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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GSL HOLDINGS, LLC,

Plaintiff-Appellant,

v.

CHARTER TOWNSHIP OF LYON TOWNSHIP, MICHIGAN, a Michigan municipal corporation; JOHN A. DOLAN, in his official and personal capacities, jointly and severally,

Defendants-Appellees.

No. 25-1394

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 2:21-cv-11664—Matthew F. Leitman, District Judge.

Argued: June 4, 2026

Decided and Filed: November 9, 2026

Before: WHITE, THAPAR, and MATHIS, Circuit Judges.

COUNSEL

ARGUED: Cindy Rhodes Victor, THE VICTOR FIRM, PLLC, Southfield, Michigan, for Appellant. Michael T. Berger, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER PC, Farmington Hills, Michigan, for Appellees. **ON BRIEF:** Cindy Rhodes Victor, THE VICTOR FIRM, PLLC, Southfield, Michigan, for Appellant. Michael T. Berger, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER PC, Farmington Hills, Michigan, for Appellees.

OPINION

MATHIS, Circuit Judge. GSL Holdings, LLC owns a parcel of land in an industrial park in Lyon Township, Michigan. In late 2020, GSL agreed to build a manufacturing facility on the

parcel for Moba Americas, Inc. GSL promised Moba that the facility would be ready in about ten months. But there was a potential problem with this timeline: the property had no public sewer access, which meant GSL would need to secure a septic permit from the county health division before any on-site construction commenced.

That would take time. With the clock ticking, GSL and Lyon Township tried to reach an agreement that would allow the developer to start building the facility without a septic permit. When those negotiations broke down, GSL sued the Township, along with Township supervisor John Dolan, bringing numerous claims under 42 U.S.C. § 1983 for alleged violations of its constitutional rights. GSL now challenges the district court's grant of summary judgment to the Township and Dolan on its equal-protection, due-process, and First Amendment retaliation claims. We affirm.

I.

GSL Holdings is a real-estate developer in Michigan. It owns a roughly six-acre parcel of land in an industrial complex in Lyon Township.

In December 2020, GSL entered into a lease agreement with Moba, a machinery manufacturer for the egg industry. As part of the agreement, GSL agreed to build a commercial facility on the property for Moba's operations. But the timeline was tight. The lease required GSL to "use [its] best reasonable efforts" to substantially complete the project and ensure Moba could take occupancy of the building by October 1, 2021—just ten months away. R. 46-2, PageID 1533.

Around that same time, a GSL representative, Maria D'Agostini Lukosavich, discussed the Moba plan with Lyon Township officials. Lukosavich stressed that a "critical piece" of the Moba deal was "timing" because Moba "want[ed] to be occupied by September 2021." R. 51-2, PageID 2310. Lukosavich then met with Township officials for a "pre-application meeting." R. 46-3, PageID 1691. GSL alleges that Township officials "g[ave] assurance" that the Township would assist in obtaining approvals "as soon as reasonably possible." R. 30, PageID 1043.

GSL got to work, securing the necessary permits and approvals from Lyon Township to begin construction. But there was trouble from the start: the property had no access to the public sanitary sewer, which meant that GSL needed to construct an on-site sewage-disposal system. And to accomplish that, the developer needed a septic permit from the Oakland County Health Division (OCHD).

Securing the septic permit was no simple matter. Around 2018, GSL applied for a permit to install an on-site sewage system on the same property, but the OCHD denied its application. The OCHD advised GSL that it would not grant a septic permit unless the developer combined the property with an adjacent lot—which, as of early 2021, GSL still had not done.

In January 2021, Lyon Township preliminarily approved GSL's site plan for the Moba facility. The plan described the construction of an on-site sewage system, or "septic field," in lieu of access to the public sewer system. R. 30-4, PageID 1096. But the approval did not mean GSL could start construction; the Township requires developers to "secure all necessary permits from other agencies as applicable to the project" before the start of construction. Lyon Charter Township Code of Ordinances § 15-10(b). In other words, GSL still needed a septic permit from the OCHD before construction could commence.

Over the next two months, GSL secured an engineering review and applied for a permit to develop the foundation and shell of the building. But as of March 1, 2021, GSL still had not applied for a septic permit, nor had it applied to combine the lots.

Yet, at least one person at GSL believed Lyon Township was moving too slowly. On March 8, Lukosavich emailed the entire Township board of trustees, along with various administrators and consultants, to express her impatience with the Township.

In response, the Township informed GSL that it would proceed with the building plan review—but only if GSL signed a hold-harmless agreement.[1] The proposed agreement relieved

[1]Lyon Township's ordinances provide that after an applicant receives initial approval from the planning commission, the applicant must again submit plans to the Township's engineering department. Lyon Charter Township Code of Ordinances §§ 15-7–15-10, 5.04. "When engineering construction plans have been approved, the applicant may apply for a building permit from the Township Building Department." *Id.* § 15-10(b). The engineering department will not approve plans unless the developer provides "documentation from other

the Township of liability related to its review of GSL's building plans. And it specified that GSL assumed the risk of loss with respect to the denial of building-plan or building-permit approvals. GSL[2] and the Township executed the agreement later that day on March 8, 2021. The parties seemed to be making progress.

Still, Lukosavich's email troubled some individuals. Lyon Township's attorney, Carol Rosati, responded to Lukosavich that it was "inappropriate" to "communicate directly with the members of the Township Board in this fashion," explaining in a later email that such communications risked "a potential violation of [Michigan's] Open Meetings Act." R. 30-11, PageID 1118; R. 30-12, PageID 1123. And Leslie Zawada, an outside engineering consultant for the Township, complained about Lukosavich's email to one of her colleagues.

On March 9, 2021, GSL finally submitted its application to the OCHD for the on-site sewage system described in the site plan. But GSL still had not applied to combine the lots. So on March 22, as before, the OCHD advised GSL that it would not consider GSL's septic-permit application until it combined the two lots. Only after receiving the OCHD's response did GSL apply to combine the lots.

Meanwhile, the Township's engineering department completed its second review of the project and instructed GSL to "incorporate the [listed] items into revised plans" and resubmit them. R. 11-4, PageID 516. It added that "[a] pre-construction meeting shall be held prior to the commencement of any on-site construction." *Id.* at 517. The engineering department also understood that GSL required "separate preconstruction meetings for grading and utilities." *Id.* It therefore separately listed tasks GSL had to complete "prior to scheduling the pre-construction meeting **for GRADING**" and tasks that had to be completed "prior to scheduling the pre-construction meeting **for UTILITIES**." *Id.* The "Utilities" category required GSL to obtain an

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agencies . . . indicating that the plans have received their approval." *Id.* § 15-9(c). However, the Township sometimes allows a developer to simultaneously seek a building-department review while the engineering department reviews the site plans, provided that the developer signs a hold-harmless agreement, essentially promising not to sue the Township if the engineering department ultimately denies the application.

[2]The agreement was signed by Lukosavich on behalf of Mode Development, Inc. In this opinion, "GSL" refers to GSL and any pertinent related entities.

Oakland County septic permit before scheduling a preconstruction meeting (and, by extension, starting non-grading building activity).[3]

Throughout March, the lots remained separate and the septic-permit application remained pending. Yet according to Lukosavich, the Township notified her at the end of the month that a building permit was ready. Lukosavich claims to have received a call from Township building coordinator P.J. Andrews telling her that the shell and foundation building permits were ready to be picked up from the Township offices.[4]

Whatever promises were made on that call, Lukosavich never picked up any permits. GSL says on appeal that it did not have a chance to pick up those permits "since the end of that week was Good Friday." D. 32 at p.32. On April 5, Andrews emailed Lukosavich to explain that, "[p]er [Township supervisor] John Dolan, it has been decided not to issue the building permit until after your utility [pre-construction meeting]." R. 30-15, PageID 1132. And that meeting could not be held until GSL obtained its septic permit.

On May 3, in a last-ditch effort to keep the project alive, the Township proposed a second, distinct hold-harmless agreement. Under that agreement, the Township would allow GSL to begin construction without a septic permit if GSL "extend[ed] the public sanitary sewer . . . at [its] sole cost and expense" if it failed to obtain the permit. R. 30-20, PageID 1150. According to GSL, this proposed agreement was both atypical and unduly burdensome. As a result, the parties never executed the second hold-harmless agreement.

Needless to say, the facility would not be ready for Moba by October. Even so, GSL still had some options available. For instance, Moba had waived its termination rights under the

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[3]GSL contends that, earlier in March 2021, the engineering department indicated work on the foundation and shell could proceed without a septic permit. It relies on two pieces of evidence. On March 5, the engineering department emailed other Township officials saying GSL "has expressed needing a foundation permit issued by the first of April. . . . I do not have an objection if the Building Dept starts to review this and issues a foundation permit." R. 51-17, PageID 2394. And Lukosavich testified that the engineering department "indicat[ed] that [it] had no issues on [its] end from issuing a footing permit." R. 51-6, PageID 2334. But these statements do not explicitly discuss a septic permit or whether GSL could begin building without one.

[4]In its briefing on appeal, GSL says Lukosavich received the call on March 31.

lease, so GSL was under no obligation to let Moba walk away free and clear. But ultimately, GSL and Moba negotiated an agreement to terminate the lease.

GSL sued Lyon Township and Dolan, asserting equal-protection, due-process, and First Amendment retaliation claims under 42 U.S.C. § 1983, and a claim arising under Michigan's Freedom of Information Act. GSL later amended its complaint to add another First Amendment retaliation claim, alleging that the Township refused to consider its application for a speculative-building-status designation in retaliation for GSL filing this lawsuit. The district court granted summary judgment to Lyon Township and Dolan on all claims except the First Amendment retaliation claim related to the speculative-building-status designation and the state-law claim. The parties settled these remaining claims shortly before trial.[5]

GSL timely appealed. It challenges the district court's summary-judgment decision on its equal-protection, due-process, and First Amendment retaliation claims.[6]

II.

We review the district court's grant of summary judgment de novo. *Puskas v. Delaware County*, 56 F.4th 1088, 1093 (6th Cir. 2023). Summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). We view all evidence and draw all reasonable inferences in the light most favorable to the nonmoving party. *Driscoll v. Montgomery Cnty. Bd. of Cnty. Comm'rs*, 173 F.4th 794, 799 (6th Cir. 2026).

A.

We begin with GSL's equal-protection claim. The Equal Protection Clause provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. It aims to protect people from "intentional and arbitrary

[5]Dolan was not a defendant for either of the remaining claims, so the district court dismissed him from the suit post-summary judgment. Once it concluded that the claims pertaining to Dolan failed on the merits, the court declined to consider whether he was entitled to qualified immunity.

[6]GSL also appeals the district court's decisions: (1) dismissing Dolan from the lawsuit without addressing qualified immunity, (2) striking GSL's damages claims, and (3) striking GSL's damages expert. Because we affirm the district court's dismissals of all remaining claims on the merits, we need not address these issues.

discrimination" by the State, "whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam) (quotation omitted). The government violates the Clause when it discriminates in a manner that: "(1) burdens a fundamental right, (2) targets a suspect class, or (3) intentionally treats one differently from others similarly situated without any rational basis for the difference." *Green Genie, Inc. v. City of Detroit*, 63 F.4th 521, 527 (6th Cir. 2023). Courts refer to the third category as the "class-of-one theory of equal protection." *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 605 (2008).

GSL brings a class-of-one claim. To succeed, it must make two showings.

First, GSL must prove intentional discrimination. *See Rockwood Auto Parts, Inc. v. Monroe County*, 155 F.4th 557, 572 (6th Cir. 2025). GSL can do so by direct or circumstantial evidence. *Green Genie*, 63 F.4th at 527–28. GSL relies on circumstantial evidence. When relying on circumstantial evidence, a plaintiff must establish that it was "treated differently than those similarly situated in *all material* respects." *Rockwood Auto Parts*, 155 F.4th at 572 (quotation omitted). And "when evaluating whether parties are similarly situated, courts should not demand exact correlation, but should instead seek relevant similarity." *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 864–65 (6th Cir. 2012) (citation modified).

Second, GSL must show that the Township had no rational basis for treating it differently from similarly situated building-permit applicants. *See Olech*, 528 U.S. at 564. On rational-basis review, plaintiffs bear a "heavy burden" to show that the government behaved irrationally. *TriHealth, Inc. v. Bd. of Comm'rs, Hamilton Cnty.*, 430 F.3d 783, 791 (6th Cir. 2005). GSL can satisfy its burden "by negating every conceivable basis which might support the government action or by demonstrating that the challenged government action was motivated by animus." *Andrews v. City of Mentor*, 11 F.4th 462, 475 (6th Cir. 2021) (citation modified). Animus means "ill will, antagonism, or hostility." *Loesel v. City of Frankenmuth*, 692 F.3d 452, 466 (6th Cir. 2012) (quotation omitted). In the context of a permit dispute, the municipality's animus must be directed at the plaintiff, not the proposed development plan. *Id.* at 467.

Whether proceeding on a no-conceivable-reason theory or an animus theory, the burden is on GSL. The Township "has no obligation . . . to sustain the rationality of its action; its choice is presumptively valid and may be based on rational speculation unsupported by evidence or empirical data." *Rockwood Auto Parts*, 155 F.4th at 572 (citation modified).

GSL argues that the Township violated its right to equal protection by subjecting it to disparate treatment, as compared to similarly situated building-permit applicants—specifically, an entity called SW North America (SWNA). SWNA owns property abutting GSL's parcel at issue. Around 2017, the Township granted SWNA a building permit to begin construction on the property before the OCHD approved its septic permit.

Assuming, without deciding, that SWNA was similarly situated to GSL, GSL's claim fails because it cannot negate every reason for the Township's actions, nor can it show that animus or ill will motivated those actions. *See Andrews*, 11 F.4th at 475.

1.

We first consider whether GSL has negated every conceivable reason for Lyon Township's decision to deny GSL's permit application after approving SWNA's application several years earlier. No one disputes that the Township has a legitimate interest in the disposal, collection, and treatment of sewage. *See, e.g.*, *Calvert Invs., Inc. v. Louisville & Jefferson Cnty. Metro. Sewer Dist.*, 847 F.2d 304, 309–10 (6th Cir. 1988). And because GSL's property lacked access to the public sanitary sewer, the Township believed it prudent to delay issuing building permits to GSL until one of two things occurred: (1) the OCHD granted GSL a permit to build an on-site sewage-disposal system; or (2) GSL agreed to extend the public sanitary sewer line at its own expense if the OCHD denied its permit application.

Was this decision rational? Yes. Keep in mind that Lyon Township need not explain the reasoning behind its position—GSL carries that burden. But the Township's reasoning provides a good starting point for our analysis. The Township asserts that, from the start, "[GSL's] site plan was designed and approved for a septic system." R. 56, PageID 2582. So "[i]f [GSL] had not obtained a septic permit, it would have had to connect to the sanitary sewer in order to service a building occupied by people, and it would have had to do so in a manner that extended

the sewer in a public right-of-way and connected into its front yard." *Id.* at 2581. Put differently, the Township contends that GSL could not rely on existing public infrastructure for waste disposal. And GSL lacked the necessary permits to build its own waste-disposal system. For these reasons, the Township declined to issue building permits to GSL.

To be sure, those same reasons might have supported the denial of SWNA's application. SWNA also lacked an OCHD septic permit. But it is conceivable, as the Township asserts, that its earlier decision to grant SWNA a building permit was simply a mistake. At that time, the building department coordinator—and, according to the Township, the person who issued the building permit—was Patty Johnson. Johnson no longer worked for the Township when GSL applied.[7] The Township conceded that Johnson breached Township policy by granting SWNA a permit. Building department official Dave Herriman testified that he did not "recall ever anyone getting a building permit without" the necessary county permits. R. 51-12, PageID 2360. And Herriman was not aware that SWNA had received a building permit before obtaining a septic permit, but he "would have stopped it" and "would [n]ever approve a building . . . permit before sanitary conditions had been approved."[8] R. 46-14, PageID 1726. That testimony accords with the Township's Code, which requires applicants to "submit copies of the documentation from other agencies . . . indicating that the plans have received their approval . . . prior to the Township Engineer granting any engineering construction plan approval." Lyon Charter Township Code of Ordinances § 15-9(c).

GSL identifies a single instance in which another entity obtained a building permit before securing the necessary approvals from other agencies. On this record, that is insufficient for us to conclude that the Township lacked a rational basis for enforcing its policies four years later to

[7]GSL contends that the Township's building department official, Dave Herriman, not its coordinator, Patty Johnson, was the only official who could issue a building permit. Herriman worked for the Township when both GSL and SWNA applied for their respective permits, so GSL argues that the same individual was responsible during both application processes. But Herriman clarified that a building department coordinator is "authorized to sign off on building permits under [Herriman's] supervision." R. 51-12, PageID 2361.

[8]GSL notes that Herriman's name appears on a sign-up sheet for SWNA's preconstruction meeting, and a document from the meeting suggests that SWNA had not yet obtained a septic permit. GSL offers this as circumstantial evidence that Herriman was aware that SWNA did not have all necessary permits and knowingly allowed SWNA to obtain a building permit without a septic permit. However, it is conceivable that Herriman did not have the missing septic permit in mind when the building permit was issued.

ensure that GSL's property had an adequate sanitation system. "We will not overturn government action unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the government's actions were irrational." *Rockwood Auto Parts*, 155 F.4th at 572 (citation modified). GSL has not carried its burden, failing to refute "every conceivable reason" for the Township's decision to withhold building permits until GSL resolved its sewage-related issues, notwithstanding its earlier approval of SWNA's permit application. *See id.* (quotation omitted).

GSL's counterarguments miss the mark. It attacks portions of Herriman's testimony as "not rational." D. 32 at p.36. But its class-of-one claim hinges on whether Township officials behaved irrationally by subjecting GSL to disparate treatment, not whether an official testified irrationally years later at a deposition. GSL also accuses the Township of "refusing for an unsupportable reason" GSL's request to connect to the public sanitary sewer off the rear-side of the property. D. 45 at p.16. But GSL never suggests that Lyon Township ever granted a materially similar request by SWNA or any other potential comparator. Thus, the Township's refusal to adopt GSL's proposed solution matters not to our assessment.

2.

We move next to GSL's animus theory. Rarely are vengeful and spiteful actions rational. So if GSL can demonstrate that Lyon Township's actions were motivated by animus or ill will toward it, then the Township's actions would lack a rational basis.

GSL points to emails sent by the Township's representatives to support its argument. Recall that on March 8, 2021, GSL's representative, Lukosavich, emailed various Lyon Township affiliates, including its board of trustees, complaining about delays supposedly caused by the Township. Rosati, the Township's outside counsel, responded to Lukosavich's email, calling it "inappropriate" and accusing Lukosavich of making "veiled threats." R. 30-11, PageID 1118. And Zawada, the Township's outside engineering consultant, emailed one of her coworkers stating, "[Lukosavich] went too far on that email, copying the entire board. BS!! I was literally on the phone with the Building Dept begging them to take the plans when she sent that bull!" *Id.*

Clearly, Lukosavich's March 8 email frustrated and annoyed Rosati and Zawada. Maybe they harbored animus toward Lukosavich. But a reasonable jury could not conclude that any animus or hard feelings Rosati or Zawada had toward Lukosavich motivated Lyon Township's treatment of GSL. Neither Rosati nor Zawada was a final decisionmaker for approving building permits. True, Rosati was closely involved in matters relevant to this dispute—namely, the drafting of hold-harmless letters. But attorneys are not final decisionmakers. Quite the opposite: attorneys abide by their clients' decisions. *See* ABA Model R. Pro. Conduct 1.2. And nothing in the record suggests that Rosati's personal feelings toward Lukosavich interfered with her professional judgment or her duties to her client. Meanwhile, Zawada was responsible for GSL's engineering review. Although her review was a critical step in the permitting process, she had no authority to approve or issue building permits herself. Lyon Township vested that authority in its building department. *See* Lyon Charter Township Code of Ordinances § 15-10.

Rockwood Auto Parts v. Monroe County helps illustrate this point. There, the plaintiffs, owners of a local towing company, brought an equal-protection claim against the county after it awarded a contract to their competitor. *Rockwood Auto Parts*, 155 F.4th at 565–66. We concluded that the county sheriff's purported animus toward one of the plaintiffs did not motivate the county's decision to award a contract to the plaintiffs' competitor. *Id.* at 573. The plaintiffs' animus theory "fail[ed] at the outset" because the "final decisionmaker" on the contract award was not the sheriff; it was the county's chief financial officer, who harbored no animus at all toward the plaintiffs. *Id.* at 574. Not only that, but the primary reason for the alleged animus was, in the sheriff's own words, the plaintiffs' "lack of professionalism." *Id.* (quotation omitted). And hostility that relates to "the defendant's official duties" is not the sort of "personal malice" that can support an animus finding. *Id.* (quotation omitted).

Here, like the *Rockwood Auto Parts* plaintiffs, GSL lacks evidence that the Township's building department or any other final decisionmaker harbored animus unrelated to their official duties. Any negative feelings that Rosati or Zawada had toward GSL were "[]legitimate" and "[]related to the [Township]'s official duties." *See id.* (quotations omitted). Rosati, for instance, felt that Lukosavich conveyed her concerns in a potentially unlawful way. So even if GSL could show that Rosati's or Zawada's annoyance with Lukosavich influenced the Township's decision,

"those negative experiences themselves provided a rational basis for" the Township's actions. *See id.* at 575.

* * *

Lyon Township did not violate GSL's equal-protection rights. The Township required GSL to obtain a septic permit before the building department would issue a building permit. In the alternative, the Township required GSL to execute a hold-harmless agreement so that GSL could begin construction before the issuance of a building permit. GSL has failed to rebut the presumption that the Township had a rational basis for taking these actions.

B.

We turn next to GSL's due-process claims. The Fourteenth Amendment's Due Process Clause bars "any State" from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Supreme Court has recognized that the Due Process Clause has procedural and substantive components. *See Town of Castle Rock v. Gonzales*, 545 U.S. 748, 755–56 (2005). GSL presses a procedural-due-process claim and a substantive-due-process claim. We reject both.

1.

Start with the procedural-due-process claim. GSL argues that Lyon Township deprived it of a property interest by withholding building permits that were allegedly ready to be picked up, and then failed to provide a procedure to contest that deprivation. Procedural due process requires the government to provide "fair procedure" before depriving a person of life, liberty, or property. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). To prevail on a procedural-due-process claim, a plaintiff must show: (1) "deprivation by state action of a protected interest in life, liberty, or property," and (2) "inadequate state process." *Reed v. Goertz*, 598 U.S. 230, 236 (2023).

The Constitution protects property interests; it does not create them. *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998). Protected property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source

such as state law." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). "[T]he state law must create a legitimate entitlement to a benefit or a justifiable expectation of receiving it." *Williams v. City of Detroit*, 54 F.4th 895, 899 (6th Cir. 2022). A "unilateral expectation" in receiving a benefit will not suffice. *Roth*, 408 U.S. at 577.

We look to Michigan law to determine whether GSL has a protected property interest in the building permits. A developer in Michigan generally has no vested interest in the lifting of a land-use restriction unless that developer: (1) possesses a "lawful" building permit, *Dingeman Advert., Inc. v. Algoma Township*, 223 N.W.2d 689, 691 (Mich. 1974), and (2) has conducted work "of a substantial character towards the construction" on the property, *City of Lansing v. Dawley*, 225 N.W. 500, 500 (Mich. 1929). "The test in each case is not whether a little or a lot has been spent in reliance upon the [expected benefit], but, rather, whether there has been any tangible change in the land itself by excavation and construction." *Bevan v. Brandon Township*, 475 N.W.2d 37, 45 (Mich. 1991) (citation modified).

If we conclude that a deprivation of a protected interest occurred, we next ask whether the government used "fair procedure[s]." *Zinermon*, 494 U.S. at 125. This is "a flexible concept that varies according to the situation." *Sharp v. Lindsey*, 285 F.3d 479, 488 (6th Cir. 2002). What matters is that the aggrieved party had an "opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citation modified).

Recall what GSL says took place. Sometime in March 2021, Lyon Township's building coordinator "advised GSL that the [shell and foundation] building permits were available to be picked up." D. 32 at p.45. GSL thought this meant that the Township had "issued" the building permits, giving the developer a protected property interest in a shell permit and a foundation permit. But when the building coordinator explained in April 2021 that no building permits would issue until GSL resolved the sewage problems, GSL took this as a revocation of the shell and foundation permits, thus depriving GSL of a protected property right without due process.

GSL's procedural-due-process claim fails. Even if we assume that Lyon Township issued valid building permits in March 2021, GSL cannot point to any construction work of a

substantial character that it performed on the property between the time it was told that the permits had issued and the time the Township supposedly reversed its decision. *See Dawley*, 225 N.W. at 500. So the Township did not deprive GSL of a protected property interest. We acknowledge that this is a "strict rule." *Seguin v. City of Sterling Heights*, 968 F.2d 584, 591 (6th Cir. 1992). But "Michigan courts have refused to weaken or back away from" it. *Id.* In fact, they have upheld the rule even when a property owner made significant expenditures in anticipation of construction. *See, e.g.*, *Schubiner v. West Bloomfield Township*, 351 N.W.2d 214, 219 (Mich. Ct. App. 1984) (finding no vested property rights existed where the plaintiff, in reliance on an approved site plan that was later revoked by the local township, expended over $100,000 on surveys, demolition, and tree-stump removal but never began construction).

GSL offers nothing to undermine our conclusion that it lacks a property interest because it did not engage in construction work of a substantial character after the alleged issuance of the building permits. Instead, it just doubles down on its argument that the Township's issuance of the building permits should suffice to create a protected property interest. We reject this argument.

2.

Turn to the substantive-due-process claim. Substantive due process "bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Zinermon*, 494 U.S. at 125 (citation modified). To succeed on a substantive-due-process claim, a plaintiff must show: (1) "it has a constitutionally protected interest," and (2) the government "deprived it of that interest through arbitrary and capricious action." *Golf Vill. N., LLC v. City of Powell*, 42 F.4th 593, 601 (6th Cir. 2022) (citation modified).

In the context of land-use restrictions, a substantive-due-process claim focuses on whether the property owner was "subjected to arbitrary or irrational" action. *White Oak Prop. Dev., LLC v. Washington Township*, 606 F.3d 842, 853 (6th Cir. 2010) (quotation omitted). We do not second guess a municipality's decision unless the decision has "no foundation in reason and is a mere arbitrary or irrational exercise of power." *Warren v. City of Athens*, 411 F.3d 697, 707 (6th Cir. 2005) (citation modified).

Even if GSL could overcome the lack-of-property-interest hurdle, it falls well short of showing that Lyon Township acted arbitrarily or irrationally in not issuing building permits for the property. Put simply, GSL did not comply with Lyon Township Code of Ordinances § 15-10(b), which required it to "secure all necessary permits from other agencies . . . and attend a preconstruction meeting" before construction commenced. And because GSL does not allege that the ordinance is itself arbitrary or irrational, Township officials did not act arbitrarily or irrationally in abiding by it.

GSL's substantive-due-process argument premised on Lyon Township's denial of its application for speculative building status likewise fails. If GSL obtained speculative building status, then it could market its property "as pre-approved for a tax abatement consideration." R. 46-23, PageID 1783. The Township's application criteria for tax abatements bars applicants from receiving a tax abatement if they have pending litigation against the Township. This posed a problem for GSL because it sought speculative building status just months after filing this suit. Lyon Township denied GSL speculative building status because GSL was ineligible for a tax abatement under the Township's tax-abatement guidelines. Thus, the Township had a rational basis for denying GSL's application.[9]

C.

Finally, we address GSL's First Amendment retaliation claim. The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the government from "abridging the freedom of speech." U.S. Const. amend. I; *Stromberg v. California*, 283 U.S. 359, 368 (1931). It also bars government officials from retaliating against individuals or entities "for engaging in protected speech." *Lozman v. Riviera Beach*, 585 U.S. 87, 90 (2018). To succeed on its First Amendment retaliation claim, GSL must prove that: (1) it "engaged in constitutionally protected speech," (2) it "suffered an adverse action likely to chill a person of ordinary firmness from continuing to engage in protected speech, and (3) the protected speech was a substantial or motivating factor for the adverse action." *DeVooght v. City of Warren*, 157 F.4th 893, 898 (6th Cir. 2025) (quotation omitted).

[9]The parties agreed to dismiss "plaintiff's claims of retaliation under the First Amendment related to the speculative building tax abatement application." R. 137, PageID 3910.

Many claims do not survive the first element. "[T]he First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). The government may apply "reasonable time, place, or manner restrictions" if they are content neutral, "narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information." *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984). To be content neutral, the regulation must not have been adopted "because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). And the alternative channels of communication need not be the *best* means of communication; what matters is that the speaker is "permitted to reach the intended audience." *Phelps-Roper v. Strickland*, 539 F.3d 356, 373 (6th Cir. 2008) (quotation omitted).

"Although the elements of a First Amendment retaliation claim remain constant, the underlying concepts that they signify will vary with the setting." *Thaddeus-X v. Blatter*, 175 F.3d 378, 388 (6th Cir. 1999) (en banc). Thus, our "inquiry is intensely context-driven." *Holzemer v. City of Memphis*, 621 F.3d 512, 520 (6th Cir. 2010).

GSL's First Amendment retaliation claim fails at the first element. In short, GSL cannot prove that the Township's conduct interfered with its free-speech rights. Recall that a GSL representative, Lukosavich, copied Lyon Township's board of trustees on an email urging the Township to move more quickly on the project. The Township's attorney, Rosati, responded to the email, calling it "inappropriate" and directing Lukosavich to "not communicate directly with the members of the Township Board in this fashion." R. 30-11, PageID 1118.

Rosati later clarified that "[c]ommunicating with all the Board members in the fashion that [Lukosavich] did is setting up a potential violation of the Open Meetings Act." R. 30-12, PageID 1123. Michigan's Open Meetings Act requires that "[a]ll deliberations of a public body constituting a quorum of its members must take place at a meeting open to the public." Mich. Comp. Laws § 15.263(3). So by advising GSL to refrain from sending further project-related communications to the board of trustees en masse, the Township hoped to shield itself from any

potential allegations that its board was engaging in secret, backroom deals with property developers.

The parties do not dispute GSL's First Amendment right to communicate with government officials. But to the extent that the Township placed limitations on this right, its restrictions were constitutionally permissible.

First, the restrictions were content neutral. Rosati's email focused solely on Lukosavich's methods of communication; Rosati told Lukosavich not to communicate with the Township "in this fashion." Rosati expressed no disagreement with the content of Lukosavich's email. *See Ward*, 491 U.S. at 791.

Second, the Township's restriction was "narrowly tailored to serve a significant governmental interest." *Clark*, 468 U.S. at 293. The Township satisfies the narrow-tailoring requirement "so long as the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward*, 491 U.S. at 799 (citation modified). Neither party disputes that Lyon Township has a significant interest in complying with the law, including Michigan's Open Meetings Act. And the speech regulation here did not bar GSL from contacting the Township. Rosati did not even bar GSL from contacting board members. She merely said that GSL cannot do so all at once via email. This directive left "open ample alternative channels for communication of the information." *See Clark*, 468 U.S. at 293.

GSL counters that the Township's concerns over possible liability under the Open Meetings Act did not justify the speech restriction. It contends that Lukosavich's correspondence would not have violated the Open Meetings Act because it amounted to no more than a "chance gathering," not a "meeting of a public body" under the Act. *See Ryant v. Cleveland Township*, 608 N.W.2d 101, 103–04 (Mich. Ct. App. 2000) (per curiam) (citation modified). But to enforce a content-neutral restriction, the Township need not show that Lukosavich's email *actually* violated the Act. It needed to show only that its restriction on GSL's speech was narrowly tailored to its significant interest in avoiding potential liability under the Act. *See Jobe v. City of Catlettsburg*, 409 F.3d 261, 267 (6th Cir. 2005). A narrowly tailored solution "need not be the least restrictive or least intrusive means" of furthering the

government's interests. *Ward*, 491 U.S. at 798; *see id.* at 800 ("The validity of time, place, or manner regulations does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests." (citation modified)). What matters is that the restriction is "not substantially broader than necessary" to achieve those interests. *Id.* The Township's modest restriction on the way citizens may contact the board passes constitutional muster.

III.

For the reasons above, we **AFFIRM** the district court's judgment.