” and “site specific zoning,” resulting in injuries to himself.²¹ Neither “injury” suffices. While Appellant correctly notes the statute does not explicitly state an injury-in-fact is required for standing purposes, the Supreme Court has expressly interpreted and equated the special damages requirement under

standing analysis refutes Appellant’s unpreserved arguments on these points and present an alternative sustaining ground. Rule 220(c), SCACR.

²¹ On appeal, to construct an injury sufficient to invoke the Court’s jurisdiction, Appellant asks this Court to take judicial notice of events which he concedes occurred after the time the Complaint was filed and disposed of by the circuit court. *See* Appellant’s Br. at 10, n.2 (“Appellant acknowledges SCACR 210 but respectfully avers the two (2) spills occurred after the court’s order of January 21, 2026”). However, because standing is a prerequisite to filing a lawsuit, a plaintiff must have standing to maintain his or her claims *when the complaint is filed*. *See Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518 (stating standing is a “fundamental *prerequisite* to instituting an action” (emphasis added)). Later events cannot cure a lack of standing that, as here, existed at the time of filing. And this court is prohibited from considering facts or arguments that do not appear in the record on appeal. *S.C. State Highway Dep’t v. Meredith*, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) (“This Court will not consider any fact which does not appear in the transcript of record nor will any fact stated in an exception be considered unless it appears from the record that it is true. Likewise, counsel is prohibited from embodying in their briefs any fact which does not appear in the record.”); *see also State v. White*, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007), *aff’d*, 382 S.C. 265, 676 S.E.2d 684 (2009). Additionally, the facts Appellant improperly offers are not those that are appropriate for appellate judicial notice. While “an appellate court can take judicial notice of something that was not before the trial court if it is indisputable,” *see Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011), “[a]ppellate courts are generally reluctant to notice adjudicative facts even when those facts may be absolutely reliable,” *Masters v. Rodgers Development Group*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984); *see also* Rule 201, SCRE. Appellant’s representations as to recent occurrences on Silfab’s site are not indisputable and are, in fact, contradicted by public statements and documents of the state and federal regulatory organizations present during the events. And the County disputes Appellant’s characterizations and attributions of fault to the County; therefore, the brief’s assertions of extra-record fact are disputed and are inappropriate for appellate judicial notice.

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, 79, 753 S.E.2d 846, 852 (2014) (“Section 6-29-950’s requirement that a private party seeking to enjoin a zoning violation must be specially damaged incorporates the particularized injury requirement of general standing doctrine as a requirement for the statute to apply.”). Thus, Appellant’s contention that the trial court erred in construing section 6-29-950’s special damages condition as requiring a showing of injury-in-fact, *see* Appellant’s Br. at 8–9, is wholly inconsistent with the Supreme Court’s binding precedent that unequivocally holds to the contrary.

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. Defs. 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). Further, 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 Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

i. Allegation of General Health and Safety Hazards

As correctly found by the circuit court, Appellant has not pleaded any facts that would satisfy the particularized injury-in-fact requirement, offering only a conjectural and generalized grievance concerning future public health and welfare concerns. *See, e.g., (R. pp. 4, 6)*, Compl. ¶¶ 18, 27 (alleging Silfab’s project “presents health and safety hazards to the plaintiff [and] the similarly affected public” and requires “the balancing of equities between public health, safety and

welfare”). Specifically, that alleged injury does not advance any individualized harm suffered by Appellant 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) (citation omitted)); *see also Carnival*, 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 Appellant had alleged some personal stake, it would be merely speculative rather than actual or imminent. *See, e.g., (R. 5)*, Compl. ¶ 25 (alleging the development “threatens toxic exposure to the public of chemicals and toxins . . .”). When the Complaint was filed, Silfab had not yet started operating on the Parcel. Nor were the purported chemicals alleged to be harmful present on site. Nor had any of the hypothetical injuries Appellant alleged as certain to befall him and the community occurred. And based on the record on appeal before the Court, no such injuries exist and are, without question, conjectural and hypothetical.

ii. “Spot Zoning” or “Site Specific Zoning”

The only “injuries” that Appellant alleges are the existence of “spot zoning” or “site specific zoning.” But the Parcel has not been rezoned. **(R. 243)**, Order at 10 (“[T]he issue is not that the Parcel has been rezoned; it has not.”). The Parcel was—and is—zoned Light Industrial.²²

²² In fact, Appellant’s unsupported assertion of spot or site specific zoning necessarily presumes two allegations that this Court is precluded from reaching in light of the Related Litigation: (1) the invalidity of the Verification, which was never challenged and is in full force and effect; as well as (2) the supremacy of the Interpretation and BZA Order over the antecedent Verification that are (a) stayed, not final, and the subject of an ongoing appeal (*see* BZA Appeal),

Nor did the circuit court determine the FILOT agreement “legislatively authorized” a change in zoning. (**R. p. 250**), Order at 17 (“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.”). And the Complaint does not allege, and Appellant’s Brief to this Court makes no headway on the issue either, “that spot zoning” or “site specific zoning” would result in a cognizable injury-in-fact to anyone generally or Appellant specifically.

The circuit court simply (and correctly) pointed out that the Inducement Ordinance and the FILOT agreement ratified the County staff’s determination that Silfab’s proposed use of the site is *consistent* with the Parcel’s Light Industrial zoning designation. Stated differently, a determination that a proposed use is compliant with a site’s existing zoning does not alter the zoning of the site. Appellant’s argument on this issue treats as fact its erroneous, conclusory premise that Silfab’s proposed use is not allowed by the site’s existing zoning, thus leading to Appellant’s logical leap that “spot” zoning or “site specific zoning” *must have* occurred. But persistently restating a legal conclusion without any factual support does not make it true, and the Court is not required to treat conclusory assertions of law as true when considering a motion to dismiss. *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)); *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002) (“[W]e are not bound to accept as true a legal conclusion couched as a factual allegation.”), *overruled on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003) (quoting *Papasan v. Allain*, 478 U.S.

and (b) which is the subject the pending—and also stayed—other action in the circuit court (*see* CAGI Action).

265, 286 (1986)). For those reasons, allegations of harm stemming from “spot zoning” or “site specific zoning” are without merit.

iii. Special Damages Conclusion

Finally, even assuming the Complaint’s unfounded allegations are true, Appellant has failed to allege an injury-in-fact necessary to establish he has standing to bring this action. *Cf. Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (“The party seeking to establish standing carries the burden of demonstrating each of the three elements.”). Appellant therefore has not sufficiently pled that he was specially damaged, a condition precedent to showing statutory standing under section 6-29-950.

2. Proposed Use in Violation of an Ordinance

The Complaint is also entirely devoid of any allegations that would support a claim that the development is being conducted in violation of the Zoning Code, especially in light of the Inducement Ordinance.²³ The Complaint alleges that Silfab’s development of and proposed operations on the Parcel are in violation of Zoning Code section 155.1121. In particular, the Complaint contends that section 155.1121 stands for the proposition that “any building occupancy or operations permit for any non-conforming use (or any use) *requires the affirmative written approval and signature* of the Zoning Administrator, or is otherwise voidable, void, and unlawful.” (**R. p. 4**), Compl. ¶ 13 (emphasis added). However, nothing in section 155.1121 specifies or mandates that written approval or the signature of the Zoning Administrator is required.²⁴ Section

²³ Appellant does not argue he has satisfied this section 6-29-950 requirement, citing to no ordinance of which the Parcel is, or is proposed to be, used in violation. Instead, he generally—and incorrectly—states the Parcel’s development and operations are without approval.

²⁴ Despite being the primary relief sought by the Complaint’s request for declaratory judgment, Appellant’s Brief does not raise the argument that all documents emanating from the zoning office of the County required the Zoning Administrator’s signature. (**R. p. 9**), Compl., Prayer for Relief (“1. That the court issue Declaratory Judgment pursuant to S.C. Code Ann. § 6-29-950 et seq[.] that any change of use *must necessarily be executed and signed specifically by the*

155.1121 merely sets out the conditions under which zoning compliance may be sought by an applicant and is therefore entirely irrelevant to the allegations and circumstances of this case.²⁵ *As this is the only ordinance cited in the Complaint*, Appellant’s claim necessarily fails for this reason alone. To be sure, no other provision of the Zoning Code specifies that the written approval or signature of the Zoning Administrator is required either. The Court is not required to—and should not—treat Appellant’s legal conclusion as true in the face of the plain language of the ordinance itself. *See HHHunt*, 389 S.C. at 635, 699 S.E.2d at 705; *Builder Mart of Am.*, 349 S.C. at 512, 563 S.E.2d at 358. Therefore, based strictly on the allegations in the Complaint, Appellant’s claim fails.

More importantly, the County’s governing body has taken official, formal action through the Inducement Ordinance to approve Silfab’s location at the Parcel. Therefore, contrary to Appellant’s unsupported assertion that Silfab’s development is being conducted in violation of an

signature authorization of the zoning administrator for York County in order to be lawful, and that any permits issued are in violation of the statute.” (emphasis supplied)); *see also* (R. pp. 4–8) Compl. ¶¶ 13, 15, 23, 25, 32, 43, 44 (same). Appellant’s counsel appeared to abandon this argument during the circuit court hearing, and the failure to raise the issue on appeal confirms as much. (R. p. 168, lines 19–22) (“I’ll get into whether a signature is required that they have argued. *That’s not required.* What is required is the approval of the zoning administrator.” (emphasis supplied)); (R. p. 172, lines 23–24) (“*We don’t need her signature. We need her approval.*” (emphasis supplied)).

By failing to raise the signature issue in its opening brief or otherwise appeal the circuit court’s holding that “the authority cited by Plaintiff actually dispels Plaintiff’s [own] claim that every County determination or permit must bear specifically the Zoning Administrator’s written approval or signature,” (R. p. 247), Order at 14, Appellant has formally abandoned the issue and the circuit court’s holding is the law of the case. *See Atl. Coast Builders*, 398 S.C. at 329, 730 S.E.2d at 285 (“[A]n unappealed ruling, right or wrong, is the law of the case.”); *see also Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) (holding that an appellant may not use a reply brief to “present an issue to the appellate court if it was not addressed in the initial brief.”).

²⁵ Section 155.1123, setting forth the parameters and conditions applicable to a zoning compliance verification, is the applicable section relevant to Appellant’s argument, but that section contains no reference to written approval, a signature, or signature requirement, and is not cited by the Complaint in any event.

ordinance, in fact, it is being developed pursuant to and at the express direction of a specific ordinance adopted by County Council to induce the development at the Parcel. The Inducement Ordinance specifically references the fact that the FILOT agreement was presented to County Council for consideration at the time of the ordinance’s adoption²⁶ and contains a legislative finding of fact that the FILOT agreement was “appropriate” and “approved” for execution by the County.²⁷ In turn, the FILOT agreement specifically identifies the Parcel for development of the Silfab project. *See* (**R. p. 87**), FILOT (defining “land” as “the land upon which the Project will be located, as described in Exhibit A”; (**R. p. 108**), FILOT Ex. A (providing the legal description for the Parcel). Further, as set forth above, the FILOT agreement—which was expressly reviewed and approved by County Council in the Inducement Ordinance—includes a finding that “all prior actions taken with respect to the Project” were “ratified.” (**R. p. 84**), FILOT. Such prior actions include the Verification, whose issuance by the County’s zoning office predated the Inducement Ordinance and FILOT agreement and was specific to both Silfab and the Parcel. Again, the entire basis for Appellant’s claim that Silfab’s development, and the permits issued to Silfab by the County, are in violation of an ordinance, is that the Verification was invalid, void, and unlawful. But that claim fails as a matter of law in the face of the foregoing legislative findings and actions of the County’s governing body.²⁸

²⁶ *See* discussion *infra* (regarding Appellant’s new—and unpreserved—due process argument advanced for the first time in this appeal).

²⁷ *See* (**R. p. 74**), FILOT (“**WHEREAS**, the County Council has caused to be prepared and presented to this meeting the form of the [FILOT] Agreement which the County proposes to execute and deliver; and **WHEREAS**, it appears that the document above referred to, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered or approved by the County for the purposes intended.”).

²⁸ Although not relevant to the claims in the Complaint, but to address Appellant’s unsupported and misleading statements in his brief, Silfab did: (1) seek formal Zoning Compliance approval from the County under Zoning Code Section 155.1120 *et seq.* on October 2, 2023, as a part of Silfab’s application for civil construction plan approval (as expressly permitted by section

C. Constitutional Standing

The circuit court also properly found Appellant failed to plead 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 Supreme Court in *Carnival* equated the special damages requirement of section 6-29-950 to the particularized injury-in-fact element of constitutional standing. But the Complaint is entirely deficient in pleading facts to satisfy Appellant’s burden of showing a concrete and particularized injury that is neither contingent nor hypothetical and different than one that would be suffered by the public generally. *See discussion supra.*

2. Causation

Appellant’s claims also fail the causation element of standing. 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. Other courts have found no causal link between a challenged governmental action and a party’s alleged injuries where those claimed injuries are caused not by the governmental action but by independent third parties not before the Court. *See Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 42–43 (1976) (holding that the

155.1122(B)(2)); (2) receive the first step of Zoning Compliance approval from the County on April 24, 2024, as a part of civil construction plan approval (as expressly permitted by section 155.1123(B)(3)) and prior to the BZA Appeal hearing or entry of the BZA Order; and (3) receive Final Zoning Compliance Approval from the County on February 6, 2026, as a part of the Certificate of Occupancy process (as required by section 155.1123(B)(4)(a)).

chain of causation necessarily presumed the “independent action[s] of some third party not before th[is] court” and that it was “purely speculative whether the denials of service specified in the complaint” would be remedied by an exercise of the Court’s remedial powers); *see also Allen v. Wright*, 468 U.S. 737, 759 (1984) (“The links in the chain of causation between the challenged Government conduct and the asserted injury are far too weak for the chain as a whole to sustain respondents’ standing.” (citing *Simon*, 426 U.S. at 40–46, 96)), *abrogated on other grounds*, *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014); *Fla. Audubon Soc’y v. Bentsen*, 94 F.3d 658, 670 (D.C. Cir. 1996) (emphasizing that “a protracted chain of causation fails both because of the uncertainty of several individual links and because of the number of speculative links that must hold for the chain to connect the challenged acts to the asserted particularized injury,” which the court found to be “far weaker than even the [causal connection] alleged in *Simon*.” (citing *Cal. Ass’n of the Physically Handicapped, Inc. v. Federal Commc’ns Comm’n*, 778 F.2d 823, 829 n. 4 (D.C. Cir. 1985) (Wald, J., dissenting) (explaining that the “double layer” of speculation in *Allen* made its causal chain far weaker than the chain the Supreme Court rejected in *Simon*))); *Doe v. Obama*, 631 F.3d 157, 162 (4th Cir. 2011). (“*Allen* and *Simon* illustrate a fundamental tenet of standing doctrine: where a third party such as a private school or hospital makes the independent decision that causes an injury, that injury is not fairly traceable to the government.” Further, “[w]here government policy not only allows [third parties] to choose what to do . . . but also safeguards the independence of their decision with strict conditions, the connection between injury and policy is a ‘purely speculative’ one.”).²⁹

Each of these cases make clear that 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

²⁹ *See* (R. pp. 45–48), Mem. in Supp. at 21–24 (discussing each case in detail).

in a lawful way. Just as the government is not legally liable for every traffic accident that takes place on its roads, it is also not legally responsible for the collateral effects caused by the companies who locate in the County.

3. Redressability

Finally, Appellant cannot establish that his alleged injuries could or would be redressed by a 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. v. U.S. ex rel. Stevens*, 529 U.S. 765, 771 (2000) (stating that there must be “a ‘*substantial likelihood*’ that the requested relief will remedy the alleged injury in fact” (emphasis added) (internal citations omitted)). Appellant’s alleged injuries are not redressable because the remedies he seeks are inappropriate here.³⁰

D. Standing Conclusion

Rather than present a claim that could redress an alleged actual injury in fact, Appellant seeks to transform the Court into a forum for policy disputes and supplant the role of—and official action taken by—the County. Specifically, this action is propelled by Appellant’s desire to halt the Silfab project. *See (R. p. 3) Compl. ¶ 9* (“Plaintiff bring[s] this action seeking the court to protect existing zoning, and compel [the County] to act to bring cease and desist and stop work orders as against [Silfab].”). Even assuming his allegations are true for purposes of a motion to dismiss, Appellant has not identified any legally protected interest he possesses that the County could have

³⁰ As discussed above, Appellant did not appeal the circuit court’s dismissal of his claims for declaratory relief, injunctive relief or writs of mandamus and prohibition for failure to state claims. Therefore, Appellant cannot claim his purported injury can be redressed via those claims. In any event, as discussed below, those claims were properly dismissed and could not redress any supposed injury.

possibly invaded in its approval and oversight of Silfab's operations.³¹ Without one, he does not have standing.

III. THE CIRCUIT COURT CORRECTLY DETERMINED APPELLANT FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES BEFORE SEEKING DECLARATORY RELIEF.

The circuit court's discussion and ruling on Appellant's failure to exhaust administrative remedies was an alternative ground for dismissal of Appellant's declaratory judgment cause of action. This discussion followed the circuit court's primary discussion of the declaratory relief sought by the Complaint and its determination that Appellant had failed to plead sufficient facts to support a finding of a judiciable controversy warranting the issuance of a declaratory judgment. (R. pp. 246–48), Order at 13–15. Notwithstanding his failure to challenge the primary basis for the circuit court's dismissal of the declaratory judgment cause of action, Appellant contends the circuit court erroneously found that he failed to exhaust his administrative remedies because he claims the Verification was not a final agency action from which he could have appealed. The record refutes this allegation and Appellant is incorrect.

The doctrine of exhaustion of administrative remedies generally requires a party seeking relief from the action of an administrative agency to pursue all available administrative remedies *before* seeking judicial relief. *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

³¹ This is no surprise given that Appellant is not the object of the County's actions but is instead seeking to bring a third-party claim to challenge the legality of the County's conduct. *See Beaufort Realty Co.*, 346 S.C. at 301, 551 S.E.2d at 589 (“[I]t is ‘substantially more difficult’ to establish standing where a challenge to the government action is brought by one who is not the object of the action, but rather seeks to challenge government action or inaction because of alleged illegality.” (citing *Lujan*, 504 U.S. at 560–61))).

109, 115 (Ct. App. 2002) (“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.”). 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).

Part 3 of Subchapter E of the Zoning Code sets forth the exclusive appeal procedures available for a “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) (emphasis added).³² Those appeal procedures “appl[y] to appeals of an order, requirement, *decision, or determination* made by the Zoning Administrator or any other administrative official in the enforcement of this Chapter.” Zoning Code § 155.981(B) (emphasis added). Contrary to Appellant’s assertion, the appeal procedures of Part 3, Subchapter E do not limit the appeal provisions to only “final” decisions; instead, it plainly states that it “provides a process for applicants to request the review and correction of decisions by administrative officials that they believe are in error.” Zoning Code § 155.980. Therefore, the Verification represents the zoning office’s initial decision/determination as to the compatibility of Silfab’s proposed use on the site and served as the basis for Silfab to proceed with applying for civil site plan approval, including

³² The York County Zoning Code is publicly accessible at: <https://www.yorkcountygov.com/960/York-County-Land-Use-Codes#docaccess-7fdf7f12d1a725fc52f441d107bc48ee4862961d1904ae6f3f240bf11b202823>.

formal zoning compliance; therefore, it necessarily was a decision or determination that falls 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).

However, neither Appellant nor any other party initiated an appeal of the Verification issued to Silfab, timely or otherwise.³³ Because there is a specific procedure to challenge the administrative agency’s decisions or determinations, 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.”). Therefore, Appellant’s attempt to collaterally attack the validity of the Verification, years after issuance, is inappropriate where a valid administrative remedy is available and has not been sought.

IV. APPELLANT’S NEW ARGUMENTS REGARDING A LACK OF DUE PROCESS AND THE APPLICABILITY OF DEED RESTRICTIONS ON THE SITE ARE UNPRESERVED AND INCORRECT.

A. Due Process

The Complaint is devoid of any reference to facts, allegations, or a cause of action asserting a violation of due process. (**R. pp. 2–10**), Compl. Nor did Appellant raise a due process defense or claim in his memorandum in opposition to the County’s motion to dismiss. (**R. pp. 14–24**),

³³ Appellant’s assertion that neither he nor the public were initially aware of the Verification is unavailing, as no appeal of the decision/determination has ever been initiated, timely or otherwise.

Mem. in Opp’n. Likewise, counsel for Appellant did not raise a due process defense or claim during the hearing below. (**R. pp. 136–82**), Tr. And finally, Appellant did not file a motion for reconsideration of the Order. The first reference to a claim of lack of due process afforded to Appellant and the public related to any action of the County regarding Silfab is in Appellant’s opening brief to this Court. As such, this argument is unpreserved. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”); *Elam, supra*.

Even so, Appellant’s due process defense or claim is wholly unavailing. Appellant asserts that he was afforded no due process or notice of a change in zoning or use of the site. Appellant’s Br. at 3. But it is undisputed that the Parcel has not been rezoned, a point which Appellant contradictorily concedes. *Id.* at 1 (“The Silfab parcel is zoned Light Industrial by York County ordinance.”); *see also* (**R. p. 243**), Order at 10 (“[T]he issue is not that the Parcel has been rezoned; it has not.”). Appellant is asserting a lack of notice and due process for something that has not occurred. Moreover, Appellant’s assertion of lack of notice and due process is belied by the legislatively proper procedures that were followed by County Council related to its adoption of the Inducement Ordinance and FILOT. As set forth above, and as required for all proposed County ordinances, Council held three readings for the Inducement Ordinance, including a public hearing on August 21, 2023, in which citizens of the County were afforded the opportunity—and many did—to appear and provide comments and opinions on the pending Silfab project. Silfab’s proposed use and operations, including the use of chemicals in the solar panel manufacturing process were well-known at the time and discussed at length during that public hearing. The fact that Appellant, himself, did not participate in that public process and procedure does not mean that

legally-required notice and due process on the Council’s legislative decision was not afforded. *See Zaman v. S.C. State Bd. of Medical Examiners*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) (“One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it.” (citing *Dusanek v. Hannon*, 677 F.2d 538 (7th Cir. 1982))).

B. Deed Restrictions

The Complaint is also devoid of any facts, allegations, or a cause of action asserting the applicability and preclusive effect of deed restrictions on the Parcel. (**R. pp. 2–10**), Compl. Nor did Appellant raise the deed restriction issue as defense or claim in his memorandum in opposition to the County’s motion to dismiss. (**R. pp. 14–24**), Mem. in Opp’n. And while the circuit court did allow counsel for Appellant to submit the deed restrictions for consideration following the hearing, Appellant did not actually make any argument during the hearing about the relevancy of those deed restrictions to the issues in this case. (**R. pp. 136–82**), Tr. The Order did not address the deed restrictions; therefore, it was incumbent upon Appellant to file a motion for reconsideration asking the court to consider and rule upon the applicability of the restrictions in the first instance, but he did not. *Elam*, 361 S.C. at 24, 602 S.E.2d at 780 (“A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” (emphasis in original)).

Here again, even if the deed restrictions are properly before the court, Appellant’s assertion that they prohibit the use of hazardous materials by Silfab on the Parcel is unsupported by the document. While it is certainly true that Article I, Section 23 of the original deed restrictions defines “hazardous materials” for the purposes of the document,³⁴ (**R. p. 204**), Original Deed

³⁴ This definition is retained in the amended deed restrictions per Article I. (**R. p. 185**), Am. Deed Restrictions at 1.

Restrictions, the restrictions do not “ban” or “prohibit” hazardous materials.³⁵ Rather, by defining the term and allocating the rights and responsibilities of the parcel owners to their fellow members with regard to the use of such materials, the deed restrictions indicate, at a minimum, the contemplation by the parties that the use of such materials might or would occur. Moreover, the deed restrictions create no third-party beneficiary rights or enforcement mechanisms; instead, they are applicable to, for the benefit of, and enforceable only by the owners of the parcels within the industrial park only. **(R. p. 190)**, Am. Deed Restrictions Art. IX, Section 9 (“All of the terms of this Declaration shall run with the land and shall be binding upon and inure to the benefit of each of the Owners and Declarant and their successors-in-interest.”). Thus, the red herring deed restrictions are of no moment to this litigation and cannot be enforced by Appellant (or the County, for that matter).

V. THE CIRCUIT COURT PROPERLY FOUND THE COMPLAINT FAILED TO STATE FACTS SUFFICIENT TO SUSTAIN ANY CAUSE OF ACTION.

Because Appellant does not appeal the dismissal of his claims on the basis that he failed to state any justiciable claims for declaratory relief, injunctive relief, writs of mandamus or prohibition, the Order should be affirmed on the basis of the two-issue rule. *See discussion supra*. The Notice of Appeal specifically identifies the grounds for appeal as follows: “Appellant would respectfully show this court the trial court erred in construing ‘zoning compliance verification’ as lawful zoning change, and erroneously viewed facts and law most favorably to the movant.” That is not an appeal of the circuit court’s ruling on the underlying claims. But should the Court disagree

³⁵ A plain reading of Article VIII, Section 4 (Prohibited Uses), cited by Appellant and retained in the amended deed restrictions, does not support Appellant’s argument either. Hazardous materials are not listed in the description of prohibited uses, and the section otherwise merely contractually binds its tenants to the common law nuisance standard. While Appellant makes a conclusory assertion that Silfab’s operations are a “nuisance,” **(R. pp. 4, 6)**, Compl. ¶¶ 18, 32; (Appellant’s Br. at 7, 8, 9, and 18), the Complaint contains no cause of action for the tort of nuisance and lacks any facts to support such a claim. *See HHHunt Corp., supra*.

that these issues are preserved for appellate review, the circuit court’s respective rulings on those causes of action should still be affirmed.

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 Relief

Appellant failed to state a claim for declaratory relief because he did not demonstrate a justiciable controversy. *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 274, 705 S.E.2d 73, 77 (Ct. App. 2010). “Declaratory judgment actions must involve an actual, justiciable controversy that is ripe for determination.” *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); *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.”). Appellant failed this requirement in several ways.

First, as discussed above, Appellant’s claim is not justiciable. Second, Appellant has failed to plead any facts that would support the premise of his declaratory judgment cause of action—that the permits issued to Silfab were without the consent or “written” approval of the Zoning Administrator. The plain language of section 6-29-950 and Zoning Code section 155.1121, both cited as the authority for Appellant’s claims and requested declarations, bely the assertion of a “written” approval or signature requirement. Third, in terms of the actual relief sought, the Complaint seeks only a general declaration that “[a]ny permit lacking the zoning administrator’s approval violates law and zoning code [sic] as set forth more fully below.” (**R. p. 3**), Compl. ¶ 10.c. In his prayer for relief, Appellant amends his request to more specifically request a declaratory judgment “pursuant to S.C. Code Ann. § 6-29-950 et seq that any change of use must necessarily *be executed and signed specifically by the signature authorization of the zoning administrator* for York County in order to be lawful, and that any permits issued are in violation of the statute.” (**R. p. 9**) (emphasis added).

Neither of Appellant’s requests for declaratory relief establishes a justiciable controversy 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; *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595, 748 S.E.2d 781, 787 (2013) (“[T]he Act does not require the courts to give purely advisory opinions as to the issues sought to be raised.” (citation omitted)).

Fourth, Appellant alleges that the Zoning Administrator’s signature is required for each and every permit issued by the County. However, as discussed above, neither Zoning Code section 155.1121 nor section 6-29-950, both cited as authority for the signature requirement, *see* (**R. p. 4**), Compl. ¶ 13 (“requires the affirmative written approval and signature of the Zoning Administrator”), specify that written approval or a signature of the Zoning Administrator is

required. Further, in Table 155.957-1, consisting of the “Summary of Procedures for general approvals and permits, the Zoning Code specifies that “Staff” is “Decision-Making Body” for zoning compliance, further undercutting Appellant’s assertion that the Verification is invalid because it was not signed by the Zoning Administrator. Moreover, simple reference to the plain language of section 6-29-950 reveals no reference to a signature, or signature requirement, either. Appellant’s assertions to the contrary cannot be sustained as a matter of law. *See HHHunt*, 389 S.C. at 635, 699 S.E.2d at 705; *Builder Mart of Am.*, 349 S.C. at 512, 563 S.E.2d at 358 (stating a court is not required to defer to legal conclusions masquerading as allegations of fact in a complaint).³⁶

B. Injunctive Relief

“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). To obtain an injunction, the plaintiff must allege facts showing 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, 50–51, 674 S.E.2d 505, 508 (Ct. App. 2009) (citations omitted). In addition, because the County is a governmental body, Appellant must also have alleged—and ultimately prove—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). None of these required elements exist here, and the circuit court appropriately dismissed the claim for injunctive relief.

³⁶ As set forth above, the principle of exhaustion of administrative remedies, which served as an alternative basis for dismissal of the declaratory judgment claim, prohibits Appellant’s collateral attack on decisions, determinations, approvals, and permits issued by the County because he did not pursue the defined appeals process for those County decisions.

1. Appellant Has Made No Showing of Harm, Much Less Irreparable Harm

First, Appellant did not sufficiently plead he would suffer irreparable harm absent an injunction. As was fatal to the justiciability inquiry, he did not allege any legally cognizable harm, much less one that is irreparable.³⁷ Appellant advanced a conclusory legal assertion that “the harm will be irreparable,” (R. p. 4), Compl. ¶ 18, but that, in addition to failing to identify “the harm,” is insufficient to meet a burden of good faith persuasion. See *Mulherin-Howell*, *supra*. Beyond that, Appellant’s only allegations regarding harm in the complaint directly tie its allegation of “imminent” and “irreparable” harm to “spot zoning” or “site specific zoning.” (R. pp. 4–6, 9), Compl. ¶¶ 19, 22, 25, 28, 52. But as discussed in the standing section above, those claims are unsupported and do not amount to injuries at all.³⁸

2. Appellant Cannot Demonstrate a Likelihood of Success on the Merits

The requirement to demonstrate a likelihood of success on the merits asks whether the party seeking injunctive relief “has made a sufficient prima facie showing of entitlement to relief.”

³⁷ This is to be expected given that, as explained in the mandamus discussion below, Appellant has no legal right to a stop work directive aimed at Silfab. Appellant cannot argue an injunction is reasonably necessary to preserve rights that do not exist, or that he is at risk for irreparable harm when he has no rights implicated by the County’s approval of the Silfab project.

³⁸ For purposes of the motion to dismiss, the County assumed Appellant’s allegations to be true yet showed they remain insufficient to state a claim for relief. However, the County emphasizes that those allegations have been manufactured to demonstrate a risk of irreparable harm. For instance, Appellant accuses Silfab of improperly locating at the Parcel and operating without duly-issued permits. This is patently wrong. See *supra* n.4. The County, by and through its governing body the County Council, has taken official legislative action inducing Silfab to locate its operations at the Parcel. Appellant also asserts Silfab is “evolving” its project “into a chemical manufacturing use,” thereby exceeding the scope of its authorization from the County and “threaten[ing] adjacent schools and residents surrounding the site.” (R. p. 9), Compl. ¶ 52. But this too is unwarranted hyperbole. Silfab is currently assembling, and intends to produce, solar panels at the facility. The production process for these panels does involve the use of certain chemicals; however, Silfab has acquired the necessary permits and has coordinated emergency response procedures and plans with the appropriate County and state personnel. In addition, County inspectors have visited the Parcel multiple times during its development and after its completion, finding no evidence that Silfab’s operations are violating County-issued approvals.

Compton v. S.C. Dep’t of Corr., 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). The question is not whether the moving party can “prove an absolute legal right,” but whether it can “present a reasonable question as to the existence of such a right.” *AJG Holdings*, 382 S.C. at 51, 674 S.E.2d at 509. The Complaint does not detail how Appellant would be likely to succeed on the merits of the litigation. Instead, it 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.” (**R. p. 5**), Compl. ¶ 26; *see also* (**R. pp. 4–5, 9**), Compl. ¶¶ 19, 22, 52 (same). That single, conclusory statement—reciting the required element for injunctive relief—cannot meet the pleading standard. Moreover, neither Zoning Code section 155.1121 nor section 6-29-950—the only “state statutory law and local zoning law” cited in the Complaint—stand for the propositions asserted by the Appellant. Neither requires a signature of the Zoning Administrator, and Appellant has pleaded no facts supporting his assertions that the Verification or subsequent permits issued to Silfab were done without the Zoning Administrator’s approval.³⁹

Moreover, as discussed below in response to the Complaint’s request for a writ of mandamus, section 6-29-950, as well as its companion provisions in the Zoning Code (§§ 155.1237(B)(5)–(6), 155.1239), confirm that the relief sought by Appellant here amounts to a discretionary right held by the County and is not required.⁴⁰ *See Kennedy v. S.C. Ret. Sys.*, 345

³⁹ To the contrary, the Zoning Interpretation, issued by the Zoning Administrator, confirmed its interpretation and agreement that a solar panel manufacturing plant—like Silfab—could appropriately locate on the Parcel and permits issued to Silfab in the intervening period are evidence contradicting Appellant’s assertions.

⁴⁰ In point of fact, all of the pertinent statutes fully demonstrate the discretionary nature of the challenged County actions. *See* S.C. Code Ann. § 6-29-950(A) (describing the actions the County “may” take); (B) (same); Zoning Code § 155.1237(B)(5) (the County “may” issue a stop work order); *id.* § 155.1237(B)(6) (the County “may” revoke permits or approvals); *id.* § 155.1239(A) (same); *see also id.* § 155.1239(B) (specifying the notice provisions required in the

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.”). Except for the instances detailed in n.5, *supra*, the County has declined to exercise its discretion, which is further indicative of the unlikelihood of success of Appellant’s contrary demands for mandatory action.

3. Appellant Fails to Show He Has No Adequate Remedy at Law

Appellant makes no effort to show he lacks an adequate remedy at law, apart from relying on unfounded misrepresentations of non-existent harm. Instead, the Complaint merely recites the applicable injunctive relief element in a conclusory legal assertion that “Plaintiff is without adequate remedy at law.” (R. pp. 4–5, 9), Compl. ¶¶ 19, 22, 52. This is insufficient to meet a burden of good faith persuasion. *See Mulherin-Howell, supra*. While it is true that irreparable harm and an inadequate remedy at law are related concepts, *see* 35 Am. Jur. 2d Federal Tax Enforcement § 1054, Appellant’s failure to articulate a harm he has suffered ends the discussion. Without harm, further speculation regarding redress would prove a fruitless pursuit.

4. Appellant Does Not Allege the County’s Actions Were Arbitrary, Capricious, and Oppressive

In order “to enjoin a public corporation or department of government in the performance of actions or duties provided by statute, there must be allegations or showing that the public department or corporation has exercised its power in an arbitrary, oppressive or capricious manner.” *Headdon v. State Highway Dep’t*, 197 S.C. 118, 14 S.E.2d 586, 588 (1941); *see also Richland Cnty.*, 422 S.C. at 310, 811 S.E.2d at 767. The Complaint fails to plead *any* facts

event the County’s discretion is exercised); *id.* § 155.1238 (specifying the right to cure protections afforded permittees in the event of a notice of violation).

supporting a contention that the County's actions were arbitrary, capricious or oppressive. Thus, for this reason too, the circuit court properly dismissed Appellant's claim for injunctive relief.

C. Writ of Mandamus

To obtain a writ of mandamus, 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. *Redmond v. Lexington Cnty. Sch. Dist. No. 4*, 314 S.C. 431, 437, 445 S.E.2d 441, 445 (1994) (citation omitted). In analyzing these factors, it must be emphasized that "[w]here for any reasons the duty to perform the act is doubtful, the obligation is not regarded as imperative, and the applicant will be left to his other remedies. So when the statute prescribing the duty does not clearly and directly create it, the writ will not lie. . . . Mandamus will not issue to enforce doubtful rights." *Gardner v. Blackwell*, 167 S.C. 313, 321, 166 S.E. 338, 341 (1932).

The Complaint does not sufficiently allege facts to support any of the required elements for this writ. First, the County has no duty to issue stop work orders. *See, supra*, n.41. Therefore, the decision to halt Silfab's development is within the County's discretion—it has no duty to do so.⁴¹ At its core, the Complaint improperly challenges the *manner* in which the County exercised its discretion, seeking an order compelling the County to cater to Appellant's preferred outcome.

Second, because the County has no legal duty to pause Silfab's project via a stop work order, it cannot be one that is 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

⁴¹ Despite Appellant's statements alluding to the contrary, the County does not have an obligation to stop Silfab's project based on the BZA Order, for it is stayed, not final, and pending in the circuit court, and its import on the prior specific approval Silfab received is dubious given the prospective nature of zoning interpretations. *See (R. p. 253)*, Order at 20, n.11.

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.”).

Third, the Complaint does not allege a specific legal right to a stop work directive aimed at Silfab. As the circuit court correctly held, “one cannot claim entitlement to a discretionary act.” (**R. p. 253**), Order at 20. Nor does the Complaint cite any provision of law—ordinance, statute, or case law—establishing a 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 demonstrate a clearly established right to force the county election commission to distribute a supplemental ballot handout when the district failed to cite any statute or case demonstrating such a right). An interest in a desired outcome does not equate to a legally cognizable right to that outcome.

Finally, other remedies are available to Appellant in its continued pursuit of stopping Silfab. In fact, he is already seeking to avail himself to others in the Complaint; although he has failed to meet the pleading standards, Appellant sought declaratory judgment in this action, which necessarily undercuts his assertion that mandamus is appropriate. *Cf. Charleston Cnty. Sch. Dist.*, 336 S.C. at 184, 519 S.E.2d at 573 (holding that because the case could have been resolved under the Uniform Declaratory Judgments Act, the school district had another legal remedy such that mandamus was improper). Further, the appeal procedures of the Zoning Code, discussed above, were available to Appellant, but he did not avail himself of those administrative remedies either.

D. Writ of Prohibition

“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) (emphasis added). The writ’s principal

modern use, generally, “is to prevent the assumption and exercise of jurisdiction by an *inferior court or tribunal* in cases where wrong, damage, and injustice are liable to follow such action.” *Ex parte Jones*, 160 S.C. 63, 158 S.E. 134, 134 (1931) (emphasis added). In other words, it is well settled that the writ of prohibition may involve lower courts, court officials, or officers that have exercised, or attempt to exercise, extra-jurisdictional judicial or quasi-judicial powers.

The County does not act as a court; county officials and employees are not court officials or officers; and the County does not exercise any manner of judicial or quasi-judicial powers; therefore, the circuit court correctly determined that Appellant cannot sustain a claim for a writ of prohibition against the County. Moreover, it is undisputed that the acts complained of by Appellant—namely, approving zoning classifications, issuing zoning verifications and compliance determinations, 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 (“A writ of prohibition may issue in a proper case to restrain a judicial or quasi-judicial act and, ordinarily, may issue only to restrain the exercise or performance of judicial functions or acts or acts that are quasi-judicial in their character. 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.”). Because the County—performing governmental functions—neither acts as a court, court officials, or officers, nor does it exercise any manner of judicial or quasi-judicial powers, 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 . . .”).

CONCLUSION⁴²

Therefore, for the reasons set forth herein, this Country should affirm the order of the circuit court granting the County’s motion to dismiss in part.

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⁴² The County also argued below that dismissal pursuant to Rule 12(b)(7), SCRCF was appropriate for failure to join a necessary party under Rule 19, SCRCF. (**R. p. 68**), Mem. in Supp. at 44. The circuit court denied this alternative basis for dismissal based on its dispositive determinations as the County’s other grounds for dismissal. (**R. p. 255**). Notwithstanding, the County’s Rule 12(b)(7) argument serves as an alternative or additional basis for affirmance of the Order. *See* Rule 220(c), SCACR. Despite pleading that Silfab “is an affected party” of the litigation, (**R. p. 3**), Compl. ¶ 8, and despite seeking judicial intervention against Silfab by way of “cease and desist and stop work orders *against the corporation* and its general contractors and agents,” (**R. p. 3**), Compl. ¶ 9 (emphasis supplied), Appellant did not name Silfab as a defendant in this matter. But as the permittee of the approvals and permits Appellant seeks to revoke, the entity he seeks to enjoin from further development, and as the alleged offender of state and local laws necessitating the extraordinary relief sought by this case, Silfab is unquestionably a necessary party. *Spanish Wells Prop. Owners Ass’n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island*, 295 S.C. 67, 367 S.E.2d 160 (1988) (holding that a permittee is a necessary party as it is the most vitally interested party to an action to revoke a permit). Having failed to join a necessary party to the relief that Appellant seeks, the Court cannot fashion effective relief, nor can Silfab protect its rights, especially considering the allegations the Complaint levels its way. For this additional reason, dismissal of the Complaint should be affirmed.

Respectfully submitted,

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