STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
COUNTY OF SPARTANBURG) C.A. NO. 2026-CP-42-03416

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S.C. SUPREME COURT

CONCERNED CITIZENS)
OF SPARTANBURG COUNTY)
Plaintiff(s),)
versus)
)
VALARA HOLDINGS, LLC , DEFENDANT, ET AL)
Defendant(s).)

H E A R I N G

Before The Honorable J. Derham Cole

DATE: September 17, 2026
LOCATION: South Carolina Circuit Court 7th
TRANSCRIBED BY: Raven Hughes

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INDEX

Proceedings..... 4
Certificate of Transcriber..... 98

EXAMINATIONS

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS

EXHIBITS

(None Marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

PROCEEDINGS

THE COURT: All right. We'll be back on the record in the 2026CP420346. Concerned citizens of Spartanburg County v. Valara Holdings and Spartanburg County. There are several motions on the docket for this matter. If the parties appearing for the -- this matter would please state their appearance for the record.

MR. BANNISTER: Thank you, your Honor. So I was going to introduce our -- our group and then I think the parties have agreed to take the motions -- the county's motion to dismiss -- Valara's motion to dismiss, and then move to the preliminary injunction, allowing the concerned citizens to then respond to those two motions, and then we'll respond to their motion if we get that far. If that's suitable with your Honor, we can adjust obviously if you want to hear on a different order.

THE COURT: Yes, sir. That -- that'll be fine.

MR. BANNISTER: Please the Court, Stephanie Burton for the county, Burton Gibbes. John Harris is the Spartanburg County attorney. That table with me is Jeremy Fielding who will be doing the arguments for Kirkland & Ellis. Michael Sciaccotta. Mitch Willoughby with Willoughby Humphrey & D'Antoni. I'm Bruce Bannister and Alex Stalvey for Valara (inaudible). So that's -- that's the folks participating on our side.

THE COURT: All right. Thank you, sir. Yes, ma'am.

MS. WANNAMAKER: Hi, your Honor. I'm Catherine Wannamaker representing Concerned Citizens of Spartanburg County, and my colleague is Carl Brzorad. We intend to split the argument between the motion to dismiss and the motion for an injunction, if that is acceptable to the Court.

THE COURT: That'll be fine. All right. Mr. Bannister, we're going to take up the Valara motion to dismiss first or the county?

MR. BANNISTER: The county's motion first.

THE COURT: Got it. Thank you. All right, Ms. Burton.

MS. BURTON: May it please the Court, your Honor. Stephanie Burton on behalf of Spartanburg County, and with me is Mr. Harris, the county attorney, also the county administrator, Cole Alverson, and deputy county lawyer back here Ryan Gaylord.

Your Honor, as you know, this matter relates to the development that has been ongoing for a little over a year out at the old Kohler toilet factory. And the issue in -- the -- the initial issue on the motion to dismiss relates to the plaintiff's failure to exhaust administrative remedies. And I need to give the Court -- I know you've gotten a lot of filings, including something that was filed at 5:00 last night that I can't say that I've studied carefully.

THE COURT: It's just -- it's just this.

MS. BURTON: Not too much, not too much. But to give the court just a little bit of framework for this, as your Honor knows our legislature enacted the South Carolina Local Government Comprehensive Planning Enabling Act of 1994. That's quite a mouthful.

But pursuant to the act, it authorized the counties and municipalities to create land management ordinances and also created boards of zoning appeals. And in fact Section 6-29-780 sets forth the creation of a board of zoning appeals, talks about the members and the terms.

And then in Section 6-29-800, the legislation gives the zoning board certain powers that include, among other things, the right -- ability to hear and decide appeals where it is alleged that there is an error in an order, requirement, decision, or determination made by an administrative official in enforcing a zoning ordinance.

And of course, that is the allegation that plaintiff makes in this particular matter. The county adopted the Unified Land Management Ordinance initially in 1999 that sets forth the county's requirements for land management practices within the county.

And as your Honor knows, probably from reading some of the papers, there are types of applications that somebody can file with respect to planning. And there's two different kinds of permits involved here, but the first we're going to

talk about is the planning permit separate from the grading land disturbance permit.

And under the ordinance, there are both a minor land development application and a major land development application. The major land development application has kind of a specific definition that includes certain specified items that are further identified in Exhibit A, which is a table within the ordinance.

And then basically the way the county defined minor land development was everything else. So you have specific items that's a major land development and then minor items, which basically is everything that's not listed as a major item within the ULMO.

THE COURT: Well, there are -- there are some delineated items that are minor developments, but it also has that catchall provision, correct?

MS. BURTON: That's true. In Exhibit A, which has the table, it -- it delineates specific minor items. And then it says at the bottom of that table, "All other uses not classified as major." So it's the -- the catchall provision, and then the major land development is defined, and I believe there's 14 separate enumerated categories.

There's also provisions within the ULMO about what to do if you don't like a decision related to an application. And it talks about who has the right to appeal and the

methodology. And in table 1, it talks about somebody who's an aggrieved person or party, which I believe would include the plaintiffs.

And it indicates in the table that they have a right to appeal. And in Section 1.04 of the ULMO, it says, "Appeal shall be taken within 10 days of the date of the action, filing notice of appeal with the county."

And then there is a kind of a flow chart, application procedure chart 2, that talks about how one appeals depending on whether the application was for a minor land development permit or a major land development permit.

And for a minor land development permit, you would appeal to the Board of Zoning Appeals. And then if you don't like their decision, you would then appeal to this court. And so we've kind of got that framework in place but the plaintiff hasn't appealed through any of that by -- by their own admission.

They indicate in the amended complaint that a minor land development permit for phase one was issued on August 27 of 2025. and no appeal was taken within 10 days in accordance with the ULMO. And in fact, no appeal has ever been taken from the issuance of that permit to the zoning board of appeals.

For the phase 2 development permit, a conditional permit was issued, but the final permit has not yet been

issued. So of course, with respect to that permit, it would be premature for plaintiffs to appeal to the zoning board, and it's therefore premature for plaintiff to be here.

Now, I've read a couple of interesting arguments that were made in connection with this by the plaintiff, and I want to address those. One of the arguments that is made relates to Section 6-29-950 of the Planning Act. And that act is entitled -- that section is entitled Enforcement of Zoning Ordinances. And it initially starts out and -- and basically says that a municipality can enforce their zoning ordinances.

And it says that if someone violates a zoning ordinance adopted to -- pursuant to the provisions of the act, that they commit a misdemeanor.

So I guess if you and I are next door neighbors in the county and it's zoned to be residential or what have you, and all of a sudden you start operating a business next door to me, the Section 6-29-950 says that that would be impermissible, that the county could enforce its zoning ordinance, that you may have committed a misdemeanor.

Plaintiff argues and they take the next sentence out of context, in my opinion, that says, "In a -- in case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to the chapter, the zoning administrator or other administrative officer

being folks, of course, with my client, or an adjacent or neighboring property owner who would be specially damaged by the violation can seek certain remedies."

And so the plaintiff wants to argue and it's a curious argument to me, they want to argue that -- that you don't actually have to exhaust administrative remedies because we can skip all that under Section 950. And I would suggest to the Court that number one that the language specifically says that the building structure or land is proposed to be used.

So it focuses upon the use of the land. In other words, saying that the operation of a dog grooming parlor violates the ordinance. That's not really what the plaintiff is arguing here. They're not really arguing that the use of the property at the old Kohler site violates some specific section of the ULMO or some specific ordinance.

What they're arguing is procedural. That we think that the type of permit you should have applied for is different. But that -- that doesn't really fall within that section 950 in terms of usage of the land. And so respectfully, I don't believe that that section gives them any solace on the failure to exhaust administrative remedies.

The other argument that I believe I -- I read was that number one, it'll be too slow. And of course, we have case law that says that's not an excuse for failure to exhaust administrative remedies, that you think the process is too

slow.

The second argument that I though they made was, well, if the county makes a decision with respect to a permit or a violation notice or something of that nature, that really -- we don't really believe the Zoning Board of Appeals would act independently. That that -- that they're just going to rubber stamp what the county does. And -- and that's a -- a problem. It's also inaccurate.

And I -- I'd point the -- the Court to another case I've been involved in involving the ULMO, which relates to the Adam Washington Sons of Confederate Veterans case related to the flag that was flying out on 85.

In -- in that very case the, number one, the county issued a citation, and then the zoning board actually reversed the county citation which is what led to the litigation.

And number two, in an order that was issued on November 27 of 2023, your father issued an order in that case saying that the plaintiffs had failed to exhaust their administrative remedies under the ULMO by not going through the process that is required through the Zoning Board of Appeals. So respectfully, the arguments about timeliness or something about a rubber stamp, those aren't -- those are not well-founded arguments for the failure to exhaust and go to the Zoning Board of Appeals.

That didn't happen on the phase one permit in a timely manner. It was issued in August of last year. And obviously, the phase two permit has not had a final decision yet, so we can't get to that process because that has not yet happened.

THE COURT: Ms. Burden, let me ask you a question about -- about that real quickly. The appeals -- the appeals process, so how does a person who might consider themselves aggrieved by a -- a decision on a minor land development permit application know that their appeal clock is ticking? How do they -- how would they -- how would they know about the -- the decision that has been made in -- so they may file, file a timely appeal?

MS. BURTON: Well, I can -- and I haven't been on this website, but there is a website that is quoted in all the footnotes of all these papers that have been submitted to the Court where actions on permits are publicly available and people log in. You can log in today and look at all of these -- all of these permits we're talking about and see what the status of the permits is.

And so -- and this is maybe a little outside of the motion to dismiss, but as your Honor knows from the paperwork there was a whole lot of publicity about this particular project. And so, you know, the fact that there was a permit application and it was acted upon was on the website and

therefore publicly available to anybody who thought they were aggrieved at that time.

I think the truth is they didn't act on it and didn't think about it then until we got into some of the grading activities that happened out there which really brings me to the second permit. And I think the plaintiff, whether intentionally or otherwise, tried to conflate the, the two permits.

If you look at the ULMO, it's very clear that there is a permitting process that -- that planning department engages in related to the use of property. There is a separate process that the Department of Public Works Engineering Department engages in, and that relates to grading of property and stormwater management.

And under the Department of Environmental Services who administers the stormwater management programs, they can delegate some of that to local municipalities, and in this case, did in fact delegate it to Spartanburg County. And then Spartanburg County adopted an ordinance to -- to effect that.

The regulations from the Department of Environmental Services and the county's ordinance both create an administrative process if you're unhappy about what's going on during a grading operation on a large construction project.

In the DES regulation 72-314, there's a citizen complaint procedure that -- that essentially says if you think, and I'll give you an example, I mean, these grading permits, a large part of it relates to making sure there's, um sediment and erosion control so that I don't, when I'm grading the property, have siltation downstream.

And so you have to use best management practices to try and make sure that doesn't happen. And that I also don't alter the land in such a way that I divert water, increase the volume of water, and divert it downstream.

If a citizen has a complaint about that under the DES regulation where it's delegated to someone like Spartanburg County, they first have to address that with the county. And then if they don't like the result of that, they address that with the commission.

And then the commission has the power to say, you county are not enforcing the stormwater and sedimentation regulations. We're going to revoke your delegation, if they're not consistently enforcing them. The county's -- stormwater ordinance also addresses those same issues. It, number one, says that the engineering division is responsible basically for implementation and enforcement of land disturbance permits.

And number two, sets forth a very specific appeals process that says, "An administrative hearing may be

requested by a citizen to address the citizen's complaint concerning the operation of the stormwater management and sediment control programs as set forth in the ordinance."

And so a citizen who thinks that there's sedimentation going off into a creek or that there's some other issue, too much water's flowing onto my land during this construction project, there is a specific appeals process within both the DES regulations and in the county's ordinance to allow you to address that administratively, which obviously makes sense.

Because the county is issuing the land disturbance permit, it's administering that permit, and so if you have a problem with administration, it makes sense to bring that to the county's attention so it can deal with it administratively rather than bringing that to this court to try and intervene.

And I think it's important to note, which I -- the plaintiff I think tried to conflate them in the complaint, it's important to note that those two permits are entirely separate. So if I own 50 acres out in Pauline and I want to clear cut the trees off of it, I want to do some grading because the topography is not particularly level but I'm not changing the use of my property, I need a land disturbance permit, a grading permit to do that.

But I don't necessarily have to go to the planning commission because I'm not changing the use of my property.

And so those are not the same thing. You can't conflate those. You can't say, well, they cut down trees at the Kohler -- old Kohler plant, and somehow that relates to this planning issue. That -- that is an issue related to the land disturbance permit and it's separate and apart from the issue about major and minor land developments.

And so for those reasons, your Honor, we know that there's an administrative process. If you don't like -- concerned citizens don't like the actions by the county with respect to these two permits, there's an appeals process. And the case law in South Carolina is pretty clear that you have to exhaust your administrative remedies.

The -- the -- one of the better cases, I think, is an old 1964 case, Lominick v. Allen, but it's substantially similar to this case in that a -- a gentleman wanted to build a drug store at a certain location, approached the municipality about that. They indicated that that would be consistent with the ordinances, engaged in activities to do that, bought the land, borrowed money, and those kind of things.

And then there was a challenge to that, and the court said, you know, you have to exhaust your administrative remedies and you didn't timely do it. And that's not dissimilar, although on a much different scale, it's not dissimilar than this.

I mean, obviously, the county issued the phase one permit, issued a grading permit so that they could go out and do grading operations. the folks at Valara obviously have invested a lot of money according to the affidavits and have taken significant actions and yet there was no exhaustion of administrative remedies.

And so I think the Lominick case is very instructive. There are a number of other cases that we cited in our paper, the DePass v. Spartanburg case that says you got to exhaust your administrative remedies. The Vaught case. We have quite a number of cases that clearly indicate you need to exhaust -- including cases where the court granted summary judgment in the case.

And there's one case I just wanted to mention briefly because I think it -- it addresses this argument that somehow you can bypass all of that under Section 950 of the planning legislation, and that is Charleston Development Company v. Alami, which is a court of appeals case from 2021. And in that case Charleston -- the city of Charleston had enacted some zoning ordinances, and they enacted two.

They enacted one that was numbered 54904 that said, if you're aggrieved, you can go through the zoning board, essentially. And they enacted a second one, which emulated section 905 of the statute, which they numbered 54905 and that authorized somebody to pursue injunctive relief.

And so in that very case, at the trial court level, the appellants made an argument, oh, we don't really need to go through the zoning board. We can just jump forward to section 905 and seek injunctive relief. And the trial court said that they could not do that, and that they had to exhaust administrative remedies under section 904.

That decision was affirmed by the Court of Appeals. And I think, frankly, that's what the plaintiffs are trying to do in this case, is skip past letting the governmental entity that's involved in administering these particular permits and try and skip past that administrative process and the proper appeals process to go directly to this court to try and get the Court to rule differently.

The additional issue we have on motion to dismiss and additional to the failure to exhaust, if we get past that, is with respect to this notion on the land disturbance permit. Respectfully, I think that claim is moot. The land disturbance permit was issued over a year ago and the grading operations have been ongoing for some period of time.

There have been modifications to the permit, as the Court knows, to include additional acreage. The county is actively administering that permit by making inspection and otherwise, and addressing any issues through its administrative process.

And so I don't quite understand what the plaintiff

wants to argue about the land disturbance permit and somehow how there's some justiciable controversy at present with respect to the land disturbance permit.

With respect to the essential claim that they have and I think it's an interesting claim, their claim is that we -- we, the plaintiff, should define what constitutes a major land development and a minor land development regardless of what county council actually did. And they essentially argue that a major land development, somehow that relates to cost and size.

And this is a big project and it's really expensive, so therefore it must be major because we say it must be major. They don't particularly proffer a dollar value, you know, major is over a million dollars, major is over 50 million dollars. They just say, well, this one's really big, so therefore it must be major, regardless of the express language that county council adopted in the ULMO.

And they don't -- they -- they can't recast it just because that's the way they would have defined it or would want it to be defined. Exhibit A, as I pointed out, lists 14 specific categories, and if it is not within those specific categories, it is a minor land development.

That's just the way that the county issued that, and as your Honor knows, has consistently enforced that for many decades now with a number of very large projects, all of

which were minor development, including at a minimum, the BMW site, which is both large and expensive, I would suggest. And so, you know, I -- I think there's a little bit of irony in this case when I was thinking about it.

On the one hand, the plaintiff wants to make a procedural argument. They don't make an argument that this facility cannot be permitted under the ULMO. They're not pointing to some section that says, well, this is really supposed to be residential property, or you can't have a -- a computing center in Spartanburg County under the ordinance.

They're making a procedural argument by saying, well, we think it should have been a major permit, and therefore, it would have been considered -- after staff considered it, it would have been considered by the planning commission. And we could have attended, but not necessarily spoken at, attended a planning commission meeting.

But what they can't point to is a portion of the ordinance that you could not build this facility. And of course, what they cannot point to is any -- anything that says the planning commission would or would not have gone ahead and issued the very permit that we're here for. They -- they have this procedural argument on the one hand.

But then on the other hand, when it comes to actually exercising their appeal rights or their exhaustion rights, they say, oh, well, you know, we really don't want to go to

the zoning board, and we really -- we really don't want to complain to the county about the grading permit. We don't really want to do those procedures.

And I think -- I think that's a, a fairly ironic position to take. And so, your Honor, we would ask that the Court dismiss the amended complaint against Spartanburg County and Mr. Alverson as the county administrator because -- primarily because the plaintiff has failed to exhaust their administrative remedies, but also because they have failed to actually state a legal claim. Thank you, your Honor.

THE COURT: Okay.

MR. FIELDING: Given the overlap, Judge, would you like to hear from us as well?

THE COURT: Yeah, let's -- let's do that. That -- I think that'll be -- be --

MR. FIELDING: And I have just --

THE COURT: -- more efficient. Any objection to that?

MR. BRZORAD: No, your Honor.

THE COURT: Okay.

MR. FIELDING: I'm not going to say anything that's going to top what counsel for the -- the county just said. I do want to emphasize two -- two quick points. First, Judge, and we've got a -- got a deck that we prepared. May I bring it to you, Judge?

THE COURT: Yes, sir.

MR. FIELDING: Two quick points that I want to hit. The first is, I want to underscore and -- and counsel for the county alluded to this earlier, but the standard here for review by a court of a decision made by a county, it's really, really high. This is a -- the -- the Furr case, which is citing from a South Carolina Supreme Court case.

The -- the language is -- is expansive in -- in scope. It is a well-settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. It might thoroughly disagree with the reasoning by which the board reached decision. Nonetheless, the court won't set aside the board's view of the matter just to inject its own idea.

So point number one, substantial deference to the county's interpretation and application of its standard. The second point I want to make, Judge, and you alluded to this with your question about the -- the catchall language. So there is this catchall language within the statute, and I -- I think it's pretty extraordinary the claim that the plaintiffs are making in this case.

They're not claiming that in this particular instance, the county made some kind of anomalous decision about a -- a minor versus major clarification. Their allegation is that the county has been applying this statute the wrong way,

going back to the '90s. And there are -- in -- in the declarations that have been submitted in this case by the county we -- they -- the county's county lists, it's declarant lists several examples.

Counsel for the county identified one, the BMW plant. There's an Amazon fulfillment center, Rite Aid Distribution Center, Keurig Green Mountain. these are all -- these are all large facilities. And the important part of this, Judge, is even if we adopt their construction of this, this statute, which we shouldn't because it's inconsistent with the language, by any definition of major, the way they want to apply it, it's large in scope, it's large in significance, it has environmental impacts.

Like, that -- the -- each one of those projects meets that test. And yet, for an uninterrupted period of -- of the -- of decades, the county has applied this statute in a consistent way. I wanted to direct your -- the Court's attention, you, you had a question about the catchall. And I -- I think that's really important.

What the county has done here is decided, here's a list of the kinds of projects that we will consider to be major. And then everything else that's not listed below as a major category is a -- is a minor facility. Now, this statute's been amended 24 -- or this -- this particular ULMO has been amended 24 times since it was enacted several times to add

major categories and several times to add to the minor list.

One of the arguments that the -- the plaintiffs have made here is they said, well, why do you need to list minor things? Why don't you just have the catchall and nothing else? And the answer is every single time the county amended the statute to add something to the minor, it's because within that statute, they also imposed use limitations associated with the addition of that minor permit.

So for instance, when they added the salvage yard as a minor, there is a corresponding provision within the ULMO in Section 3 that talks about use limitations that would apply to that minor permit. So that's why that is. The -- the last -- the last issue I wanted to hear, one of the arguments that the plaintiffs have made is they pointed to this language in the statute that says, "Includes but not limited to in similar developments."

And their argument is, oh, what -- what this is trying to do is to basically create this kind of holistic analysis where you just have to decide, is it quote major in some holistic sense? And they say that's what include but not limited to, and they say that's what similar developments refers to. Here's the central problem with that argument.

That language includes but not limited to did not exist in the statute when it was originally enacted. And the reason, Judge, was that when the statute was originally

enacted and there was a list of major, major developments, all of those major developments at that time were multi-tenant facilities. And you can see the language in the statute that talks about it.

The list of everything, industrial parks, subdivisions, townhouse developments, shopping centers, manufacturing home parks, these are all multi-tenant facilities. But what happened is they amended, they began adding things to the major permit that weren't multi-tenant in nature.

So for instance, if you look at the -- the list of major projects, one of them is a scrap metal processor, another is an asphalt batch plant. These are not multi-tenant facilities. And so when you look at the legislative history around this, Judge, this is an amendment that was made to the ULMO in 2002. They described why they added that includes -- includes but not limited to language.

And the explanation was it's to match and define the uses as described in the table, that is the exhibit. And what the county recognized when they did this was, we need to add this, this language includes but is not limited to because all of the other things that follow are all multi-tenant, but that would create a disconnect between the language -- between the language in -- in Section 1 and the exhibit.

So it wasn't because the county changed its mind and

decided, oh, we're just going to throw this open and we're going to ignore the catchall provision and we're just going to like holistically evaluate it. It was precisely to solve for that -- that exact problem. I would note that if all we had, Judge, in this ordinance was Section 1.02, maybe the -- maybe the plaintiff's argument would have some force.

But what they're asking you to do, which is a violation of the basic cannons of statutory construction, is to ignore the Exhibit A and ignore the catchall. And the only way that you can read the ordinance the way they want you to is to ignore that catchall, to suggest that that catchall has no -- no value, no importance, and no significance.

Let me now address the one other point, which is this argument that the plaintiffs have made about how Section 6-29-950 gives them some kind of escape hatch from the obligation to exhaust their administrative remedies. Counsel for the county alluded to this earlier.

But I think it's important she focused on the language of that particular provision and I think that's important. There's two parts I think are important, Judge. She -- she pointed to the proposed to be used in violation of an ordinance. But I think the sentence that comes immediately before that is also significant in explaining what this is actually targeting.

And what this -- what this statute is giving a right of

a party to do is if I've received a valid permit that I'm relying on and I'm a -- a landowner adjacent to some property that you own and I start doing something that violates that permit, if I have a residential -- if I'm zoned residential and I build a -- a business on my property that's zoned residential.

This statute says if you're an adjacent landowner, you don't have to exhaust the administrative process. You can go and say, this permit that was validly issued, you're in violation of it. It gives you an automatic right to be able to go challenge that. What it doesn't do is say that if you -- if the permit itself was not validly issued, then you can also challenge it.

And the best evidence to that, Judge, is that sentence that goes before. Because what that sentence makes clear is, if I'm operating -- if I'm that adjacent landowner and I'm operating a -- a property in violation of an ordinance, it's a -- it's not just a civil problem, it's a criminal problem. It is a misdemeanor offense.

If you extrapolate that principle across the board in the way the plaintiffs want, that would suggest that in a situation like ours, where a permit was validly issued by the county in its exercise of all that judgment to which the courts defer, and we, in reliance on the permit, complied in exact respects with everything the permit said and did it for

a whole year, that is a misdemeanor offense.

It's a criminal offense to do that. And ironically, might even extend to the -- the -- if -- if this allows suits against a county, which is what this is, this is not a suit by the plaintiffs against the adjacent landowner claiming they violated a permit.

This is a suit against the county attacking whether the permit should have been issued in the first place. If you extrapolate what they say this provision should do, it would suggest that there is criminal liability, not just for us, but -- but potentially anybody that touched that, including folks on the county. That's an absurd interpretation.

The last thing I will point out is Carnival, the Supreme Court's case in Carnival underscored this point. Carnival was a case that did not involve a challenge to whether a -- a particular zoning ordinance should have been issued. It was a challenge to Carnival's use of a boat in a dock. And the plaintiffs in that case didn't say that the permit itself shouldn't have been issued. It was zoned light industrial.

And the allegation was Carnival's use of docking here with this giant ship that has noise and all these problems is violating that light industrial use of the zoning ordinance. It was a violation of the zoning ordinance brought against a party that was violating that ordinance.

And the Court, in describing the effect of 950, underscored the same point that counsel for the county made. The Court said in short, under this section, a specifically damaged adjacent or neighboring property owner can bring an action for an injunction based on an alleged violation of a zoning ordinance.

It doesn't say whether or not the, the ordinance should have been passed in the first place, whether the ordinance is legal or not. So the only proper way to read that 950 is in a situation where two landowners are suing one another for a violation of existing permit.

Not a situation like this where the plaintiffs have filed an action against the county challenge the legality of the permit in the first place. Unless the Court has any further questions I will just adopt all the arguments made by counsel for them.

THE COURT: All right. Thank you, sir. None at this time, but I will hear from response from plaintiffs.

MR. BRZORAD: Thank you, your Honor. May it please the Court Carl Brzorad here for the plaintiffs, Concerned Citizens of Spartanburg County. There's -- there's a couple of points I would like to make at the outset, your Honor. conspicuously absent from the 80 pages of briefing from the defendants in this case and from all of the argument that we've just heard is the quotation of the plain language A, of

Section 950(a) and (b) of the actual ordinance that's, that's at issue here.

And your Honor, I'd like to address this Section 950(a) issue head on. That -- that section specifically provides that adjacent or neighboring landowners, and there is no dispute in this case that the plaintiff's members are adjacent and neighboring landowners, may institute a suit for injunctive relief in circuit court, "In addition to other remedies."

And those words never appear in the defendant's briefing. And they have not cited a single appellate decision, your Honor, that has ever held that exhaustion is required under section 950(a). And I'll -- I'll address this -- this Charleston case in a moment. But I -- I just want to drill down on this because the words in addition to other remedies, it -- it is crystal clear what that means.

The Planning Enabling Act is -- is the same -- this is the same statute, your Honor, that sets up the Board of Zoning Appeals process that the defendants are claiming that the plaintiff should have -- should've resorted to.

And this -- this is the legislature saying that if -- if you are a neighboring or adjacent property owner who is specially damaged, you do not have to first go through that process. We are not going to leave you to the whims of local administrators when you are a specially damaged neighbor.

You can go directly to court. There is no other way to read that in addition to other remedies language, your Honor. And respectfully, we, we've cited a case that was construed materially identical language in another statute, and that's the Greenville Baptist case, your Honor. That's -- that's in our briefing.

THE COURT: Thanks.

MR. BRZORAD: But -- but in that case, there was a statute that provided one remedy, "In addition to another remedy." And the Court specifically held that -- that what that language plainly means is you do not have to exhaust the administrative remedy. You can go directly to court. Your Honor, I -- I would like to address this -- this other point about --

THE COURT: Let me ask you this, was your position then that there -- the county -- well, the county and Valara in violation of the permit, which would take you within the ambit of 950? And I thought you were talking about the -- the whole entire permit was improperly issued under the planning process. So why doesn't that put you into the appeal process under the Board of Zoning Appeals and then the -- finally the Circuit Court?

MR. BRZORAD: Yes, your Honor. Thank you for that -- that question. So -- so the language at issue here is, "In case a building structure or land is or is proposed to be

used in violation of any ordinance is, or is proposed to be used in violation of any ordinance." So we -- we have two basic types of claims here, your Honor. One is that this entire project is a major land development that is improperly being permitted as minor.

And the second is that defendants are in violation of their first minor land development permit. And so the -- the first claim, your Honor they are using the land in violation of the county ordinance because they are using the land to build a major land development without a major land development permit.

And the ordinance specifically says that it is unlawful to develop land without applicable permits. And -- and that is -- they are using the land in violation of that provision of the ordinance, your Honor. And as to the permit violation claim, which is count three, I, I understood counsel for Valera to admit that that was a proper claim under section 950(a).

I -- I believe he specifically said that permit violations are exactly the types of claims that were contemplated under section 950(a). And your Honor, we have a permit violation claim. so -- so that -- that would be how I would respond to that question, Judge.

I -- I -- this -- the second point I want to make here is that, again, I'll -- I'll fall back on the fact that in --

in 80 pages of briefing, the operative language of the county ordinance has never been cited by the defendants. And two -- two points I want to make here, your Honor. I -- I did not hear the county once quote the language of the ordinance.

And -- and if I could, your Honor, major land development includes but is not limited to commercial and industrial parks and other similar developments. Now, the defendants in this case say that, oh, well, the -- the catchall, other similar developments, what that means is what's in Exhibit A. And Exhibit A lists 14 different types of developments, your Honor.

And what the defendants just write out of the language of that exhibit is -- is the words major to include, which captions the entire list. And we've cited, your Honor precedent from the United States Supreme Court, multiple cases, the Fourth Circuit, every dictionary in the English language that interprets the word to include means that it is part of a greater whole.

This ordinance could not be clearer that the examples of major land development are illustrative. They are not exhaustive. And -- and what that means, your Honor, is that this is not a technocratic definition. This is not an exclusive list.

The -- the defendants are asking that the Court basically stick its head in the sand and ignore the plain

meaning of major, ignore the plain meaning of minor, and ignore the words include but is not limited to, and then in Exhibit A, ignore the word to include.

Your Honor, what -- whatever deference is accorded to the county, no rational person could read that language to conclude that this is an exhaustive list. It is explicitly non-exhaustive, your Honor. And under the plain language and common sense at the very least, this, this project is similar to an industrial park, your Honor. This is the largest development in the history of Spartanburg County.

And for purposes of a motion to dismiss, that allegation is -- is to be taken as true. This -- we're talking about a -- a project that's -- is multiple billions of dollars, a nearly 460 megawatt power plant. And, and your Honor, what, what, what that means is that that is a power plant that is capable of fueling every home in Spartanburg County and then some.

The -- the -- there is no -- frankly, your Honor, there's no rational way to apply the language of this ordinance to this project and consider that it is anything other than a major land development, your Honor. I've -- I've heard about the B&W plant and some other previous projects. Your Honor, none of that is in the complaint.

This is a motion to dismiss. Those -- none of that's in the record. None of that's in the complaint. But -- but

what I will say is that, you know, if -- if I get pulled over for speeding it -- it's not a defense for me to say, well, I've been speeding all these years and no one ever pulled me over.

Your Honor, the -- I -- I think because the merits here are so clear, we -- we've heard a host of -- of technicalities, a host of -- of defenses here, your Honor, that -- that are -- are really just trying to keep the Court from addressing plain meaning and common sense. And -- and if I could just start with this exhaustion point.

And -- and so none of this applies to the claims under section 950(a), which -- which would be my first point, your Honor, and I'd be happy to talk more about that if the Court would like to hear. But even if exhaustion did apply to the first claim under the Declaratory Judgment Act, your Honor the South Carolina Supreme Court has repeatedly made clear that exhaustion is a discretionary policy doctrine.

This is not a jurisdictional question, your Honor. And as a discretionary policy doctrine, there are multiple exceptions. And your Honor, I've -- I've identified at least five of them that -- that would apply here. The -- the first, your Honor, is for pure questions of law.

So -- so this case, at least counts one and two, count three, frankly, there's been some factual dispute about, but at least on counts one and two, which -- which is the heart

of this case, whether this is a major or a minor land development. Your Honor, this is a pure question of law. And the South Carolina Supreme Court in -- in the Andrews Bearing case.

Which we've cited in our brief, your Honor, that's 261 S.C. 533, has -- has definitively held that when you have a pure question of law, you do not have to resort to the administrative process, your Honor.

And in -- in that case, it's actually quite analogous. The, the, the issue was whether the tax classification of a piece of property was a purely legal question or whether you had to go to the Tax Board of Appeals to -- to dispute that.

And -- and the Court said how this property is classified under the tax code, that is a pure question of law. You can go straight to Circuit Court. You do not have to go to administrators. And -- and that makes good sense, your Honor, because the -- the whole point of the exhaustion doctrine is to let the administrators find the facts so that the Court is not grasping around.

But -- but that -- that rationale just does not apply to pure questions of law. And, and here the -- the -- based on the -- the permitting documents, the undisputed permitting documents that are in the record and the application of the plain language of the ordinance, that is a pure question of law on -- on major minor, your Honor, for -- for counts one

and two. There -- there's several other exceptions that would apply --

THE COURT: Well, let me ask you this. What are the -- what are the legal principles that you would ask this court to use to determine this is to be a major land development as a matter of law?

MR. BRZORAD: Yes, your Honor. Just frankly, just the -- the plain meaning of -- of this -- this sentence, "Major land development includes but is not limited to commercial and industrial parks and other similar developments," and the words to include in Exhibit A of the -- of the ordinance, your Honor.

And, you know, the -- the -- there could conceivably be close cases where that language is not clear. But -- but here, where -- where the, the complaint is alleging that this is the largest project in the history of the county, your Honor, that -- that is at the very least similar to an industrial park.

And is under any rational reading major. That -- that is just not an argument that at the very least could be dismissed on a under Rule 12(b)(6) your Honor.

THE COURT: And it's largest on the basis of what?

MR. BRZORAD: Cost -- the cost. Cost.

THE COURT: Okay. So it's purely a dollar -- a dollar determination, you'd have the Court decide whether this is a

major land development.

MR. BRZORAD: No -- no. It -- it would not be, your Honor. It -- it would be the -- the plain text of the ordinance and -- and the common meaning of -- of major land development as -- as well as, you know taking that --

THE COURT: Well, there's no dollar threshold in the ordinance, is there?

MR. BRZORAD: There -- there is no dollar threshold in the ordinance. Okay. That's correct. That's correct. Your Honor, I -- I -- so if -- if I could move on to, to another exception to the exhaustion --

THE COURT: Yes, sir.

MR. BRZORAD: There -- there are also exceptions to exhaustion when the -- the plaintiff would suffer immediate irreparable harm during the period of the appeals. And we've cited a course on this -- a -- a case on this in our briefs, your Honor, Storm M.X. ex rel. McSwain, and that's 400 S.C. 478.

In -- in that case, your Honor, this, the Supreme Court dealt with a situation where there was a student who was denied entry to a public school. And on -- on the eve of school starting the defendants argued that the -- the student had to go through this administrative process to determine if the denial was proper.

And -- and the Court rejected that and held, "The

remedies would have been inadequate given the immediacy of the student's enrollment date and the potential delay of an administrative appeal." And so to -- to summarize that -- that holding, your Honor when the delay of the administrative process would require the plaintiff to continue to suffer imminent irreparable harm, the administrative remedy is inadequate and exhaustion is not required.

And that same principle applies here, Judge. The -- the complaint alleges that plaintiff's members are suffering imminent and ongoing harm from the construction of this project, including immense amounts of noise, dust, light pollution, harm to local wildlife and trees that give this neighbor its -- this neighborhood its character.

And on a motion to dismiss, those -- those facts have to be taken as -- as true. There's -- there's still more exceptions to exhaustion, your Honor, and we've cited several of these in our brief, but -- but another one is -- is notice. Your Honor, at the time that the first minor land development permit was issued back in August 2025, no one had the slightest inkling that -- of the scale of this project or that it would include a power plant large enough to fuel a mid-sized city.

The first minor land development permit solely said that they were going to do some interior remodeling on the Kohler plant. They were going to set up some equipment

outside the plant. That -- that is all that the public knew when that permit was issued. It was not until April of this year, your Honor, that it was publicly disclosed the scale of this project would include a 457 megawatt power plant.

And it's frankly remarkable to hear the -- the other side talk about, well, we slept on our rights when none of this was disclosed until April of this year. And since April, I mean, we -- we filed our complaint in July, that's three -- you know, during those three months, the -- the community was organizing, lobbying the county.

The county was ignoring their requests, and so they -- they had to go and look for counsel. And then counsel had to take time, given the scope of this, to analyze the facts. And we filed our complaint in -- in July. We filed for an injunction in August, and we're here in September, your Honor. I -- I don't know what else could reasonably be expected of a community group.

So -- so, your Honor, notice -- lack of -- lack of adequate notice, that is another exception to exhaustion that would make that remedy inadequate, your Honor, and is another grounds for excusing exhaustion. And -- and then the last point I'll make on exhaustion is futility.

Your Honor, the -- the county has said that they investigated plaintiff's claims of permit violations, and they've taken no action. And now they're saying that, well,

we need to go file a complaint about permit violations, which they've already investigated and have taken no action.

And so it would be a futile waste of time to have -- have the plaintiffs go and -- and submit complaints on this, your Honor. So -- so if I could -- if -- if I could just summarize the -- I -- I know --

THE COURT: Did they take -- did they take no action or did they find no violations?

MR. BRZORAD: Well, they -- well, they did actually find violations. And there's a factual dispute about that, but -- but they found, I believe it was two acres of land had been developed outside the scope of their permit. Plaintiffs alleged that it's far more than that, your Honor.

But -- but there's a factual dispute on that, which is another reason that -- that a motion to dismiss cannot, cannot be granted as -- as to that count. So your Honor, if -- if I could, if I could just summarize the exhaustion issue, it just does not apply at all to -- to plaintiff's claims under the Planning Enabling Act.

The text of which is conspicuously absent from defendant's briefing. But your Honor, even if exhaustion did apply either to that claim or to the claims under the Declaratory Judgment Act, there are five different exceptions to that discretionary policy doctrine that -- that the Court can apply here.

Your Honor, if -- if I can move to the issue of standing which -- which is another issue that -- that's raised in the -- in the defendant's briefing. All -- all of the plaintiff's claims are subject to the same basic Article 3 standing requirements, your Honor.

You need an injury in fact, you need causation, and you need redress. And the United States Supreme Court and the South Carolina courts have held that if -- if a defendant's conduct is interfering with your use and enjoyment of your property, that is a textbook injury in fact, your Honor.

Also for environmental purposes, if a defendant's conduct is impairing your use or enjoyment of -- of aesthetic or recreational activities or your neighborhood, that is a textbook injury in fact. And -- and so Valara is challenging this, this first element of standing which is injury in fact.

And the -- the county appears to be challenging the second element, although they don't explicitly state that, the county appears to be challenging causation. So if -- if I could just address the injury and fact point, your Honor. Valara claims that plaintiff's members have failed to allege, quote, "particularized harm from the project that is different from the public at large."

Valara doesn't dispute that plaintiff's members live right next door. We're -- we're talking about people who

live right across the street from this massive construction project. It is frankly absurd to think that the neighbors are not harmed any differently than the general public, your Honor. The -- the general public does not live right next door to Valara.

Valara's argument ignores common sense and the Supreme Court's 2020 decision in Preservation Society of Charleston. Your Honor, that's 430 S.C. 200. And -- and I just want to quote from that opinion. "Those living near the project are most likely to be impacted in ways that are distinguishable from the impacts generally falling upon the public at large."

The Court there concluded, "We find petitioner's allegations of potential harms to members in nearby neighborhoods are not speculative." And -- and I just want to point the Court to the relevant paragraphs of the amended complaint, which are paragraphs 18 to 32.

And the -- the Court will find extensive allegations of particularized harms that neighbors of this data center and future power plant are suffering personally and on their own properties.

And Valara's entire standing argument I -- I believe they only cite one case, and it's this Carnival Cruise case, your Honor. And that -- that case is clearly distinguishable because there, the plaintiffs, "made no allegations that they own adjacent or neighboring property." That -- that all the

Court needs to read in, in that opinion, your Honor.

Valara makes -- makes another argument about the -- the procedural injuries here, your Honor. And -- and they -- they basically claim that, well, this is a procedure that's open to the public, so it's not particular to you. And what -- what they don't cite are any of the precedential decisions on how procedural injury works.

Procedural injury is -- is a situation where there's a procedure, and if you have a concrete interest that would be protected by that procedure, say your neighbors of a massive development, that concrete interest plus the -- the deprivation of the procedure, that is what creates the injury, in fact.

And -- and your Honor, they just have not cited for example, Lujan, which -- which was the foundational Supreme Court case on this judge, and that's 504 U.S. 555, that they've just not cited or engaged with -- with any of the -- the authorities on procedural injury. The -- the county's -- the county's argument on causation, Judge, is -- and -- and I'll -- I'll just quote this from their brief.

The county says, "Plaintiff has not demonstrated that requiring major land development review would eliminate the dust, noise, lighting, traffic, or other construction related conditions that its members allege." And your -- your Honor, what they don't cite in their brief is the Supreme Court

precedent that says you don't have to show any of that in a procedural rights case.

Your Honor, that -- that case is Massachusetts v. EPA, and that is 549 U.S. 497. That case says, "A litigant who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure, the substantive result would have been altered."

All that is necessary to show is that the procedural step was connected to the substantive result. And in this case, Judge, plaintiff's members were denied their rights to a public process and a public vote on the data center by the County Planning Commission, which is a democratically accountable body.

They were denied a process where the members could attend and submit comments and gain information and influence whether or under what conditions this project goes forward. This is the process that would determine the substantive question of -- of whether the project would be approved, and if so, under what conditions.

And -- and, and that is the textbook application of -- of the Supreme Court precedent on procedural injury. We don't have to show, you know, here's exactly how the Planning Commission would come out, your Honor, because frankly, that -- that will be addressed before the Planning Commission.

The -- the next -- the next thing your Honor -- sorry

for the long-windedness, there -- there's a number of -- of issues here, but the -- the next issue is ripeness. and you know, so the -- the great -- the great irony here is that the defendants are claiming that we are both too early and too late. It's -- it's -- it kind of strains logic to -- to follow this argument.

But the -- the points I want to make on this are Valara admits that they are -- and -- and I should -- I should just say as a threshold matter, Judge, this -- this ripeness argument is being made in response to our challenge to the second minor land development permit, which is currently pending before the county, but which -- what has been conditionally approved by the county, but it has not been formally issued.

And they're saying, we're -- we're too early, Judge. We're -- we're too early to challenge that claim. In the same breath, Valara says that that second minor land development permit is authorizing them because of the conditional approval to do all of this construction activity beyond their phase one.

So they're saying that the permit authorizes them to do all of this construction that's harming our members, but that we cannot challenge it until it's formally finally issued. So it -- it can't be both that this permit is authorizing them to construct, but that we're too early to -- to

challenge it, that there's no concrete injury there.

It's a completely contradictory argument. And then the -- the other thing I would point the Court to, your Honor, is -- is once again, this argument just overlooks the language of Section 950(a) of the Planning Enabling Act, which creates a cause of action to, "Prevent proposed activity that would violate an ordinance."

And clearly by applying for this permit, they have proposed the activities subject to the second land development permit, your Honor, and section 950(a), just the plain -- the plain text of that would grant plaintiff's a cause of action here and would make the case ripe. If I could just have one -- one minute, your Honor.

THE COURT: Yes, sir.

MR. BRZORAD: Oh, so -- so one -- one thing I would note, your Honor. The Charleston County v. Alami case, I -- I probably butchered that pronunciation, but this is the Alami decision that counsel for the county just quoted as being a Section 950(a) decision.

And, your Honor the Court in that case explicitly did not address the question of administrative exhaustion. It affirmed the circuit court on a completely different ground that was unrelated to exhaustion. And -- and a second point I would make on that case, your Honor, is that case did not involve a Section 950(a) claim. It involved a claim under a

local ordinance.

And so that case is frankly being completely mischaracterized. The -- the other point I would, I would make on this is that the Carnival Cruz case that the defendants have repeatedly relied on, one -- one point of that case that they've not mentioned is the fact that -- that that case sets out the elements for a cause of action under Section 950(a).

And it says you've got to be a specially damaged neighbor. And it says that you've -- what was the second element. Specially damaged neighbor and ordinance violation. And absent from that is a requirement for administrative exhaustion. And that Carnival Cruise case, your Honor, that was handled by our firm.

And -- and we talked to the lawyer who litigated that case, and -- and he doesn't remember going through any administrative process. And -- and so the one Supreme Court case that we have construing Section 950(a) says nothing about an exhaustion requirement. And as far as I'm aware, there was no exhaustion in that case. Your Honor we -- we -- we'd rest. Thank you.

THE COURT: All right. Thank you. We'll hear any -- any reply.

MS. BURTON: I've just got a couple of points, your Honor. And -- and it seems to me a couple of things. One is

that the plaintiff ignores the fact that the ordinance has been amended, I think, 24 times in 25 years by county council.

And clearly, if county council didn't approve of the interpretations that county administration was making of the definitions that it created and adopted it could -- it had lots of ability to amend the ordinance and define major as a dollar amount, a square footage amount, or something else. And it's chosen not to do that.

In fact, it's only updated the table creating these 14 specified items that constitute a major development. the second thing, there's this continued desire to conflate the grading permit and the planning permit.

And what I hear and what I understand the -- the plaintiff being concerned about is that there's a mass grading operation going on pursuant to a grading permit that involves removing of trees, that's pursuant to the grading permit, that involves movement of soil. That's pursuant to the grading permit.

And I didn't hear any argument about why the plaintiff has not wanted to exhaust some administrative remedy if it feels that the contractor that's moving dirt or the -- the folks that are doing clearing and grubbing or whatever's going on out there are somehow violating a land disturbance permit.

I didn't hear one bit of discussion about why there hasn't been any administrative action, because I hear that as a lot of the complaint, right? We heard about the trees and the birds in the trees that have been cut down and that there are trucks out on the road and that there's dust and soil being moved.

But that relates to a land disturbance permit and there's no -- been no assertion at all of any attempt to take administrative action or any reason that would be futile or -- or how somehow that's a question of law because I -- I don't see that. I mean, at the end of the day, the real argument -- the -- the real argument is they don't want this land use.

They don't want this to be a computer center out there. But the lawsuit isn't that. That's not really what the lawsuit's about. The lawsuit is a discussion about the type of permit, not a whether you can have a computer center in Spartanburg County.

And I think -- I think that misses the point in the argument. I like the argument that -- that the -- the plaintiff has decided for us that it is quote, similar to an industrial park. I wrote those words down. I -- respectfully, I don't think it's very similar to an industrial park. And I don't think the plaintiff gets to decide -- decide the definition of what an industrial park

is.

Like, the ones we have out on 85 where you've got, you know, SNME and Reader and some of these businesses out there with an internal road system and a singular facility. Making that argument, I think it is a bit specious.

I also thought it was interesting in trying to explain some of the delay that there was an, an attempt to conflate the -- the phase two permit, which obviously was applied for more recently and say, well, somehow we didn't know the scope of this until the phase two permit. And somehow that excuses us from not taking any action over a year ago when the phase one permit was issued.

There was clearly public notice. They had the opportunity to see that a permit was issued, and there was no attempt to exhaust administrative remedies. So is the argument that that size of a computer center would have been acceptable to these folks?

I mean, that -- that to me is -- is a -- a bit of a specious argument. And I'm just looking at my notes. Bear with me, your Honor. I -- I thought that they did make a futility argument, but there's just no -- no basis to support the fact that it'd be futile to go to the zoning board and let the zoning board make a decision about the interpretation of this project versus the ordinance. Thank you, your Honor.

THE COURT: Thank you. Yes, sir.

MR. FIELDING: Yeah. Four -- four quick points I want to respond to. So on this Section 950 argument, counsel said that there are no cases we can point to saying that exhaustion is required under Section 950. And that is precisely the case because it's not required when you bring a claim to which 950 applies to.

But that's not the issue in our case. The issue in our case is whether 950 applies to this kind of a challenge. It does not. And counsel's point about, well, Carnival -- in Carnival, they didn't talk about exhaustion. Well, of course, Carnival didn't talk about exhaustion because in Carnival, one landowner sued another landowner claiming that that landowner's use of the property violated an existing permit.

Here, the challenge is not that. The challenge is whether the permit was validly issued in the first place. So we're not disputing that if you actually have a claim that fits within the confines of 950, you don't have to exhaust. Our argument is theirs doesn't, and that's apparent on the face of the statute, and also the way the Court has applied it in the Carnival case.

The last point I would make on the 950 argument is they place a lot of weight on this language about the addition to, in addition to other remedies. What's important though is what it doesn't say. It doesn't say instead of. That's

significant important.

There are plenty of cases, and we cite many in our briefs, where courts have found that like language that says in addition to other remedies, you're still required to exhaust. That was the holding in the -- in the Devco case. That's exactly -- and -- and counsel for the county talked about that principle.

If the statute of 950 said instead of pursuing remedies and assuming it applied in the first place, maybe there'd be an argument here. But -- but that -- there's not, and there is no argument. counsel said that exhaustion is a discretionary remedy. And it is true that in certain very narrow circumstances, courts can exercise that discretion.

But the two categories that he focused on, what he called pure questions of law and notice, what's telling is these are all situations, again, that don't apply in these situations. So the Andrews case, which he focused on, is a good example of this. Andrews involved a constitutional challenge to an ad valorem tax calculation.

And the allegation, there were no issues of fact. There weren't any determinations that needed to be made. The question was, is this ad valorem tax scheme that has been adopted by the legislature, is it constitutional? And in that situation, of course, it makes sense for a court to resolve that question. There's no need for fact finding.

But here, there is no pure question of law that is present when you adopt their proposed definition. What they want the Court to do is to apply this definition of major. And then you alluded to this in your questions, like, what does it mean to be major? How big is this project? Like, does it fit these categories?

There are fact questions. It's replete with the kind of fact questions, and that is exactly the kind of circumstances where administrative regulatory bodies and the deference that they're afforded, their fact finding is required. So the Andrews case doesn't help them. it actually proves the opposite. The other argument he made is this notice argument.

He said, well, in certain instances, courts have found that where we didn't have notice, then you can -- you can relax the administrative -- the administrative exhaustion requirement. But what they're really asking you to do, Judge, is they're asking you to craft into the ULMO an equitable tolling doctrine or a notice requirement that the legislature chose not to do.

If you think about it, Judge, the purpose of a statute like the UMLO is to balance a set of public policy choices. You have to balance predictability and certainty and reliance interest against the need for aggrieved citizens to have a say or a role in the process. And there's lots of different

ways a legislature could decide and make public policy choices.

And these kinds of statutes, Judge, South Carolina obviously has its own unique one, but they're all over the country. You -- there could be -- it could have been 30 days. It could have been 90 days. The legislature could have made a public policy choice or the county could have made a public policy choice to say it's tied to actual notice and not to the posting on the -- on the portal of a permit.

Again, these are all public policy choices. And if they don't like the public policy choices that have been made about it, there's a remedy there. But what they can't do is come to a court and ask the Court to craft into a statute that is clear and unambiguous on its face regarding administrative remedies and say, you should modify that to embrace a public policy preference that we have.

The -- the next point I want to make is counsel said that we're simultaneously saying it's too early and too late. That's not our argument. Our argument is it is too late to challenge phase one because of the administrative statute and those public policy choices that are implicit in that.

Yes, it's too late to challenge phase one. It is not too late to challenge phase two. It is too early to challenge phase two. There hasn't even been a decision. There hasn't even been a decision made about phase two. So

there's no contradiction between the positions that we're taking in this case.

Counsel said Valara has taken the position that we're authorized right now to take construction activities under phase two. That's not true. We don't say that in our pleadings. It's not our position. We are doing nothing now and will do nothing under our phase two development permit unless and until that permit is issued.

Counsel is confusing the difference between a land disturbance permit, which was granted and which is not being challenged, and a phase two construction permit. All of the grading and the tree removal and the dirt work that's happening are happening pursuant to that land disturbance permit, which is not being challenged here.

The last point that I want to address, Judge, is counsel said the language of Section 102 is not anywhere in the 80 pages of briefing. He -- he must not have been reading our briefs because section 102's language is all over our briefing. And as you know, in my presentation that I did earlier, we made it front and center of our presentation.

We're not afraid of the language of Section 102. Our point is the only way to give -- to read a statute is to read it holistically. You can't just read Section 102 and then ignore Exhibit A. And the only way to give content to the catchall in Exhibit A is to reject their interpretation.

What's striking, Judge, is they're the ones who want to hyper-focus on one section, and they don't engage at all in this catchall argument because it is devastating to their case. Counsel said no rational person could read this statute the way that the county has read it.

But again, that understands -- underscores how extraordinary this argument they're making because for decades, this is precisely how all the rational folks at the county read and applied the statute over and over again to a number of projects that as we talked about before, even under their definition of major would check all of those boxes.

If you couple that deference that the Court gives to counties with that reality, it only reinforces that the only correct way to read this statute is the way that we have pointed out in our brief. So unless the Court has further questions, that's all I have.

THE COURT: All right. Thank you, sir. Okay. The Court has heard the thorough presentations of counsel and -- and will review again the pleadings and -- and memos and motions on file in light of those arguments and issue rulings on each of the motions to dismiss accordingly. And so before we move to the motion for injunctive relief, we'll take a five-minute recess and let everybody reset. We'll be in recess till noon.

(RECESS TAKEN)

THE COURT: Okay. This time we will take up plaintiff's motion for preliminary injunction.

MS. WANNAMAKER: Thank you, your Honor. May it please the Court. I'm Catherine Wannamaker. I'm here today on behalf of the concerned citizens of Spartanburg County on our motion for a preliminary injunction.

As my colleague, Mr. Brzorad, explained, the project at issue is a data center, but more importantly, your Honor, it is a 460 megawatt gas-fired power plant in the middle of a residential neighborhood in Spartanburg.

Now, I want to set the record straight on an issue that's been sort of flying around and bubbling up in the briefs. Oh, there's this permit and there's that permit and then there's the land grading. This is one project. And part of the problem here is the way that it has all been segmented.

Last year, there was one minor land development permit, this year, there's another. And that had drastic implications for what our clients and what the citizens of Spartanburg knew about this project.

So let me read to you from the first minor land development permit application. This is the description of the project.

This was in 2025, August 27, 2025. "Redevelopment of the former Kohler industrial plant, which currently consists

of an existing manufacturing industrial facility comprised of approximately 905,000 square feet of business space, including a main plant count and separate utility facility."

That is how the project was described, redevelopment of the Kohler facility last August. This year in a separate application in July, this became -- I'm sorry, in April, this became known to the public for the first time, April 6th.

"Phase 2 improvements for the high performance computer center consists of four proposed buildings with floor areas of approximately 423,000 square feet," lots of other square footages, "as shown on the site improvement plan.

Associated site improvements include a power yard -- apparently that's a power plant. A power yard, internal roadways and site access road, electrical equipment houses, transformers, modular yard areas, equipment trestles, a metering station, mechanical cooling system, stormwater management ponds, and ancillary improvements.

So let -- let's just get this delay and -- kind of out in the open here. This is when everybody knew what was actually happening in that site -- at that site in April this year. That's also when Valara went to the South Carolina Department of Environmental Services and asked for a 400 -- approval for air emissions for a 400 megawatt power plant.

So I want to start by saying the idea that we have delayed is patently ridiculous. And all these kind of

bureaucratic, well, you should've challenged that one and you can't do that now, but you're too early on the second one, which is -- has been conditionally approved and we're moving forward, that is just frankly, a lot of smoke in the way of what is really going on here, which is the development of a massive power plant and data center at a site that is causing obvious irreparable harms on our clients.

And I don't want to -- we've all been here, I think, a very long time at this point, but the declarations that we have filed with our motion, we have seven declarations and they detail all sorts of harm from noise, dust, heavy machinery, lighting it all hour -- all hours of the night, loss of forest, loss of property value. These are all classic irreparable harms for purposes of a preliminary injunction.

I'm sure the Court is aware there are three findings you have to make to issue an injunction. The first is irreparable harm. We would submit it is just open and obvious how harmful this is to the neighbors of this property as detailed in the declaration. So what does Valara say about that harm in the briefs that they filed?

Well, number 1, they say this is speculative harm. It's -- we didn't provide, a quote from their brief a quote on page 22, "soil analysis, noise studies, traffic studies, air quality reports, property valuation or epidemiological

reports to document our harms."

Your Honor, the case law is very clear, that is not required. And in fact Valara has submitted a -- a declaration where they explain that they have been out to Dr. Pack's house, one of our affiants, to power wash it for him because of the significance of the dust. So again, I think, you know, very clear that we have irreparable non-speculative harm.

The second thing that Valara says in their briefs is that the plaintiff's members chose to live in an industrial area. I was quoting that from the briefs. Yes, many of these plaintiffs, the members of our organization, live next to what I think my opposing counsel called a toilet factory at the Kohler site. That is true.

However, that site had no dust, noise, light pollution, the whole forest around the Kohler site was not cleared. So the idea that, you know, they chose to live in this place and they have no right to participate in a public planning commission process about whether this is an appropriate location or what condition should be imposed is ridiculous.

Third, they say, you know, this -- there's -- the -- the harm here is future and speculative. We don't really know what's going to happen. Well, they've applied for an air permit asking for, you know, permission to pollute with formaldehyde, PM 2.5, lots of other things that is currently

under review by South Carolina DNS.

The idea that that is speculative and not certain is -- is also ridiculous. in fact, the county is currently holding hearings on the health implications of this -- of this facility. So the idea that they're not real impacts here, again, your Honor, I just -- I think I'll --- I'll rest on the briefs and the affidavits on that.

Turning to the likelihood of success on the merits. There's been a lot of talk today about major versus minor, and deferring to the county, and how could anybody come up with a definition of what is major.

This, to me, is the simplest way to put that. If -- if a 460 megawatt power plant is not a major project, because it's not on a list that says, includes, what would be?

If, you know, for example, Universal Studios and Disney World came into the middle of Spartanburg and said, we're going to build Epic Universe and Universal Studios and Universal Orlando, and we're going to put it in the middle of the neighborhood, oh, theme park isn't on the list, so that's not a major development. That just makes zero sense, your Honor.

Of course, this is a major development and that designation has real important consequences. It means this would've gone through a public process, which is what the citizens want and which is what they were deprived with the

first notice calling this a redevelopment and a repurposing of the Kohler site.

Finally, for purposes of an -- of an injunction, your Honor we have to demonstrate that there is no adequate remedy at law. And again, the segmentation of this project means that we meet that standard. There is no vehicle, other than this case, for the Court to look at the entire project and determine whether it is a major land development.

They've said repeatedly here today, "We cannot challenge the phase one permit, because we're too late. We can't challenge the phase 2 permit because we're too early." There is no remedy at law that will allow us to obtain review here while they continue constructing.

And they've made a big deal in their briefs about conditional approval of the phase 2 permit. We frankly didn't even know that had happened, but apparently it has. Conditional approval of the phase 2 permit, they say is allowing them to keep doing activities at the site.

And, your Honor, we are entitled to an injunction. And again, I should point out, an injunction is a temporary remedy. It is designed to allow us time to get to the merits of this case to be a -- a pause while we get to the merits of this case. And, your Honor, we satisfy all the elements of that motion for an injunction. And I would love to just save the rest of my time for rebuttal.

THE COURT: All right. Thank you. Who wishes to respond first?

MR. FIELDING: Yes. Thank you. If I may proceed, your Honor.

THE COURT: Yes, sir.

MR. FIELDING: We've got Mr. Felk I want to hand out to the Court, if I may.

THE COURT: Yes, sir. Thank you.

MR. FIELDING: Judge, it -- it's worth, I think, underscoring, and this is black letter law, obviously, but to get an injunction in an ordinary circumstance, it's a drastic remedy that courts have to apply with caution.

And the plaintiffs, in order to carry that heavy burden to prove their entitlement to an injunction, have to demonstrate three things, and they have to do all three of these things. And if they can't prove all three, then the injunction has to be denied.

They have to show there's irreparable harm. They have to show that they have a site likely to success on the merits, and then they have to show an absence of an adequate remedy at law.

Not only here can the plaintiffs not actually carry their burden on all three, they can't even carry their burden on any one of those. And I want to walk through how and why that's the case.

Now, I'd also note, Judge, before we do that, the already heightened burden and standard that applies, that the plaintiffs bear and that they have to carry is even higher here for the reasons we point out our cases. But one of them is because they're seeking to disrupt the status quo.

They're not here before construction is started, and they're not saying, don't build. They're asking you to cease the construction of a project that's been underway for a year with almost a billion dollars invested in it, and over two and a half million man-hours of time put in that project.

So that heightens the standard even more because it's not a status quo injunction. And because they're challenging a decision by a municipal or a county agency, that standard is higher still because they have to show, and it's their burden to show that the decisions and conduct by the county were arbitrary, oppressive, or capricious. So really high standard.

Let me turn to the irreparable harm and why the -- the appellants do not and cannot carry their burden here. Under South Carolina Law, there are three things you have to demonstrate to show that there's irreparable harm.

You have to show that the harm is immediate. If you're going to go down and you're going to seek an injunction, you have to say, I need you to do this right now, because any delay will -- will be a problem. They have to show that the

harms are real. They cannot be, I'm concerned about or I think this may be. It has to be real harms.

And third, the proposed injunctive relief has to actually address and remediate the harms that the plaintiffs have established are real and not speculative. Let me address this first point, Judge, on the immediateness of the harm.

Now, the Hodel case, which we cite in our brief in which the plaintiffs have not addressed at all in their briefing, Judge, is a kind of roadmap for this. The concept behind when courts are asking the question of, is this harm immediate?

The question courts ask is they look -- they recognize that actions speak louder than words, and they say, let me look, not what you're saying now, but what did you do? And do your actions suggest that there was some kind of immediate need, and you acted quickly?

The Hodel quote -- we've cited a -- a quote from the Hodel quote across -- across the top of this, "A long delay in seeking relief indicates that speedy action is not required." And of course, that's the general standard.

But I would -- I would -- I would note, Judge -- I would note that, just to read from the Hodel quote itself, because I think this -- this is on all fours, our case, the Hodel quote said, "Equity demands that those who would

challenge the legal admit sufficiency of administrative decisions concerning time-sensitive public construction projects," that's us, "do so with haste and dispatch."

And then the quote explains why, "To require any less could well result in costly disruptions of ongoing public planning and construction." So that's the test and that's the concept. When you apply that concept to the plaintiff's knowledge and actions in this case, it doesn't match up.

So what I've done, Judge, and we have this timeline in our briefing where we sketch all this out, one of the arguments you heard them say is, we just had no idea, and as soon as we knew, we acted with haste. That's not what the factual record suggests.

So this timeline slide, Judge, on this first slide, what we've done is we've identified all of the instances where there was public notice or information about this project up through today. And this is also addressed in Mr. Johnson's declaration.

Beginning in 2025, there were three city council meetings where this project was discussed. There were news reports discussing the fact that it was going to be a $2.8 billion project.

Now, again, they're wrong about what major means and how the Court should -- how it -- the county should have applied it, but let's just adopt their definition of major,

which is if it's large in scope. By any -- any reasoning, a $2.8 billion project ought to meet what they claim is the definition of major. And there were press releases all over in this early 2025 period announcing the value and the amount and the -- the size of this -- this project.

There was another city council meeting on the 21st and the 22nd. Another press release was issued by NorthMark on behalf of Valara talking about this. And then, Judge, maybe most crucially in all of this, in July of 2025, Valara filed for an air permit application. And in its air permit application, it indicated it was going to be building combustion power generation on its facility.

That also, Judge, is the very same month in July when the -- when Valara filed its phase 1 development permit. And I'll note, the reason Valara did what it did is because it went to the county, and this is all in the declaration of Ms. Amador who was the -- is at Jacobs, which is the general contract for the project.

We went to the county, the county directed us to do what they've been doing for the last -- you know, since the '90s. They applied their -- their statute and they said, "You need to apply for a minor permit." So that's what we did. We applied for a minor permit.

This permit was posted on the public portal, would have been available to anybody who wanted to log in and see. If

anybody saw the press releases and saw it was $2.8 billion, they could have gone to the portal and it would have been there for everyone to see.

But on the air permit side, Judge, in that particular proceeding, several of the plaintiffs in this action participated in the two-month comment period where this air permit was being reviewed and ultimately approved by the DES. So they're very well aware and they were participating in that process.

Over the course of the next several months, there were several additional permits that were issued. There were disturbance permits. There was an initial disturbance permit which allowed us to go in and move dirt on the property, prepare the property for construction, not do any construction because we didn't have a phase 1 permit.

But both the applications for these disturbance permits and each one of these disturbance permits would have been placed on the county portal, and would have been available for anyone to look at and to see. And that proceeded all the way up until May when the third disturbance permit was provided.

Okay. Now, a crucial date in all this, we filed for our phase 1 permit in July. On August 27th of 2025, the county granted that phase 1 permit, again, posting it on its portal so that it was available to be seen by the public.

And at that point in time, Judge, we had gone through this process. We'd followed the county's direction. County had applied its ordinance, told us, "You've got a green light to go." And that's what we did. And Valara immediately commenced construction.

And over the course of the next year, up until today, almost a billion dollars has been spent on that project. There are 1,500 workers employed on that site that have been working on that project.

The declaration of Mr. Johnson talks about two and a half million man-hours have been spent over this same time period, building this project, which is in the phase 1 phase, right -- like, under construction right now. So this is what's happening.

And again, we did all this in good faith, as -- as the county did. We were told that we could do it and nobody said a word. Nobody popped up and said, wait, you can't do it this way, or this is improper. None of that. So of course, we proceeded in -- in good faith, as the permit allowed us to do.

Now, at the same time, Judge, the plaintiffs, by their own admission, were aware of what was happening. And don't take my word for it, Judge. You can look at their declarations that they've submitted in support of their preliminary injunction in this case.

They confirm, for instance, this is Mr. -- or Dr. Pack and Mr. Heath, he learned about the project in 2025. He learned a data center was being built in 2025. So all of this was known, and of course it was, given where we were in this process, the air permit, all the press releases, the city council meetings, all this stuff available on the portal, et cetera.

But it didn't stop there. In December of 2025, a Facebook group was created called the No Data Center Spartanburg. Several of the plaintiffs in this action joined that group, and were actively posting on that Facebook post in December of 2025, agitating and upset about the project, and yet, no action.

In March of 2026, now, one of the arguments I heard counsel make is they said, okay. Well, we should be excused about this stuff before because we didn't really know what it -- what would be happening. We didn't realize that there was going to be 400 megawatts of generating power. And that really changed everything for us.

Now, again, Judge, their argument is that a major permit is anything that's big, and so they knew about that a long time before. But let's just take -- taking them at their word, if you look at the declaration of -- this is Mr. -- this is Mr. -- this is -- this -- this is from, excuse me, Mr. -- Dr. Pack, but Mr. Felk, in his declaration, he talks

about he knew at the time that the air permit application was filed, which was filed in -- in March.

On March 4th of 2025, he says in his declaration, that's when he knew it was, "All a bald-faced lie." This is in March of 2025. This is their own declarations, and all of the plaintiffs have similar kinds of statements they make about when they knew about this.

So even if we take their position at face value and say, okay. Like, it wasn't until 2026 that we really became aware it was a problem, by March, according to their own declarations, they were aware of everything they know now, but they still did not act.

Fast-forward, Judge, in June of 2026, the lawyers representing the plaintiffs in this action filed a -- a challenge in the Public Service Commission of South Carolina to challenge whether or not the -- the PSC had to go -- the -- the construction of these -- these power generation facilities had to undergo a public siting commission review.

So these lawyers are on notice there, and they knew how big the project was, and -- and again, no action in June. It wasn't -- Judge, and this is what the next slide demonstrates, it wasn't until July of 2026.

But again, by their own declaration, months and months after they learned in March about the "truth" of the project, that they filed their complaint.

But, Judge, (inaudible). They didn't file a preliminary injunction. They didn't run in here and say, we just learned this and we need to act immediately. They waited another month. And a month later, then they filed an amended complaint. That amended complaint didn't have a preliminary injunction.

It wasn't until August 19th of 2025, that the plaintiffs first came here and are now telling you that they acted with haste and with vigor as soon as they knew. That they didn't sleep on their rights, such as they claim they are.

The factual record, (inaudible) by their own declaration, tells a very, very different story. And it's worth understoring, Judge, this isn't some -- we're not up here telling you, oh, this is some technical football by them, and so you should deny it.

In the meantime, while they were -- had this knowledge and were doing nothing, we were spending massive amounts of money. And in the Johnson affidavit, this is significant.

He points out that after March of 2026, when these plaintiffs, by their own admission, triggered by that air permit application, were aware about this, of the two and a half million man-hours that were spent on that project, two million of those were spent after March.

And there was no injunctive relief that was sought in

any way, shape, or form for another six months until August.

In total, the Court found that a six-month delay in the context of a construction project like that was enough to demonstrate that they -- those particular plaintiffs in that case did not meet their burden of demonstrating there was an immediate need for relief.

That fact pattern applies with equal force here. It's hard to imagine record where it is no more true that a long delay in seeking relief indicates a speedy action is not required. So they can't prove that there's an immediate need for this and their own actions speak louder than their words. That's only the beginning of the plaintiff's problems on the irreparable harm.

The second thing they have to -- the -- the second and third thing we've talked about they have to show is they've got to show that the harms are -- are not just likely -- or that they're likely, not just merely possible, and they have to demonstrate that the requested injunction that they're asking for would actually work to remediate those harms. They cannot do that either.

Now, the way I think they think about this, Judge, is there are basically three categories of harms that the plaintiffs are alleging that they've suffered in this case, and for which they're asking an injunction to supposedly help remediate.

There are past harms, and this falls in the bucket of all of the dirt work is done, the trees that have been taken down, but those are all harms that have already been done. As Mr. Johnson notes in his affidavit, the dirt work on the property is substantially complete.

So those past harms, no injunction right now is going to remediate any of those past harms. Those -- those trees aren't going to grow back, that -- whatever vegetation was there is -- is gone, and -- and it's not coming back with an injunction. So their injunction is not going to remediate any of those past harms.

They have claims about present harms. So several of the plaintiffs talk about dust on the property, lights on the property that shine onto their property, and -- and noise allegations.

I would note, Judge, with respect to the present harms, we have a declaration from Mr. Johnson where he talks about the great lengths that Valara was going to, to work through all those issues. It's interesting to me that the plaintiffs brought up Dr. Pack as an example here. It -- it's actually an example that demonstrates how hard Valara's working.

They showed up at his house when he complained and they offered to clean it for free. Then they went on his front porch, this is in the Johnson affidavit, and they sat there and he had some concerns about lights, and they figured out

how they could rejigger these lights so that they no longer affected his property.

This is all happening right now. It's in the Johnson affidavit. It's not contradicted by any contrary evidence of the extent to which Valeria is working to address, remediate, and fix any present harms. And as far as the noise complaints go, several of the -- the plaintiffs talk about noise issues. One of them is Mr. Pack.

But Mr. Pack was in a city council hearing on Wednesday of last week in a response to a direct question from the city council member who asked him, "Is the noise still affecting your property?" He said, "I don't have a noise problem now." I'm paraphrasing, but it's in the Johnson declaration. "My concern is it will affect it out into the future."

So this -- this noise issue, the evidence of that, particularly with all the remediation, I note one other thing, Judge, in the Johnson affidavit, and that is that one of the drivers of potential noise on the project are the temporary power generation.

There is a -- as Mr. Johnson notes, a giant sound barrier around the outside of that facility instructed at Valara's expense, precisely to mitigate against those harms. So there is no need for an injunction at this point to remediate any of those harms because Valara is (inaudible).

That leads to the last category of harms, which is

these future harms. And what ties all of these together, Judge, every single one of them, is that these are not statements about based -- like, evidentiary statements about what the project is going to do.

The evidence that's coming to the record in the form of declarations are all about what people are concerned or fear will happen. And you can see this in each one of the declarations. Dr. Pack, he talks about current impacts and then he transitions in paragraph 14. He says, "I fear that things will only get worse."

Mr. Heath, in his declaration where he's talking about concerns about emissions and water issues and other things, he says, "I am very concerned about the impact." Mr. Wood, "I have a reasonable concern that similar impacts are likely to occur in my community." And Mr. Stevens, "The ongoing construction causes me serious concerns."

And here's the thing, and the case law on this is clear, Judge, perspective concerns about future harms can't justify relief. Because an injunction is such an extraordinary remedy, you can't come and say, I'm concerned about this or I fear this is going to happen. It requires actual evidence.

Now, I'll grant that these concerns and fears the plaintiffs have, I'm sure they're well-meaning, but good intentions and well-meaning is not evidence. And it's

certainly not enough evidence to compel the kind of extraordinary relief that they're requesting in this particular case.

And the -- the -- and -- and that -- that is the obligation and the duty of a plaintiff seeking a preliminary injunction. Now, Judge, when you stack that evidence of their fears and concerns against the other evidence in the record, which you do as part of your irreparable harm analysis, that evidence is especially exposed as lacking.

And let me -- there's two buckets of that. The first, Judge, is the fact -- let's take, for instance, the allegations of air pollution. There is a regulatory proceeding that happened where a body selected and appointed by the legislature, the DES, filled with experts to make expert decisions about air permissions have -- air emissions have looked at this.

They've evaluated this. They did it back in July, beginning in July of last year, and they granted an air permit. And that air permit wasn't based on concerns and fears, it was based on actual evidence in a regulatory process designed to answer exactly those questions by experts who have the knowledge and the capacity and the capability to answer those questions.

On the water usage side, just as in the Johnson declaration, we went to the Spartanburg Water Utility. We

told them, "Hey, we just want to make sure, do you have enough water for our facility?" And they -- this is in his declaration, they assured us they have plenty of excess water capacity for residential, commercial, and industrial use going forward.

That is a -- and of course, that makes sense because the Spartanburg Water Utility Company is the one that is the best position to know the answer to that question.

And when you compare the plaintiff's concerns and fears when they say things like, I'm concerned it's going to affect our water with these decisions made, or I'm concerned about air emissions with (inaudible), it demonstrates the disconnect. But that's not all, Judge.

In our declaration of -- of Mr. Johnson, he talks about all of the things that Valara is doing to ensure that the complaint of impacts the air pollution, noise pollution, water usage, how all of these things are going to get addressed and dealt with.

Air pollution side, he talks about how they've implemented emissions controls, including catalytic converters, oxidation catalysts, emissions monitoring systems, and all of these were pursuant to that air permit.

That the experts designated to answer this question concluded that this permit was -- should be granted and that the -- the facility as operated would be within or exceed all

of the relevant standards that apply under the DES's purview.

On the noise pollution side, he talks about all of the efforts that are going to be undertaken, including sound barriers, noise enclosures, modifications to the turbines that are going in a permanent sound barrier, all of the things that are specifically designed to mitigate and protect against any noise impact on adjacent communities. And then he confirmed the conversation with the Water Utility as well.

All of this testimony, both the facts that experts that are (inaudible) review all this stuff and the testimony from Mr. Johnson, about all of the things Valara is doing to remediate these future harms when stacked up next to the fears and concerns, just underscore the plaintiffs simply have not carried their burden under irreparable harm.

They cannot show that there's an immediate need, based on that timeline I showed you. They cannot show that -- that there is a real proof of harm, the quantum of evidence that the -- the case law requires, and they cannot show that the injunction will remediate it.

Let me give you one example of that, Judge. One of the things they said is, "We need an injunction right now because of this dust problem." Here's their challenge with the dust problem, Judge. The problem there is, right now, because we have our land disturbance permit, which we have complied with

all it's steps, that land is -- is -- it's just dirt right now.

Once that phase 2 -- if that phase 2 permit is issued, that dirt is going to become buildings and sod and trees and landscaped properties. If you enter the injunction and tell Valara, just stop work on the project right now, it's not going to solve the dust problem. It may -- it may exacerbate, particularly when coupled with Mr. Jacobs' declaration.

But like we're at the -- the -- right now where the company is, because they substantially completed all that dirt work, it's now at a point in time where that's going to start to recede. So again, based on all of this, they can't carry their burden, their heavy burden of proving irreparable harm.

On the likelihood of success, Judge, I'm going to skip through this because this really deals with the exhaustion issue, and the interpretation of the ULMO that we've already had extensive conversations about. But for all the reasons we talked about in the motion to dismiss arguments, Judge, that they cannot show that they have a substantial likelihood of prevailing on the merits.

But one point that I would like to make and didn't come up in the motion to dismiss, but it is relevant because one of their Count 3 claims -- their Count 3 claim is that Valara

is violating its phase 1 permit right now by doing dirt work outside of the phase 1 permit.

And you may have seen in their brief, Judge, they also put in their reply briefing, and they had a map where they showed where the scope of the phase 1 permit was, like, a satellite image, and then they showed that a bunch of dirt had been cleared around that map, and their map focused on that yellow area.

Counsel for the county flagged this earlier in the motion to dismiss. This just shows a fundamental lack of misunderstanding about how these permits work together.

And counsel continues to say Valara is proceeding apace with the construction. It's not. It -- it is not proceeding apace with the phase 2 construction, and it will not and won't until that phase 2 permit. But what it is doing, it is pursuant to validly granted land -- land disturbance permits. It is doing dirt work on the property.

What this map demonstrates, Judge, and this is proved up by Ms. Amador's declaration, the -- there was an original land disturbance permit and then there were three modifications. And what you can see, Judge, is each one of those colored areas reflects an area of the site for which there was a land disturbance permit granted.

So the first one that was granted was the yellow, then the green, right, which was around the exterior of the

property, then the blue, and then the purple. This fits -- when you take their satellite map, which they claim proves that there was construction work being done, they pointed to dirt work that was done in this purple area. That purple area was subject to a validly granted land disturbance permit that's not being challenged here.

So on the merits of their claim that there is some violation of the phase 2 permit, that we are actually commencing construction under the phase 2, it's -- it's contradicted by uncontradicted declaration testimony both from the county whose declarations discuss these land permits, and the testimony from the declaration of -- of the -- of Ms. Amador, who talks about the same thing and confirms that all of that work was done consistent with that.

Now, counsel mentioned this in the motion to dismiss, there was one instance in July of 2022, where within the scope of one of these permits, the county came as they do, to monitor these situations and they noted that one of our particular -- some of the dirt work we were doing, (inaudible) to do the dirt work, was something that exceeded the scope of our land disturbance permit.

And they told us, "You need to apply for a modification before you do that work." We did, and that's where we are. And there is no evidence in this record at all of any continuing or existing violations. And -- and again, it's

their burden to prove a substantial likelihood of the merits of this, and they can't on the face of this record.

So let me move to the last element, Judge, and that is the adequate remedy at law. In order to obtain an injunction, you've got to show that there's no other way that I could have obtained this relief. But there is an adequate remedy at law.

The adequate remedy at law is the administrative process that the ULMO sets forth. And that adequate remedy at law, and this is the whole thing in the -- in Santee Cooper case that we cite in our brief, in -- in that particular case, that's what the Supreme Court said.

The Supreme Court in that case recognized that -- that because the parties had a -- an adequate appeal to an administrative process -- it wasn't the ULMO in that case, it was a different administrative process, but the Supreme Court of South Carolina recognized that's an adequate remedy at law and you're not entitled to an injunction in light of that.

Now, the plaintiff's complain and they say, well -- they say, this would be unfair to us if you -- if -- if -- at least with respect to the phase 1 permit, because they say, like, you know, we didn't know and we couldn't figure it out. Now, again, they -- the record speaks for itself, the timeline that I just showed you. But more importantly, the case law in South Carolina is also clear on this.

You can't shoehorn for a claim that is otherwise time-barred into an injunctive relief. And that's what this nut court case, that involved a situation where somebody tried to get an injunction on a claim for which the statute of limitation had expired, and -- and the Court in that court recognized that's not how that works.

If you lost the ability to pursue the underlying cause of action, you can't circumvent that process, that time-barred process by -- by seeking injunctive relief. So with respect to the phase 1 permit, they had their opportunity, they didn't avail themselves.

On the phase 2 permit, Judge, it's even more clear. There is right now, today, an adequate remedy at law for the plaintiffs. If -- whatever happens on this permit, this second -- this phase 2 permit, if -- if they don't like something about the permit, they have a process by which they can appeal that permit.

That is the textbook definition of an adequate remedy at law that exists to them, that they can elect to pursue. So they cannot prove that there's an adequate remedy at law.

And at the end of the day, Judge, that means that they can't prove irreparable harm, they can't prove a substantial likelihood of prevailing on the merits, and they can't prove there's not an adequate remedy at law, and they must prove all three.

One last reason, Judge, why you can and should deny this injunction separate or following that. (Inaudible) they filed last month. They said they will not put a bond to secure the injunction. That's a problem because the law in South Carolina could not be more clear that a plaintiff must secure its injunction -- any injunction with a bond.

Now, this is in Section -- this is Rule 65 of -- that -- that applied -- of the South Carolina -- South Carolina Procedural Code. And it's very clear both that -- two things are clear from Rule 65. First, that -- that the post of the bond is mandatory. It uses that term, shall. Right.

That's a mandatory term. It -- it -- and no restraining order shall issue except upon the giving of security. And the rule also explains how to calculate and assess that security, that bond. And there's a -- the -- the goal is a payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully enjoined or restrained.

And as the Supreme Court has explained in the -- in the (inaudible) case, that is exactly what that bond is designed to do. It's designed to give the -- the party that's been enjoined a remedy that is recoverable immediately if it's later determined that that injunction was improperly granted. So they don't have to go chase people to capture back what it is that they lost, the -- the amount of money that they've

lost.

Now, in the face of this case law, this clear language in Rule 65, their response is, Judge, you should just ignore it. They say this -- they say that, yes, it's there, but you should ignore the mandatory nature and you should ignore the method of calculating it.

And their authority, Judge, are a bunch of out of -- out of state cases that are applying different rules in different contexts. The Supreme Court has spoken on this. And I know, Judge, there are carve-outs in this statute.

This is a public policy choice of the Supreme Court of North -- of South Carolina that creates these rules, and then the legislature which ratifies them. They carve stuff out.

They've carved out divorce and child custody and marital support actions. They've carved out the fact that if it's a -- a state officer or an agency, that they don't have to post a bond. But what they don't do is there's no carve out for the exception the plaintiffs want you to recognize, and what they want you to say their argument is, well, what am I supposed to do? Doesn't this mean that, like, I can never go try to enjoin a really high value project because, like, I'll never be able to afford a bond?"

There are two problems with that. Problem number 1 is, the reason why this bond is so high is precisely because they did nothing, and watched for a year as we constructed our

project.

If they would've pursued their administrative remedies and filed an appeal before construction commenced, this bond would not be the massive size that it is. So that's point number one.

But point number two, what they're asking you to do is to -- again, this is a public policy decision that the Supreme Court of Texas -- or of South Carolina promulgates these rules and the legislature that ratifies and makes, where they decide, what are we going to require?

And there are no exceptions in South Carolina Law recognized for people who can't afford to put up a bond or people who the -- the project is too big, and it would be too cost prohibitive to put up a bond.

In fact, the South Carolina Supreme Court has rejected that, and they did it in the Atwood case. In the Atwood case, the judge granted an injunction -- the -- the trial court granted an injunction and placed only a nominal bond. And the reason the judge said, I put a nominal bond is, he said, "I think this injunction's going to hold up. So I don't need to put -- put a bond on there because I think my injunction's solvent."

And the Supreme Court rejected that. They dissolved the injunction, but they noted the Circuit Court's order requiring only a nominal security bond does not satisfy the

Rule 65(c).

And what they criticized this trial court there for, is instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed proper, they recognize no exceptions to that mandatory nature and how the bond -- the process by which that bond is set.

Other South Carolina courts applying and quoting from Atwood say the same thing. They say things like, this is the pro-wiring installer's case. Setting a nominal bond is not within the discretion of the trial court.

Even a nominal bond doesn't satisfy Rule 65(c). And in this Spartanburg Buddhist case, the Court recognized that that's because South Carolina interprets Rule 65 strictly. And again, I want to emphasize what they are asking you to do is that you recognize the exception that no court in South Carolina has ever recognized, to the contrary, they have rejected.

Under that well-settled case law, the Court only has one option, and that is to require the posting of a bond and to calculate that bond in the amount that would make Valara hold in the event that that bond is later dissolved.

And that basis alone, the facts that they say they won't put up the bond, you don't even need to go through the exercise of anything else, Judge, because if they won't put up the bond, the bond -- the injunction cannot issue without

it.

Now, as far as the amount of that bond, Judge, we have uncontradicted declaration testimony from Mr. Johnson about this. The size of that bond would be admittedly massive. And it's because of how far in progress this project is.

To go demobilize a -- a site that is under a phase -- that is under the phase 1 constructions proceeding that -- with 1,500 employees there, you can't just, like, walk away. Like, put your shovels down and walk away. You've got to transport stuff there, or cranes out there.

The -- one of the largest cranes on the Eastern Seaboard is on that -- is at that facility. These things are going to have to get moved. There -- there are lots of high value items that exist out there that are going to have to get either removed from the facility, or stored under security.

And the declaration of Mr. Johnson calculates it will take between 30 and 60 days to demobilize, and it costs about two and a half million dollars a day, which equates to $165 million in losses that we would suffer if an injunction's entered, and later determined to be improbably granted.

Then there are the post-mobilization costs. These are the costs we'd have to incur if we had to go out and rehire all the 1,500 people, like, take everything out of cold storage, move everything back. And those -- those account

for another $40 to $60 million, which Mr. Johnson totals at approximately $208 million. And again, these are using very conservative assumptions.

So if -- if the Court's going to grant bond, you have uncontradicted evidence in front of you of how to calculate that amount that you'd make Valara hold, and you have a -- you have a -- a rule and case law that directs you to both assess that bond and -- and to calculate it.

And there is no contradictory testimony about any other amount that bond should be other than the $200 million requested. Instead, the plaintiff's only response is to ask you to ignore South Carolina Law. And we respectfully suggest that you should decline that invitation.

So unless the Court has any further questions, we would say for all these reasons, you should deny the plaintiff's motion for injunctive relief.

THE COURT: All right. Thank you, sir. Ms. -- Ms. Burton, do you have anything to add in response to the injunction --

MS. WANNAMAKER: I do.

THE COURT: Okay. All right. Ms. Wannamaker?

MS. WANNAMAKER: Thank you, your Honor. I'd like to start, again, with what is a fundamental issue here, and that is the timeline, and the continued argument that we have delayed, no injunction should issue because we slept on our

rights. They've cited our declarations about when we learned about these things.

Let's be very clear. In February of 2025, there was a county council resolution about this project. David Britt, who was a county council member at that time, told reporters, after the resolution on this project, this is not a data center and it would not, "Use more power than the site's existing facility."

That was in 2025 when the first permit shortly thereafter, was applied for. That is what the public knew. Now, in the deck presented by opposing counsel, they've put forward lots of timelines. There are multiple iterations of timelines.

Let's see. I'm looking at the one -- not on 4, 5, and 6 and 7, but the timeline on page 9, February 17th, 2025, county council meeting. That's when David Britt said, "This is not a data center and it would not use more power than the site's existing facility."

Then we go way down the timeline, lots of phase one permits and land disturbance permits. Those were all clearly related to what they described as the redevelopment of the Kohler site. That's what all of that was up until, conveniently omitted from the timeline, on page 9, April 2026, when they both applied for a new air permit, disclosing for the first time that this was going to have a power plant

on site, 400 megawatt increase power plant. It was 50 megawatts and it became 450 megawatts.

It was a redevelopment of the Kohler site, and it became a massive new project with storage yards, a "power yard," the 450 megawatt increase in April of 2026, which is not on this timeline on page 9. And that is when everyone learned about this. And we filed our case a mere three months after that and sought an injunction within a month.

So let's just be very clear about that. I think the cases that we cite in our brief are also clear that in equity, someone who comes to a situation and hides facts or obfuscates the truth cannot then claim delay. So I -- I would point the Court to our brief on that.

This project, you know, went from being a baby, which maybe people would not have been concerned about, to a giant, or from a molehill to a mountain. It was not adequately disclosed to the public.

Now, my opposing counsel spent a lot of time on irreparable harm and why it's speculative, and these are fears and concerns. I think there were some misquotes on dates in the Felk affidavit, but again, the facts are clear when everyone learned about this, which was April. There is clear uncontradicted testimony in our affidavits about irreparable harm here.

Ms. Stevens, she has asthma. She doesn't go outside

anymore because of all the dust at the site, because she can't breathe. That is classic prototypical irreparable environmental harm for purposes of a preliminary injunction.

My opposing counsel said Valara is working very hard -- they're working very hard to mitigate all the harms of this project. Well, you don't, your Honor, mitigate harms if they aren't real, if they're not happening. I query, why are they out washing Dr. Pack's house and offering everyone car washes if there is not real irreparable harm here? So that factor of the injunction test is clearly satisfied.

My opposing counsel also argued that an injunction basically is going to make the situation worse because, you know, dust will just continue. They can't do anything about the fact that trees have been cut. You know, we would be happy to brief this, to work with the opposing side on ways to tailor an injunction.

They -- injunctions can be tailored. There's obviously some way to tailor an injunction here that does not make the facts on the ground any worse.

As to the adequacy of a remedy at law, we've cited these cases in our brief. I mean, the courts ask whether you have complete relief in another forum. They have argued repeatedly that we cannot get review of the first permit in the BZA.

We can't get review of the second permit in the BZA

now. Who knows when we will? Whether that -- it's been sitting there, that permit, from -- since April. Who knows when we will be able to go to the BZA and appeal that permit? We have no adequate complete relief outside of this court.

As to the bond requirement, I think opposing counsel made the argument that we ignored it. That is not true. We didn't -- didn't ignore the bond requirement.

In our brief that we filed last night, we explained, your Honor, that a nominal bond is appropriate under the rule. The rule says the Court may set a bond as it deems appropriate, I think is the -- as it deems proper, excuse me, is the proper language.

We cited to a host of cases from federal courts interpreting the exact same language, and saying that in public interest cases like this one, nominal bonds are -- are allowable, because otherwise you deprive citizens of the right to any relief.

And the South Carolina rule, again, is the same. We cited in our brief in a footnote cases that say, courts in South Carolina may look to federal authority on issues like this when the rules are substantially the same. So we have not ignored the bond requirement. We do believe a nominal bond is appropriate.

As to the Atwood case, your Honor, that was not a public interest case that they're citing for the idea that a

nominal bond is -- is inappropriate. That issue has never been litigated in South Carolina. So the idea that Atwood says you cannot set a nominal bond is just wrong.

We have all been here a very long time. I think I want to just say a few things in closing to -- to leave the Court with today. There are so many contradictions and inaccuracies in all the way that this has been portrayed.

Valara is both being very transparent with the public and they want the public to know everything about this project and what they're doing, but they are fighting tooth and nail to stay out of the planning commission review process that goes with the major land development permit. Why? Why, your Honor, if they are all in favor of transparency?

We have no special damages to the members of our organizations, but they are washing our members' houses and offering car washes for a year. How can those both be true? They can't. This is a minor permit, but it's too big to stop it. They've spent all this time and this money, and you can't stop it. It's minor, but it's too big to stop. It's minor, but it requires a massive bond.

Your Honor, those things cannot all be true about this project, and we would respectfully ask the Court to grant our request for a preliminary injunction so that the parties may reach the merits before it's too late.

THE COURT: Okay. Again, thank you all for your -- for your arguments and your -- your materials and your thorough briefing on these -- on this issue, as well as the motions to dismiss. The Court will take all this under -- under advisement, and issue rulings on each of the motions accordingly, the county's motion to dismiss, Valara's motion to dismiss, and the plaintiff's motion for preliminary injunction. Thank you all.

MR. BANNISTER: Thank you, your Honor.

MS. WANNAMAKER: Thank you.

MR. FIELDING: Thank you.

BAILIFF: All rise.

THE COURT: Court will be in recess.

(THERE BEING NOTHING FURTHER, THIS HEARING IS CONCLUDED)

CERTIFICATE OF TRANSCRIBER

I, RAVEN HUGHES, a certified transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 7th of Spartanburg County, South Carolina, on September 17, 2026.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Raven Hughes

November 02, 2026

RAVEN HUGHES

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