

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF ANDERSON</p> <p>Hubert N. Smith, Jr. and Stanley Hix,</p> <p style="text-align: center;"><i>Plaintiffs/Appellants,</i></p> <p style="text-align: center;">v.</p> <p>Anderson County Planning Commission and Spano & Associates, Inc.,</p> <p style="text-align: center;"><i>Defendants/Respondents.</i></p>	<p>IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT</p> <p>Civil Action No. 2025-CP-04-00328</p> <p style="text-align: center;">ORDER</p> <p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">Jul 28 2025</p> <p style="text-align: center;">SC Court of Appeals</p>
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This matter is before the Court on the second appeal (“Second Appeal”) regarding the Anderson County Planning Commission (“ACPC”) approval of a *preliminary* plat for the Anderson Reserve subdivision project (“Anderson Reserve”). The Court heard oral arguments regarding the merits of the Second Appeal on June 4, 2025. After an opportunity to review the relevant pleadings and memoranda of record, the supporting information provided by counsel, and careful consideration of the relevant law, this Court hereby dismisses the Second Appeal of Appellants Hubert N. Smith, Jr. and Stanley Hix (collectively, “Appellants”).

BACKGROUND

The preliminary plat for Anderson Reserve was initially approved on April 9, 2024 (“April 2024 Decision”). Appellants’ prior appeal of the 2024 Decision (“First Appeal”) was recently dismissed.¹ In doing so, this Court explained:

¹ See *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm’n*, No. 2024-CP-04-00975, at *4 (Anderson Cnty. Com. Pl. Feb. 21, 2025) (“Because Plaintiffs’ appeal is untimely . . . Plaintiffs’ appeal is hereby dismissed with finality.”) (citing Rule 74, SCRCF to explain that “[n]otice of appeal to the circuit court . . . must be served on *all parties* within thirty (30) days after receipt of written notice” of the decision from which appeal is made (emphasis added)). Despite

[Respondents] did what they were supposed to do, and that's it. . . . They've done it. And so I'm dismissing your appeal based on the fact that they've done what they were supposed to do.

(*Id.*, at 17:4-17). Likewise, this Court found that Respondents “went above and beyond what was necessary” and concluded that “[t]here's nothing else for us to fight about back here.” (*Id.*, at 14:2; 15:18-21).

This Second Appeal arises in part² from the ACPC's January 14, 2025 decisions (collectively, “January 2025 Decision”) after this Court urged the ACPC on remand to fully consider whether Respondent Spano & Associates, Inc. (“Spano”) had sufficiently investigated for potential gravesites. Appellants generally argue that the ACPC erred by: (1) failing to ensure that Spano preserved or protected the gravesite area, (2) approving a revised preliminary plat without public hearing of the Commission, and (3) failing to approve a final plat.³ The Court is not persuaded by these arguments.

LEGAL STANDARD

The “any evidence” standard of review applies to appeals of planning commission decisions. *See Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013) (citing *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)); *see also* S.C. Code Ann § 6-29-840 (2005). The “any evidence” standard *is the most deferential*

telling the Court that they planned “to appeal this Decision,” *Appellants never did so*. (*See* Hearing Transcript, Feb. 6, 2025, at 15:22-24) (emphasis added).

² *See* Notice of Appl., ¶ 1, where Appellants collectively refer to the ACPC's April 2024 Decision and January 2025 Decision as the “*Decision*.” (emphasis added). *Compare, Id.*, p. 9, Appellants, their prayer for relief, ask this Court to “reverse the Commission's *Decision*” . . . (*Id.*, p. 9) (emphasis added).

³ In their Notice of Appeal, Appellants incorrectly refer to the final plat as a “Master Plan” or “Master Plat.” (*See* Compl., at, e.g., ¶ 51). The correct terminology under Anderson County Ordinance § 24-367 is “final subdivision plat” or “final plat.”

standard of review recognized by South Carolina's courts. *Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC*, No. 2021-CP-23-03048, 2022 WL 20804832, at *1 (Com. Pl. Aug. 17, 2022) (emphasis added). Planning commissions receive this deference because of the South Carolina Supreme Court's recognition of "the legislature's intent [to grant] a planning commission broad discretion in this area." *Id.*, citing *Kurschner*, 376 S.C. at 173-74, 656 S.E.2d at 351.

Under the "any evidence" standard, the trial court must uphold a decision by a county planning commission unless there is no evidence to support it. *Floyd*, 403 S.C. at 476, 744 S.E.2d at 166 (citing *Kurschner*, 376 S.C. at 173, 656 S.E.2d at 351). The court is not free to substitute its judgment for that of the commission. *Alliance to Preserve*, 2022 WL 20804832, at *1. The trial court may only reverse a decision by a planning commission if the decision is incorrect as a matter of law. *Furr v. Horry County Zoning Bd. of Appeals*, 411 S.C. 178, 183-84, 767 S.E.2d. 221, 224 (Ct. App. 2014). The decision will be overturned only if it is "arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Id.*

DISCUSSION

In arriving at the January 2025 Decision, the ACPC unanimously: (1) found that Spano went above and beyond to determine if there were any grave sites on the property, and (2) voted to reaffirm the April 2024 Decision approving the preliminary plat for the Project. According to the meeting minutes, the ACPC made the January 2025 Decision after specifically evaluating this Court's directive in the First Appeal, i.e., to consider whether the potential gravesites had been adequately investigated. Likewise, the record reflects that the ACPC did not make the January 2025 Decision until after evaluating the relevant information available, which included reports

generated by *Appellants' own consultants*, Preservation South, LLC and New South Associates, as well as reports from Spano's archeologist, Kimberly Nagle, M.S., RPA, of S&ME Inc.

A decision is arbitrary or capricious if it is made without consideration of the evidence, based on whim rather than reason, or lacks a rational connection to a legitimate purpose. None of these examples apply here. The relevant meeting minutes demonstrate that the ACPC arrived at the January 2025 Decision after careful deliberation, which appears to have been grounded in objective fact (facts detailed in the respective reports) and reliable expertise (expertise of the respective experts). These reports provided detailed archaeological and historical assessments regarding the presence of grave sites. The ACPC's reliance on expert analysis signifies a reasoned approach with appropriate deference to professional expertise rather than subjective determination. Thus, the January 2025 Decision was neither arbitrary or capricious.

The ACPC's January 2025 Decision also was reasonably related to a legitimate purpose, since it explicitly followed the suggestion of this Court in evaluating the investigation of gravesites at Anderson Reserve. Therefore, the January 2025 Decision was inherently tethered to legal directive from this Court, rather than personal discretion.

Appellants also incorrectly argue that the ACPC approved the "wrong map" and that the approved map does not adequately protect the gravesite area. They also argue that to the extent the preliminary plat was modified, approval of any such modifications required a public meeting and public comment. In support of this position, Appellants rely on a plat—allegedly received in response to a Freedom of Information Act request—and an incorrect analysis of the Anderson County Code of Ordinances.

The current plat, which was revised to accommodate the findings of Appellants' own experts ("Revised Plat"), was submitted to the ACPC prior to the January 2025 Decision. The

Revised Plat is the current version on file with ACPC staff and has worked its way through the ordinary course of several iterations of review and comments by the appropriate Anderson County departments. This was confirmed by counsel for the ACPC and Spano, as well as the ACPC staff present at the June 4, 2025 hearing. Based on the submissions and information provided by the parties, I find that the Revised Plat (1) identifies the gravesite area to be protected and (2) shows the protected gravesite area will be in “open space” in compliance with § 24-401(7). Thus, this Court finds the Appellants’ argument concerning the ACPC’s approval of the “wrong map” to be misleading and without merit.⁴

Likewise, Appellants’ contention that the ACPC failed to hold a public hearing or to provide certain information to the public fails. Once approved by the ACPC, subsequent revisions to *preliminary* plats do not mandate public comment or a public meeting. This comports with Anderson County Ordinance § 24-335(5), which states, in pertinent part: “[a]pproval of the *preliminary* plat constitutes *general* approval by the planning commission of the road alignments, dimensions, layout, shape of lots and proposed rights-of-way.” *Id.* (emphasis added); *see also* § 24-337 (“The following supplemental information, where applicable, shall be submitted *after* approval of the *preliminary* plat.”) (emphasis added); § 24-335(5) (“However, review and approval by other departments and government agencies must be obtained, including, but not limited to, stormwater permits from county stormwater managements and the Department of Health and Environmental Control, which must be obtained prior to beginning land disturbing activity.”).⁵

⁴ In addition, according to the draft protective covenants submitted by Spano, which are not required by law, it is apparent that Spano seeks to protect and preserve the gravesite area. Spano has gone above and beyond what is required by state law concerning its efforts to protect the gravesite area.

⁵ ACPC staff present at the June 4, 2025 hearing also confirmed that the Revised Plan did not require a public hearing.

Accordingly, Appellants' arguments concerning the ACPC's failure to hold a public meeting or provide certain information to the public fail as a matter of law.

The ACPC fully complied with this Court's directive in the First Appeal by thoroughly evaluating the existence of gravesites. Similarly, Appellants received the relief they sought in the First Appeal, as they were given the opportunity to conduct independent investigations using their own experts. Given these circumstances, the Second Appeal appears to have been filed primarily to delay the rights of a property owner who has exceeded legal requirements in addressing the matter.

CONCLUSION

For these reasons, this Second Appeal is **DENIED** and ACPC's January 2025 Decision regarding Anderson Reserve is **AFFIRMED**.

IT IS SO ORDERED.

R. Lawton McIntosh, Presiding Judge
Judge's Electronic Signature Page to Follow

June _____, 2025



Anderson Common Pleas

Case Caption: Hubert H Smith Jr. , plaintiff, et al VS Anderson County Planning Commission , defendant, et al
Case Number: 2025CP0400328
Type: Order/Dismissal

S/R. LAWTON McINTOSH

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